Case Summary

HKSAR v Lai Man Ling (黎雯齡) and Others

DCCC 854/2021; [2022] HKDC 981; [2022] 4 HKLRD 657
(District Court)
(Full text of the Court's reasons for verdict in English at https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=147076&currpage=T)

Before: HH Judge W. K. Kwok
Date of Reasons for Verdict: 7 September 2022

Conspiracy to commit sedition offence regarding seditious publication under ss. 10(1)(c), 159A and 159C of Crimes Ordinance ("CO") – construction of s. 9 of CO – definition of "State" under s. 3 of IGCO – CPG's responsibilities under BL be exercised by "Central Authorities" – CPG responsible for defence of HKSAR under BL 14(1) and national security affairs relating to HKSAR under NSL 3 – NPCSC Decision on 23 February 1997 and Sch. 8 to IGCO – "Her Majesty" in s. 9 of CO be construed as "Central Authorities" – "Central Authorities" be considered to be "the body of central power under the constitutional order established by the Constitution of the PRC" under the leadership of Communist Party of China

Sedition offence under s. 10(1)(c) of CO – mens rea – intention to perform prescribed act under s. 10(1)(a) of CO – knowledge of publication being seditious – intention of publisher constituted evidence of intention of the publication – burden of proof on prosecution – proof of intention to incite persons to violence or to create public disturbance or disorder unnecessary – likely effect of publication on ordinary people and audience – seditious intention stemmed from words with proscribed effects intended to result in children's minds

Constitutionality of sedition offence under s. 10(1)(c) of CO – freedom of expression, speech and publication – restriction prescribed by law and proportionate – Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR not rules of law in HKSAR – overseas jurisprudence of little assistance

Time limit for bringing prosecution of sedition offence – conspiracy on a continuous basis – prosecution not time-barred

Background

1. The five Defendants (respectively D1, D2, D3, D4 and D5) were charged with one count of conspiracy to print, publish, distribute, display and/or reproduce seditious publications, contrary to ss. 10(1)(c), 159A and 159C of the Crimes Ordinance, Cap. 200 ("the Charge"). It was alleged that D1 to D5 among themselves and together with other persons had embarked upon an agreement to cause three picture books, i.e. "羊村守衛者" ("Book 1"), "羊村十二勇士" ("Book 2") and "羊村清道夫" ("Book 3"), to be printed, published, distributed, displayed and/or reproduced in the name of the General Union of the Hong Kong Speech Therapists ("GUHKST") from 4 June 2020 (the day when Book 1 was published) until 22 July 2021 when they were arrested, and that these three books had the following seditious intention:

(a) to bring into hatred or contempt or to excite disaffection against the Central Authorities and/or the Government of the HKSAR;
(b) to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong;
(c) to raise discontent or disaffection amongst inhabitants of Hong Kong;
(d) to incite persons to violence; and/or
(e) to counsel disobedience to law or to any lawful order.

2. Drafts of another picture book entitled "羊村投票日" ("Book 4") pertaining to the 35+ Primaries were also found in the electronic devices of three defendants. All defendants pleaded not guilty.

Major provision(s) and issue(s) under consideration

- BL 14, 23, 27, 34, 39 and 160
- NSL 2, 3 and 20
- BOR 11 and 16
- Crimes Ordinance (Cap. 200) ("CO"), ss. 9, 10, 11(1) and 159A
- Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO"), ss. 2A and 3; Sch. 8, ss. 1, 2 and 22

3. The Court considered the following issues:

(a) whether the offence charged covered the Central Authorities;
(b) what the elements of the offence were;
(c) burden of proof in relation to s. 9(2) of the CO;
(d) whether proof of an intention to incite violence or to create public disturbance or disorder was required;
(e) whether the offence charged was unconstitutional on the grounds that it was inconsistent with the defendants' freedom of expression, speech and publication, and/or freedom to engage in literary and artistic creation and other cultural activities under BL 27 and 34 and BOR 16;
(f) whether the three picture books were seditious publications;
(g) whether there was the alleged conspiracy, and if so, whether the defendants had taken part in it; and
(h) whether prosecution of the offence was time-barred.

