

立法會
Legislative Council

LC Paper No. CB(2)141/06-07(01)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

Background brief for the meeting on 23 October 2006

The case of Mr Michael WONG Kin-chow

Purpose

This paper provides background information on past discussions of the Panel on the case of Mr Michael Wong Kin-chow.

Background

2. The Panel held a special meeting on 14 November 2003 to discuss post-retirement employment, pension benefits and acceptance of advantages by judges and judicial officers arising from public concern about media reports on the following -

- (a) continued receipt by Mr Michael Wong Kin-chow, a retired judge of the Court of Appeal of the High Court, of his pension while taking up appointment as the Chairman of the Equal Opportunities Commission; and
- (b) allegation that Mr Wong had, while holding office, accepted a gift of air tickets from a businessman.

3. On paragraph 2(b) above, Judiciary Administrator (JA) briefed the Panel on the provisions governing acceptance of advantages by judges and judicial officers under the Prevention of Bribery Ordinance (Cap. 201), and sections 29(1) and 31 of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) relating to cancellation, reduction, or suspension of pensions (a relevant extract from LC Paper No. CB(2)325/03-04(01) is in **Appendix I**). JA also advised the Panel that as the allegation against Mr Wong had been reported to the Independent Commission Against Corruption (ICAC) for investigation, the Judiciary considered it inappropriate to initiate an inquiry into the matter at that time.

4. ICAC investigated in November 2003 complaints that Mr Wong, while serving as a judge, had, on three occasions, deliberately made improper applications to the Government for reimbursement of Leave Passage Allowance (LPA) in respect of air tickets in the sum of \$171,666 for trips which he and his family had made between 1998 and 2001. ICAC submitted a finalized report to the Director of Public Prosecutions (DPP) for consideration in November 2005.

DPP's decision

5. On 25 January 2006, DPP announced his decision not to prosecute Mr Wong; a copy of his statement is in **Appendix II** (LC Paper No. CB(2)993/05-06(01)). DPP addressed the Panel at a special meeting on 3 February 2006 on his decision.

6. In brief, DPP had decided that a prosecution of Mr Wong for an offence under the Prevention of Bribery Ordinance could not be justified on the following grounds -

- (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 her parents, 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 (Mr Wong produced a cheque dated 1 December 2000 to a merchant for the sum of \$215,000 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 amount spent on these occasions more than covered the cost of the three trips);
- (b) two senior lawyers in the area of commercial crime and corruption, one in Hong Kong and the other in London, had each separately advised DPP not to 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 LPA on the three occasions between 1998 and 2001. The Secretary for Justice 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.

Follow up actions by the Panel

System of payment of LPA

7. Some members expressed concern about the implications of Mr Wong's case on the integrity of the existing system of payment of LPA by the Government to eligible civil servants. They pointed out that although Mr Wong had submitted claims to the Government for payment of LPA in 1998, 2000 and 2001 respectively, he had not actually made reimbursements to his daughter until December 2000 and 2001. In particular, Mr Wong had not repaid his daughter for the air tickets for the 1998 trip until more than two years later. The Panel requested the Civil Service Bureau (CSB) and ICAC to consider whether any improvement to the system was necessary in the light of Mr Wong's case.

8. CSB had subsequently advised the Panel that the existing system had struck a reasonable balance between administrative efficiency and the need to ensure proper disbursement of the allowance by the Government. As a matter of good practice, it reviewed the payment rules and procedures from time to time in the light of operational experience. In the light of members' concern, the Bureau would consult the parties concerned, including the Treasury and the ICAC, on whether any improvement to the existing system on payment of LPA to eligible civil servants was warranted. As and when any modifications were made to the payment of LPA in respect of the civil service, it would inform the Judiciary of the modifications according to the established practice. ICAC had also replied that it would discuss with CSB on possible improvements to the relevant payment procedures (CSB and ICAC's replies were circulated to the Panel and other Members vide LC Paper Nos. CB(2)1245/05-06(1) and (2) on 27 February 2006).

Follow up action by the Judiciary

9. Given that a decision not to prosecute Mr Wong had been taken, the Panel requested JA to advise whether the Judiciary would take any follow up action in relation to Mr Wong's case (paragraph 3 above refers).

