



## Summary of Judgment

### Secretary for Justice (“SJ”) v Sung Ho Tak Edward (宋浩德) (“Defendant”) HCMP 1542/2021; [2022] HKCFI 227

<b>Decision</b>	<b>: Defendant liable for civil contempt and sentenced to 21 days’ imprisonment, suspended for 12 months, and liable to pay SJ’s costs in the sum of HK\$180,000</b>
<b>Date of Hearing</b>	<b>: 18 January 2022</b>
<b>Date of Judgment/Decision</b>	<b>: 18 January 2022</b>

### Background

1. On 31 October 2019, the Court of First Instance (“CFI”) 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) 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. In the morning on 11 November 2019, a Police Officer (“**the subject officer**”) used his firearm during a public order event in Sai Wan Ho.
3. Upon Police investigation, the Defendant was found to have posted 2 messages on his Facebook page (“**Message 1**” and “**Message 2**” respectively). Message 1 was posted on 11 November 2019 and read “殺咗呢條冚家鏹”<sup>2</sup> and incorporated the shared post of another Facebook user, which comprised a photograph of a Police Officer (“**the subject officer**”) who used his firearm during a public order event in Sai Wan Ho earlier that day. Message 2 was posted on 12 November 2019 and read “希望今晚會見到有黑警死 一定要見到有黑警死”<sup>3</sup>. The status of

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

<sup>2</sup> English translation: “kill the hom-ka-chan” (“hom-ka-chan” being a Cantonese curse word cursing the death of the whole family of the subject person).

<sup>3</sup> English translation: “hope to see the corrupt cops die tonight. Must see some corrupt cops die [tonight]”

Messages 1 and 2 was “public”.

4. The Defendant was subsequently arrested. Under caution, he admitted that he posted Messages 1 and 2 on his own initiative out of anger but claimed that he was not aware of the Incitement Injunction at the time of posting.
5. Following the Defendant’s release from police custody, he took down the posts of Messages 1 and 2 and posted an apology in the form of a public Facebook post.
6. 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 8 November 2021, the CFI dealt with sentencing on 18 January 2022.

### **Issues in dispute**

7. The questions for determination are :-
  - (a) the relevance of the Defendant’s knowledge of the Incitement Injunction;
  - (b) the appropriate sentence; and
  - (c) costs.

### **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=141778&QS=%2B&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=141778&QS=%2B&TP=JU))

8. On the relevance of the Defendant’s knowledge of the Incitement Injunction, the CFI accepted that the requirement for service or notice before enforcement by way of committal can proceed is procedural in nature, rather than being an inherent and constituent element for civil contempt of court. The *mens rea* for civil contempt of court is satisfied once it is proven that the defendant’s act was intentional (as opposed to accidental) and he knew of all the facts which made it a breach of the order. It is not necessary to show that the defendant appreciated that his conduct did constitute the breach of any injunction order. In any event, the CFI did not accept that the Defendant was completely unaware of the grant of the Incitement Injunction. (§§32,33 & 61)
9. 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. (§36)
- (b) Whilst both inciting violence online and doxing are serious matters, the threat posed by inciting violence is more direct, explicit and immediate. (§37)
- (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. (§39)

10. The aggravating features of this case include:-

- (a) Messages 1 and 2 were issued more than one day apart, pointing to an intentional act rather than simply the ventilation of feelings out of impulse. (§42)
- (b) Irrespective of one's political stance, or lack of any political stance, one should never resort to physical violence against other members of society. (§44)
- (c) The facility to broadcast and publish material widely on the internet makes breaches worse rather than less serious. The 'ripple effect' caused by wider and more extensive dissemination of offending material is obvious. (§46)
- (d) There is a clear correlation between online calls for violence and their actual implementation in the real world, as was particularly seen in the context of the period of violent unrest in November 2019. The conduct is particularly serious as it incited physical violence against a police officer, when the police are essential in law enforcement and safeguarding the proper administration of justice. (§§43 & 47)
- (e) The Court should send a clear message to the public that such conduct is not to be tolerated. The sentence imposed should have a deterrent effect on would-be defendants. (§48)

11. The CFI also took into account the following mitigating factors including, that the Defendant removed Messages 1 and 2 from his Facebook account and posted an apology after his release from police custody, his genuine remorse, his early admissibility of liability and cooperation with the Police, that he was under financial and emotional stress, that the acts were out of his character and the delay in the commencement of the committal proceedings. (§§50, 63 & 64)

12. On the question of delay in bringing these committal proceedings (i.e. about 19 months after the Defendant was informed that the criminal investigation against him was brought to an end), the Court reiterated that the breach of the Incitement Injunction is a serious matter and the SJ ought to bring breaches of the Court's order to the attention of the Court timeously, so that the Court is in a position to enforce its order through contempt proceedings and orders for committal if necessary. (§§25, 26 and 29)
13. In the particular circumstances of this case, the appropriate sentence is one of a custodial sentence of 21 days, suspended for 12 months. (§65)
14. As regards costs, the CFI accepted that the usual order in a successful contempt proceeding is for costs to follow the event and to be payable by the person found guilty of contempt on indemnity basis. Nevertheless, the combined effect of sentence and costs can be regarded as composite elements of the contempt proceedings' impact on a defendant. In exercising its discretion on costs, the CFI ordered the Defendant to pay SJ's costs in the sum of \$180,000. (§§66-68)

**Civil Division**  
**Department of Justice**  
**18 January 2022**