Summary of the Court's reasons for verdict

(a) Whether the offence charged covered the Central Authorities

4. Section 9 of the CO, enacted when Hong Kong was under British rule, did not include reference to the term "Central Authorities", but instead "Her Majesty" and other terms and expressions associated with that concept. The provision had been adopted as laws of the HKSAR pursuant to BL 160 and s. 2A of the IGCO[*]. Sections 1 and 2 of Sch. 8

[*] Editor's note: It is the Decision of the Standing Committee of the National People's Congress Concerning the Handling of the Laws Previously in Force in Hong Kong in Accordance with Article 160

to the IGCO[†] facilitated the modification and the adaptations of the previous laws so as to bring them into conformity with the status of Hong Kong as a Special Administrative Region of the PRC. In this regard, the issue was whether the reference to "Her Majesty" in s. 9 should be construed as a reference to the "Central Authorities" pursuant to s. 1 of Sch. 8 to the IGCO. (paras. 53-54 and 57)

5. As to the meaning of "Central Authorities", the definition of "State" in s. 3 of the IGCO provided that "State" included the Central Authorities of the PRC that exercised functions for which the CPG had responsibility under the Basic Law. It was therefore clear that the functions that fell within the responsibility of the CPG under the Basic Law were to be exercised by the Central Authorities. In other words, the responsibility of the CPG under the Basic Law could be regarded as the responsibility of the Central Authorities. (para. 56)

6. Counsel for D4 submitted that it was the HKSARG which had the sole responsibility to defend national security in the HKSAR rather than the CPG, and at the time when s. 9 of the CO was enacted, it could not be related to the foreign affairs or the defence of Hong Kong. Hence, any reference to "Her Majesty" in s. 9 could only be construed as a reference to the HKSARG rather than the CPG or the Central Authorities. The Court rejected the submissions and held that the CPG was responsible for the defence of the HKSAR under BL 14(1). (paras. 58-60)

(a) Since the HKSARG took care of public order in the HKSAR under BL 14(2), what was left to be defended by the CPG under

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of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the 24th Meeting of the Standing Committee of the Eighth National People's Congress on February 23, 1997) that has adopted s. 9 of the CO, which should now be construed in accordance with s. 2A of the IGCO. See para. 10 below.

[†] Sections 1 and 2 of Sch. 8 to the IGCO provided:

"1. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State … where the content of the provision—

(a) relates to title to land in the [HKSAR];

(b) involves affairs for which the [CPG] of the [PRC] has responsibility;

(c) involves the relationship between the Central Authorities and the [HKSAR],

shall be construed as a reference to the [CPG] or other competent authorities of the [PRC].

2. Any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State … in contexts other than those specified in section 1 shall be construed as a reference to the Government of the [HKSAR]."

BL 14(1) could only be the defence of the HKSAR against any national security risk.

(b) Since the HKSAR was part and parcel of the PRC, safeguarding national security in the HKSAR must be a component of the overall national security framework of the PRC, which must be a matter outside the limits of the HKSAR's autonomy but within the purview of the Central Authorities. In other words, there was nothing called defending against national security risk of Hong Kong, but defending against national security risk in the HKSAR.

(c) The CPG had an overarching responsibility for national security affairs relating to the HKSAR under NSL 3. The fact that the HKSAR was under a constitutional responsibility to safeguard national security in the Region was not inconsistent with the CPG having the responsibility for safeguarding national security in the HKSAR under the Basic Law.

7. The contents of s. 9 of the CO involved affairs for which the CPG had responsibility. (para. 61)

(a) Although s. 9 did not say expressly that it was enacted for the defence of Hong Kong, it was clear from the provisions of s. 9 that it was enacted in the colonial era to protect "the person of Her Majesty, or Her Heirs or Successors", which must mean that s. 9 was enacted to protect not only the Monarch of the British Empire but also her Monarchy. Hence, it was incorrect to say that s. 9 was not related to the defence of Hong Kong.

(b) The CFA had ruled in *HKSAR v Ng Hau Yi Sidney* [2021] HKCFA 42 that a prohibited act of sedition, including an offence contrary to s. 10(1)(c) of the CO, qualified as an offence endangering national security. In other words, the sedition offence created by ss. 9 and 10 must be one of the laws to be used for the defence of the HKSAR against offences endangering national security, which was one of the affairs for which the CPG had responsibility under the Basic Law.

