

**Report on Matters Relating to Mr Timothy TONG's
Duty Visits, Entertainment, and Bestowing and Receipt of Gifts during
his Tenure as Commissioner of
the Independent Commission Against Corruption**

July 2014

**Report by Hon Dennis KWOK, Hon Cyd HO Sau-lan ,
Hon James TO Kun-sun, Hon Kenneth LEUNG and Hon WONG Yuk-man
on Matters Relating to Mr Timothy TONG’s Duty Visits, Entertainment, and Bestowing and
Receipt of Gifts during his Tenure as
Commissioner of the Independent Commission Against Corruption**

I. Introduction

Background

1. At the Council meeting on 8 May 2013, Mr Dennis KWOK presented a petition jointly signed by Ms Cyd HO and himself, requesting that the Petition be referred to a select committee under Rule 20(6) of the Rules of Procedure of LegCo (“RoP”). 25 LegCo Members supported their request, and thus the Select Committee to Inquire into Matters Relating to Mr Timothy TONG’s Duty Visits, Entertainment, and Bestowing and Receipt of Gifts during his Tenure as Commissioner of the Independent Commission Against Corruption (“The Select Committee”) was established at the House Committee meeting on 24 May.
2. In order to obtain more comprehensive information to assist the members of the Select Committee in understanding matters relating to Mr TONG’s duty visits, entertainment, and bestowing and receipt of gifts during his Tenure as Commissioner of the ICAC, when the Select Committee was first established and during its proceedings, we have repeatedly requested to summon ICAC officers who are closely related to the incident to the hearings. However, all attempts were rejected by the Chairman and other members of the Select Committee, and we express our deepest regrets towards their decision, though we do not wish to second-guess the Chairman’s intention.
3. The Select Committee has already compiled a detailed report containing the findings of its proceedings and recommendations. In this report, we aim to:

- a. Set out some of our observations during the proceedings, as well as the findings we have derived from these observations. These findings turn out to be different from some of those of other members in the Select Committee as contained in the Select Committee Report; and
- b. Explain why we have arrived at these findings, and to make certain recommendations at this opportunity, in the hope that the monitoring measures relating to the duty visits, entertainment, and bestowing and receipt of gifts of public officers may be improved.

II. Overall Comments

4. The Select Committee Report consists of 9 chapters organized into 3 parts. From Chapter 4 onwards, every chapter ends with “Findings and Recommendations”. There is no disagreement with most of the content in the “Findings and Recommendations” of the report, but we wish to articulate our comments with regards to the “Findings and Recommendations” of certain chapters, in order to explore the impact of the Timothy Tong incident on Hong Kong society and the work of the ICAC in fighting corruption through different angles. Our comments are as follows:

Damaging the Image of ICAC and Tarnishing its Reputation

5. At the Finance Committee meeting in April 2013, we and other members of the Select Committee raised questions about Mr TONG’s expenses during his duty visits and the use of public funds for bestowing gifts. In the same month, the Audit Commission submitted the auditing report, which pointed towards the inadequacy of the ICAC in monitoring expenditure for the purpose of official entertainment. The media subsequently revealed that apart from the public funds of \$220,000 spent by Mr TONG on bestowing gifts as stated in ICAC’s replies to the Finance Committee, the ICAC had concealed other expenses on gifts bestowed during Mr TONG’s tenure. The ICAC later

admitted that food items were not included in the aforementioned replies submitted to the Finance Committee.

6. During the proceedings of the Select Committee, Mr TONG repeatedly avoided the members' questions, and denied utilizing his position as ICAC Commissioner to establish personal relationships with Mainland China officers and thereby prepare his post-ICAC career, through excessive entertainment and bestowing gifts with public funds.
7. Mr TONG also denied that his 35 duty visits abroad of 146 days in his five-year tenure focused too much on overseas work and therefore neglected the duties and responsibilities expected of ICAC locally.
8. With regards to the members' view that Mr TONG's serving of hard liquor at official entertainment functions during his tenure was inappropriate, and that the inclusion of beer drinking contests and karaoke singing sessions would give a negative perception to the general public; the percentage of overspending meals hosted by Mr TONG was unduly high, and he ignored the principle of frugality to avoid extravagance in entertaining guests with public funds; unduly close contacts between him and Mainland officials in Hong Kong during his tenure would shake public confidence in the impartiality of himself as the Commissioner of ICAC in handling alleged corruption cases involving Mainland officials; and that using public funds for bestowing gifts is not commensurate with the values of probity and integrity advocated by ICAC. Mr TONG has not replied to any of the above points.
9. We believe that Mr TONG's repeated duty visits abroad during his tenure reflected that he focused too much on overseas work and neglected the duties and responsibilities expected of ICAC locally, and did not focus on work related to fighting against corruption. He also neglected the internal morale of the ICAC, failing to carry out the duties as an ICAC Commissioner.

