



Summary of Judgment

Secretary for Justice (“SJ”) v Ho Wai Pan (何惠彬) (“Defendant”)

HCMP 1274/2021; [2022] HKCFI 191

Decision : **Defendant liable for contempt and sentenced to 1 month’s imprisonment, suspended for 12 months, and liable to contribute towards SJ’s costs in the sum of HK\$100,000**

Date of Hearing : **27 April 2022**

Date of Judgment/Decision : **27 April 2022**

Background

1. On 31 October 2019, the Court of First Instance (“**Court**”) granted an injunction order (“**Incitement Injunction**”)¹ 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) bodily injury to any person unlawfully within Hong Kong; or (ii) damage to any property unlawfully 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 posted a post on his Facebook page (“**Facebook Post**”) on 22 May 2020. The Facebook Post reads “襯任醉醉地同你地講 你唔敢出手打鳩差佬(第日係打鳩國安)就註定比班仆街食住 而家有人同你地講道理呀 而家講拳頭 你敢搞正佢 就有出路 眼前選擇得兩個：你條命 同埋香港”². The status of the Facebook Post was “public” (i.e. the Facebook Post was publicly accessible by anyone with connection to the Internet).
3. Upon the request of the Department of Justice on 26 May 2020, the

¹ The order was continued on 15 November 2019 and amended on 20 November 2019.

² Taking the opportunity of being a bit drunk, (let me) tell you guys. If you dare not take the action and fucking beat the cops up (it would be fucking beating the national security agency in future), you are doomed to be under the control of the bastards. Nowadays no one will talk reason with you guys; nowadays, fists do the talking. If you dare to mess with them, there will be a way out. There are only two options before (your) eyes: your life and Hong Kong.

Defendant removed the Facebook Post from his Facebook page.

4. In light of the breach of the Incitement Injunction, SJ commenced the present contempt proceedings against the Defendant. The Defendant having admitted liability for civil contempt on 13 January 2022, the Court dealt with sentencing on 27 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 Court's judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=143782&QS=%2B&TP=JU)

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. (§§34-36)
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. (§39)
 - (b) Whilst both inciting violence online and doxxing are serious matters, the threat posed by inciting violence is more direct, explicit and immediate. (§40)
 - (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. (§41)
8. In imposing the sentence in the present case, the Court took into account the following factors:-
 - (a) The Facebook Post was a clear breach of the Incitement Injunction. Yet the level of violence advocated was not at the most extreme end. (§64)
 - (b) There was not an intended flouting of the authority of the Court, that

the Facebook Post was removed by the Defendant very quickly after it was demanded by the Department of Justice to be removed, and that the Defendant is now genuinely remorseful for his actions. (§§65-67)

(c) The Defendant being a District Councillor at the time of the offending Facebook Post means that he was in a public position of responsibility and some influence. A person holding public office, with a reasonably large social media, ought not to have allowed his own views to stray into the forbidden territory. (§69) Yet the Defendant had the intention to serve the community as a District Councillor. (§70)

(d) The Defendant's previous conviction which was based on another post made by him a few weeks before the Facebook Post in this case. (§71)

(e) The delay in the commencement of the committal proceedings. (§72)

9. In the particular circumstances of this case, the appropriate sentence is one of a custodial sentence of one month, suspended for 12 months. (§74)

10. On the question of delay in bringing these committal proceedings (i.e. 15 months after the date of the breach), 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. (§26)

11. Even taking into account the possible need for some further investigation to clear any concern as to the authorship of the Facebook Post, and to be confident of meeting the high evidential threshold, the Court remains of the view that the 15-month delay was unacceptably long. (§32)

12. As regards costs, the Court accepted that the usual order in a successful contempt proceeding is for costs to follow the event and to be payable by a defendant on indemnity basis. In some cases, it may be appropriate to approach costs by requiring payment of a contribution only so as to reflect the appropriate degree of proportionality when the penalty and costs can be regarded as composite elements of the sanction and the proceedings' impact on a defendant. Taking into account all the circumstances (including the grant of legal aid to the Defendant on 4 February 2022) and recognising that there may be no great attraction in ordering public funds to be moved from one pocket to another, the Court ordered the Defendant to contribute

a sum of HK\$100,000 to SJ's costs for the period before 4 February 2022,
with no order as to costs after that date. (§§75-79)

Civil Division
Department of Justice
27 April 2022