8. For these reasons, the criteria for triggering s. 1(b) of Sch. 8 to the IGCO were satisfied. Any reference to "Her Majesty" in s. 9 of the CO should be construed as a reference to "the CPG or other competent authorities of the PRC". (para. 62)

9. As to whether the Charge should cover the Central Authorities rather than the CPG, since the Central Authorities exercised functions for which the CPG had responsibility under the Basic Law, it would be proper to construe any reference to "Her Majesty" in s. 9 of the CO to be a reference to the Central Authorities. The Central Authorities must fall within the limb of "other competent authorities of the PRC" in s. 1 of Sch. 8 to the IGCO. (para. 63)

10. Further, reference could be made to the NPCSC Decision adopted on 23 February 1997 concerning the handling of the laws previously in force in Hong Kong in accordance with BL 160 ("the BL 160 Decision"). By Arts. 4 and 5 of the BL 160 Decision, it is stipulated that the laws previously in force shall be applied with such modifications, adaptations, restrictions or exceptions as may be necessary in accordance with the principles stated therein and the substitution rules stated in Annex III of that Decision. Paragraph 1 of Annex III of the BL 160 Decision stated that in any provisions that involved the affairs within the responsibilities of the Central Authorities as prescribed by the Basic Law, any reference in these provisions to "Her Majesty", etc should be construed as a reference to "the Central Authorities". Since Sch. 8 to the IGCO was enacted to give effect to the BL 160 Decision, the construction rules in Sch. 8 to the IGCO should operate in the same way as the substitution rules in Annex III of the Decision. On this basis, reliance could be placed on s. 22 of Sch. 8 to the IGCO (which provided that Sch. 8 applied unless the context otherwise required) to construe any reference to "Her Majesty" in s. 9 of the CO to be a reference to "the Central Authorities". (para. 64)

11. Counsel for D4 submitted that the matters referred to in s. 9 of the CO could not be within the responsibility of the CPG because BL 23 stipulated that the HKSAR should enact laws "on its own" to prohibit any act of sedition, and if the CPG had responsibility under s. 9, it would

mean that prosecution of the sedition offence would also be the responsibility of the CPG. The Court held that no offence of sedition had been enacted, and that it merely construed the laws previously in force in Hong Kong in accordance with Sch. 8 to the IGCO. Further, BL 14(1) only provided that the CPG was responsible for the defence of the HKSAR; prosecution of offences in the HKSAR was not covered. (paras. 65-66)

12. For the above reasons, the Central Authorities had been properly included in the Charge against the defendants. It was unnecessary to decide whether s. 9 of the CO also involved the relationship between the Central Authorities and the HKSAR and, hence, s. 1(c) of Sch. 8 to the IGCO also applied. (paras. 67-68)

13. The Court accepted the prosecution's submission that in the context of s. 9(1)(a) of the CO, the Central Authorities had to be considered to be "the body of central power under the constitutional order established by the Constitution of the PRC" under the leadership of the Communist Party of China, which, by reference to Chapter III ("State Institutions") of the Constitution of the PRC, included but was not limited to the NPC, the NPCSC, the President of the PRC, the State Council and the Central Military Commission. (para. 69)

14. Accordingly, the provisions of s. 9 of the CO were construed as follows: (paras. 70-71)

(a) Section 9(1)(a) should read: "[A seditious intention is an intention] to bring into hatred or contempt or to excite disaffection against the Central Authorities, or against the Government of Hong Kong". The other parts of s. 9(1)(a) were to be disregarded as the types of colonial governments referred to therein no longer existed.

(b) References to "Her Majesty's subjects" in ss. 9(1)(b), 9(1)(d) and 9(2)(c) should be disregarded, but the other parts of each subsection should remain. Section 9(1)(d) should read: "[A seditious intention is an intention] to raise discontent or disaffection amongst inhabitants of Hong Kong".

(c) Section 9(1)(c), (f) and (g) should remain unchanged[‡].

(d) Section 9(2)(a) should read: "[An act, speech or publication is not seditious by reason only that it intends] to show that the Central Authorities or the Government of HKSAR has been misled or mistaken in any of their measures". It was not necessary to change s. 9(2)(b) and (d).

(e) For s. 9(2)(c), the only change was to ignore the reference to "Her Majesty's subjects", leaving behind "to persuade inhabitants of HKSAR to attempt to procure by lawful means the alteration of any matter in HKSAR as by law established".

