

IN THE DISTRICT COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
CRIMINAL CASE NO. 298 OF 2005

Transcript of the audio recording of the  
Reasons for Sentence at the trial of  
Kanjnapas Chong-kwong, also known as Wong  
Chong-kwong, (D1) and 3 others, charged with  
Conspiracy to pervert the course of public  
justice, before H H Judge Fung

Date: 16 June 2006

Present: Mr Roger Beresford, Counsel on fiat, for the  
Department of Justice  
Mr Edwin Choy, instructed by Messrs David Lo &  
Partners, for the 1st Defendant  
Mr Nicholas Adams, leading Ms Michelle Chong,  
instructed by Leung, Lien & Co., for the 2nd Defendant  
Mr Graham Harris, leading Mr David Khosa, instructed  
by Messrs Pang, Wan & Choi, for the 3rd Defendant  
Mr John Patrick McNamara, instructed by Messrs  
Robertsons, for the 4th Defendant

\*\*\*\*\*

1. D1, D2 and D3 were convicted after trial of conspiracy  
to pervert the course of public justice, contrary to Common Law  
and section 159A and 159C of the Crimes Ordinance, Cap.200  
(1st Charge). D2 was also convicted after trial for attempted  
perjury, contrary to section 31 of the Crimes Ordinance  
(2nd Charge). D4 was convicted after trial of two charges of  
attempting to disclose information about the identity of a  
participant in the witness protection programme, contrary to  
section 159G of the Crimes Ordinance and section 17(a) and (4)  
of the Witness Protection Ordinance, Cap.564 (4th and  
5th Charge).

The Facts

2. The detailed facts are set out in my reasons for  
verdict. Suffice it to say that D1 was the Chairman of Semtech,  
a public listed company. He and his secretary, Becky Wong, and  
others were arrested by the ICAC on 9 July 2004 for suspected

A bribery offences. Both D1 and Becky Wong were released on bail. A  
B Becky Wong had given non-prejudicial statements to the ICAC B  
C implicating D1. Becky Wong feared for her safety and was C  
D protected by the ICAC with her consent. She signed a Memorandum D  
E of Understanding ("MOU") to join the witness protection E  
F programme under the Witness Protection Ordinance ("WPP") on 13 F  
G July 2004, having been approved by the Approving Authority in G  
H the Witness Security Panel meeting on 12 July 2004. H

F 3. Becky Wong felt sorry for D1. On 11 and 12 July she F  
G rang D1's girlfriend, D2, and asked D2 to say sorry to D1, G  
H saying she had told the ICAC things against D1 but nothing D1 H  
I could not explain except about market manipulation and illegal I  
J money. Becky Wong also asked D2 to tell D1 not to use the J  
K mobile phones starting with the numbers "6" and "9" as she felt K  
L they were tapped by the ICAC. During the two telephone L  
M conversations Becky Wong said she was with "them" but she was M  
N safe and sound; she never asked for any help to be released from N  
O the ICAC. O

L 4. On 13 July, D1 engaged D3 as a solicitor in the L  
M Semtech case. Through the introduction of D3, D2 instructed M  
N another firm, Messrs Massie & Clement, to seek legal access for N  
O Becky Wong at the ICAC, and to apply for habeas corpus if access O  
P was denied on the basis that Becky Wong was detained by the ICAC P  
Q involuntarily and she wanted to be released from the ICAC. I Q  
R have found that D1, D2 and D3 all knew or believed this was R  
S untrue. S

Q 5. Massie & Clement proposed to write a letter asking the Q  
R ICAC to ascertain from Becky Wong whether she wanted legal R  
S advice. D2 reported this proposed course to D1 and D3. D3 S  
T thought the action was not strong enough. D3 spoke to D4, T  
U resulting in D4 acting as counsel on instruction by Massie & U  
V Clement on a legal visit to the ICAC seeking legal access to V  
Becky Wong. D4 went to the ICAC on the night of 13 July and

A said Becky Wong was in protected custody and he had instructions from D2 that Becky Wong wanted to leave the ICAC, citing the telephone conversations between Becky Wong and D2.

6. The ICAC ascertained that Becky Wong never indicated to the ICAC she wanted to see a lawyer. D4 was denied access on the ground the Becky Wong was not at the ICAC. There was no disclosure to D4 that Becky Wong was in the WPP because of the prohibition against disclosure.

7. D4 then went to the Central Police Station to report on false imprisonment by the ICAC. D3 asked the reporter of the Sing Tao Daily to ring D4 for the details of the legal visit and report to the police, resulting in the Sing Tao Daily publishing that Becky Wong was allegedly illegally detained by the ICAC on 14 July.

