

立法會
Legislative Council

LC Paper No. CB(2)2526/05-06
(These minutes have been seen
by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

**Minutes of special meeting
held on Friday, 3 February 2006 at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
- Members attending** : Hon Albert HO Chun-yan
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
- Members absent** : Hon LI Kwok-ying, MH (Deputy Chairman)
Hon James TO Kun-sun
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Lik, GBS, JP
- Public Officers attending** : Item I

Mr WONG Yan-lung, SC, JP
Secretary for Justice

Mr I Grenville CROSS, SC, JP
Director of Public Prosecutions

Mr Harry MACLEOD, BBS
Deputy Director of Public Prosecutions

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Lolita SHEK
Senior Council Secretary (2)7

Action

I. Briefing on the decision on Mr Michael WONG Kin-chau's case

(LC Paper No. CB(2)993/05-06(01) – The Statement made by the Director of Public Prosecutions on 25 January 2006 concerning the case of Mr Michael WONG Kin-chow

A booklet on “The Statement of Prosecution Policy and Practice” issued by Department of Justice in 2002

LC Paper No. CB(2)1005/05-06(01) – The minutes of the special meeting of the Panel on 14 November 2003

LC Paper No. CB(2)1005/05-06(02) – An extract from the Report of the Independent Panel of Inquiry on the Incidents Relating to the Equal Opportunities Commission (February 2005) on “Acceptance of Gifts by Mr Michael WONG”

LC Paper No. CB(2)1018/05-06(01) – A chronology of events provided by the Administration in relation to the statement of the Director of Public Prosecutions issued on 25 January 2006 concerning the case of Mr Michael WONG Kin-chow

LC Paper No. CB(2)1030/05-06(01) – The statement made by the Secretary for Justice at the meeting

LC Paper No. CB(2)1030/05-06(02) –The statement made by the Director of Public Prosecutions at the meeting)

Secretary for Justice (SJ) explained the established principles and policies relating to prosecution decisions. The salient points of his statement were as follows –

- (a) under the common law system, there were well defined and separate roles assigned to the prosecuting authority and the courts to ensure a separation of powers in respect of prosecutions;

Action

- (b) there was also separation of functions in respect of the investigation of possible offences and the making of prosecution decisions in Hong Kong which ensured that the prosecutor was able to bring an independent and objective eye to the case prepared by the law enforcement body;
- (c) under the law of Hong Kong, an individual who was charged with a criminal offence had the benefit of the presumption of innocence. The prosecution must prove guilt beyond reasonable doubt. A suspect should only be prosecuted if the evidence was sufficient. There must at least exist a reasonable prospect of conviction;
- (d) the established policy in Hong Kong was that detailed reasons for prosecution decisions would not be disclosed so as to protect the legitimate interests of those caught up in the system. The case of Mr Michael WONG Kin-chow was an exceptional situation since both the nature of the complaints against Mr WONG, and the explanation he had given in denial of impropriety, were already in the public domain. The Department of Justice (DOJ) had therefore disclosed more information than normal on the reasons for the decision not to prosecute;
- (e) there would be no parading in public of all the evidence that was gathered during the investigation, since it would facilitate a public trial of the case without the protection afforded by the criminal justice process; and
- (f) Mr WONG was treated exactly in the same manner as any member of the public would be in a similar situation. DOJ had made its decision in this case objectively, competently and with full integrity.

(Post-meeting note: The statement made by SJ was tabled at the meeting and issued to members after the meeting vide LC Paper No. CB(2)1030/05-06(01).)

2. Director of Public Prosecutions (DPP) explained the decision not to prosecute Mr Michael WONG. The salient points of his statement were as follows –

- (a) the materials made available to the prosecution by Mr WONG showed that Ms Rosaline WONG, Mr WONG's daughter, had made the travel arrangements for Mr and Mrs WONG, and that Mr WONG had duly reimbursed Miss WONG in kind for the expenses she had incurred on his behalf by paying for her shopping expenses after he had received reimbursement from the Government;
- (b) Deputy Director of Public Prosecutions (DDPP) and Mr Martin Wilson, Queen's Counsel in London, had each separately advised DPP not to

Action

prosecute Mr WONG. After considering their opinions, DPP concluded that criminality could not be established to the required standard on the evidence as a whole, since it could not be proved that Mr WONG had acted dishonestly in relation to the air tickets or in relation to his claims for reimbursement of Leave Passage Allowance (LPA) on the three occasions between 1998 and 2001. SJ concurred with DPP's conclusion; and

- (c) it was the duty of prosecutors to ensure that only meritorious cases based on sound and solid evidence would proceed to trial so as to defend the rights of the suspects.