10. JA responded to the Panel on 30 September 2006 (copy of response circulated to the Panel vide LC Paper No. CB(2)3142/05-06(01) on 3 October 2006 and in **Appendix III**). JA advised that the legal advice obtained was that there were insufficient grounds for the Judiciary to take action against Mr Wong under section 29(1)(b) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401). However, the legal advice concluded that Mr Wong was not entitled to payment for reimbursement of LPA between August 1998 and February 2001. At the request of the Judiciary, Mr Wong had repaid the sum of \$171,666 to the Government.

11. At the Panel meeting on 12 October 2006, members agreed to invite representatives of the Judiciary Administration and the Department of Justice to further explain at the coming meeting on 23 October 2006 the basis of the legal advice and the decision taken by JA as set out in **Appendix III**.

Relevant papers

12. A list of the relevant papers considered by the Panel is in **Appendix IV**. These papers are available on the LegCo website at <http://www.legco.gov.hk>.

Council Business Division 2
Legislative Council Secretariat
20 October 2006

**Extract from paper on "Post-retirement Employment and Pension Benefits
and Acceptance of Advantages by Judges and Judicial Officers"**

(II) Acceptance of Advantages by Judges and Judicial Officers

Prevention of Bribery Ordinance, Cap. 201

15. The acceptance of advantages by judges and judicial officers is governed by the Prevention of Bribery Ordinance, Cap. 201 ("POBO"). particular:

- (a) Section 3 provides that any prescribed officer ^(Note 2) who, without the general or special permission of the Chief Executive, solicit or accepts any advantage shall be guilty of an offence.
- (b) Section 4(2) provides that it is an offence for a public servant^(Note 3) to solicit or accept any advantage as an inducement to or reward for or otherwise on account of, among other things, his performing or abstaining from performing any act in his capacity as a public servant.

Acceptance of Advantages Notice 1992

16. The Acceptance of Advantages (Governor's ^(Note 4) Permission) Notice 1992 ("the Notice") is given for the purposes of section 3 of the POBO.

^(Note 2) Under s.2 of POBO, "prescribed officers" include judges and judicial officers.

^(Note 3) Public servants are also defined under s.2 of the POBO to include any "prescribed officer".

^(Note 4) Construed as the Chief Executive in accordance with the provisions of the Hong Kong Reunification Ordinance, Cap. 2601.

Contractual Obligation

17. In the Memoranda on Conditions of Service governing employment of judges and judicial officers, a standard clause is included which states that a judge or judicial officer “must not solicit or accept advantages such as gifts, loans of money, discounts and passages except those for which general or special permission has been given under Section 3 of the POBO.”

Procedure and Criteria

18. By the Notice (clauses 3 to 7), general permission is given for certain advantages to be solicited or accepted in certain circumstances, such as advantages from relations (clause 3), from tradesmen (clause 4), from close personal friends (clause 5), from other persons (clause 6), and from Government (clause 7). Where general permission is not given by the Notice, the Notice requires special permission to be obtained from the approving authority (clauses 8 and 9).

19. Where permission from the approving authority is required, judges and judicial officers are required to apply in writing, providing adequate information including the nature of advantage(s), the estimated value(s), relationship between the judge/judicial officer and the offeror of the advantage(s), whether the offeror of the advantage(s) has any official dealings with the judges and judicial officers or with the Judiciary, etc.

20. In considering applications for permission to accept an advantage by judges and judicial officers, the relevant considerations include whether judicial independence, or perception of such independence, may be compromised; and whether this may give rise to any conflict of interest, or perception of such conflict.

21. Further, in processing such applications from judges and judicial officers, reference may be made by the Judiciary to the criteria laid down by the Administration for similar applications.

Approving Authority

22. The approving authority is the Chief Justice as Head of the Judiciary responsible for its administration as provided for by s.6(2) of the Hong Kong Court of Final Appeal Ordinance, Cap. 484, and the Judiciary Administrator who is accountable to the Chief Justice.