(b) Elements of the offence charged

15. A person would not commit an offence contrary to s. 10(1)(c) of the CO unless:

(a) he printed, published, sold, offered for sale, distributed, displayed or reproduced any publication ("the prescribed act");
(b) the publication was having a seditious intention; and
(c) at the time when he performed the prescribed act,
  (i) he intended to perform the prescribed act,
  (ii) he knew that the publication was having a seditious intention, and
  (iii) he had a seditious intention. (para. 73)

16. A defendant had to intend to perform the prescribed act, and he knew that the publication was a seditious publication. It was also necessary to prove that the defendant himself had a seditious intention for the following reasons: (paras. 74-77)

(a) There was a common law presumption of *mens rea*, which would only be rebutted by express words or by necessary implication. This presumption had not been rebutted by the prosecution.

[‡] Editor's note: It appears that s. 9(1)(e) should also remain unchanged as it does not include any expression requiring adaptation.

(b) Section 9(3) which served as a deeming provision assisting the prosecution to prove that the defendant had the requisite intention had been repealed in 1992 on the grounds that it was inconsistent with the presumption of innocence under BOR 11.

(c) In *Fei Yi Ming v The Crown* (1952) 36 HKLR 133, the then Chief Justice's direction to the jury referred to "the state of the publisher's mind when he published the article". It was therefore clear that the defendant had to have a seditious intention as an element of the offence.

17. Nevertheless, if the publication had a seditious intention involving more than one limb of s. 9(1), it was not necessary for the defendant to have a seditious intention mirroring exactly in every respect with the publication so long as he shared some of the seditious intention of the publication. (para. 78)

(c) Burden of proof in relation to s. 9(2) of the CO

18. As a seditious intention was the fundamental core element of each of the seditious offences, the burden must be on the prosecution to prove not only that the defendant had a seditious intention within one or more of the limbs stated in s. 9(1)(a) to (g) of the CO, but also that his act, speech or publication was not within any limb stated in s. 9(2)(a) to (d). (para. 80)

(d) Whether proof of an intention to incite violence or to create public disturbance or disorder was required

19. The defence argued that in addition to an intention within one or more of the seven limbs stated in s. 9(1) of the CO, a seditious intention must also include "an intention to incite persons to violence or to create public disturbance or disorder for the purpose of disturbing constituted authority" ("the Common Law Intention"). The Court held that seditious intention as defined in s. 9 had never included the Common Law Intention as a necessary ingredient and there was no legal basis to incorporate the Common Law Intention into the statutory definition of

seditious intention: (paras. 81-87)

(a) Although the offence of sedition had its origin in common law, sedition had been a statutory offence in Hong Kong since 1914. It was the statutory meaning of seditious intention that mattered.

(b) The Sedition (Amendment) Bill 1970 added an intention to incite other persons to violence, or to counsel disobedience to law or to any lawful order, as another two limbs of seditious intention.

(c) The pre-1997 government pushed through an amendment to the CO in June 1997 by adding "with the intention of causing violence or creating public disorder or a public disturbance" into s. 10(1). This would not be necessary if seditious intention in s. 9 had already included the Common Law Intention.

(d) The Full Court held in *Fei Yi Ming* that incitement to violence was not a necessary element of the offence of sedition.

(e) The defence cited many cases on the Common Law Intention but the situation had changed. Violence was no longer the only means to bring down a government or cripple its running. Spreading rumor, hatred and disinformation was clearly a readily available and might even be a more effective weapon without the need to incite people to violence.

(f) The offence of secession under NSL 20 could be committed whether or not force or threat of force was used. Since the offence of sedition usually occurred as a prelude to secession, incorporating the Common Law Intention into the statutory definition of seditious intention would not be in conformity with the intention that the NSL and the laws of the HKSAR should work as a coherent whole to safeguard national security in the HKSAR.

