

**Statement of the Hong Kong Bar Association**  
**in Response to Certain Recent Statements**  
**Made in relation to Judicial Decisions**

1. Hong Kong members of the Chinese Association of Hong Kong & Macao Studies have recently made statements expressing the views that the recent violence in Mongkok was “the aftereffect of the Judiciary conniving violence”, urging the courts “not to condone those who undermine the safety and public order of Hong Kong”. Collectively they suggested a mechanism be set up to publicize the names of the judges and magistrates who “have a clear political inclination or readily pass lenient sentences in cases which jeopardize national security and public order”. Similar sentiment and recommendation has also been expressed by some members of the public. A former senior officer of a law enforcement agency even called upon citizens to “expose” the personal background and family connections of a magistrate who allegedly sentenced certain defendants leniently (collectively “the Statements”). Not until last night did he withdraw his open call, citing its publication as a result of miscommunication between the publisher and him on which version of his writing was to be published. In the clarification he apologized for the distress he might have caused to the magistrate and his family.
2. The Hong Kong Bar Association takes the view that statements of the types identified above overstep the boundary of the public’s freedom of commentary and were highly inappropriate. We strongly disagree with the contents of the Statements. We also find it deeply regrettable that those who partook in making them included experienced lawyers and a former law enforcement officer.
3. Freedom of speech is a fundamental right enjoyed by every person and that carries with it the right to comment on judgments delivered by the court. As the former Chief Justice Mr Andrew Li pointed out in his speech at the Ceremonial Opening of the Legal Year 2008, public discussions on court decisions are “most meaningful”, but only when they are “well informed and well considered, having

taken into account the circumstances of the case in question and the reasons of the sentencing judge”.

4. **While we deplore the recent incidents of violence and very much hope to see those who broke the law brought to justice, we see no basis to suggest that in any of the cases referred to in the Statements, the sentencing judge had passed an inordinately “lighter sentence” or had acquitted any defendant due to the fact that he shared or sympathized with the political affiliation of the implicated party, or took account of any factors unrelated to the applicable law and evidence when delivering judgment or passing sentence. It is also a misconception to treat a community service order as a “light sentence” or a “let-off”.**<sup>1</sup>
5. Moreover, any dissatisfied party in any case, be it civil or criminal, has the right of appeal or review in accordance with the relevant legal procedures<sup>2</sup>. There are a number of recent cases in which the appellate or sentencing court has either increased or reduced the sentence passed by the lower court upon appeal or review, which demonstrates that the appeal and review mechanism effectively protects our society and balances civil rights.
6. More importantly, one must be careful and cautious when commenting on a court judgment and has to take into account the impact of such comment on the integrity and independence of the Judiciary. **The bedrock to the rule of law in Hong Kong is the trust and confidence of the public and the international community towards our judges and the judicial system. Any inappropriate comment could fuel baseless and unnecessary suspicion on judicial independence, and may undermine the confidence of the public and the**

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<sup>1</sup> See *HKSAR v Choy Yau Pun* [2002] 3 HKLRD 156 where V Bokhary J observed that “community service is not a soft option or let-off”. See also *HKSAR v Ogawa Shuichi*, HCMA 174/1999 (13 April 1999) where McMahon DHCJ observed that “a community service order is a real and effective alternative to prison. Its purpose is both punishment and deterrence.”

<sup>2</sup> This includes the prosecution in criminal cases: see e.g. pursuant to section 104 of the Magistrates Ordinance (Chapter 227 of the Laws of Hong Kong) and section 81A of the Criminal Procedure Ordinance (Chapter 221 of the Laws of Hong Kong).

**international community in the rule of law in Hong Kong.** Hong Kong, Mainland China and the international community must be vigilant against any such comment.

7. Anyone attempting through speech or conduct to put pressure on judges so as to affect their adjudication of cases may have committed a contempt of court. The notion of judicial independence guarantees that every judge could independently adjudicate on a case in accordance with the law and free from any interference. **We find deeply deplorable the suggestion, made collectively by “experts” who hold subjective views drawn from incomplete assessments of selective individual cases, that some judges should be “named and shamed”.**
8. We are fully confident that all judges in Hong Kong are capable of and will continue to abide by their judicial oath to uphold the Basic Law, bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China, serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity, safeguard the law and administer justice without fear or favour, self-interest or deceit. We will do our utmost to safeguard judicial independence in Hong Kong.

HONG KONG BAR ASSOCIATION

Dated this 25<sup>th</sup> day of February 2016