(Post-meeting note: The statement made by DPP was tabled at the meeting and issued to members after the meeting vide LC Paper No. CB(2)1030/05-06(02).)

Payment for the air tickets

3. Mr Ronny TONG said that Mr Martin Wilson had formulated his opinion on Mr Michael WONG's case on the assumption that the air tickets involved in Mr WONG's claims for reimbursement of LPA between 1998 and 2001 were provided to him by his daughter. However, according to many media reports in October 2003, in particular the report on a telephone interview of Mr WONG published in Ming Pao on 31 October 2003, Mr WONG admitted that Mr LAU, a local businessman, had given the air tickets to his daughter as a gift.

4. Mr TONG was of the view that if the air tickets were a gift to Mr WONG's daughter from the businessman, the ground put forth by Mr WONG in his defence that he had reimbursed Miss WONG the payment for the air tickets was not valid. Therefore, the law enforcement authorities should investigate and ascertain the authenticity of the report in Ming Pao. Mr TONG asked whether the report, which appeared to have been based on a recording of the telephone interview, was investigated into by the Independent Commission Against Corruption (ICAC), and whether there was documentary evidence of Miss WONG paying for the air tickets.

5. DPP said that the ICAC had conducted a thorough investigation on Mr WONG's case for two years. The investigation had covered the relevant media reports and statements received. DPP explained that the materials available to the prosecution revealed that there was an agreement between Mr WONG and his daughter that she made travel arrangements for him and his wife. It was also revealed that Miss WONG had made the travel arrangements for him and his wife on those three occasions between 1998 and 2001 and provided the necessary documents for Mr WONG to apply for reimbursement of LPA. Mr Martin Wilson had considered all the materials thoroughly and concluded that there was no evidence that the air tickets were given to Mr WONG as a gift by a third party.

Action

6. DPP informed members that in his statement to the Independent Panel of Inquiry on the Incidents relating to the Equal Opportunities Commission, Mr WONG denied that he had ever accepted any air tickets from the businessman. Mr WONG considered that the report in Ming Pao was taken out of context, and was a distortion of his conversation with the reporter.

7. DPP further said that the ICAC had sent the file on Mr WONG's case to DOJ on four occasions for advice during its investigation so as to ensure that all the relevant aspects had been covered in the investigation. It could not be shown that Mr WONG had acted dishonestly or with impropriety in a criminal sense. Mr WONG believed that his daughter had made the travel arrangements for him and his wife. DPP added that discussions at this meeting should focus on Mr WONG and not other persons.

8. Ms Emily LAU said that some of her friends in the legal and judicial sector had expressed concern that favourable treatment had been given to Mr Michael WONG. The public did not have confidence that DOJ had handled the case impartially. Members had expected DOJ to provide more information to explain its decision not to prosecute Mr WONG. She considered that it was very crucial who had paid for the air tickets involved in Mr WONG's claims for reimbursement of LPA. However, DOJ had failed to provide a clear answer.

9. SJ strongly denied that DOJ had not handled Mr WONG's case honestly and impartially. He reiterated that the ICAC and DOJ had taken into account all the information available, including the relevant media reports, which were covered in the ICAC investigation. Mr WONG had denied the allegation against him in the media reports. SJ added that media reports might not be reliable evidence.

10. SJ stressed that DOJ was the gatekeeper. A suspect should only be prosecuted if the evidence was sufficient, and the prosecution must prove guilt beyond reasonable doubt. To justify a prosecution, there should be sufficient evidence to prove that Mr WONG had acted dishonestly in relation to the air tickets or his claims for reimbursement, that he believed that he did not have the responsibility of repaying his daughter for the air tickets, and that he had not made the reimbursements to his daughter. However, there was substantial evidence to show that Miss WONG had made all travel arrangements for Mr WONG and his wife, and that he had reimbursed Miss WONG by paying for her shopping expenses. There was also no evidence to prove that the air tickets concerned were given to Mr WONG as a gift by a third party. DOJ's decision not to prosecute was supported by the advice of an overseas legal expert. SJ reiterated that DOJ had complied fully with the prosecution policy and principles in handling this case, and favourable treatment had not been given to any persons.