(e) Whether the offence charged was unconstitutional

20. There was the question of whether s. 10(1)(c) of the CO infringed the defendants' rights to freedom of expression, of speech, of publication

and to engage in literary and artistic creation and other cultural activities guaranteed by BL 27, BL 34 and BOR 16. It was accepted that these rights were not absolute and might be subject to restrictions as long as the restrictions were "prescribed by law" and proportionate under BL 39(2). (paras. 88-89)

(i) Whether the restriction was "prescribed by law"

21. In order to satisfy the "prescribed by law" requirement, the offence must have a sufficiently clearly formulated core to enable a person, with advice if necessary, to regulate his conduct so as to avoid liability for that offence. Despite the use of words like "hatred", "contempt", "disaffection", and "discontent" in s. 9 of the CO, these concepts were not vague or imprecise, and the degree of legal certainty satisfied the "prescribed by law" requirement. (paras. 92 and 96)

(a) The words "hatred", "contempt", "disaffection" and "discontent" in s. 9 were just words with ordinary meaning. These concepts were best left to the trial judge or jury to be applied in their ordinary meaning to the time, place and circumstances of the conduct in question. (para. 94)

(b) In the context of s. 9(1), the acts or words that were prohibited were those that had the effect of demeaning the Central Authorities and/or the HKSARG in the eyes of the general public, and/or estranging the relationship between these institutions and the people here, thereby damaging the legitimacy of the authorities and their relationship with the people, which in turn would or might endanger the political order and social tranquillity of the nation. While it was not possible to list out each and every prohibited act, there was a sufficiently clearly formulated core to enable a person, with advice if necessary, to regulate his conduct so as to avoid criminal liability. (para. 94)

(c) A seditious intention did not depend on the subjective feeling of the target institutions or persons, but depended on the subjective intention of the person uttering the words or printing the

publication. A person could refer to s. 9(2) to find out if his words or publications would be regarded as seditious. If he could not rely on any of the four limbs in s. 9(2), he had to consider carefully whether what he was going to do or say might be prohibited by ss. 9 and 10. This was sufficient to satisfy the requirement of legal certainty. (para. 95)

(ii) Whether the restriction was proportionate

22. In determining whether the restriction was a proportionate measure, the Court applied the 4-step analysis as set out in *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372: (a) the restriction must pursue a legitimate aim; (b) the restriction must be rationally connected to that legitimate aim; (c) the restriction must be no more than necessary to accomplish that legitimate aim; and (d) a reasonable balance must be struck between the societal benefits and the inroads made into the constitutionally protected rights of the individual. (para. 97)

23. The Court held that criminalisation of seditious acts by ss. 9 and 10 of the CO clearly pursued a legitimate aim which was the protection of national security and public order (*ordre public*) as stated in BOR 16 (step 1). It was also rationally connected with the legitimate aim (step 2). (paras. 98-100)

24. The dispute was to what extent restrictions could be imposed on the right to free speech in the name of national security (step 3). The defence submitted that the concept of national security should be construed according to the "Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR" which stated that a legitimate national security interest was one that aimed "to protect the existence of the nation or its territorial integrity or political independence against force or threat of force". The Court held: (paras. 101-103)

(a) The Siracusa Principles did not enjoy the status of rules of law in the HKSAR; they were issued 38 years ago and likely to be outdated. These days, the existence of a nation, its territorial integrity or political independence could be threatened not just by force or threat of force, but by propaganda spreading rumours,

misinformation and disinformation that made people no longer trust and even hate their government, resulting in serious social unrest and chaos. In this sense, making sedition an offence should be an important tool for protection of national security rather than holding it unconstitutional.

(b) The scope of the sedition offence should not be unduly restricted, or else it would be ineffective in protecting national security.

(c) Overseas statutes, case law, law commission working paper, academic commentaries were of little assistance. Their political background, social condition, culture and the availability of alternative legislations to deal with seditious situations to safeguard their national security were different to those in the HKSAR. The focus should be on the unique political and social conditions of the HKSAR, and the other laws in force in the Region.

25. In considering whether the offences created by ss. 9 and 10 of the CO were no more than necessary to accomplish the legitimate aim, it was important to understand the political and social condition in the HKSAR at the time of the alleged offence up till the hearing. Since the start of the Anti-Extradition Movement in mid-2019, the HKSAR went through a lengthy period of mass riots and civil unrests. People participating in those riotous activities did not recognise the sovereignty of the PRC over Hong Kong, and they did not support the "One Country, Two Systems" policy. Although the situation had calmed down after promulgation of the NSL, it was very volatile underneath. (para. 104)

26. The restrictions imposed by ss. 9 and 10 of the CO on the right to freedom of expression were necessary for the protection of national security and public order (*ordre public*). (para. 105)

(a) There was a strong pressing need to safeguard national security in the HKSAR to prevent riots and civil unrests of any magnitude from happening again.
(b) It was essential to protect the constitutional order of the HKSAR under the "One Country, Two Systems" policy and to restore

national unity as soon and as fullest as possible.