23. In the case of the Chief Justice, the approving authority is the Chief Executive. Where gifts to the Chief Justice are disposed of by established methods such as donating the gifts to a charitable organization, the approving authority has been delegated from the Chief Executive to the Judiciary Administrator.

(III) Sections 29(1) and 31 relating to cancellation, reduction or suspension of pensions

24. The entitlement of judges and judicial officers to a pension is governed by the Pension Benefits (Judicial Officers) Ordinance. Where the statutory conditions are satisfied, that Ordinance makes entitlement to pension benefits a legal right. Accordingly, a judge or judicial officer who is otherwise qualified to receive a pension, can only be refused his pension or have it cancelled, reduced or suspended in the circumstances provided for by that Ordinance. Apart from s.34(1) and s.28(1) discussed above, there are two relevant provisions.

25. The first is s.29(1). In each case after considering the advice of the Judicial Officers Recommendation Commission (“JORC”) and subject to following the procedures set out in s.32, a designated officer^(Note 5) (appointed by the Chief Executive) :

- (a) can refuse to grant a judge or judicial officer a pension “if it is shown to the designated officer that the officer wilfully suppressed facts that are material to the grant of a pension;” or
- (b) can 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.”

26. Section 29(2) also provides for the possible refusal to grant a pension and the cancellation or reduction of a pension granted in certain situations involving retirements during or when threatened by disciplinary proceedings.

^(Note 5) A designated officer must be an officer holding judicial office (s.2 of Cap. 401).

27. The other relevant section is s. 31 which applies to officers who have been granted a pension and provides that the pension may be cancelled, suspended or reduced where such officer is convicted of an offence falling within any of three specified categories, namely :

- (a) an offence in connection with public service under the Government, and that offence is certified by the Chief Executive to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service;
- (b) an offence under Part II of the Prevention of Bribery Ordinance (Cap. 201), and that offence is related to the person's previous public service under the Government; or
- (c) treason under section 2 of the Crimes Ordinance (Cap. 200).

Judiciary Administration
13 November 2003

**A Statement by the
Director of Public Prosecutions**

**The Case of
Mr. Michael Wong Kin-chow**

Introduction

In November 2003, complaints of impropriety were made to the ICAC against Mr. Michael Wong Kin-chow. In consequence, the ICAC conducted an investigation. This, in the event, centred on the issue of whether Mr. Wong had, on three occasions, deliberately made improper applications to government for reimbursement of Leave Passage Allowance (LPA), in respect of air-trips which he and his family had made between 1998 and 2001.

2. Mr. Wong, a judicial officer for many years, retired as a judge of the Court of Appeal of the High Court on 16 August 2001. Thereafter, he was re-employed by the judiciary as a deputy judge of the Court of First Instance from 25 February 2002 to 24 May 2002, and again from 23 September 2002 to 20 December 2002. From 1 August 2003 to 6 November 2003, Mr. Wong served as chairman of the Equal Opportunities Commission (EOC).

3. The ICAC investigation related to separate claims for LPA made by Mr. Wong between August 1998 and February 2001, while in service as a judge of the Court of Appeal. If established, the conduct complained of would have been prosecutable under section 9(3) of the Prevention of Bribery Ordinance, Cap 201, on the basis that Mr. Wong, as an agent of the judiciary, had sought to deceive his principal into granting him LPA by the use of false documentation. The suggestion was that Mr. Wong knowingly deployed false documents in respect of three separate trips for which he sought reimbursement of LPA.

4. After the ICAC had completed its investigation, a finalised report was submitted to the Director of Public Prosecutions (DPP) for consideration in November 2005.

5. The DPP decided thereafter that there was not a reasonable prospect of securing a conviction against Mr. Wong on the evidence as a whole in respect of any offence.

Criteria for Prosecution

6. Paragraph 7.1 of *The Statement of Prosecution Policy and Practice* (2002) stipulates :

The prosecutor must consider two issues in deciding whether to prosecute. First, is the evidence sufficient to justify the institution or continuation of proceedings? Second, if it is, does the public interest require a prosecution to be pursued? That policy is consistent with the policies applied by prosecution agencies throughout the common law world.

