

**LegCo Panel on Administration of Justice and Legal Services
for meeting on 22 May 2006**

Review of penalty for perverting the course of public justice

The problem

In *Secretary for Justice v Wong Kwok-kau* [2004] 3 HKLRD 208, the Court of Appeal (para. 44) invited the Administration to take note of its concern that –

“the maximum sentencing limit [of seven years’ imprisonment for perverting the course of public justice] has been set too low. In England and Wales, it is to be remembered that the sentence is at large, giving the sentencer an unfettered discretion for the situation which has arisen.”

2. In *Wong Kwok-kau*, the defendant had been sentenced in the Court of First Instance to seven years’ imprisonment, which represented one-third of the twenty one-year starting point originally taken for the offence of trafficking in dangerous drugs. The standard one-third discount had been awarded for the accused’s guilty plea.

3. However, a further one-third discount was awarded for a plea of mitigation by the defendant which was later discovered to be false. The defendant had conspired with a police sergeant and others to pervert the course of justice by dishonestly setting up a bogus dangerous drugs transaction and causing information about the transaction to be supplied to the police, thereby enabling the defendant to plead mitigation and obtain a reduction in the sentence imposed on him after the trial.

4. The defendant was convicted in the Court of First Instance of conspiracy to pervert the course of public justice and sentenced to four years and eight months’

imprisonment. The Court of Appeal quashed the seven-year sentence for the dangerous drugs offence and substituted the sentence of fourteen years “which would have been imposed but for the deliberate deception practised on the judge by the respondent himself” (para. 42). The two sentences were ordered to run consecutively for an overall sentence of 18 years and eight months’ imprisonment.

5. The Court of Appeal further observed (para. 44) that –

“the factual scenario provides an awesome demonstration of the lengths to which some influential criminals are capable of going in order to extricate themselves from the trouble in which they find themselves. It is not difficult to envisage situations where, for example, false evidence is created with the assistance of corrupt agents within the police, which could lead to an acquittal in a case which was contested. As the law presently stands, there are no circumstances in which an acquitted defendant can be re-tried. Depending on the gravity of the offence which has been alleged, a maximum sentence of seven years’ imprisonment for perverting the course of public justice, or conspiring to do so, in the event that the defendant is found out is not, in our opinion, a sufficient deterrent for a defendant who is faced, as the respondent in this review was, with a sentence of fourteen years or more on conviction.”

Definition

6. Perverting the course of public justice is an indictable offence at common law. The offence consists of an act, a series of acts, or conduct which has the tendency and is intended to pervert the course of justice (Halsbury’s Laws of England 4th Ed. Reissue, Vol. 11(1), para. 315).

7. Cases of perversion of the course of public justice have included

discontinuing a criminal prosecution in return for payment; bringing a false charge against a person; making false statements to police officers investigating an offence; doing an act calculated to assist another to avoid arrest; improperly interfering with a witness; a witness deliberately absenting himself from proceedings in return for payment; producing fabricated evidence; publishing articles calculated to interfere with the course of justice; improperly aborting a prosecution; frustrating a statutory procedure which would or could otherwise lead to a prosecution.

Penalty in England

8. The offence is punishable in England by fine and imprisonment at the discretion of the court. As an indictable offence at common law not subject to any special punishment, there is no limit fixed for the period of imprisonment (Halsbury's, paras 315, 1200).

9. The courts determine sentence according to the gravity of the offence or offences. For example, the appropriate starting point for sentencing a former police officer convicted of conspiracy to pervert the course of justice was held to be nine years' imprisonment (Halsbury's, paras 315, 1200, 1201).

10. Factors to be taken into account when considering the appropriate level of sentence for perjury and other offences related to perverting the course of public justice include, (1) whether the contaminated proceedings were civil or criminal; (2) the number of offences committed; (3) the time scale over which the offences were committed; (4) whether the offences were planned or spontaneous; (5) whether the offences were persistent; (6) whether the lies told (or other acts) had an impact on the proceedings; (7) whether the defendant involved others in his activities; and (8) the nature of the relationship between the defendant and any others drawn into the conduct (Halsbury's, paras 299 and 315).

Penalty in Hong Kong

11. Punishment for perverting the course of public justice is subject to the limits provided under section 101I(1) of the Criminal Procedure Ordinance (Cap. 221) by which, “where a person is convicted of an offence which is an indictable offence and for which no penalty is otherwise provided by any Ordinance, he shall be liable to imprisonment for 7 years and a fine”.

12. Under the current provisions of section 101I(1) of the Criminal Procedure Ordinance, had a case as serious as *Wong Kwok-hau* been contested and had false evidence caused an acquittal of the defendant on a count of trafficking in dangerous drugs, the Court of Appeal would have been limited to imposing a maximum sentence of imprisonment for seven years rather than, say, the 18 years and eight months which, in all the circumstances, it might otherwise have imposed for perverting the course of public justice commensurately with the gravity of the deception which secured the acquittal.

Proposal

13. Taking into account the concern noted by the Court of Appeal regarding appropriate sentencing in the worst types of such offence, it is proposed that section 101I of the Criminal Procedure Ordinance be amended to provide that an offence of doing an act tending and intended to pervert the course of public justice, contrary to common law, be punishable by fine and imprisonment at the discretion of the court.

14. While a finalised text for the purpose of an eventual bill would be settled by the Law Draftsman, an amended section 101I (with illustrative amendments printed in bold italics) to reflect the proposal could tentatively read as follows –

“(1) Subject to subsections (2) ***and*** (3), where a person is convicted of an offence which is an indictable offence and for which no penalty is otherwise provided by any Ordinance, he shall be liable to imprisonment

for 7 years and a fine.

(2) [deals with incitement];

(3) *Where a person is convicted of the offence of perverting the course of public justice at common law, he shall be liable to be sentenced to imprisonment and a fine at the discretion of the Court.”*

Legal Policy Division

Department of Justice

8 May 2006