(c) It was of fundamental importance that Hong Kong residents could have a prolonged period of living in peaceful environments.

(d) It was therefore important to adopt measures to protect the general welfare and the interest of the collectivity as a whole under the concept of public order (*ordre public*).

(e) A person's right to freedom of expression could be restricted for the protection of public order (*ordre public*) for the benefit of the legitimate societal interests to consolidate the new constitutional order in Hong Kong and to implement the "One Country, Two Systems" policy: *HKSAR v Ng Kung Siu* (1999) 2 HKCFAR 442.

27. Sections 9 and 10 of the CO did not impose restriction more than necessary to limit the right to freedom of expression, publication, etc. for the protection of national security and public order (*ordre public*). (paras. 106-108)

(a) The law did not prevent anyone to say and publish whatever they like, including criticisms of the Central Authorities and the HKSARG in any form, provided that they did so without a seditious intention.

(b) On a proper construction of ss. 9 and 10, the prosecution had to prove that the defendant could not benefit from the "defence" stated in s. 9(2), and that the defendant had a seditious intention when he did the act complained of.

(c) Under NSL 2, when anyone exercised his rights and freedoms, he could not refuse to recognise the HKSAR being an inalienable part of the PRC, or that the HKSAR enjoyed only a high degree of autonomy rather than complete autonomy.

28. As there was nothing to suggest that a reasonable balance had not been struck between the restrictions and the societal benefits obtained as a result (step 4), the constitutional challenge failed. (paras. 109-110)

(f) Whether the three picture books were seditious publications

29. The defence submitted that since a seditious publication was a publication having a seditious intention, the seditious intention had to be found within the publication itself, and the mental state and the intention of a defendant were irrelevant. The Court held that the publisher of a book was the best person to know what messages he intended the book to convey. His statement in this regard constituted evidence of the intention of the book, and might constitute an admission or a declaration against interest which was admissible in evidence. However, it was just one piece of evidence. (paras. 112-113)

30. The Court agreed that it had to consider the likely effect of the books on ordinary people and on the audience to which the books were addressed, bearing in mind that the target reader could be as young as 4 years old. Further, the content of Book 4 should not be used as a tool to construe the intention of the other three books, though evidence relating to Book 4 was admissible to show the course of conduct pursued by the defendants. (paras. 114, 116 and 118)

31. After reading the three books, the Court had the broadbrush but deep impression that the wolves were evil and the sheep were kind. It was not wrong for the defence to say that it was a fable teaching some universally celebrated virtues. There was nothing wrong to teach children such virtues and that they should protect their home if some evil people came to harm them and they should resist. However, a fable only promoted universal virtues or told the moral of a story. It would not identify the real characters so as not to accuse anyone in the wrong. This was not the case in any of the books. (paras. 119-121)

32. The Court agreed that the three books were record of what had happened in Hong Kong, and exaggeration in describing the events was acceptable in all broadminded democratic societies, but it still depended on what had really been depicted. The biggest problem about the three books was that after the story had been told, the children were to be told that the story was real. They would be told that in fact, they were the sheep, and the wolves who were trying to harm them were the PRC Government and the HKSARG. (paras. 122-123)

33. After noting that the defendants had not submitted that the

publications were not seditious upon any of the s. 9(2) grounds, the Court held that each of the three books was a publication having seditious intention which stemmed not merely from the words, but from the words with the proscribed effects intended to result in the mind of children as stated in s. 9(1)(a), (c), (d), (f) and (g). (paras. 124, and 127-128)

(a) In Book 1, by identifying the PRC Government as the wolves, and the Chief Executive of the HKSAR as the wolves masqueraded as a sheep at the direction of the Wolf-chairman, the children would be led into believing:

(i) that the PRC Government was coming to Hong Kong with the wicked intention of taking away their home and ruining their happy life with no right to do so at all. The publishers clearly did not recognise that the PRC had legitimately resumed exercising sovereignty over Hong Kong, but the children would be led to hate and excite their disaffection against the Central Authorities;