Disclosure of Reasons for Decision

7. Save in exceptional circumstances, it is not the practice of those who have responsibility for the conduct of public prosecutions in Hong Kong to indicate in any detail the basis of particular prosecutorial decisions. This practice reflects the traditions of the common law world, which recognise that once a decision has been taken not to prosecute a person the position of the suspect must be safeguarded. The only proper place for issues of guilt or innocence to be determined is in a court of law, and not through public debate or media comment. On rare occasions, of which this is one, rather more detail as to the basis of the decision reached will be given. In this case, the nature of the complaints against Mr. Wong is already in the public domain, as is his denial of impropriety, and the basis upon which the decision was reached will, exceptionally, be indicated.

The Relevant Law and the Investigation

8. It is an offence under section 9(3) of the Prevention of Bribery Ordinance, Cap 201, for an agent, with intent to deceive his principal, to use any receipt, account or other document :

- in respect of which the principal is interested; and
- which contains any statement which is false or erroneous or defective in any material particular; and
- which to his knowledge is intended to mislead the principal.

9. The investigation into the complaints against Mr. Wong concentrated, in the event, on concerns that, in 1998, 2000 and 2001, while still in service as a judge of the Court of Appeal, he deliberately used false documents to

obtain reimbursement of LPA in respect of air tickets. These related to :

- a claim in August 1998 for \$44,800 for flights to China
- a claim in July 2000 for \$117,080 for flights to Europe
- a claim in February 2001 for \$118,000 for flights to Europe and the United States.

10. Invoices and receipts from travel agents were attached by Mr. Wong to the applications as supporting documentation in each instance.

11. As a result of the claims made, Mr. Wong was reimbursed a total of \$171,666. The reimbursements paid to Mr. Wong were less than the amount claimed because the credit balances in his LPA account in the qualifying periods were less than the cost of the travel. Mr Wong's eligibility for LPA was :

- 16 September 1997 to 15 September 1998 : \$101,928
- 16 September 1999 to 15 September 2000 : \$84,160
- 16 September 2000 to 15 August 2001 : \$77,012.

Mr. Wong Explains

12. Although Mr. Wong declined to be interviewed by the ICAC, he, and his daughter, Rosaline Wong, provided statements to the Independent Panel of Inquiry on the Incidents relating to the Equal Opportunities Commission, on, respectively, 21 September 2004 and 26 October 2004.

13. Mr. Wong indicated that Rosaline Wong had started to handle his air ticket bookings and those of his wife in 1998 or 1999 because he was getting older and was very busy as a trial judge. Mr. Wong told his daughter that he and his wife were each entitled to an annual first-class air passage of about \$42,000 to \$43,000, and he reminded her to provide him with the invoices and receipts from the travel agents for the purpose of claiming reimbursement. As to the mode of repayment, Mr. Wong did not specifically give Miss Wong a cheque each time, but reimbursed her in kind by paying for her shopping and other expenses up to an amount equivalent to her expenditure on the air tickets.

14. Mr. Wong denied impropriety of any sort in his response to the Independent Panel of Inquiry. He declared that *'I have dedicated myself to Government, public and charitable services for the past 37 years. I have an unblemished record which speaks for itself. My conscience is clear'*.

15. Miss Wong herself confirmed Mr. Wong's account. She indicated

to the Independent Panel of Inquiry that she had told her father that she would like to help him with his travel arrangements and passage bookings. Although Mr. Wong had offered to give her a cheque each time to settle the amount, Miss Wong declined as she felt it would be better for her father to make reimbursement by paying for some of her shopping or other expenses when she requested. She said the amounts her father paid for her shopping and other expenses were, in fact, more than sufficient to cover the cost of the air tickets. Miss Wong denied emphatically that her father had improperly accepted air-tickets or other gifts from her or from a third party.

