



Summary of Judgment

Secretary for Justice (“SJ”) v Lester Shum(岑敖暉) (“Defendant”)

HCMP 1158/2021; [2022] HKCFI 1015

**Decision** : Defendant liable for civil contempt and was sanctioned with 6 weeks’ immediate custodial sentence, and liable to contribute towards SJ’s costs in the sum of HK\$25,000

**Date of Hearing** : 14 April 2022

**Date of Judgment/Decision** : 14 April 2022

Background

1. On 31 October 2019, the Court of First Instance (“**Court**”) granted an injunction order (“**Incitement Injunction**”)<sup>1</sup> to SJ as the guardian of public interest restraining anyone from:-
  - (a) wilfully disseminating, circulating, publishing or re-publishing on any internet-based platform or medium any material or information that promotes, encourages or incites the use or threat of violence, intended or likely to cause: (i) unlawfully bodily injury to any person within Hong Kong; or (ii) unlawfully damage to any property within Hong Kong;
  - (b) assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorizing others to commit any of the aforesaid acts or participate in any of the aforesaid acts.
2. Upon Police investigation, the Defendant was found to have published an article with the title “周梓樂被香港警察謀殺身亡，半年”<sup>2</sup> on the Facebook profile of “Lester Shum (岑敖暉)” on 8 May 2020 and on the Inmediahk Website on 9 May 2020 (collectively “**Article**”). The Article contains, *inter alia*, the following references:-
  - (a) 兇手正是香港警察<sup>3</sup>
  - (b) 但我是確信，周梓樂是被香港警渣所謀殺的。<sup>4</sup>
  - (c) 從那天開始，我們的口號由「香港人加油」、「香港人反抗」，變為「香

<sup>1</sup> The order was continued on 15 November 2019 and amended on 20 November 2019.

<sup>2</sup> English translation: “The Murder of Chow Tsz Lok by Hong Kong Police, Half a year”

<sup>3</sup> English translation: The murderer is the Hong Kong Police Force.

<sup>4</sup> English translation: But I firmly believe, that Chow Tsz Lok was murdered by the Hong Kong Police scums.

港人，報仇」。香港警察親手殺害了我們的手足，制度不彰，公義不顯，報仇是理所當然。<sup>5</sup>

- (d) 「香港人報仇」……也不能只是流於口號，因為牠們是切實地殺害了我們親友的仇人。<sup>6</sup>
- (e) 自此之後，有些手足向著更高規格的裝備發展，有槍有炸彈。<sup>7</sup>
- (f) 其實我一路都想講，如果佢地真係做左，行埋未行到果步，其實一定唔會割，至少我一定唔會割。<sup>8</sup>
- (g) 自從周梓樂那夜，香港人要報仇，是一個實在的任務來。香港警畜是實實在在地謀殺了我們一位手足。或許是多位。<sup>9</sup>
- (h) 如果香港人報仇，不再是口號，而是真的有手足做了，一定不割。<sup>10</sup>

3. Upon the request of the Department of Justice on 20 May 2020, Inmediahk removed the Article from Inmediahk Website. However, the Defendant refused to remove the Article from his Facebook profile despite requests.

4. In light of the breach of the Incitement Injunction, SJ commenced the present civil contempt proceedings against the Defendant. The Defendant having admitted liability for civil contempt on 21 January 2022, the Court dealt with the sentencing on 14 April 2022.

### **Issues in dispute**

5. The question for determination is the appropriate sentence.

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

(full text of the judgment at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=143550&QS=%24%28HCMP%7C1158%2F2021%29&TP=JU&ILAN=en](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=143550&QS=%24%28HCMP%7C1158%2F2021%29&TP=JU&ILAN=en))

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<sup>5</sup> English translation: From that day onward, our slogan had been changed from “Hong Kong people, keep it up”, “Hong Kong people, rebel”, to “Hong Kong people, take revenge”. Hong Kong Police murdered our comrade with their own hands but the institution was faulty and justice was not seen. Taking revenge is a matter of course.

<sup>6</sup> English translation: “Hong Kong people, take revenge” ... should not remain as a slogan only, as they [using the animal form of “they”] are the enemy who actually murdered our close family and friends.

<sup>7</sup> English translation: Since then, some comrades have been advancing the level of their equipment, there are guns and bombs.