11. SJ added that the ICAC had also investigated into the payment for the air tickets. It was revealed that Miss WONG had handled the arrangement for payment for the tickets by cheques to the travel agent. SJ stressed that because of the principles explained in his statement regarding disclosure of evidence gathered during

Action

the investigation, DOJ could not disclose additional information, as other parties were involved. While DOJ had exceptionally given more information than normal on the reasons for the decision not to prosecute in this case, DOJ would not disclose information concerning individuals other than Mr WONG. The disclosure of the information would not be fair to those individuals, since it would facilitate a public trial of the case without the protection afforded by the criminal justice process.

12. The Chairman and Mr Martin LEE asked whether Mr WONG could accept the air tickets and apply for reimbursement of LPA if the tickets were a gift from his daughter. The Chairman pointed out that according to paragraphs 4.27 and 4.28 of the Report of the Independent Panel of Inquiry on the Incidents relating to the Equal Opportunities Commission, the Judiciary had issued two statements in 2003 responding to media enquiries about the alleged acceptance of air tickets by Mr WONG from the local businessman. In its statement issued on 3 November 2003, the Judiciary mentioned that Miss WONG had said that the air tickets were a gift from her to Mr WONG.

13. The Chairman commented that the public might not have confidence in DOJ's decision not to prosecute Mr WONG. She pointed out that there were allegations in some media reports that the air tickets were a gift to Mr WONG from the local businessman or from Mr WONG's daughter. Members were not aware of Mr WONG's claim that Miss WONG had arranged for his travel arrangements, and that he had fully repaid Miss WONG for the air tickets until such information was disclosed by DOJ recently. Members and the public were therefore full of questions about the case.

14. DDPP clarified that a public officer was required to seek permission for accepting gifts. Nevertheless, a public officer was permitted to accept gifts from a relation including his children. It was not necessary for him to report acceptance of such gifts to the Government, irrespective of the value of the gifts.

15. DPP explained that if Miss WONG had given the air tickets to Mr WONG as a gift, and Mr WONG had made claims for reimbursement of LPA without any intention to repay his daughter, his conduct would have been prosecutable under section 9(3) of the Prevention of Bribery Ordinance (Cap. 201) for deceiving his principal. However, in the present case, there was an agreement between Mr WONG and his daughter that she made the travel arrangements for him, and Mr WONG had then duly repaid his daughter for the air tickets.

16. SJ added that the ICAC investigation had revealed that besides Mr WONG's statement to the Independent Panel of Inquiry on the Incidents relating to the Equal Opportunities Commission, there was substantial objective evidence that Mr WONG had reimbursed his daughter the expenditure on the air tickets by paying for her shopping expenses. The reimbursements Mr WONG made to his daughter had contradicted the assumption that he had considered the air tickets as a gift and that he did not have the obligation to repay his daughter. SJ reiterated that DOJ had considered all the evidence available and whether criminality could be established to the required standard in deciding not to prosecute Mr WONG.

Action

17. As regards the Judiciary's statement on 3 November 2003, DPP clarified that the statement merely referred to the allegation that Mr WONG had accepted a gift of tickets from a businessman, as reported in the media. However, the ICAC investigation had not revealed that there was evidence to substantiate the allegation against Mr WONG. SJ added that the ICAC had thoroughly considered all the evidence before deciding whether to accept the evidence having regard to its credibility and admissibility.

18. Mr Martin LEE said that DOJ had accepted Mr WONG's defence that there was an agreement between him and Miss WONG that she made the travel arrangements and paid for the air tickets, and he would reimburse Miss WONG in kind afterwards. Mr LEE considered that the effective period of such an agreement was important and should be ascertained by DOJ. He pointed out that if the agreement did not exist when Mr WONG made any of the three claims, his defence should not be accepted.

19. SJ pointed out that the effective period of the agreement was not crucial. This case concerned the three claims for reimbursement of LPA made by Mr WONG between 1998 and 2001. The evidence available proved that the agreement existed between Mr and Miss WONG during that period. There was not sufficient evidence to justify the institution of a prosecution against Mr WONG. DPP supplemented that Mr WONG had indicated that the agreement had been made in early 1998.

