



## HONG KONG BAR ASSOCIATION

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28 December 2020

Ms. Teresa Cheng, SC  
Secretary for Justice  
Department of Justice  
5/F, Main Wing, Justice Place  
18 Lower Albert Road Central  
Hong Kong.

Dear SJ,

### Re: Attack on Judges

I refer to the letter dated 11 December 2020 from Mr. Hinz Chiu written on your behalf in reply to our letter to you dated 23 November 2020, in which we expressed our grave concerns that *Takungpao* had launched a virulent article on its front page on 20 November 2020 attacking the judgment of Anderson Chow J in respect of the judicial review of (inter alia) the failure of the police to show identification whilst on duty.

In his reply, Mr. Chiu stated that the Government, amongst others, should not hesitate to come forward to defend the independence of our Judiciary, as enshrined in the Basic Law, and ensure that it is respected and not arbitrarily attacked.

Unfortunately, over the long weekend, we saw *Takungpao* reporting on certain individuals criticizing the Judiciary in respect of the decision of Alex Lee J granting bail to Mr. Jimmy Lai. These attacks were made after the Department of Justice lodged an application for leave to appeal to the Court of Final Appeal against the decision, the application of which will be heard on 31 December 2020.

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In particular, an individual was reported by the *Takungpao* to have expressed an opinion that granting bail to Mr. Lai was equivalent to “offering protection” to the defendant (“准保釋等於為黎撐保護傘”) and that the Judge adopted “double standards” in Mr. Lai’s case when compared with a previous case where a defendant was charged with an offence under the National Security Law (*HKSAR v. Tong Ying Kit*, HCCP 463/2020 [2020] HKCFI 2916). The Court of Final Appeal was also unjustifiably criticized by this individual for deliberately delaying the hearing of the application for leave to appeal and, in doing so, giving Mr. Lai ample time to prepare to abscond (“終審法院卻「嘆慢板」，拖足一個星期，相當於給黎智英充足的時間準備潛逃。”)

These statements, on a fair reading, can give the impression to the public that the Judiciary was biased in favour of Mr. Lai and that our Courts were deliberately “protecting criminals” – much in the same way the newspaper attacked Chow J’s decision on 20 November 2020 as referred to above.

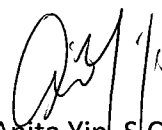
*Takungpao* in its editorial on 28 December 2020 made a further statement to the effect that the Court’s decision to grant bail to Mr. Lai was not only contrary to the Rule of Law but had a shadow of foreign interference behind it (“他獲保釋不僅違反法治精神，背後更有外國干預的陰影。”)

It has also been reported that the *People’s Daily* in Beijing yesterday (27 December 2020) suggested that the decision to grant bail in Mr. Lai’s case justified intervention into the case by the National Security Council under Article 55 of the National Security Law; and urged the Court (effectively the Court of Final Appeal in this instance) to uphold the Basic Law and National Security Law and “make the correct decision” (“我們期待，香港司法機關嚴格落實基本法、香港國安法規定，作出正確選擇。”).

Bearing in mind the public perception of the role and affiliations of the aforementioned media, it is quite unavoidable that reports and opinion pieces of this nature would be perceived by the public as means to exert pressure on the Judiciary in relation to extant legal proceedings.

Referring again to Mr. Chiu’s letter, it clearly stated that: “for any conduct that may constitute a contempt of court, this Department will take follow up actions as appropriate and necessary in the circumstances.” We trust that the Secretary for Justice, being the crucial institutional guardian of the Rule of Law in Hong Kong, will take appropriate action and come forward to staunchly defend the independence of the Judiciary. The Hong Kong Bar Association and the public expect no less at this critical moment in the development of the Hong Kong Special Administrative Region.

Yours sincerely,



Anita Yip, S.C.  
Vice Chairman