

Fraud in a Post Truth World:  
Keynote address on the occasion of the 20<sup>th</sup> Anniversary of  
The Association of Certified Fraud Examiners, HK Chapter

The term: Post Truth World

I have chosen this topic for an occasion when experts in fraud detection meet. I am sure I can assume that you know far more about fraud detection than I do. But I thought that it might be helpful if I were to say a few words about the current post-truth world as a backdrop to your reflections today.

The phrase “Post Truth” be stated in two propositions:

Proposition 1:

People are more likely to accept an argument based on beliefs and emotions rather than on facts.

Brexit: reasons for leaving the European Union – few facts but mostly emotion.

Trump Election: Clearing the Swamp, Making America Great Again, few facts mostly emotion.

Proposition 2:

People are more likely to believe what they are told as facts based on their beliefs and emotions rather than on checking the facts for themselves or relying on logical or empirical tests to view what they have been presented with.

Trump campaign and his subsequent pronouncements, checked by many sources, including *www.Factcheck.Org* and other news media such as CNN, which has set up a fact check organisation – still within the established press, but there are organisations

which do this. Unfortunately, there is no similar organisation in Hong Kong which fact checks the many assertions we find in social media in Hong Kong, some of which looks well beyond the ordinary but appears to be widely believed. People seem have forgotten simple logical tests when examining extraordinary claims.

"Extraordinary claims require extraordinary evidence" was a phrase made popular by Carl Sagan. Its roots are much older, however, with the French mathematician Laplace stating that: "The weight of evidence for an extraordinary claim must be proportioned to its strangeness."<sup>[1]</sup> Also, David Hume wrote in 1748: "A wise man ... proportions his belief to the evidence", and "No testimony is sufficient to establish a miracle, unless the testimony be of such a kind, that its falsehood would be more miraculous than the fact which it endeavors to establish."<sup>[2]</sup> and Marcello Truzzi says: "An extraordinary claim requires extraordinary proof."<sup>[3]</sup>

1. Théorie analytique des probabilités, 1812, «... Plus un fait est extraordinaire, plus il a besoin d'être appuyé de fortes preuves ; car, ceux qui l'attestent pouvant ou tromper ou avoir été trompés, ces deux causes sont d'autant plus probables que la réalité du fait l'est moins en elle-même. »
2. Jump up↑ Hume, David (1748). *An Enquiry concerning Human Understanding, chap. 10.4*. <http://www.davidhume.org/texts/?text=ehu#10>.
3. Jump up↑ Marcello Truzzi, *On the Extraordinary: An Attempt at Clarification, Zetetic Scholar*, Vol. 1, No. 1, p. 11, 1978.

There are many explanations for the emergence of the Post-truth world, but it is not my intention to delve into these explanations – we can take all day and it will be inconclusive anyway.

### Two examples of enduring frauds

But I think that two examples of enduring frauds might provide better food for your reflections today.

### The Donation of Constantine

The first was a fraud, which lasted for over 6 Centuries (yes, over 600 Years). It concerns a forged document, which history has named the “Donation of Constantine”.

This Donation was said to have been made by Constantine I, on 30<sup>th</sup> March 315, written of course in Latin, and purporting to contain a detailed profession of Christian faith and a recounting of how the emperor, seeking a cure for his leprosy, was converted and baptized by Pope Sylvester I. In gratitude, he determined to bestow on the seat of Peter "power, and dignity of glory, and vigour, and honour imperial", and "supremacy as well over the four principal sees, Alexandria, Antioch, Jerusalem, and Constantinople, as also over all the churches of God in the whole earth". For the upkeep of the church of Saint Peter and that of Saint Paul, he gave landed estates "in Judea, Greece, Asia, Thrace, Africa, Italy and the various islands". To Sylvester and his successors he also granted imperial insignia, the tiara, and "the city of Rome, and all the provinces, places and cities of Italy and the western regions".

What may perhaps be the earliest known allusion to the *Donation* is in a letter of 778, in which Pope Hadrian I exhorts Charlemagne, whose father, Pepin the Younger, had made the Donation of Pepin granting the Popes sovereignty over the Papal States, to follow Constantine's example and endow the Roman Catholic church.

The first pope to directly invoke the decree was Pope Leo IX, in a letter sent in 1054 to Michael I Cerularius, Patriarch of Constantinople.<sup>[3]</sup> He cited a large portion of the document, believing it genuine,<sup>[6][7]</sup> furthering the debate that would ultimately lead to the East–West Schism. In the 11th and 12th centuries, the *Donation* was often cited in the investiture conflicts between the papacy and the secular powers in the West. It remained an item in the political armoury of the Popes whenever, their authority needed to be bolstered and this remained until the mid 15<sup>th</sup> Century, when Lorenzo Valla, in his argued in his philological study of the text that the language used in manuscript could not be dated to the 4th century (*Discourse on the Forgery of the Alleged Donation of Constantine*). Valla was acting for a client when writing this Discourse. The language of the text suggests that the manuscript can most likely be dated to the 8th century. Valla believed the forgery to be so obvious that he leaned

toward believing that the Church had knowledge that the document was inauthentic. Valla further argued that papal usurpation of temporal power had corrupted the church, caused the wars of Italy, and reinforced the "overbearing, barbarous, tyrannical priestly domination." Even after De Valla, the shadow of the Donation was so powerful a symbol for the Popes that it remained part of the magnificent art work (some commissioned in the early 16<sup>th</sup> Century) of the Vatican. No wonder, De Valla's discourse found its way into the Reformation.