Representations of Mr. Wong

16. On 24 February 2005, lawyers acting for Mr. Wong made representations to the DPP. It was said that the complaints against Mr. Wong were groundless, and that he had already explained his position to the Independent Panel of Inquiry. The representations included :

- that Rosaline Wong accompanied Mr. Wong and his wife on each of their three trips in 1998, 2000 and 2001
- that Mr. Wong reimbursed his daughter in full for the expenditure she had incurred by paying her shopping and other expenses
- that Mr. Wong paid for Miss Wong's jewellery in the sum of \$215,000, in December 2000, which covered the travel expenses of the 1998 and 2000 trips, and that he paid \$139,865.65 for her handbags in August 2001, which covered the cost of the 2001 trip. Documentation was supplied to confirm the payment of these sums, which more than covered the expenses of the three trips.

Department of Justice Processes the Case

17. After the ICAC submitted its finalised report, the DPP instructed Mr. Harry Macleod, Deputy Director of Public Prosecutions and Head of the Commercial Crime Unit, to advise on the case. The DPP was satisfied that Mr. Macleod was not familiar with Mr. Wong. Mr. Macleod was able to provide an independent and objective assessment of the case.

18. Mr. Macleod submitted his finalised opinion to the DPP in mid-November 2005. He advised the DPP not to prosecute Mr. Wong. That was on the basis that the evidence did not suffice to justify criminal proceedings against him. It could not be proved that Mr. Wong intended to deceive when he

submitted the claims for reimbursement to government for the three trips. The prosecution could not show that he knew or believed that the documents he provided were other than genuine.

19. As the DPP felt he would be assisted by an outside opinion, he decided to instruct a Queen's Counsel in London to consider the allegations and the evidence and to provide him with the benefit of his assessment. In so deciding the DPP bore in mind the sensitivity of the case, the nature of the evidence, and the level of public concern. The legal expert to be instructed was Mr. Martin Wilson, QC. He, like Mr. Macleod, was not familiar with Mr. Wong.

20. Mr. Wilson enjoys great stature in the law. He is an experienced criminal lawyer, having been appointed Queen's Counsel in 1982. He has sat as a Recorder (part-time judge) of the Crown Court of England and Wales. Mr. Wilson has the advantage of a familiarity with the criminal law and circumstances of Hong Kong, and has both prosecuted and defended in criminal cases in this jurisdiction in recent times. In particular, in the mid-1990's he prosecuted successfully the Bumiputra Malaysia Finance Limited (BMFL) case, which resulted in the convictions of George Tan, former chairman of the Carrian Group of Companies, and of Rais Saniman, a director of BMFL, for conspiracy to defraud BMFL. Mr. Wilson was instructed to examine all aspects of this case and to advise the DPP if a prosecution of Mr. Wong was appropriate.

21. Mr. Wilson submitted his opinion to the DPP in December 2005. He advised that the evidence was not sufficient to justify the institution of a prosecution against Mr. Wong. He concluded that *'the evidence available to the prosecution does not rise above the level of suspicion and does not provide a reasonable prospect of conviction.'*

22. Mr. Wilson advised the DPP that in seeking reimbursement from the Treasury, Mr. Wong was making claims in respect of flights which he had taken and for which, in principle, he was entitled to seek appropriate reimbursement. In order to prosecute him successfully, it would be necessary to prove :

- (a) that Mr. Wong did not, as claimed, make the reimbursements to his daughter
- (b) that when Mr. Wong made the claims under the LPA he knew that he had neither repaid her, in cash or kind, nor intended to do so, and
- (c) that Mr. Wong acted dishonestly.

23. In relation to (a), (b) and (c), Mr. Wilson commented that *'all would have to be established to the criminal standard of proof and there is no direct evidence whatsoever to support any of them. A court could be invited to draw an inference of guilt, but the answer would be that strong suspicion justifies investigation but not conviction. My view is that, on the evidence, a court would not be likely to conclude that, on the evidence available, it could properly draw the inference of guilt.'*

24. In essence, Mr. Wilson's advice to the DPP was that it could not be proved that :

- (a) Mr. Wong did not believe that the invoices had been met when he submitted the claims for reimbursement
- (b) Mr. Wong did not believe the documents he presented were genuine, and
- (c) Mr. Wong did not believe that he was under an obligation to repay, or had repaid the party who had settled the invoice, whether through his daughter or otherwise.

