

LCQ15: Protecting jurors from clandestine video-recording and photo-taking

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (June 6):

Question:

It has been reported that four alleged incidents of clandestine video-recording and photo-taking in courtrooms occurred in the past three months. Three of such incidents occurred during the trial of cases of the offences of riot, etc. committed in Mong Kok, and the latest one occurred during the trial of contempt of court case relating to the Occupy Mong Kok movement in 2014. On February 23, a man pointed his mobile phone to the direction of the jury and took photos and videos, and disseminated the photos and video clips through an instant messaging software. However, the judge who tried the case decided not to pursue the matter after the man deleted the photos and video clips. On May 18, when the jurors of that case retired for deliberation, the Judiciary received an email with words which read "there are a lot more" and with a photo with features of the jurors. Some members of the legal profession have considered that the person who sent the email attempted to challenge the court's impartiality in the trial of the case. On the other hand, it has been reported that in an article entitled "Smart tips to observe trials in High Court" posted on a Mainland website with a number of photos featuring local courts, the author said that, "fortunately, the clandestine photo-taking was not discovered by the judge". Also, an article entitled "What kind of experience is it to observe trials in Hong Kong's High Court", along with photos of local courts, can be found through a Mainland Internet search engine. Those articles show that the courts in Hong Kong seem to have become a tourist attraction for Mainland tourists. In this connection,

will the Government inform this Council:

(1) whether it has assessed if the aforesaid acts of clandestine video-recording and photo-taking, as pointed out by the media, relate to politically sensitive cases, and whether such incidents (i) involved the intention of some people to influence the trials by sending out threatening messages, (ii) will cause members of the public who serve as jurors to worry about their identities being exposed and their personal safety, and (iii) has an impact on the confidence of members of the public on the court's impartiality in trying cases;

(2) whether it will seriously pursue the criminal liability of the aforesaid persons involved in the clandestine video-recording and photo-taking;

(3) whether it knows if the Judiciary has stepped up measures to prevent the recurrence of incidents of clandestine video-recording and photo-taking of the jury in court to ensure that they discharge their duties impartially without worries and free from threats; and

(4) whether it will request the relevant Mainland authorities to (i) address squarely the aforesaid issues and (ii) step up education of Mainland residents of their obligation to abide by the laws of Hong Kong, including the requirement that no video-recording and photo-taking is allowed when observing trials in court, when they are in Hong Kong?

Reply:

President,

Trial by jury for criminal cases at the Court of First Instance (CFI) is an indispensable component of the criminal justice system and a deep-rooted aspect of the common law tradition of Hong Kong. Article 86 of the Basic

Law provides that "the principle of trial by jury previously practised in Hong Kong shall be maintained."

In *HKSAR v Lee Ming-tee and another* (2001) 4 HKCFAR 133 (FACC No. 8 of 2000), the Court of Final Appeal pointed out in its judgment that "reliance on the integrity of the jury and its ability to try the case fairly on the evidence, to put aside extraneous prejudice and to follow the directions of the judge is fundamental to the jury system itself."

Any intended or actual threat that constitutes undue pressure on jurors and judicial officers resulting in biased acts on their parts is completely unacceptable. Such acts may not only bring about injustice to the defendants in certain cases, but also weaken public confidence in the jury system and the criminal justice system.

In a recent case of criminal contempt of court handled by the CFI of the High Court involving photo-taking in court, the defendant was convicted by the Court for criminal contempt of court. In the reasons for verdict and sentence, the Court clearly pointed out that photo-taking in court would very likely prejudice or interfere with the due administration of justice. This is because photo-taking in the courtroom would possibly disrupt or interrupt court proceedings. Moreover, photo-taking may cause concern or unease among jurors and witnesses (including victims in sexual assault cases), in particular when their identities are disclosed, thereby leading to issues of their safety. If the photographs are misused, it will deal an even more serious blow to the due administration of justice. Therefore, photo-taking in court would very likely constitute the offence of criminal contempt of court.

Under existing laws, there are generally two ways to deal with the acts of taking photographs in court:

(i) Under section 7 of the Summary Offences Ordinance

(Cap. 228), certain acts of taking photographs in court are prohibited. Offenders are liable to a fine of \$2,000 upon conviction.

