

## Case Summary (English Translation)

**HKSAR v 陳泰森 (Chan Tai Sum)**

DCCC 354/2022; [2022] HKDC 1336  
(District Court)

(Full text of the Court's reasons for sentence in Chinese at  
[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=148731&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=148731&currpage=T))

Before: HH Judge Stanley Chan

Date: 15 November 2022

*Sentencing – common law and s. 18 of Public Order Ordinance (Cap. 245) – inciting others to take part in an unlawful assembly – republishing posts created by others – effect of publishing on online platforms – posted messages without substantive effect not a focus of the offence of incitement – publishing online posts after the NSL coming into force – purpose of republishing and effect – risk of producing “lone wolves” – 15 months’ imprisonment as starting point*

*Sentencing – s. 10(1)(a) of Crimes Ordinance (Cap. 200) – doing an act or acts with seditious intention – messages inconsistent with constitutional and legal status of HKSAR and its political structure – not spur-of-the-moment – effect of messages or pictures concerned – 12 months’ imprisonment as starting point*

### **Background**

1. The Defendant was convicted upon his guilty plea to one count of inciting others to take part in an unlawful assembly, contrary to the common law and s. 18 of the Public Order Ordinance (Cap. 245) and three counts of doing an act or acts with seditious intention, contrary to s.10(1)(a) of the Crimes Ordinance (Cap. 200).

## **Summary of the Court's reasons for sentence**

### **A. Charge 1: inciting others to take part in an unlawful assembly**

2. The Defendant published a post titled “Independence of Hong Kong, Revolution, Outpost Battle” in each of two chat groups on Telegram, thereby inciting others to take part in unlawful assemblies to be held on 24 December 2021 in the areas of Causeway Bay, Yau Ma Tei, Tsim Sha Tusi and Mong Kok by conducting themselves in a disorderly, intimidating, insulting or provocative manner intended or likely to cause any person reasonably to fear that the persons so assembled would commit a breach of the peace, or would by such conduct provoke other persons to commit a breach of the peace. The purpose was to waste the resources of the police and of those corporations and state-owned businesses which were against the “Anti-Extradition Amendment Bill Movement”. The posts also explained how the participants should divide the tasks, such as by setting out the division of labour among the “civilians”, “valiants / independence revolutionary army”, “engineers”, “propagandists” and “branch line”, and called for “lone wolves to become pack wolves”.

3. The Court's sentencing considerations for Charge 1 were as follows: (paras 52-56)

- (a) The Defendant merely republished someone else's post, rather than creating it himself, but he did not acknowledge the source of his posts.
- (b) The republished post urged the “valiant independence revolutionary army” on 5 key points. Insofar as that post was concerned, the original author was a self-proclaimed general who wanted to lead a universal uprising, and a rebel who wanted to overthrow the ruling regime with violence.
- (c) The Defence submitted that the Defendant's post was but a “fleeting presence” on Telegram without causing any substantive effect. The Court found this a blatant disregard of the function and effects of online platforms. Telegram allowed

the existence of these seditious articles, free for anyone to circulate and publish them regardless of area, country or region. Anyone who knew Chinese could read them.

- (d) These posts could incept into people's minds and thoughts prompting them into more radical behaviour.
- (e) Whether the Defendant's posts carried any substantive effect was not the focus of the offence of incitement.
- (f) By publishing these posts almost one and a half years after the the NSL coming into force, the Defendant had blatantly disregarded the law.
- (g) Suffering from autism was not an excuse for the Defendant to claim ignorance of the legal consequences.
- (h) Although the Defendant acted alone and republished the posts on his own, he was hoping for a "universal" response.
- (i) The Defence said that the Defendant was neither making political capital nor supporting the opposition party; he received no reward but merely brought into hatred or contempt against the Government together with like-minded people. However, the Court saw a high probability of such incitement creating and producing lone wolves. These lone wolves might inflict self-harm, take their own lives, and even cause grievous harm to others, and commit homicide or arson. As such, it was necessary not only to punish the perpetrators, but also to serve all a deterrent reminder of the importance to abide by the law and that online platforms were not a lawless place for unrestrained rhetoric.
- (j) Although the call (for the unlawful assemblies on Christmas Eve 2021) republished by the Defendant did not materialise, his culpability remained serious.