Director of Public Prosecutions Reviews the Case

25. After Mr. Macleod and Mr. Wilson had each separately advised the DPP not to prosecute Mr. Wong, the DPP himself independently reviewed the case, the law, the circumstances and the submissions. As part of that process, he reminded himself that suspicion, even strong suspicion, is not a sufficient basis for instituting a prosecution of any person. Any prosecution must be grounded in solid and cogent evidence. The DPP reached the following conclusions :

- if the evidence against Mr. Wong was such as to justify a prosecution, his prosecution would be in the public interest
- prosecution policy had to be applied without fear or favour, and while Mr. Wong was to be given no special treatment, he would not be prosecuted unless there was a reasonable prospect of conviction
- it was apparent that Mr. Wong was entitled, as a judge of the High Court from 1985 to 2001, to first-class air passages once each year for himself and his wife
- Mr. Wong could only be reimbursed with sums which did not exceed his LPA entitlement

- there was uncontradicted material to show that in the late 1990's Mr. Wong had entrusted his daughter with the task of making his travel arrangements for him and his wife, and that Miss Wong duly did this and accompanied her parents on each of the three trips
- it appeared that Mr. Wong relied on Miss Wong to ensure that the payments were made to the travel agents, and he was not aware of the exact sums paid to them for air tickets and incidental expenses
- Mr. Wong did not seemingly consider it to be problematic for him to reimburse his daughter for her shopping and other expenses once he had received reimbursement from the government, and such conduct is not contrary to law
- there was some documentation to show that Mr. Wong had more than reimbursed Miss Wong for the expenses she had incurred on his behalf
- both Mr. Wong and Miss Wong indicated that it was she who provided him with the necessary accounting documents, and there was no evidence to show that he did not believe these documents to be genuine and correct when he submitted his claims for reimbursement to the Treasury
- it could not be shown that Mr. Wong had acted with impropriety in a criminal sense or that he had knowingly allowed someone other than his daughter to pay for his air-tickets.

26. It was in these circumstances that the DPP decided that a prosecution of Mr. Wong for an offence under the Prevention of Bribery Ordinance could not be justified. The DPP accepted as correct the reasoning of Mr. Macleod and Mr. Wilson. The evidence was not such as to enable criminal proceedings properly to be initiated against Mr. Wong.

27. The DPP explained his decision to the Secretary for Justice (SJ). Having studied the materials, the SJ endorsed the decision of the DPP.

Conclusion

28. A prosecution should only be instituted against a suspect if there is sufficient evidence. No one should be prosecuted unless there is at least a reasonable prospect of securing a conviction. A mere suspicion of guilt does not satisfy the basic prosecutorial criteria, nor does a bare prima facie case. Just as no-one is to be treated as being above the reach of the law, so, also, and just as

importantly, no-one is to be treated as being beneath the protection of the law. To prosecute a suspect in the absence of enough evidence would represent a violation of the duty to protect the citizen which is the responsibility of those in whom is vested the control of public prosecutions. As there is not sufficient evidence to justify a prosecution of Mr. Wong for any offence, he will not be subjected to criminal proceedings.

29. The decision taken has been communicated to the ICAC and to Mr. Wong's lawyers.

I. Grenville Cross, SC
Director of Public Prosecutions
Department of Justice
25 January 2006

香港司法機構
司法機構政務長辦公室



Appendix III
LC Paper No. CB(2)3142/05-06(01)

JUDICIARY ADMINISTRATION
JUDICIARY
HONG KONG

Fax. 圖文傳真： 2123 0028

Tel. 電話： 2123 0008

E-mail 電郵：

Your Ref. 來函檔號：

Our Ref. 本署檔號： (30) in L/M (3) to SC/CR/25/2/1 Pt. 3

30 September 2006

Clerk to LegCo Panel on
Administration of Justice and Legal Services
(Attn : Mrs. Percy Ma)
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mrs. Ma,

Panel on Administration of Justice and Legal Services
The Case of Mr. Michael WONG Kin-chow

I refer to your letter of 7 February 2006 on the captioned matter, requesting the Judiciary Administration to inform the Panel as to whether the Judiciary will take any follow up action in relation to the case of Mr. Michael WONG Kin-chow, having regard to the fact that a decision has been taken not to prosecute Mr. Wong. Since that decision was taken, the Operations Review Committee of the Independent Commission Against Corruption has provided to the Judiciary information concerning this matter.