8. At midnight of 13/14 July, D2 sent an SMS to ask Becky Wong to see a solicitor's clerk of Messrs C.K. Mok & Co., Frankie Chung, a named co-conspirator in the 1st Charge. Frankie Chung had acted for D1 in relation to D1's arrest and bail. Becky Wong rang Frankie Chung and he told her to tell the ICAC that she knew him from the past and to ring him in the morning and he would go to see her if she rang back. She never asked for help and never rang back.

9. Immediately after talking to Becky Wong, Frankie Chung met D1 telling D1 that he would go to see Becky Wong provided Becky Wong rang back, and D1 asked Frankie Chung to accompany D4 to the ICAC if Becky Wong rang back. D1 told Frankie Chung that D3 would hold a press conference for him to vent his grievance against the ICAC and that made him happy.

10. In the morning on 14 July, D1 asked Frankie Chung to accompany D4 to the ICAC for a second legal visit without Becky Wong ringing back. I found that Frankie Chung was a party to

A the conspiracy. D4 was again denied access. In the afternoon  
B D4 made an ex parte application for habeas corpus before Yam J  
C of the High Court, with D2 as the applicant, on behalf of Becky  
D Wong on the strength of an affirmation of Frankie Chung that  
E Becky Wong was illegally detained by the ICAC and she wanted to  
F see a lawyer.

E 11. Becky Wong cried and considered withdrawing from the  
F WPP when she heard about the habeas corpus application, but she  
G did not tell the ICAC. She stayed on as she feared losing the  
H protection. D1 once told Frankie Chung that Becky Wong was a  
I fragile person. I found that D1, D2 and D3 contemplated and  
J intended such interference on Becky Wong by the application of  
K habeas corpus.

L 12. On 15 July, D4 appeared before Yam J, and government  
M counsel revealed in camera that Becky Wong was a participant in  
N the WPP, although legally she was not as the Approving Authority  
O had not signed the MCO until 16 July 2004, and the signature of  
P the Approving Authority was required to legally include Becky  
Q Wong in the WPP. Yam J issued the Writ of Habeas Corpus and  
R directed Becky Wong be brought to the court at 3.30 pm that  
S afternoon. Yam J made a gag order prohibiting disclosure of the  
T order and the fact that Becky Wong was in WPP. D4 gave his  
U undertaking to the court.

V 13. In the afternoon the Court of Appeal, in camera,  
granted a one-hour stay of writ and the return hearing was  
transferred to Hartmann J at 4.30 pm. Hartmann J, in camera,  
directed the substantive hearing to be heard on 16 July with the  
filing of affidavits. During the break and also after the  
hearing before Hartmann J, D4 had two conversations with a  
reporter of the SCMP mentioning Becky Wong in juxtaposition with  
the Witness Protection Ordinance and the WPP, giving the  
reporter the irresistible inference that Becky Wong was a  
participant in the WPP.

14. On 16 July, the SCMP published an article stating that a legal source said that Becky Wong was in the ICAC WPP. Although Becky Wong was not legally in the WPP as at the date of the disclosure, I found that D4 believed she was in it, and he was guilty of attempting the impossible.

15. On 16 July 2004, D2 filed an affirmation in English in support of the habeas corpus application, which wilfully and falsely stated that Becky Wong did not know where she was, she feared for Becky Wong's safety as she had no close family members in Hong Kong but she omitted to say Becky Wong said she was safe and sound, making her belief that Becky Wong was illegally detained false. However, D2 was not lawfully affirmed because the affirmation did not include the oath of the interpreter as was required by the Oaths and Declarations Ordinance when the deponent was not familiar with the English language. Hence, she was convicted of attempted perjury.

Personal Background

16. D1 is aged 38, married with three children at school. He is of clear record. He is a university graduate and has been a director of a publicly listed company since the 1990's and he has never been censured by the Securities and Futures Commission. He has been benevolent to various charities and worthwhile causes. Mr Lok, S.C., submitted that D1's arrest and conviction has serious impact, including financially, on his family and aged parents and his company.

17. D2 is aged 26, a secondary school-leaver. She is of clear record. Her only work experience was in connection with the beauty salon invested by D1.

18. D3 is aged 54, divorced with one child. He is of clear record. He was a senior investigator with the ICAC before

A qualifying as a solicitor in 1985. He founded his own firm in  
B 1991.

C 19. D4 is aged 60. He is of clear record. He has been a  
D barrister for 34 years.

E Consideration

F 20. The maximum sentence for perverting the course of  
G public justice is 7 years' imprisonment (see Secretary for  
Justice v Wong Kwok Kau [2004] 3 HKLRD 208), and the sentence on  
H conspiracy as per the substantive offence.

