



Summary of Judicial Decision

**Secretary for Justice (“the Applicant”) v SIEW Yun Long, MAN For On, YUNG Yiu Sing, CHAN Pak Tao and LOU Tit Man (collectively as “the Respondents”)
HCMP 2917, 2918, 2925, 2929 & 2931/2015; [2018] HKCFI 2027**

Decision : The Respondents are all guilty of criminal contempt of court
Date of Hearing : 15, 18, 23, 28-31 May, 4-6, 13, 25 June 2018
Date of Judgment/Decision : 31 August 2018

Background

1. These are criminal contempt applications made by the Applicant for the committal of the Respondents in relation to events which took place on 25 November 2014 in the portion of Argyle Street between the junction of Nathan Road and Portland Street in Mong Kok, Kowloon, a section of “the Area”.¹ (paragraph 1)
2. Most of the background facts can be found in paragraphs 2 to 28 of the judgment relating to the same event in the *Secretary for Justice v Cheng Kam Mun* HCMP 2916/2015.² (paragraph 4) (full text of the CFI reasons for sentence at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=108865&QS=%2B&TP=JU)
3. The Applicant commenced the present committal proceedings seeking to commit the Respondents to prison and/or fined for criminal contempt by interfering with and/or impeding the due execution on 25 November 2014 of the Injunction Order by refusing to leave the Area despite repeated warnings.

¹ The westbound carriageway of Argyle Street between the junction of Tung Choi Street and Portland Street

² The relevant background facts from *Cheng Kam Mun* can be summarized as follows: As a result of what was generally known as the “Occupy Movement”, a significant part of the public highway in Mong Kok, namely, the Area and the streets nearby had been occupied by different individuals since late September 2014. The general public was prevented to a varying extent from using the relevant roads/streets.

On 20 October 2014, the plaintiff in HCA 2086/2014 (“the Plaintiff”) obtained an *ex parte* injunction from the Court of First Instance (“CFI”) in relation to the Area. (full text of the CFI ruling at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=95376&QS=%2B&TP=JU)

By the judgment of 10 November 2014, the CFI ordered the *ex parte* injunction to be continued (“the Injunction Order”). (full text of the CFI judgment at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=95659&QS=%2B&TP=JU)

The terms of the Injunction Order were essentially that the Defendants (either by themselves or by placing objects thereat) are refrained from (a) occupying the Area to prevent or obstruct the reasonable use of the Area by the Plaintiff, and (b) preventing the Plaintiff from removing such obstructions from the Area.



Issues in dispute

4. The key issue in dispute is whether the conduct of the individual Respondents on 25 November 2014 amounted to criminal contempt of court to the criminal standard of proof.

Department of Justice's Summary of the Court's rulings

(full text of the CFI judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=117168&QS=%2B&TP=JU)

5. Having considered all the evidence, the Court is satisfied beyond reasonable doubt that the Respondents are all guilty of the offence of criminal contempt. (paragraphs 28, 31, 33, 38, 46)
6. Following the Court of Appeal's judgment in *Secretary for Justice v Wong Ho Ming* CACV 259/2017 [2018] HKCA 173, the Court held that where a party to a court order obstructed or interfered with the bailiff in executing the order, whether or not the order contained a provision authorising the bailiff to do so, the party committed a criminal contempt. As regards *mens rea*, the Court held that it is sufficient to prove the party's basic intent to do the acts which constituted the *actus reus* of the contempt complained of. No specific intent to interfere with the administration of justice is required. (paragraph 19)
7. The Court found that the Respondents made a decision to be present and to remain in the Area on 25 November 2014 when action was being taken to enforce the Injunction Order. (paragraphs 28, 31, 33, 38, 46)
8. The Court also noted that the bailiffs, the Plaintiff's solicitors and the police had made numerous announcements advising people to leave the Area as their presence obstructed and interfered with the clearance operation. (paragraph 25)
9. Given the factual matrix, the history of events leading up to the Injunction Order and the extensive media coverage that followed, as well as the presence of the media and the police on the day in question, the Court found it inconceivable or incontestable that any individual protestor was not aware of the police's request for them to leave. (paragraphs 8 & 29)
10. The Court found that the conduct of the Respondents was clearly calculated to defy the Injunction Order and made the job of clearing and removing the obstructions substantially more difficult. Their presence and conducts were not only inherently likely to, but were factually calculated to, delay if not to frustrate, the bailiffs and the Plaintiff's agents' efforts. Their conducts amounted to



serious interference with the administration of justice, and they were held guilty of criminal contempt. (paragraphs 28, 31, 33, 38, 46).

Civil Division

Department of Justice

31 August 2018