### Pacific Electric Wire & Cable (PEWC)

Fast forward another 600 years from the late 14<sup>th</sup> Century to the late 20<sup>th</sup> Century, that is, the early 1990s.

PEWC is one of the oldest listed companies in Taiwan. In fact the company started in Peking during the early Republican years making electric wires when the City was electrifying. It subsequently grew into a large electric cable making company and moved to Chungking during the war years. After the civil war, the founders of the Company moved to Taiwan and became again a thriving company, as Taiwan began to rebuild and extend electrification.

When the stock market began in Taiwan in the 1950's, it became one of the earliest listed companies there. As the Company grew, it amassed a lot of money which its directors decided to invest overseas, particularly in Hong Kong and the United States. At one stage the Company bought the Conrad Hotel and made a lot of money selling it, which it then reinvested. But when a new batch of directors were appointed in the early part of the 21<sup>st</sup> Century, and asked for an accounting from the previous directors, that accounting was not forthcoming. Thus began one of the largest asset recovery exercises Hong Kong has known.

I was asked to lead this case in late 2003, when I returned to my legal practice after serving my country in the Central Government as the Chief Advisor of the China

Securities Regulatory Commission at the personal invitation of then Premier Zhu Rongji. That was in fact the second or third case I took up. The first was the Harbour Case where I led Professor Johannes Chan, succeeding in preventing further reclamation of Victoria Harbour.

The PEWC case was not completed into 2013, 10 years later, with numerous hearings, a long trial and three appeals to the Court of Appeals and the Court of Final Appeals. When you type in PEWC in the Judgments Search of the Hong Kong Judiciary, you will find the numerous court decisions in this matter. In the end, we recovered a large shopping centre in Ap Li Chau, the controlling shares of a Hong Kong listed company and various landed properties for PEWC, worth in 2013.

But you would wonder how was the fraud perpetrated? It was perpetrated by the control exercised by a small group of senior management controlling the information given to the Board and to the Company Supervisor and accounting standards which did not require Group Consolidation. Vast amounts of monies were lent to subsidiaries which were then stated to be banked with Banks in obscure off shore banking jurisdictions (Samoa was one), when in actual fact the monies were siphoned off to BVI and Cayman Companies controlled by the perpetrators. One of those banks was aptly named NM Bank. The Bank would issue deposit confirmations of large amounts of money with interest payments to the subsidiaries of the company. These deposits were rolled over countless times and further monies were lent by PEWC to either the same or newly formed subsidiaries. At the end the amount of deposits ballooned to over a few hundred million US Dollars.

When the Forensic Accountants were called in and called for the deposits to be lifted and returned to Taiwan, they found that the deposits were bogus. NM Bank was indeed registered in Samoa but it was a small bank and it in fact never did any business after inquiries were made with the Banking Supervisor. After much inquiry, it turned out that the perpetrators had an office in Hong Kong which produced the deposit slips and communicated with the Head Office. When a member of the accounting staff became suspicious and queried this, he was quickly laid off. The monies siphoned off by the perpetrators were used to buy the shopping centre, the

controlling interest in a publicly listed company and in numerous landed properties in Hong Kong. The perpetrators were the Chairman, the President and the Chief Financial Officer. The subsidiaries were controlled by the CFO and the Hong Kong office was staffed by children of the Chairman. This all happened in the days before strict anti-money laundering rules were enforced and when corporate governance was lax. You will ask why this was not be picked up by anyone for so long – over ten years!

When the fraud was finally discovered, the Chairman and his son, the President and the Chief Financial Officer were arrested in Taiwan. The Chairman passed away, the others were convicted. The President and the son have served their sentences, but the Chief Financial Officer is (as far as I know) still appealing his conviction. He is now in his 80's but still has enough money to carry on a lingering and expensive legal battle, a clear indication that the asset recovery exercise may not have been as complete as could be.

### Conclusion

The post truth world is more likely to allow frauds and half-truths or untruths to proliferate, as people become uncritical and gives way to their emotions and beliefs or to greed for power (as in the Donation of Constantine) or to complacency, as in the case of PEWC. That is why professionals such as yourselves, have a responsibility, as do all who aspire to live in an open society where freedom for all is to be guaranteed, to find truth from a critical examination of the facts. I wish you all a successful conference.

Anthony Neoh, QC, SC

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