I 21. Perverting the course of justice is a crime against  
J public interest as a whole. It strikes at the very heart of the  
K system by which law and order was enforced. Strong measures are  
L needed to preserve that confidence and personal circumstances of  
M an individual defendant carry less weight in such cases. The  
N crime attracts a sentence of immediate imprisonment (see AG v  
Yeung Sau Shing [1981] HKC 129). A clear record, good family  
O behaviour, the probability that the offence was a single fall  
P from grace and the defendant will in future lead a blameless  
Q life, are by no means abnormal circumstances to justify any  
R sentence other than immediate custodial sentence (AG v Yeung  
Kwong Chi [1989] 1 HKLR 266).

S 22. I have been referred to a number of authorities on  
T quantum: 9 months' imprisonment upon review by the Court of  
U Appeal in an attempt to persuade a victim not to give evidence  
V to nail down the defendant (AG v Yeung Sau Shing op. cit.);  
15 months upon review, otherwise 18 months upon conviction, for  
agreeing to act as a witness to a sham crime in an attempt to  
frame an innocent person of indecent assault (AG v Yeung Kwong  
Chi op.cit.); 18 months upon plea for bare attempt to persuade  
the witness not to give evidence with a fairly meagre bribe (R v  
Lam Hon Kwan CACC 525/1984); 24 months starting point  
appropriate for interference with witness on the first day of

A trial by telling the witness to minimise the role of the  
defendant by saying he knew where the witness's wife worked  
implied adverse consequences if not moderated evidence (HKSAR v  
Chu Ka Shing CACC 104/2001); 4 years after trial for solicitor  
assisting a criminal to flee the jurisdiction (R v Alick Au Shui  
Yuen CACC 470/1992). These cases are referenced for the range  
of sentence and each case depends on its circumstances.

23. The maximum sentence for perjury is 7 years'  
imprisonment and the sentence on attempt is as per the  
substantive offence.

24. In R v Wu Wing Keung Anthony CACC 202/1988, Hunter JA  
said that like the offence of attempting to pervert the course  
of justice, perjury strikes at the root of the administration of  
justice and an immediate custodial sentence is demanded. There  
are three categories of offenders:

(1) a man committing perjury in the course of his own  
defence, where the law looks upon it somewhat  
benevolently and attempts to bring a charge of perjury  
are few;

(2) family rallying around to give support to a member  
who has strayed and the usual sentence is 12 months;

(3) some third party coming in, deliberately giving  
false evidence in support of a defendant and 2 years'  
imprisonment upon conviction is not manifestly  
excessive.

25. Mr Lok submitted that it was a single fall from grace  
for D1 and his future as a director of a publicly listed company  
is ruined. The court is asked to be as lenient as possible.

26. D1 was the instigator of the conspiracy. He was the  
person Becky Wong had implicated. He enlisted Frankie Chung and  
D3 and, through D3 Massie & Clement was used for the habeas

A corpus proceedings, and he paid for the legal fees, for the  
B legal visits and application for the habeas corpus. D2 later  
C received a gift of an expensive motor car from D1 a few days  
D after the discharge of the habeas corpus. It could not be said  
E that the scheme was not well thought out. Although there was no  
F bribe, threat, persuasion or communication, it was intended to  
G influence Becky Wong, who was known to be fragile, and she did  
H consider withdrawing from the programme. I consider the  
I sentence of 3 years' imprisonment for D1 on the 1st charge as  
J appropriate.

27. I shall deal with the 1st and 2nd charge globally for  
D2 as the 2nd charge is an overt act of the 1st charge.

28. Mr Adams submitted that D2 was rallying around for D1  
who was her focus of affection. He pointed out that D2 was not  
kept informed fully of the proceedings; she did not know that  
Becky Wong was in the WPP and the lawyers never sought an  
adjournment to apprise her of the updated situation. Had she  
been fully informed she might not have filed the affirmation.  
Mr Adams asked for a Community Service Order or a suspended  
sentence.

29. I found that D2 had been informed by the trainee  
solicitor who prepared her affirmation that she had to tell the  
truth under swear. The truth must be truth to one's conscience,  
not according to the exigencies of the situation. She might  
have done it for the benefit of D1, but her role as the person  
who lied about the situation of Becky Wong, both in instructions  
and in the affirmation, could not be overlooked. I consider the  
sentence of 2½ years' imprisonment for D2 on the 1st charge as  
appropriate. I shall impose a sentence of 12 months'  
imprisonment on the 2nd charge concurrently.

