

**Paper for
the Panel on Administration of Justice and Legal Services
of the Legislative Council**

**Supplementary Note
on “The case of Mr. Michael WONG Kin-chow”**

PURPOSE

1. The purpose of this paper is to provide additional information on the basis upon which the Judiciary decided to:
 - (a) Take no action against Mr. Michael WONG Kin-chow (“Mr. Wong”) under section 29(1)(b) of the Pension Benefits (Judicial Officers) Ordinance (“the Ordinance”) (Cap. 401); but
 - (b) Request Mr. Wong to repay the sum of \$171,666.00, being the payment for reimbursement of Leave Passage Allowances (“LPA”) submitted by Mr. Wong between August 1998 and February 2001, to the Government.

BACKGROUND

2. On 30 September 2006, the Judiciary Administration informed the Panel of Administration of Justice and Legal Services (“AJLS Panel”) that:
 - (a) The Judiciary had sought legal advice on whether there was sufficient ground for the Judiciary to take action against Mr. Wong under section 29(1)(b) of the Ordinance, having regard to the information provided to the Judiciary by the Operations Review Committee (“ORC”) of the Independent Commission Against Corruption (“ICAC”). The legal advice was that there were insufficient grounds for the Judiciary to take action against Mr. Wong under section 29(1)(b) of the Ordinance. The Judiciary considered the legal advice and agreed that no action should be taken against Mr. Wong under that section; and

- (b) The legal advice however concluded that Mr. Wong was not entitled to payment for reimbursement of LPA submitted by Mr. Wong between August 1998 and February 2001 and that steps should be taken to recover the amount paid. On the basis of that advice, the Judiciary therefore requested Mr. Wong to repay the sum of \$171,666.00 to the Government. In accordance with the Judiciary's request, Mr. Wong has repaid that sum.

3. On 13 October 2006, the AJLS Panel requested the Judiciary Administration to further explain the basis of the legal advice and its decision to recover the sum from Mr. Michael Wong. The AJLS Panel has also requested the Department of Justice to further explain the basis of its legal advice.

THE LEGAL ADVICE

The Reason for Disclosure in this Case

4. The Judiciary took legal advice from the Department of Justice ("the Department"). The Department had previously advised the Judiciary on the case, but had advised that consideration of the question of whether action could be taken under section 29(1)(b) should be deferred until the conclusion of the ICAC investigation.

5. The Judiciary will not normally comment on individual cases concerning Judges and Judicial Officers. However in this case the Secretary for Justice ("SJ") and the Director of Public Prosecutions ("DPP") have given detailed reasons for DPP's decision not to prosecute Mr. Wong. The SJ and DPP considered it exceptional since both the nature of the complaints against Mr. Wong, and the explanation Mr. Wong had given in denial of impropriety, were already in the public domain. Noting the exceptional nature of this case and having consulted the Department, the Judiciary considers that it would be appropriate to provide Members with more detailed information on the basis on which its decisions at paragraph 2 were taken.

Take No Action under Section 29(1) (b) of the Ordinance

6. The Department was asked to advise if action could be taken against Mr. Wong under section 29(1)(b) which provides that:

“29(1) After taking into consideration the advice of the Judicial Officers Recommendation Commission, and subject to section 32, a designated officer may -

- (a); or
- (b) cancel or reduce a pension granted to an officer if it is shown to the designated officer that the pension was obtained by the wilful suppression by the officer of facts, or that it was granted in ignorance of facts, which were such that had they been known before the retirement of the officer the pension would not have been granted in full or in part.”

7. There are two limbs to that section. The first of which requires “the wilful suppression” by the officer of relevant information. Nothing in the investigation suggested that Mr. Wong had taken positive steps to suppress relevant information. The Department was therefore of the view that the first limb is not relevant in the present context.

8. As regards the second limb of that section, the Department took the view that:

- (a) An investigation under that section should only be undertaken if, on the facts as now revealed, it is reasonably likely that the power under that limb should be exercised;
- (b) The exercise of the power should only now be considered if, had the facts come to light before Mr. Wong retired, they would have justified disciplinary proceedings, which in turn might have led to his dismissal or compulsory retirement with a reduction of pension benefits; and
- (c) Before such penalties could be imposed, it would be necessary to prove to a standard approximating to the criminal standard, an intention on the part of Mr. Wong to act in a manner which constitutes serious misconduct.

9. Noting the DPP's conclusion that there was insufficient evidence against Mr. Wong to justify a criminal charge of obtaining the LPA by deception, the Department saw no reason to go behind the DPP's conclusion. On that basis, the Department advised that there were insufficient grounds to initiate proceedings under section 29(1)(b).

10. The Judiciary has considered the legal advice and agreed that no action should be taken against Mr. Wong under section 29(1)(b).

Repayment to the Government

11. In advising on Mr. Wong's case, the Department noted that a claim could be made for repayment of the sums paid to Mr. Wong since, in the circumstances, it did not appear that he was entitled to the reimbursement and the sums had been paid to him on the basis of an error of fact.

12. It was noted that under the LPA scheme applicable to Mr. Wong, LPA is fully accountable, i.e. it only covers actual expenses, and, by implication, the officer must pay from his own pocket first and then seek reimbursement on production of itemized invoices and receipts. While it is not an express requirement under the LPA scheme, it is clearly envisaged that in reimbursement cases the invoices would have been paid by the officer.

13. Referring to the dates of submission of invoices by Mr. Wong for reimbursement under the LPA scheme, it was noted that the dates of submission of invoices were prior to the dates on which purchases were made by Mr. Wong on behalf of his daughter in relation to the concerned invoices. The Department concluded that at the time each of the applications for payment of LPA was made, Mr. Wong was not entitled under the Scheme to payment in respect of the invoices submitted.

14. On the basis of the above legal advice, the Judiciary therefore requested Mr. Wong to repay the sum of \$171,666.00 to the Government. In accordance with the Judiciary's request, Mr. Wong has repaid that sum.