(ii) that the Chief Executive of the HKSAR was sent by the Central Authorities with the ulterior motive of hurting them. The publishers clearly refused to accept the constitutional order of the HKSAR after the Handover, and led the children to look down on the Chief Executive of the HKSAR with contempt;

(iii) that new immigrants from the PRC were sent here deliberately to use up their resources. The publishers refused to accept the immigration arrangement agreed between the PRC and the HKSARG and led the children to feel discontent with the new immigrants;

(iv) that if they were not obedient, they would be sent to prison. The publishers therefore led the children not to trust the administration of justice in Hong Kong and to look down upon the police, the prosecution and the court with

contempt;

(v) that the Extradition Bill was a tool to suppress dissenting Hong Kong residents and subject them to arbitrary arrest, and they might even be sent to prison in China; and

(vi) that the only way to protect their home was to resist and to use force if necessary against the authorities.

(b) In Book 2, the children would be led to believe that the 12 fugitives were victims of oppression and unfair prosecution, and that they are forced to leave their home in short notice, only to find that they had already been closely monitored by the wicked force to be taken to prison. The children would be led to believe that these 12 fugitives were unfairly detained in the PRC.

(c) In Book 3, the children would be led to believe the Government deliberately allowed people coming from China to make their home dirty and spread the pandemic. The publishers incited discontent or disaffection amongst Hong Kong residents.

34. The defence alleged that the defendants' intention was to leave a record of the events. The Court did not decide what the defendants had said was true or not, but found that the publishers of the books clearly refused to recognise that the PRC had resumed exercising sovereignty over Hong Kong, nor did they recognise the new constitutional order in the HKSAR, and led the children to think that what the authorities both in the PRC and the HKSAR had done was wrong and illegitimate. (para. 125)

35. The defence submitted that the books did not mean to indoctrinate any sort of ideas into the mind of the children as they faced an open question at the end of each book for them to answer. The Court held that it was hypocritical to say that the children were allowed an open mind to decide the answer. It was patently clear from the structure of each book that the thinking of the children was to be guided in a particular way when the story was being told, and when their mindset

was already confined in a particular mode, the so-called open answer from the child himself was no more but a guided answer. (para. 126)

(g) Whether there was the alleged conspiracy, and if so, whether the defendants had taken part in it

36. The three books were the publications of GUHKST. This *per se* provided direct evidence that all executives of the Executive Council of GUHKST, including D1 to D5, had participated in the agreement to print, publish, distribute, display and reproduce the three books. (paras. 130-131)

37. Each of the defendants knew the contents of each book, and agreed for them to be published. For this reason, each one of them had a seditious intention to publish the books. From the roles played by each of the defendants, each of them had entered into an agreement amongst themselves and with others to print, publish, distribute, display, and/or reproduce the three books, knowing that the books printed or to be printed were publications with seditious intention. They intended to have this agreement carried out. The Court decided that subject to the time bar argument, D1 to D5 were to be convicted of the Charge. (paras. 148-150)

(h) Whether prosecution of the offence was time-barred

38. Section 11(1) of the CO provided: "No prosecution for an offence under section 10 shall be begun except within 6 months after the offence is committed." Counsel for the defendants submitted that there was only one single agreement, and the publication of the three books were simply different parts of that single transaction. It was pointed out that Book 1, Book 2 and Book 3 were published on 4 June 2020, 19 December 2020 and 16 March 2021 respectively. No charge was laid against D2 until 23 July 2021. It was submitted that the Charge was out of time in so far as it related to the substantive publications of Book 1 and Book 2, citing s. 159A of the CO.

39. The Court rejected the defence's submissions, holding that under s. 159A, if there was an agreement to pursue a course of conduct that

involved the commission of a series of substantive offences on a continuous basis, that person was guilty of a conspiracy to commit the offences in question, and that conspiracy would only come to an end when that person and the others agreed that they would no longer pursue that course of conduct, or he himself withdrew from the agreement. (para. 154)

40. It was stated in the Particulars of the Charge that the alleged offence took place between 4 June 2020 and 22 July 2021. The prosecution was clearly alleging that the conspiracy in question was an offence continuing throughout this period of time. It was beyond doubt that the conspiracy entered into between the defendants had not come to an end before their arrest. The prosecution was not time-barred and each of D1 to D5 was convicted as charged. (paras. 155-157)

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