20. Mr Martin LEE noted from paragraphs 6 and 7 of DPP's statement, which was tabled at the meeting, that Mr WONG had made claims for reimbursement of LPA in 1998, 2000 and 2001 respectively. However, he had not repaid his daughter for the expenditure on the air tickets involved in his claims until December 2000 and 2001. Mr LEE considered that such payment arrangement was not appropriate, as Mr WONG had not actually paid for the air tickets when he submitted claims for reimbursement to the Government. In particular, Mr WONG had not repaid his daughter for the air tickets in 1998 until more than two years later. The Chairman, Ms TAM Heung-man and Ms Emily LAU expressed similar concern.

21. DPP said that the time lag had been taken into account fully by DDPP and Mr Martin WILSON. However, they had to accept the fact that there was evidence to show that there was an agreement between Mr and Miss WONG on travel arrangements. Although Mr WONG had offered to repay Miss WONG by cheque, she had refused and preferred payment in kind instead. DPP added that the ICAC investigation had not revealed any evidence which contradicted that fact.

22. Mr Martin LEE pointed out that the ladies' jewellery and handbag paid by Mr WONG in December 2000 and August 2001 respectively might have been bought for Mrs WONG and not Miss WONG, and asked whether this point had been addressed in the ICAC investigation. DPP responded that there was strong evidence to show that Mr WONG had reimbursed his daughter for the expenses she had incurred on his behalf.

Action

23. Ms TAM Heung-man declared that she was a member of the Equal Opportunities Commission. Ms TAM referred to paragraph 20 of SJ's statement which explained that one of the criteria for prosecution decisions was whether it was in the public interest to prosecute. She expressed concern that a total sum of \$171,666, being public money, had been reimbursed to Mr WONG as a result of the three claims he made. As public interest was involved, the Administration should clarify whether Miss WONG had actually paid for the air tickets.

24. SJ explained that if there was sufficient evidence to prosecute, DOJ would consider whether it was in the public interest to do so. In Mr WONG's case, DOJ had not yet considered the second criteria since there had not been sufficient evidence to prosecute.

25. Mr Albert HO remarked that based on the information provided by DOJ, the public would not be confident that DOJ had made the decision not to prosecute Mr WONG impartially. Mr HO shared the concerns raised by other members. He considered that the ICAC should explain why Mr WONG was allowed to claim reimbursement of LPA in respect of these air tickets.

26. Mr HO further said that given the education level and status of Mr and Miss WONG, and the fact that they were aware that public money was involved, it was doubtful that they had made such an oral agreement on the travel arrangements and reimbursement of air tickets in kind. It was also doubtful why DOJ had accepted their defence. Mr HO pointed out that if the same criteria for prosecution were adopted by DOJ, prosecution in many cases would not be justified.

27. DPP assured members that DDPP and Mr Martin Wilson had handled the case impartially. DOJ had also reviewed the case in its entirety and made the decision objectively and with full integrity. DPP said that the arrangements made by Miss WONG and Mr WONG might not be satisfactory, and in retrospect, Mr WONG might wish he had handled the matter differently. However, DOJ had to consider whether the evidence as a whole could reach the standard required to prove that Mr WONG had intended to deceive his principal. In view of the receipts produced by Mr WONG and Miss WONG on the payment for the air tickets and Miss WONG's shopping expenses, DOJ was not in a position to contradict their defence, and had therefore decided not to prosecute Mr WONG. DPP stressed that the case had been reviewed by four lawyers, and they had reached the same decision not to prosecute.

28. Mr Albert HO said that questions about the dubious arrangements between Mr and Miss WONG had remained unanswered. Such arrangements had aroused suspicions and further investigation might have resulted in prosecution. Mr HO added that he would not query the impartiality of Mr Martin Wilson in handling the case. However, Mr Wilson's decision might have been affected by the materials made available to him.

Action

Impact on the system of reimbursement of payment

29. Ms TAM Heung-man and Ms Emily LAU expressed concern about the implications of Mr WONG's case on the integrity of the system of reimbursement of payment by the Government to civil servants. They were concerned that the case might become a precedent, and other public officers would choose not to comply with the reimbursement procedure and pay for their air tickets only after they had obtained the reimbursement of LPA. Ms Emily LAU considered that such practice was not acceptable and should not be allowed by the Government.

30. SJ responded that if pitfalls in the administrative procedures were revealed during criminal investigation, the problem should be addressed separately. He assured members that this case would not be regarded as a precedent. DOJ would consider whether there was sufficient evidence to justify a prosecution in each case. DPP supplemented that the Judiciary might review the accounting procedures for the reimbursement of LPA.

