

Attacks on Queen’s Counsel are “baseless and ill-informed”

Ms Teresa Cheng, SC, Secretary for Justice

(Article published in China Daily on January 21, 2021)

Whilst freedom of speech is a value much cherished, one would expect that such right would be exercised wisely by those in office with correct factual basis and objectivity. The personal attacks and criticisms levied against Mr David Perry, QC who was earlier instructed by the Department of Justice (DoJ) of the Hong Kong Special Administrative Region (HKSAR) to handle the prosecution in *HKSAR v Lai Chee-Ying & Others* are appalling. The remarks were made oblivious of what the case is about. The intensity and ferocity of these remarks are so fierce that it may have an impact on some.

The case has nothing to do with National Security Law or any offences relating to national security. The nine

defendants were charged with two offences under the Public Order Ordinance (legislated before 1997) for organising and knowingly taking part in an unauthorised assembly contrary to section 17A(3)(a) and (b)(i).

A brief summary of the prosecution case has been set out in Chief Judge of the High Court Jeremy Poon's judgement in relation to the ad-hoc admission of Mr Perry, QC, and is summarised below. On 12 August 2019, the Civil Human Rights Front submitted a notification of intention to hold public meetings at Victoria Park and Chater Road and a procession between the two on 18 August 2019. The Commissioner of Police issued a letter of no objection for the holding of a public assembly in Victoria Park but having regard to the interest of public order and public safety and for the protection of rights and freedoms of others objected to the holding of the public procession from the Victoria Park to Chater Road and the assembly at Chater Road. An appeal was lodged to the Appeal Board on Public Meetings and Processions. The Appeal Board upheld the Commissioner of Police's decision and dismissed the

appeal. On 18 August 2019, participants assembled at Victoria Park and later started a procession led by the defendants. The procession eventually ended in the small hours on 19 August 2019.

Therefore, the ill-advised assertion that the prosecution “will have to apply the national security legislation at the behest of the authorities in Beijing” from the UK Foreign Secretary is totally erroneous. Following that, a politician from the UK characterised the prosecution as “under the really questionable law that was produced at the behest of China.” She was not only referring to the wrong legal basis but also harbours a total misconception as to the true nature and propriety of the National Security Law.

Many who are ill-informed is taking every opportunity, irrelevant though it may be, to make misguided and malicious attacks on the National Security Law that is applicable to HKSAR, when it is in fact a legitimate exercise of China’s sovereign right to legislate so as to safeguard its sovereignty and national security. Just as the UK has national security legislations such as the

Treason Act 1351, the Treason Felony Act 1848, and the Official Secrets Act 1989, to name a few, China has also passed legislation to address the same concerns within its sovereign territory.

The severity of the attacks on Mr Perry, QC by high ranking officials, politicians and peers in the UK on his involvement in a HKSAR prosecution case is rather unexpected. But what is more eye-opening is the pressure and impact such ferocious attacks and statements could have.

After Mr Perry, QC had been instructed, his ad hoc admission was granted by the Chief Judge of the High Court on 12 January 2021. Since then there have been pressures and criticisms from the UK community directed at his involvement in the case. Whilst expressing concerns about those pressures and the exemption of quarantine, Mr Perry, QC indicated that the trial should not be re-fixed and that it should be proceeded with as scheduled without him.

Ever since the arrest of the nine defendants in April last year, there have been baseless accusations from local and overseas communities against the HKSAR Government. A prosecutor must not be influenced by any investigatory, political, media, community or individual interest or representation. When there are signs of possibility of fear or concerns that may influence the prosecution work, it is my duty to ensure that measures are taken to eliminate such risks, so that the prosecution work can be conducted fairly and efficiently, without fear or favour and free from any interference in accordance with Article 63 of the Basic Law.

Yet, one must not underestimate the effect such pressure and criticisms, baseless though they may be, could have on individuals, and more importantly, the rule of law. The impact such external pressures may have really calls for concern. Nonetheless, the determination of the Department of Justice to fairly and objectively deal with each case based only on the evidence and applicable law without fear or favour will remain unchanged and

resolute as evidenced in our action to proceed with the trial as scheduled.

As legal proceedings are on-going, it is inappropriate for anyone to comment further on the case as it is a matter of “sub-judice”. Comments that create a public discussion which may lead to a trial by the public as opposed to an established judicial system is to be avoided.

Ends