

LegCo Panel on Administration of Justice and Legal Services
Meeting on 3 February 2006

Opening Statement by the Director of Public Prosecutions
on the Case of Mr. Michael Wong Kin-chow

Madam Chairman, Ladies and Gentlemen,

I welcome this opportunity to address the Panel on the decision not to prosecute Mr. Michael Wong.

2. After the ICAC investigated complaints that Mr. Wong, while serving as a High Court judge, had on three occasions deliberately made improper applications to government for reimbursement of Leave Passage Allowance in respect of air trips which he and his wife had made between 1998 and 2001, two senior lawyers, one in Hong Kong, the other in London, were asked to advise on the case. Each is an expert in the area of commercial crime and corruption.

3. Mr. Harry Macleod, the Deputy Director of Public Prosecutions who, since 1995, has headed the unit which specialises in commercial crime and ICAC cases, advised that there was not sufficient evidence to justify a prosecution of Mr. Wong. Mr. Martin Wilson, a Queen's Counsel in London, who is familiar with Hong Kong circumstances, and over the years has conducted both prosecution and defence work in this jurisdiction, advised that the evidence available to the prosecution did not provide a reasonable prospect of conviction. Each separately analysed the evidence, and arrived at the same conclusion.

4. I approached this case, as always, with an open mind. I had no preconceptions. Provided there was sufficient evidence, I was entirely satisfied that a prosecution should proceed. However, after I had reviewed the results of the investigation and all aspects of the case, and considered the opinions of the two experts, I concluded that criminality could not be established to the required

standard on the evidence as a whole. It could not, that is, be proved that Mr. Wong had acted dishonestly in relation to the air tickets or in relation to his claims for reimbursement. In these circumstances, my duty to stop the case from proceeding further was plain.

5. As a Justice of the High Court, Mr. Wong was entitled to an allowance each year for air travel for himself and his wife. This, of course, was not unlimited, and a system of credit entitlements was operated by the Treasury so that a judge in his position would only be reimbursed for that portion of his claim that did not exceed the balance of his annual entitlement. Three separate claims, in, respectively, 1998, 2000 and 2001, and for which he received reimbursement of \$171,666, were the subject of the ICAC investigation. The Treasury would, obviously, not make reimbursement without sight of the relevant receipt or invoice, and these were duly supplied by Mr. Wong.

6. Material made available to the prosecution by Mr. Wong, through his lawyers, and which was not contradicted by the ICAC investigation, showed that Mr. Wong's daughter made the travel arrangements for him and his wife, and that she also accompanied them on each of the trips. Suggestions have surfaced that perhaps someone other than Miss Wong might have accompanied Mr. and Mrs. Wong on their trips in 1998, 2000 and 2001, but this was not borne out by the ICAC investigation. The investigation also lent no credence to the suggestion that the air tickets had been given to Mr. Wong as a gift by some third party. On the contrary, the available material pointed one way, namely, that Miss Wong made the travel arrangements for her parents, and that Mr. Wong duly reimbursed her in kind by paying for her shopping expenses.

7. As has been indicated, Mr. Wong, through his lawyers, advised that he had honoured the agreement with Miss Wong to make reimbursement, and he produced documentation in support. In particular, he produced a cheque to a merchant for the sum of \$215,000, dated 1 December 2000, for the purchase of ladies' jewellery. This covered the travel expenses of the 1998 and 2000 trips. Mr. Wong also produced a Statement of Account, dated 20 September 2001, which showed that on 31 August 2001 he had used his credit card to make a purchase of \$139,865.65 from a luxury handbag supplier. That sum covered the cost of the 2001 trip. The total spent on these two occasions more than covered the cost of the three trips.

8. A strange feature of the case might perhaps be thought to be that Mr. Wong would repay his daughter in the way claimed, given her position as a company director who enjoyed financial independence. As against that, it is perhaps not uncommon for a parent to reimburse a child with payment in kind. There was nothing in the investigation to controvert the account of Mr. Wong and Miss Wong on this point. Miss Wong's version was that she had rejected her father's proposal that he repay her by cheque, and that in light of the father-daughter relationship it was not necessary to have such a strict rule as they could trust one another. She would, in any event, prefer repayment in kind.

9. It might be thought to be foolish for someone in the position of Mr. Wong to make claims for reimbursement of Leave Passage Allowance when he was accounting to or repaying his daughter in such a haphazard and undisciplined way. A claim for reimbursement should, ideally, be meticulously evidenced. But as against that, if Mr. Wong were to be prosecuted for making false claims it would be necessary to demonstrate, as Mr. Wilson highlighted, that Mr. Wong did not reimburse Miss Wong, *and* that when he claimed reimbursement he had not repaid her and did not intend to do so, *and* that he did so dishonestly. The suggestion that Mr Wong acted dishonestly and had a guilty mind was directly contradicted by the reimbursements which he made to his daughter.

10. It was Mr. Wong's position that the travel arrangements were made by his daughter, and that he had no contact with the travel agencies which arranged the flights. As far as he was concerned, the accounting documents were genuine and correct, and in any event he could only be reimbursed by the government with an amount which did not exceed his Leave Passage Allowance entitlement. He did not see a problem with Miss Wong paying the travel agents on his behalf, and he did not consider it was improper to reimburse his daughter by way of paying for her shopping expenses after he had received reimbursement from the government. I have no doubt that in retrospect Mr. Wong wishes he had handled this matter differently. It would certainly have saved him a great deal of heartache and criticism. But however foolish Mr. Wong may have been, I concluded at the end of the day that Mr. Macleod was correct when he advised me that the evidence as a whole fell short of the standard required to prove that Mr. Wong intended to deceive his principal. Likewise, Mr. Wilson was correct when he advised me that the available evidence did not rise above the level of suspicion.

11. My view, having reviewed the case in its entirety, was that on the evidence as a whole a prosecution could not be justified. That Mr. Macleod, Mr. Wilson, and, ultimately, Mr. Secretary Wong, were of a like mind reassured me in the difficult decision I had to take. As Sir David Calvert-Smith, QC, the former Director of Public Prosecutions of England and Wales, once explained, *'Prosecuting is the art of the possible; you can only prosecute if you have the evidence'*.

12. As prosecutors, we are gatekeepers, and our sacred duty is to ensure that only meritorious cases based on sound and solid evidence ever proceed to trial. However tempting it might sometimes be to take the easy way out, and to sidestep controversy by simply leaving it to the court to decide, even though we consider the evidence to be deficient, the adoption of such an approach would represent a devastating blow to the rule of law and a shameful abdication of responsibility. It is not one which will ever happen on my watch. Just as the judge must scrupulously safeguard the interests of the accused who stands trial, so must the prosecutor be vigilant in defence of the rights of the suspect who does not.

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