

LCQ3: Conducts of contempt of court

Following is a question by the Hon Wong Ting-kwong and a reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (February 7):

Question:

It has been reported that early last month, a woman, who was dissatisfied with the court judgment on a certain case, hurled abuses at the magistrate of the case outside the courtroom and was subsequently arrested by the Police for alleged contempt of court. However, there have been people in the past from time to time who were neither arrested nor prosecuted after they had publicly hurled abuses or curses at judges. For example, in October 2016, a former Member of this Council, after having been convicted of a charge of common assault, publicly hurled abuses at the magistrate of the case by calling him a "dog judge" by name, and his supporters even uttered the curse that "the whole family of the magistrate would go to hell". Some members of the public have queried the inconsistent standards on law enforcement adopted by the authorities in respect of acts of contempt of court. In this connection, will the Government inform this Council:

(1) of the respective numbers of persons arrested and prosecuted in the past three years for alleged contempt of court, with a breakdown by the type of acts involved in such cases (e.g. obstructing or refusing the execution of court rulings or orders, acting in a disorderly manner before a court and insulting a judge either inside or outside a courtroom);

(2) of the respective criteria adopted by the authorities for determining whether a person who has allegedly committed an act of contempt of court (especially hurling abuses at a judge) should be arrested and prosecuted; whether the

considerations involved include the political stance and background of the person involved in the case, the race and nationality of the judge being insulted, and the stance expressed by legal professionals and bodies on the act involved in the case; if so, of the details; if not, the reasons for that; and

(3) whether the authorities will review those cases that occurred in the past three years in which abuses and curses were publicly hurled at judges and the persons involved were neither arrested nor prosecuted, so as to respond to the queries raised by members of the public regarding the authorities' inconsistent standards on law enforcement; if so, of the details; if not, the reasons for that?

Reply:

President,

Judicial independence is an essential element of the rule of law. The Hong Kong Special Administrative Region Government respects the freedom of speech of individuals. Members of the public have the right to express their views on court decisions and related matters within the boundary permitted by the law. Rational discussions can also promote awareness of the rule of law. However, as pointed out by the Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li, at this year's Ceremonial Opening of the Legal Year, "... any comments that may be made about the work of the Judiciary, whether seemingly positive or negative, should be done on an informed basis." I should stress that personal attacks, insults and even threats against judges and judicial officers would severely undermine the authority of the courts and damage public confidence in the judicial system.

I would also like to reiterate that, effective enforcement of court orders and the law is especially important for

upholding the rule of law. Interim injunctions are orders made by the court, and should be observed notwithstanding that they are interim in nature. Breaching or omitting to comply with interim injunctions may also very likely amount to contempt of court. In a judgment concerning an interim injunction, the court has observed that even if the defendants are of the view that a court order is wrongly granted, instead of simply disobeying it, they should first comply with it and then seek to challenge that order pursuant to the judicial process.

As I stated at the Ceremonial Opening of the Legal Year, it is my duty as the Secretary for Justice to ensure that the independence of our Judiciary, as enshrined in the Basic Law, is respected and judges are not arbitrarily attacked or criticised.

As always, the Department of Justice (DoJ) is very concerned about any conduct that may constitute a contempt of court, and will not hesitate to take suitable follow-up measures where appropriate and necessary.

Under common law, criminal contempt of court means conduct calculated to interfere with the due administration of justice, and there must be a real risk that the due administration of justice would be undermined by the relevant conduct. "Contempt of court" covers a wide range of conducts. Examples of conducts that may constitute criminal contempt as mentioned above are conducts disrupting court hearing or insulting judicial officers; refusing to be sworn to give evidence when called as a witness in the face of the court; scandalising the court by published words outside the court; publication of any report which prejudices the fair trial of an on-going proceeding; and obstructing the execution of court orders, etc. To take the contempt of scandalising the court as illustration, past cases show that contemnors can be sentenced to substantial fines and imprisonment.

Generally speaking, once any conduct that may constitute a contempt of court has come to its knowledge or been referred by the Judiciary, the DoJ will refer the case to law enforcement agencies (LEAs) for investigation. If members of the public witness or note any conduct which in their view may constitute a contempt of court, they can certainly make a report and provide information to the LEAs as well.

It is worth mentioning that in certain circumstances, the courts are empowered by legal provisions to summarily punish those who commit a contempt of court, for example, under section 99 of the Magistrates Ordinance (Cap 227) and section 20 of the District Court Ordinance (Cap 336). These statutory provisions cover insulting behaviours in the face of a magistrate or a judge. Depending on the applicable provisions, offenders are liable to the maximum penalty of a fine of \$10,000 and imprisonment for six months to two years.

Besides, contempt of court situations may also arise in civil litigation. Civil contempt of court generally refers to the breach or omission to comply with a court order or an undertaking given to the court by a party to the civil proceedings. In cases of civil contempt, it is generally for a party to the proceedings to apply to the court for a committal order against the other party who is alleged to be in breach of the court order. The applying party needs to prove to the court that the other party has breached or omitted to comply with the relevant court order or undertaking given to the court. Depending on the severity of the conduct in contempt of court, the types of punishment may include imprisonment, suspended committal order or fines.

The consolidated response of the DoJ to the three questions raised by the Hon Wong Ting-kwong concerning

arrests and prosecutions for suspected contempt of court is as follows:

Contempt of court covers a wide range of conducts and offences, and government LEAs and the DoJ have not kept a set of figures covering all relevant cases. Hence, the Government is unable to provide relevant figures in respect of cases involving alleged contempt of court.

If the Police have reasonable grounds to suspect that a person has committed contempt of court, the Police will commence investigation. The Police Force is a professional LEA. It has always been acting in accordance with the law, and handling and investigating every case in a fair and just manner. In considering whether to take any arrest action in an individual case, the Police must consider whether the person concerned is suspected to have contravened the law, having regard to the circumstances of the case and the evidence available. The political stance or background of the person concerned is not a relevant consideration of the Police in taking law enforcement actions.

If necessary, the Police will seek legal advice from the DoJ. The DoJ has to decide whether to bring prosecution in a case in accordance with the Prosecution Code: the first consideration is whether the evidence is sufficient to justify a prosecution, that is, whether the admissible and reliable evidence demonstrates a reasonable prospect of conviction; if there is sufficient evidence to prosecute, further consideration is given as to whether the public interest requires a prosecution to proceed.

While contempt of court proceedings (which proceed according to procedures of civil proceedings) are different from general criminal proceedings, the guiding principles of arrest and prosecution as mentioned above are applicable to cases that may constitute contempt of court.

Moreover, for cases in respect of which decisions have been made not to prosecute, provided there are justifiable circumstances (for example, where unanticipated significant evidence becomes available at a later time), the DoJ will review the previous decisions not to prosecute.

I must emphasise that officers of the LEAs and the DoJ act fairly by adhering to the above guiding principles, and will not, and should not, be influenced by irrelevant factors such as political stance and background, race and nationality of the person(s) concerned, or the opinions of the public or professional bodies. Most importantly, they will not apply double standards.

Thank you. President.

Ends/Wednesday, February 7, 2018