31. The Chairman said that when the Panel discussed Mr WONG's case at the meeting on 14 November 2003, the Judiciary Administration had considered that it was not appropriate to initiate an inquiry into the matter as the case had been reported to the ICAC for investigation. Since the ICAC investigation had been completed, and a decision had been taken not to prosecute Mr WONG, the Panel should request the Judiciary Administration to indicate whether it would take follow up actions in relation to Mr WONG's case.

32. Ms Emily LAU suggested that as the case might have implication on the system of reimbursement of payment by the Government to other civil servants, the Panel should coordinate with the Panel on Public Service, and request the Secretary for the Civil Service to provide a paper on the operation of the existing system and whether any improvements to the system would be considered in the light of Mr WONG's case.

33. The Chairman suggested that the ICAC should also be requested to advise, in the light of Mr WONG's case, whether it would consider making any recommendations for follow up by the Administration. Members agreed that the Judiciary Administration, the Civil Service Bureau and the ICAC should be requested to provide responses as suggested by the Chairman and Ms Emily LAU.

(Post-meeting note: The responses from the Secretary for the Civil Service and the ICAC were issued vide LC Paper No. CB(2)1245/05-06(01) and (02) on 22 February 2006.)

Interview by the ICAC

34. Mr Martin LEE noted from DPP's statement issued in January 2006 that Mr WONG had refused to be interviewed by the ICAC and had only provided a statement through his lawyer. Mr LEE expressed concern that as Mr WONG was allowed to

Action

do so, and both the ICAC and DOJ had accepted the defence put forth in his statement, the case would become a precedent. In future, individuals under investigation would refuse to be interviewed by the ICAC.

35. The Chairman and Mr Albert HO expressed similar concern. The Chairman said that Mr Anthony LEUNG, former Financial Secretary, had also refused to be interviewed by the ICAC on a previous occasion, and had only made representations through his lawyer. Such cases might give rise to a public perception that people in high position would be able to evade the examination by the ICAC. She urged the Administration to address this issue.

36. Mr Albert HO said that he had represented many civil servants who were subjects of ICAC investigation and had been prosecuted in the end. They could not refuse to be interviewed by the ICAC. Most of them had given their oral statements to the ICAC because they were keen to provide clarifications in the hope that they would not be prosecuted. Mr HO added that in cases where there was prima facie evidence for prosecution, the subjects under investigation would be arrested if they refused the ICAC's request for interviews.

37. DPP said that it was desirable if Mr WONG had agreed to be interviewed by the ICAC. However, it was the right of any individual to decline to be interviewed and choose to submit representations instead. According to the guidelines and principles stipulated in the "Statement of Prosecution Policy and Practice", DOJ was required to consider all the materials supplied by individuals who might be charged in their defence. DOJ received and considered such kind of statements frequently.

38. SJ supplemented that anyone had the right to remain silent when approached by the ICAC for an interview. Anyone could make representations through lawyers to DPP in his defence, and DOJ was required to consider all these representations. Therefore, Mr WONG had not been given favourable treatment in this regard.

Separation of functions in respect of investigation of offences and making of prosecution decisions

39. In response to Ms Emily LAU, DPP informed members that on the four occasions between January and August 2005 mentioned in the chronology of events provided by DOJ, DOJ had provided interim advices to the ICAC and requested it to pursue further lines of investigation in Mr WONG's case.

40. Ms Emily LAU noted from paragraphs 11 and 12 of SJ's speaking note that the separation of functions in respect of the investigation of possible offences and the making of prosecution decisions in Hong Kong ensured that the prosecutor was able to bring an independent and objective eye to the case prepared by the law enforcement authority. Ms LAU expressed concern that there was conflict of roles as DOJ had tried to direct the ICAC investigation.

Action

41. DPP explained that law enforcement authorities forwarded case files to DOJ for advice frequently. In some cases, DOJ would request the law enforcement authorities to pursue particular lines of investigation if it considered that new evidence which could assist with the making of prosecution decisions might be uncovered by the investigation. The arrangement helped to ensure that a comprehensive investigation was conducted. DPP stressed that DOJ provided such advice to the law enforcement authorities frequently. It had followed the normal practice in providing its advice to the ICAC in Mr WONG's case.

II. Any other business

42. There being no other business, the meeting ended at 10:20 am.

Council Business Division 2
Legislative Council Secretariat
22 June 2006