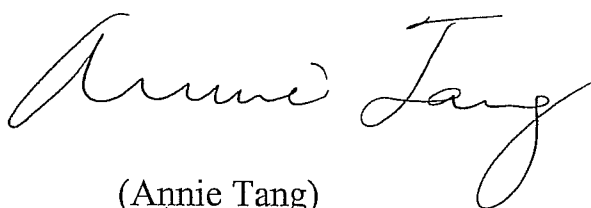
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2. The Judiciary notes that section 29(1)(b) of the Pension Benefits (Judicial Officers) Ordinance (“the Ordinance”) (Cap. 401)^{Note} may be relevant. The Judiciary has sought legal advice on whether there is sufficient ground for the Judiciary to take action against Mr. Michael Wong under section 29(1)(b) of the Ordinance, having regard to the information provided to the Judiciary by the Operations Review Committee of the Independent Commission Against Corruption.

3. The legal advice is that there are insufficient grounds for the Judiciary to take action against Mr. Michael Wong under section 29(1)(b) of the Ordinance. The Judiciary has considered the legal advice and agreed that no action should be taken against Mr. Michael Wong under section 29(1)(b) of the Ordinance.

4. The legal advice however concludes that Mr. Michael Wong was not entitled to payment for reimbursement of leave passage allowances submitted by Mr. Wong between August 1998 and February 2001 and that steps should be taken to recover the amounts paid. On the basis of such 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 had repaid that sum.

Yours sincerely,



(Annie Tang)
for Judiciary Administrator

c.c. SFST (Attn : Ms. Amy Tse)
SCS (Attn : Mr. K.S. So)

Note – Section 29(1)(b) of Cap. 401

“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.”

b.c.c. DoJ (Attn: Mr. Ian Wingfield and Ms. Ada Chung)

The case of Mr Michael WONG Kin-chow

Relevant papers

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion Passed</u>
Panel on Administration of Justice and Legal Services	14 November 2003	<p>Responses to press enquiries concerning Mr Michael WONG, a retired judge, issued by the Judiciary on 30 October and 3 November 2003 (LC Paper Nos. CB(2)248/03-04(01) and (02))</p> <p>Letter dated 3 November 2003 from Hon James TO Kun-sum to the Panel (LC Paper No. CB(2)324/03-04(01)) (<i>Chinese version only</i>)</p> <p>Paper provided by the Judiciary Administration on "Post-retirement Employment and Pension Benefits and Acceptance of Advantages by Judges and Judicial Officers" (LC Paper No. CB(2)325/03-04(01))</p> <p>Draft Official Record of Proceedings of the Council meeting on 22 October 2003 relating to an oral question raised by Hon Albert HO (LC Paper No. CB(2)324/03-04(02)) (<i>Chinese version only</i>)</p> <p>Written question raised by Hon Emily LAU at the Council meeting on 12 November 2003 and the Administration's reply (LC Paper No. CB(2)324/03-04(03))</p> <p>Sections 28 to 34 of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) and Acceptance of Advantages (Governor's Permission) Notice 1992 made under Prevention of Bribery Ordinance (Cap. 201) (LC Paper No. CB(2)324/03-04(04))</p>

		Minutes of meeting (LC Paper No. CB(2)842/03-04)
	3 February 2006	<p>A booklet on "The Statement of Prosecution Policy and Practice" issued by Department of Justice in 2002</p> <p>The Statement made by the Director of Public Prosecutions on 25 January 2006 concerning the case of Mr Michael Wong Kin-chow (LC Paper No. CB(2)993/05-06(01))</p> <p>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)1005/05-06(02))</p> <p>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)1018/05-06(01))</p> <p>The statement made by the Secretary for Justice (LC Paper No. CB(2)1030/05-06(01))</p> <p>The statement made by the Director of Public Prosecutions (LC Paper No. CB(2)1030/05-06(02))</p> <p>Minutes of meeting (LC Paper No. CB(2)2526/05-06)</p>