10. Mr TONG's serving of hard liquor at official entertainment functions during his tenure, the inclusion of beer drinking contests and karaoke singing sessions, the unduly high percentage of overspending meals and disregard for the principle of frugality to avoid extravagance in entertaining guests with public funds, the unduly close contacts between him and Mainland officials, and the usage of public funds for bestowing gifts, all exhibit behavior incommensurate with the values of probity and integrity advocated by ICAC, and have affected the positive impression of the ICAC built up over the years. The actions of Mr TONG severely damaged the image of the ICAC, tarnished its reputation, and also hit the morale of other ICAC staff who had always been conscientious in their work, committed to fighting against corruption and dedicated to educating the public about the evils of corruption.
11. We strongly condemn Mr TONG for the above wrong doings, as well as his evasive attitude and double-talk when he gives evidence in the Select Committee.
12. Further, we hope that ICAC would draw reference from this incident. Instead of circumventing the requirement for provision of information to LegCo Members by means of trickery, we hope that ICAC would answer LegCo Members' questions in a co-operative and earnest manner in future. We express deep regret at the failure of ICAC to disclose full and frank information to the Financial Committee for the aforesaid questions.

Damaging the ICAC Tradition of Probity and Integrity, and Setting a Bad Precedent of Corruption

13. When being questioned as to why hard liquor was served at official entertainments, Mr TONG responded that entertainment at different time periods call for different considerations and needs. Such arrangement at the time was made having regard to the prevailing customs and serving liquor to guests was considered conducive to

entertainment functions. What Mr TONG said was unreasonable, absurd and ignorant. The ICAC was established for the purpose of changing the old customs and traditions: to correct the trend of corruption which has been long present in the Hong Kong society. '[T]here is much history behind corruption in Hong Kong and deeply ingrained attitudes are involved. The Commissioner will therefore have a civil unit whose main task will lie in educating the public as to the evils of corruption not only from the point of view of the recipient but also from that of the giver.' Sir Macle hose expressed the above on 17 October 1973 when the establishment of the ICAC was announced at the LegCo, and this precisely reflected that the ICAC has a duty to make right what was wrong, and the Commissioner should set a good example for this purpose.

14. As a Commissioner of the ICAC, not only did Mr TONG not set a good example himself, but rather took the lead in damaging the ICAC tradition of probity which was established with great pains. As someone who should defend the core value of probity in Hong Kong, Mr TONG blatantly engaged in sophistry and even attempted to justify his actions as merely catering to the prevailing customs. Such behavior is infuriating, and we strongly condemn Mr TONG for damaging the ICAC tradition of probity and integrity.

Some Suggestions

15. After referring to existing laws and related cases, we believe that Mr TONG may have violated the offence of "misconduct in public office". We understand that the ICAC has already commenced investigation, and we propose that the ICAC should disclose the investigation results to the public, demonstrate to the citizens that it has carried out an in-depth investigation, and reinstate their confidence towards it;
16. According to the Code of Ethics of the ICAC, as Commissioner of the ICAC, Mr TONG ought to uphold the good name of the ICAC and not take advantage of his authority or position. During his tenure, Mr TONG ignored the principle of frugality to avoid extravagance in entertaining guests with public funds: not only did he always overspend,

he even consumed hard liquor, and bestowed expensive gifts upon Mainland officers, damaging the image and tarnishing the reputation of the ICAC. We propose that the government refer to the Code of Ethics of the ICAC, commence investigation through appropriate procedures, and punish him accordingly.

17. Since a public office executive public authority, there ought to be a set of clear, strict and high standard code of conduct to ensure that all behaviour of public officers are in the public interest, and are completely forgone of personal interests. The Commissioner of the ICAC is an important public officer position in the HKSAR, responsible for defending Hong Kong's core value of probity, and the society expects to see a more dignified code of conduct for the Commissioner of the ICAC. However, both the Civil Service Regulations and the Code for Principal Officials under Accountability System do not apply to the Commissioner of the ICAC, and there is no code of conduct to restrain their actions and conduct. Therefore, we propose that the government refer to the Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interest, as produced by the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests chaired by former Chief Justice of the Court of Final Appeal Andrew Li. Its recommendations related to the principles that ought to be adhered to by public officers may be used as a blueprint to design a code of conduct suitable for the Commissioner of the ICAC:

18. Currently, the Commissioner of the ICAC is nominated by the Chief Executive, reported to the Chinese Government for appointment, and announced by the SAR Government through the Gazette. It was widely known that Mr TONG was seconded from the civil service to take up the post of ICAC Commissioner in 2007, but when he left the civil service in 2009 and continued his post by contract, the Government did not announce this change to the public and the way the Government handled the matter is questionable. In order to prevent similar situations in the future, we propose that the

Government review the announcement mechanisms to enhance the level of transparency.

19. The behaviour of Mr TONG which damaged the reputation of the ICAC were, however, not possible overnight. While there are numerous trustworthy and impartial staff in the ICAC who understood that allowing crimes to happen is to strengthen such behaviour, there are many reasons behind their reluctance to admonish Mr TONG directly or to report to the related authorities. One of such reasons is the lack of a secure redress and report mechanism within the ICAC. The absence of a staff union of the ICAC also makes the staff feel isolated when they wish to reflect their views. In order to alleviate the staff' insecurity, we propose that the government introduce a new channel under the ICAC Complaints Committee, headed by the Chairman of the Committee and the Ombudsman, to specialize in handling related complaints. Also, we propose that the Government encourage and help ICAC staff to establish a staff union to defend their interests.

July 2014

Signatures of Members

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