4. The maximum penalty for inciting others to take part in an unlawful assembly was 5 years' imprisonment. The Court adopted 15 months as the starting point, and granted the Defendant a full one-third discount for his guilty plea. In respect of Charge 1, the Defendant was sentenced to 10 months' imprisonment. (paras 56-57)

## **B. Charges 2 to 4: doing an act or acts with seditious intention**

5. These three charges took place in the period between August and December 2021, during which the Defendant published posts and replied to others' messages on Telegram:

(a) Charge 2: The Defendant published 33 messages in the discussion forum on LIHKG (commonly known as “連登”), which included:

- (i) encouraging others to “save the hatred, continue to rebel, fight till the end”, to “take revenge” against the CPG and the HKSARG, and urging others to “take the vow of no compromise” against the CPG and the HKSARG;
- (ii) smearing and defaming the CPG and the HKSAR, and instigating others to “exterminate” them and even to wage a war in return;
- (iii) advocating “Ethnic enhancement, Hong Kong independence”, “Hongkongers to build a state” and “Liberate Hong Kong Revolution of our times”, and commending the so-called freedom-fighting “Hong Kong independence camp”;
- (iv) defaming and cursing the Communist Party of China, viewing the Communist Party of China as “totalitarian”, advocating resistance and ganging up with other provinces to overthrow the Communist Party of China; and
- (v) vehemently criticising the CPG's rule for stripping its people of their freedoms and rights.

(b) Charges 3 and 4: The Defendant published on the Telegram chat groups 4 and 2 seditious messages respectively, including: once he was detained, he would either kill the Correctional Services Department officers or commit suicide, cursing at the Communist Party of China, preaching Hong Kong independence and “Liberate Hong Kong Revolution of our times”.

6. The Court held that the revolution propagated and advocated by the

messages published by the Defendant was inconsistent with the constitutional and legal status of the HKSAR and the political structure stipulated by the BL. The acts lasted a continuous period of time, not committed on the spur of the moment. The Defendant treated the NSL as a paper tiger and blatantly committed the offences with the so-called “like-minded” people. (paras 38 and 58)

7. The Defence contended that the 39 messages or pictures in question neither brought into hatred or contempt, nor excited disaffection against the administration of justice in Hong Kong. The Court held that although the particulars of offences did not mention the judicial system, there were five allegations which were extremely serious, capable of bringing chaos and disruptions to that part of Hong Kong people who were always law-abiding and to the rule of law in Hong Kong, a place where people lived and worked in peace and contentment, thereby impacting upon the economy, the livelihood of Hong Kong people and many of the rights which they were entitled to. (para 59)

8. The maximum penalty for doing an act or acts with seditious intention was 2 years’ imprisonment. These offences took place against the backdrop of massive riots and frequent demonstrations in late 2019 and after the NSL came into force. Having regard to the similar nature of Charges 2 to 4, the fact that the Defendant was not a political figure, and the content of the posts, the Court decided to adopt 12 months as the starting point for sentencing. The sentence was reduced to 8 months’ imprisonment after a one-third discount for the Defendant’s guilty pleas to all charges. Sentences on these three charges were ordered to run concurrently. (para 60)

9. While regard must be had to the totality principle, the Court held that a perpetrator should not receive a greater reduction in sentence the more offences he committed. The circumstances in which and the modus operandi by which the Defendant committed Charge 1 were different from those for Charges 2 to 4. Having considered all the factors, the Court ordered 4 months of the sentences on Charges 2 to 4 to run consecutively with that on Charge 1, making a total of 14 months’ imprisonment. (para 61)

10. Being sympathetic toward the Defendant's personal history and frustration, and having considered his autistic state of mind, the Court exercised its discretion to further reduce the sentence by two months. Hence, the Defendant was finally sentenced to 12 months' imprisonment.  
(para 62)

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