30. Mr Harris submitted that D3 came into the picture only  
on 13 July, and it was submitted that the phone call of Frankie



A Chung and Becky Wong really led to the habeas corpus. It must  
B be borne in mind that Becky Wong never asked Frankie Chung to go  
C for the second legal visit and D2's instruction to Massie &  
D Clement on 12 July was to apply to the court once access was  
E denied. As the claim of unlawful detention was a sham, denial  
F of access was hardly surprising. I found that D3 knew it was a  
sham. I also found that he planned the habeas corpus  
application and switched on all the machines of involving the  
press, which had far more effect than the legal visit to the  
ICAC.

G 31. D3 is a member of the honourable profession of the  
H solicitors, and he has made a good career out of it. More  
I importantly, he is an officer of the court with the appurtenant  
J rights and privileges, and he owes a duty to safeguard but not  
K to abuse the system. The press report of a false allegation of  
L illegal detention by the ICAC is a blow to public confidence in  
the administration of justice. This makes his criminality more  
serious than D1. I consider a sentence of 4 years' imprisonment  
for D3 on the 1st charge as appropriate.

M 32. The maximum sentence under section 17(1) of the  
N Witness Protection Ordinance upon conviction on indictment is 10  
O years' imprisonment. Arrested persons turning prosecution is a  
P sanctioned feature of our criminal justice system. One cannot  
Q overlook the legislative intent behind the protection and  
prohibition against disclosure of the identity of the person in  
the WPP and the level of maximum sentence.

R 33. Mr McNamara submitted that this is the first  
S prosecution under the Ordinance and the sentencing option is at  
large before me.

T 34. Mr McNamara submitted that it was a technical breach  
U by D4. He had had a long and fraught day before three courts.  
He was besieged by a swarm of reporters and he had resisted them

A earlier by saying there was a gag order. D4 did not make any A  
B disclosure in direct terms but it was inferred by the reporter. B  
C D4 told the reporter to look up the Witness Protection C  
D Ordinance, clearly indicating D4 did not expect it to be D  
E reported. Had the reporter read the prohibition against E  
F disclosure in the Ordinance, the matter would have gone no F  
G further. The reporters knew there was a gag order. Her G  
H criminality was higher than D4 and she was given an immunity. H  
I In any case there was no evidence that Becky Wong was affected. I  
J Hence, D4's criminality is low, and either a conditional J  
K discharge or fine or suspended sentence would suffice. K  
L

H 35. D4 never said to the reporter not to make a report of H  
I what he said. He had spoken to another reporter of the Sing Tao I  
J Daily and he was reported. He must have known that the press J  
K was interested to report what he had to say about the case. Why K  
L would one speak to a reporter who was gathering the news in the L  
M very subject of the conversation? I have found the disclosures M  
N to be intentional though not in terms of the conspiracy of the N  
O 1st charge. O  
P

M 36. There was a gag order by Yam J and D4 gave his M  
N undertaking of non-disclosure to the court. The disclosures in N  
O the 4th and 5th charges were blatant breaches of the Witness O  
P Protection Ordinance as well as the undertaking. Furthermore, P  
Q the disclosure was made to the press and it resulted in the Q  
R publication of the article in the newspaper. The mischief R  
S against which the Ordinance directed proliferated. S  
T

Q 37. I have found that D4 did intend to influence Becky Q  
R Wong's co-operation with the ICAC, although I could not be sure R  
S that he knew the call for help was a sham. D4 admitted that he S  
T played the ICAC at their own game by involving the press. When T  
U he was cross-examined that at one stage he requested Becky Wong U  
V for cross-examination, he said it was tit-for-tat for government V  
counsel requesting his deponent for cross-examination.

A Mr McNamara submitted that D4 was acquitted on the 1st charge A  
B and such evidence could not be relied on in sentencing on the B  
C 4th and 5th charge. With respect, I do not agree. I am not C  
D sentencing D4 on the 1st charge but the factual matrix is highly D  
E relevant. E

F 38. The law is not tit-for-tat, but sense and sensibility, F  
G discretion and reason. Officers of the court, while acting on G  
H instructions, must act with vigilance to ensure that the system H  
I of justice is not abused by the client. It is trite that I  
J barristers owe an overriding duty to the court and the law. All J  
K D4 had were instructions that Becky Wong was illegally detained K  
L and he launched into a campaign against the ICAC involving the L  
M press when access was denied. The disclosure that Becky Wong M  
N was in the WPP aggravated the situation and is a direct assault N  
O on the administration of justice and the system of witness O  
P protection. P

Q 39. I view the breaches seriously. In the circumstances. Q  
R I impose a sentence of 2½ years' imprisonment against D4 on the R  
S 4th and the 5th charge concurrently. S  
T  
U  
V

H H Judge Fung  
Chief District Judge