<sup>8</sup> English translation: As I have been wanting to say all along, if they actually do it, taking the step that has not been taken yet, we are definitely not going to sever ties with them. At least I myself am definitely not going to sever ties.

<sup>9</sup> English translation: Since the night Chow Tsz Lok (was killed), it has become a real mission for Hong Kong people to take revenge. Hong Kong Police beasts have actually murdered one of our comrades, or possibly more,

<sup>10</sup> English translation: If “Hong Kong people, take revenge” is no longer a slogan but actually done by our comrades, definitely will not sever ties.

6. In bringing contempt proceedings, the SJ is acting in her role as guardian of the public interest and the administration of justice. Such role requires the SJ to endeavour to assist the Court with the sentencing process in a fair and impartial manner, including making detailed submissions to assist the Court on the appropriate penalty to be imposed. Further, the Prosecution Code does not apply to cases of civil contempt (§§ 39, 40 & 42)
7. In determining the appropriate sentence for civil contempt, the general principles include:
  - (a) The appropriate starting point for breach of the Incitement Injunction is one of an immediate custodial sentence, and one perhaps measured in months. (§49)
  - (b) Whilst both inciting violence online and doxxing are serious matters, the threat posed by inciting violence is more direct, explicit and immediate. (§50)
  - (c) The Court is not concerned only with the subjective intention of the contemnor, but with the objective potential or likely effect of the words used. (§51)]
  - (d) Beside the degree of culpability, the Court may take into account various other circumstances to the extent appropriate to the case such as, (a) the contemnor's personal circumstances, (b) the effect of the contempt on the administration of justice, (c) the need to deter future or repeated contempt, (d) the absence or presence of prior conviction for contempt, (e) the contemnor's financial means, (f) whether the contemnor has exhibited genuine contrition and made a full and ample apology, and (g) whether the conduct is sufficiently serious to warrant the imposition of a term of imprisonment (sometimes considered as the penalty of 'last resort'). (§52)
8. The aggravating features of this case include:-
  - (a) the Article clearly incited hatred against the Police. The violence promoted, encouraged and condoned in the Article was both severe and specific. (§74)
  - (b) the Article was not removed by the Defendant from his Facebook Page until after the commencement of these proceedings, so that there was no early recognition of the wrong or attempt to lessen its effect. (§75)
  - (c) the fact that the Defendant was a District Councillor does mean that

he was in a public position of responsibility and some influence, who might be taken as an example and an opinion leader, and so he should have paid much closer scrutiny to the qualities and consequences of his actions. (§78)

(d) the fact that this is not the first occasion the Defendant was sentenced for contempt of court . (§80)

9. The Court also took into account the following mitigating factors including, that (a) the Defendant is now – at last – genuinely remorseful for his actions in relation to the Article, (b) that the Defendant makes a genuine apology to the Court for breaching the Incitement Injunction, backed up by a clear express disavowal of any encouragement of violence, (c) that the Defendant did not become a District Councillor just for his own aggrandisement or to provide him a soapbox. Rather, he intended to and did genuinely serve the community and his constituents by engaging in the kind of activities which that position properly entails. (§76 & 79)
10. On the question of delay in bringing these committal proceedings (i.e. about 15 months between the discovery of the breach and the application for leave to pursue committal proceedings), the Court repeats the judgement in §§28-30 of *Secretary for Justice v Sung Ho Tak Edward* [2022] HKCFI 227 that the Court is entitled to expect actions which are said to be clear breaches of Court orders to be brought to the attention of the Court within a fairly short time. (§§27-29)
11. Significant delay can frustrate the Court’s ability properly to police its own orders. But, in this particular case, and balanced against the need to mark the real gravity of the breach, the Court is of the view the delay can be reflected not in the nature of the sanction imposed, but in its length. In the particular circumstances of this case, the appropriate sentence is one of an immediate custodial sentence of 6 weeks. (§82-84)
12. As regards costs, the Court accepted that the usual order in a successful contempt proceedings is for costs to follow the event and to be paid on indemnity basis. Nevertheless, in some cases it may be appropriate to approach costs by requiring payment of a contribution only. Having considered the Defendant’s financial position, in exercising its discretion on costs, the Court ordered the Defendant to pay a contribution to SJ’s costs in the sum of HK\$25,000. (§§85-89)

**Civil Division**  
**Department of Justice**  
**14 April 2022**