

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE**

ACTION NO 2007 OF 2019

BETWEEN

SECRETARY FOR JUSTICE

Plaintiff

and

**PERSONS UNLAWFULLY AND WILFULLY Defendants
CONDUCTING THEMSELVES
IN ANY OF THE ACTS PROHIBITED
UNDER PARAGRAPH 1(a) AND (b) OF
THE INDORSEMENT OF CLAIM**

Before: Hon Coleman J in Chambers (Open to Public)

Date of Hearing: 31 October 2019

Date of Judgment: 31 October 2019

J U D G M E N T

1. This is an application brought by the Secretary for Justice, acting in her role as the guardian of the public interest, for injunctive relief which seeks to restrain the defendants from:

- (1) wilfully publishing or republishing on internet-based platforms or forums (including but not limited to LIHKG and Telegram) any material or information that promotes,

encourages or incites the use or threat of violence, intended or likely to cause: (a) bodily injury to any person unlawfully within Hong Kong; or (b) damage to any property unlawfully within Hong Kong; and

(2) assisting, counselling or inciting others to commit or participate in any of the above acts.

2. On the draft writ which would formally commence these proceedings and on the order which I shall make, the defendants are described in the following manner: “persons unlawfully and wilfully conducting themselves in any of the acts prohibited under paragraph 1(a) and 1(b) of the indorsement of claim”, those paragraphs 1(a) and 1(b) being in the same terms as those I have just read out.

3. The application is brought on *ex parte* and on an urgent basis in light of the escalation of the force used in relation to injuries to people, including police officers, and damage to properties. I do not need for present purposes to summarize what are in many respects well-known facts to anyone who lives in or has an interest in Hong Kong. But it does seem that there is some evidence identifying that the use of internet-based platform or media, discussion forums and social media platforms and the like, due to their anonymous and instantaneous nature in communication as well as accessibility, have played a significant role in intensifying the situation by inciting protesters to resort to violence and to vandalism.

4. One of the purposes of the application for this order is to identify to people who may not know it that expressions online are subject to scrutiny by the law, and it would be a misconception to think

A that online expressions are not subject to any scrutiny by the law or do
B not give rise to liability for any legal consequences.

C 5. Where the application is brought against defendants
D described in the way I have identified, it is important, fundamentally, as
E one of the principles of justice, that the persons who are said to be made
F subject to the jurisdiction of the court and to the order can reasonably be
G expected to learn of the proceedings, that they will be brought to their
H attention.

I 6. I am satisfied that the proposed means of effecting
J substituted service by publication on the websites of the Hong Kong
K Police and the Hong Kong Government are likely directly, and as well as
L the indirect republication of those matters in various media indirectly, to
M bring the terms of the order to the notice of the defendants or would-be
N defendants. I mention “would-be defendants” because the way in which
O the defendants are described on the order includes a category of people
P who may not yet fall into that description but might bring themselves
Q within that description and therefore become subject to the order if they
R act in any way as prohibited under paragraphs 1(a) and 1(b).

S 7. The court’s jurisdiction to grant an injunction in a civil case
T in aid of the criminal law plainly exists but it is properly recognised by
U the Secretary for Justice, or on her behalf, that that jurisdiction is one to
V be invoked and exercised exceptionally and with great caution. There
must certainly be something more than mere infringement of the criminal
law before the assistance of civil proceedings can be invoked for the
protection or promotion of the interests of those persons who live or work
in a particular area. The essential foundation is the need to draw the

A inference that the defendants' unlawful operations will continue unless
B and until effectively restrained by the law, and that nothing short of an
C injunction will be effective to restrain them.

D 8. So the essential question is whether the court is satisfied that
E despite the existence of the criminal law, the granting of a civil injunction
F is necessary and effective in curtailing the criminal conduct. For the
G purposes of this application, I am satisfied to the required standard that
that does apply.

H 9. I am satisfied that there is a serious issue to be tried at least
I on the relevant causes of action in public nuisance and in the civil
J injunction in aid of the criminal law, and that damages caused by
K unlawful incitement, encouragement or promotion of the acts of threats or
L violence or vandalism is not quantifiable and so could not be adequately
remedied by an award of damages (meaning dollar sums).

M 10. I am also persuaded that if one looks at balance of
N convenience or prejudices, it is unlikely that the defendants would suffer
O prejudice in being restrained from committing unlawful activity.

P 11. I have specifically taken into account, and it has been drawn
Q to my attention on behalf of the Secretary for Justice, that the injunction
R order may restrict certain fundamental rights, including the right to
S freedom of speech or expression as guaranteed under Article 27 of the
T Basic Law or Article 16 of the Hong Kong Bill of Rights, but it needs to
U be understood that the restriction of speech inciting violence has been
V held on many frequent occasions to be a justified infringement of the
fundamental right to freedom of expression. The fundamental right to

A freedom of expression is simply not absolute and may, on certain
B occasions, in certain circumstances, have to give way to countervailing
C considerations. The question is always one of balance. In this case, I
D am satisfied that the proposed terms of the order make the right balance
E and are proportional.

F 12. In those circumstances, I grant an order in the terms of the
G draft provided to me, save that I have included in paragraph 4 the time of
H 10.30am on Friday, 15 November 2019, and this order will remain in
I force up to that time. And I have included a new paragraph 6 that says
J that:

K “The defendants or any of them may apply to the court at any
L time to vary or discharge this order (or so much of it as affects
M that person), but anyone wishing to do so should first inform
N the plaintiff’s solicitors at 3918...”

O and then the rest of the number which is on the back sheet. And
P obviously, I have renumbered the remaining paragraphs in the draft
Q accordingly.

R 13. So, as I say, I make an order in the terms of that draft as I
S have amended it.

T (Russell Coleman)
U Judge of the Court of First Instance
V High Court

Mr Victor Dawes, SC, Mr Jonathan Chang and Mr Martin Ho, instructed
by the Department of Justice, for the plaintiff

The defendants were not represented and did not appear