

Department of Justice's response to decision not to appeal
against sentences imposed in contempt of court case

In response to media enquiries, a spokesman for the
Department of Justice (DoJ) said today (October 14) as follows:

By orders made on September 16, 2015, Mr Justice Au of
the Court of First Instance of the High Court imposed fines
totalling \$550,000 by way of sentences against the
proprietors/publishers as well as the editors of Apple Daily
and Sharp Daily (collectively the Defendants) in contempt
proceedings (HCMP 1851 & 1852 of 2013). The Defendants were
also ordered to pay the costs of the Secretary for Justice
(SJ) on an indemnity basis.

The contempt proceedings arose from the publication on
March 20, 2013 of: (1) an article respectively in the
newspapers Apple Daily and Sharp Daily of an interview of Mr
Henry Chau Hoi-leung, who had then been arrested and charged
for double homicide; and (2) a video clip in the website of
Apple Daily the interview which was conducted by two reporters
of Apple Daily while Mr Chau was remanded at the Siu Lam
Psychiatric Centre. The said publication was made when the
criminal trial of Mr Chau was still pending.

In sentencing the Defendants, Mr Justice Au stated in
open court that the contempt committed was serious and the
sentences had to reflect its seriousness. In imposing fines
against the Defendants but not custodial sentence against any
of the editors, the learned Judge was fully apprised of the
relevant circumstances under which the said publication was
made, as well as the relevant sentences in previous contempt
cases of similar nature. In addition, the learned Judge had
considered the relevant mitigating factors including: (1) an
early admission of liability for contempt by the Defendants;
(2) an unreserved apology; (3) a lack of any deliberate
intention to interfere with a fair trial; and (4) no actual
interference with the then pending criminal proceedings.

Further, the fact that the editor and proprietor/publisher of Apple Daily each had one previous record of publication contempt in 1997 and 2000 respectively was duly drawn to the learned Judge's attention.

After the sentences were imposed, the SJ has carefully considered whether an appeal should be lodged against the sentences in question (including the question of whether custodial sentence should be imposed against the editors in the circumstances of this case). For such purpose, the SJ has also obtained advice from independent Senior and Junior Counsel on the merits of such an appeal against the sentences.

Having considered all the relevant circumstances (including the applicable legal principles, the sentences imposed in previous cases of similar nature, the evidence in the present case and independent legal advice by Senior and Junior Counsel), the SJ is satisfied that there is no sufficient basis to lodge an appeal against the sentences in question. Amongst others, there is no sufficient basis to suggest that: (1) the learned Judge had erred in law; (2) the sentences imposed by the learned Judge were outside the usual range of sentences imposed in cases of similar nature.

In the circumstances, the SJ has no real alternative but decides not to lodge an appeal against the said sentences imposed by Mr Justice Au.

Ends/Wednesday, October 14, 2015