(ii) Suspected offenders may also be prosecuted for criminal contempt of court, and could be sentenced to a fine and imprisonment upon conviction.

In a most recent case involving clandestine photo-taking during court proceedings in the CFI referred above, the trial judge has taken forward proceedings for contempt of court according to summary procedures in respect of the act of clandestine photo-taking by the offender. The offender was ultimately convicted and sentenced to imprisonment for seven days. As regards another incident involving clandestine photo-taking of jurors during a trial at the CFI, the Police have launched investigation into the case. The Department of Justice (DoJ) will take a serious approach in following up on the case, and on receipt of the Police's investigation report and evidence gathered, it will consider, in accordance with the Prosecution Code and the applicable law, whether to initiate prosecution or proceedings for committal for contempt of court.

In respect of the question raised by the Hon Paul Tse, the DoJ has consulted the Judiciary Administration, whose response to part (3) of the question is as follows:

"The Judiciary takes the view that due administration of justice is of paramount importance for all court proceedings. In particular, trial by jury is an important part of the administration of justice under the common law, which is constitutionally protected under Article 86 of the Basic Law. Serving jurors must be free from all actual or perceived interference or pressure. An important safeguard is the prohibition of photography and audio or video recording inside courtrooms.

According to the Judiciary, the Judiciary has all along been taking measures to remind court users that photo-taking is not allowed in courtrooms. For example, clear signage is posted inside courtrooms and at court lobbies. The Judiciary staff has been reminding court users of such restriction as necessary. The Judiciary has also been referring cases involving photo-taking at court buildings to the DoJ and/or Police for follow-up actions as appropriate.

The Judiciary is very concerned with the recent incidents of photo-taking in courtrooms when proceedings were held and takes the matter seriously. Besides taking the necessary follow-up actions, the Judiciary has recently put in place the following enhancement measures:

(i) making public announcements in courtrooms before commencement of court proceedings to remind court users of the photo-taking prohibition. The announcements are made in Cantonese, English and Putonghua;

(ii) putting up more notices and signage on the prohibition of photo-taking in more prominent areas in courtrooms and at court lobbies;

(iii) reminding court users of the prohibition of photo-taking more extensively by Judiciary staff verbally or through written notices as appropriate; and

(iv) strengthening security personnel manpower during court proceedings for monitoring the situation as necessary.

In addition, the Judiciary is actively considering the issuance of a Practice Direction to regulate the use of mobile phones and other devices with photo-taking or audio/video recording capability for jury proceedings."

As regards parts (1), (2) and (4) of the Hon Paul Tse's

question, the DoJ's response is as follows:

(1) and (2) We do not provide specific comments on individual cases. In respect of the incident of clandestine photo-taking of jurors referred above, it is already under police investigation. The DoJ attaches great importance to the incident. But to avoid affecting the related follow-up actions, it is inappropriate for us to comment any further or disclose any specific details at this stage. On receipt of the Police's investigation report and evidence gathered, the DoJ will make an independent professional consideration as to whether to initiate prosecution or proceedings for committal for contempt of court in accordance with the Prosecution Code and the applicable law, and the offender may also be subject to arrest or punishment. In the most recent case involving clandestine photo-taking during court proceedings in the CFI referred above, the trial judge emphasised in his judgment that the court must protect the privacy and safety of jurors and witnesses, so that they would not be subject to unnecessary interference. And because photographs taken inside the court may also be disseminated quickly and fall into the hands of the bad elements, thereby seriously disrupting the court's judicial proceedings, it is necessary to impose penalties with deterrent effect on offenders for illegal photo-taking in court.

(4) Taking into account the various measures set out in the Judiciary's response to part (3) of the question set out above, it is considered that there are sufficient measures to ensure that people observing trials in court are aware of the requirement that photo-taking is not allowed in court. The sentence imposed in the most recent case involving clandestine photo-taking during court proceedings in the CFI has also sent a clear and deterring signal to the public, the court definitely would not tolerate acts of illegal photo-taking in court.

Ends/Wednesday, June 6, 2018