# 律政司 律政司司長辦公室

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# 司法及法律事務委員會

有關葛珮帆委員就 「律政司檢控官涉嫌利益衝突事宜」的信件 及 蔣麗芸委員就「解釋量刑起點」事宜的信件

秘書處6月4日來函收悉,來函附上葛珮帆委員及蔣麗芸委員分別於3月20日和4月27日就上述事宜致委員會主席的函件。按委員會主席的要求,律政司回覆如下。

公務員(包括律政司檢控人員)的專業操守及外間工作申請的審批機制

《基本法》第九十九條訂明,公務人員必須盡忠職守,對香港特別行政區政府負責。公務員作為公職人員體系中的主要組成部分,具有政制上的角色,須竭盡所能,輔助在任的行政長官及政府。



# DEPARTMENT OF JUSTICE Secretary for Justice's Office

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根據公務員事務局制訂的《公務員守則》,公務員須恪守堅守法治實可信、廉潔守正、不偏不倚、改治人利益忠問等正、不偏保公職與私人利益之19年出現實際、觀感上或潛在利益衝突。公務員在表達意見時為局長在2019年8月1日致全體公務員的信中亦提醒「公務員在表達意見時為」,為別方職務時不倫和政治有數分類,不過數方。另外,公務員必須時刻確保他們的行為官於疑他們以專業及公正的態度執行職務。

以上原則適用於所有不同職系及職級的公務員,包括律政司 的檢控人員。

公務員從事任何有薪的外間工作,均須事先申請批准。根據相關公務員規例,公務員如未獲批准,不得用個人名義發表因公職而獲得的資料,或傳達給未獲授權的人士,或私下製備副本。與其他公務員一樣,律政司的檢控人員必須事先提出申請,並在獲得所屬部門首長(即刑事檢控專員)批准後,才可以個人名義擔任外間工作(包括出版書刊),賺取任何酬勞,或接受任何在正常工作時間以外擔任的受薪職位。

在審核該等申請時,部門首長應考慮多項因素,包括有關人員擬擔任的外間工作是否會(或看來會)與該員本身的政府僱員職務有衝突,以及擬擔任的外間工作會否令政府感到尷尬。在批准相關申請時,部門首長可施加其認為合適的附帶條件,例如申請人的外間工作一般會在辦公時間以外進行以及不會使用政府資源等。

律政司一向非常注重檢控人員的專業操守。律政司的檢控人員亦應恪守《基本法》第六十三條,肩負起該條訂下的憲制責任,並以公平、公正和高透明度的方式處理所有檢控工作。律政司的檢控人員進行所有檢控工作時,均須嚴格按照法律和《檢控守則》下的相關指引專業地處理所有刑事案件。

《檢控守則》闡述了檢控人員的角色及職務。律政司的檢控人員一直按照相關原則履行檢控職責,在任何時間皆秉持公正廉

潔,謹慎從事,以最高標準來維持司法公義。作為檢控人員,他們須確保以個人身份所發表的意見,無礙他們以專業、不偏不倚的態度執行職務。就法律事宜而言,政府的律師應保持獨立及公正,尤其日後有機會處理相關的案件。

有關葛珮帆委員3月20日函件中提及的律政司人員出版書籍事宜,律政司司長4月29日已在立法會就相關提問「作出了詳盡的書面回覆。在知悉事件後,律政司已隨即將相關人員調離所屬工作崗位,讓該人員不會處理涉及公眾秩序活動的案件。與此同時,律政司亦啟動內部既定程序處理有關個案,並已積極跟進任何涉嫌違規行為。有關人員最近已離開了公務員隊伍,就個案中部門曾對該人員採取的具體行動,律政司不宜作進一步評論。

無論如何,律政司會繼續根據實際經驗,檢討和改進現行機制釐清負責審批人員的責任並審慎處理每宗外間工作的申請,並按需要在批核過程中施加合適的附帶條件,以確保相關外間工作不會和看來不會與申請人本身的職務出現利益或角色衝突,或令政府感到尷尬。如果發現司內人員有違規行為,律政司必定會嚴肅跟進,絕對不會容忍。

有關近期公眾秩序活動涉及罪行的量刑起點

## 覆核刑期的原則

上訴法庭在律政司司長 訴 黃之鋒及另二人 (CAAR 4/2016) 一案的判案書第155段強調:

「155. 確立的法律原則是,上訴法庭不會輕易接納律政司司長提出的判刑覆核申請,把下級法庭所處以的判刑上調。原因包括(一)原判刑的法庭對案件有耳聞日賭的優勢,對罪行的嚴重性自有全面了解,多能對犯案者處以合適的判刑;及(二)法律有傾向保障人身自由的推定(presumption in favourem libertatis),上訴法庭不會輕言下級法庭的判刑是明顯過輕……因此,律政司司長必須說服上訴法庭,下級法庭的判刑是犯了法律上的錯誤,或明顯過輕,上訴法庭才會干預,把判刑上調。」

<sup>1</sup> 立法會七題:律政司人員出版書籍。

再者,終審法院在黃之鋒一案確定,如判刑法庭已考慮過某項判刑因素,並達致一個在適當刑罰範圍內的刑罰,除非上訴法庭裁定該刑罰明顯不足或犯原則性錯誤,否則上訴法庭便不可在覆核刑罰時對該項因素給予不同比重。相關原則見終審法院判案書第62段:

It is also not open to the Court of Appeal in a review of sentence to ascribe a different weight to a factor properly taken into account by the sentencing judge in arriving at a sentence that is otherwise within the range of sentences appropriate for the offence. If the judge has failed to take a relevant matter into account or has taken into account an irrelevant factor, that is an error of However, the relative weight the principle. sentencing judge ascribes to each relevant factor is a matter within the judge's discretion and, unless that exercise results in the imposition of a sentence that is manifestly inadequate, the relative weight attributed to each individual relevant factor is a matter for the judge. Save where it concludes that the sentence is manifestly inadequate, the Court of Appeal is not entitled to ascribe more or less weight to a relevant factor than did the sentencing court."2

另外,終審法院在黃之鋒一案中同意上訴法庭的觀點,強調在香港目前的情況下,阻嚇性和懲罰是對於涉及暴力和大規模的非法集結案件有相當的必要。終審法院同時指出,上訴法庭作為有權覆核原審裁判官所判的刑罰的法庭,有責任為將來的判刑事宜作出指引。終審法院在判案書第2、83及120段指出:

"2. In its judgment on the review application, the Court of Appeal took the opportunity to provide guidance to sentencing courts in the future regarding the sentences for unlawful assemblies, particularly emphasising the need to take a much stricter view where disorder and any degree of violence was involved. The Court of Appeal, consistent with its responsibilities for providing

<sup>2</sup> 終審法院判案書只備英文本。

guidance in sentencing matters, was fully entitled to provide this guidance for the future and accordingly note should be taken of this new approach. Like the Court of Appeal, we specially draw attention to the importance of taking a much stricter view where disorder or violence is involved. Naturally, it will be incumbent on the sentencing court to take into account the extent of the participation or involvement of the convicted person but where disorder or violence is involved, these are serious aggravating features. Hong Kong is on the whole a peaceful society and these elements are to be deterred.

...

In the event, although Poon JA said in the 83. introductory paragraph of his judgment ([18]) that he was expounding on the principles on sentencing in unlawful assemblies that involve violence "to provide guidance to the sentencing courts in the future", the Court of Appeal did not lay down any fixed starting point of sentence for this category of offence as such. Instead, as noted in paragraph [2] above, the Court of Appeal emphasised the need, when sentencing in cases of unlawful assembly, to take a much stricter view where disorder and any degree of violence was involved. This consistent withthe Court ofAppeal's responsibilities for providing guidance sentencing matters and it was fully entitled to provide this guidance for the future.

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120. In short, it was appropriate for the Court of Appeal to say that, in the circumstances now prevailing in Hong Kong including increasing incidents of unrest and a rising number of large scale public protests, it is now necessary to emphasise deterrence and punishment in large scale unlawful assembly cases involving violence....."

律政司考慮是否申請覆核刑期時會依據上述法律原則。

#### 相關罪行的量刑原則

就蔣麗芸委員4月27日函件中表示關注的案件類型,法庭曾 在有關案件的判案書闡釋一些相關罪行的量刑原則,概述如下。

### 侮辱國旗

經律政司申請覆核判刑後,上訴法庭在律政司司長 訴 羅敏 聰 (CAAR 4/2019)一案重申終審法院在吳恭劭案對侮辱國旗罪立法目的和控訴要旨權威的意見,即罪行條文旨在全面保護國旗免遭侮辱,以維護獨有象徵國家尊嚴、統一及領土完整之國旗的合法利益,並釐清侮辱國旗罪的判刑原則及需考慮的因素。因應該案的情況,量刑基準不應少於4個月。法庭在判案書第32-34及46段指出:

- 「32. 法庭就《國旗及國徽條例》第7條的罪行量刑時;必須緊記該條文旨在全面保護國旗免遭侮辱,以維護象徵國家尊嚴、統一及領土完整之國旗的合法利益。這利益至為重要,觸及香港特別行政區的憲制根基。法庭必須確保判刑充分反映法律維護這重大合法利益的用意,包括考慮判處具阻嚇性的刑罰。
- 33. 基於第7條的上述立法目的和控訴要旨,法庭量刑 時必須審視被告人的行為對國旗造成、帶來或引致的 侮辱程度。被告人對國旗的侮辱愈惡劣,對第7條所保 護的合法利益貶損就愈大,他要面對的判刑,包括懲 處方式和刑期(若是即時監禁),就會愈嚴厲。
- 34. 法庭為任何罪行量刑,都需要考慮所有的案情,並根據案發時整體的情況,以及各個相關的環節來考慮被告人的刑責。針對侮辱國旗的罪行,法庭通常會考慮的因素包括:
  - (1) 被告人的實質作為,對國旗造成、帶來或引致的侮辱,例如污蔑、輕藐、鄙視和惡意等。因為對國旗構成的侮辱程度要視乎每宗案件的實際案情而定,所以不能如答辯人所說,焚燒國旗是對

國旗的唯一極終侮辱。視乎案情,把國旗燃燒淨盡,不一定比把國旗肆意損毀、塗劃、玷污、踐踏或其他侮辱行徑更具侮辱性。當然,如果在人多擠逼或空間狹小的地方焚燒國旗,甚至澆上助燃劑助燃,構成對人身和財產的實際危險,這必然會加重被告人的罪責。

- (3) 被告人是否有預謀或經策劃下犯案;若是,其刑責更重。
- (4) 被告人是否夥同其他人犯罪;若是,其刑責更重。就算被告人不是早有預謀或早經策劃,而只是在犯案過程中鼓動了其他人加入,但只要他在知情下繼續進行違法行為,那仍然是夥同犯罪。如果被告人是受到其他人鼓動加入一同犯案,一樣是夥同犯案。
- (5) 無論是出於在場其他人的鼓動,抑或被告人的個人抉擇,他持續地以相同或不同的方式侮辱國旗,是令其罪行更加嚴重。答辯人辯稱,因辱旗事件一般在公眾集會發生,所以自然有人自發加入和互相鼓動起來,罪行持續一段時間在所難免,法庭因此不宜對這些因素給予太多比重。這個說法和第7條的控訴要旨抵觸,絕對是倒果為因,不能接受。

...

46. 本庭認為,考慮到與案有關的一切因素,以本案的情況,量刑基準不應少於4個月。......

### 暴動

上訴法庭最近藉*香港特別行政區 訴 梁天琦及另二人* (CACC 164/2018)一案,重申暴動罪的判刑原則。法庭在判案書第69-71及73-80段指出:

- 「69. …… 本庭必須強調,暴動涉及以暴力來集體破壞或威脅公共秩序和公共安寧,對法治構成即時、極其嚴重及惡劣的影響。
- 70. 香港實行並尊崇法治,一直以來都是公認的法治 先進地區。法治是香港成功的基石,保障市民全面充 分享有法律之下各種自由和權利,以及確立香港作為 先進文明的地區和國際金融中心的地位。若要維護香 港所擁有的文明自由,和確保香港能得以持續進步和 發展,法治這個核心價值是必不可少。
- 71. 法治的內涵極其豐富,涉及多方面及互相連系的 法律概念。法治其中一個不可或缺的元素是市民必須 守法,並在法律容許的界限內行使各種自由和權 利。......

. . .

- 73. 為了保護公共秩序不被暴力破壞而令法治受到損害,法庭對暴動罪的判刑,必須反映法律對維護公共秩序的決心,並向社會和公眾清晰說明,法律絕不容許公共秩序被人以暴力非法破壞或擾亂…… 正如上訴法庭副庭長楊振權在楊家倫案強調:
  - 「60. 本庭認同原審法官的說法,要對有關罪行 判處具阻嚇性的刑罰,對犯案滋事者迎頭棒喝, 防止同類事件再次出現,否則社會要付出慘痛代 價,有違公眾及執法者的利益。
  - 61. 對一名出身自良好家庭及有良好教育的年輕 人處以長期監禁的刑罰,對他個人、其家庭、甚 至社會都是悲劇,但法庭必須堅決打擊本案所顯 示的罔顧法紀及漠視社會秩序和執法人員安危的 犯罪行為。」
- 74. 在Wong Chi Fung案,終審法院在第120段亦特別指出,因應香港現今的社會情況,包括涉及暴力的示威有增加的趨勢,法庭有需要對涉及暴力非法集結罪行處以具阻嚇性及懲罰性的判刑。終審法院認為,澳洲維多利亞州刑事上訴法庭Starke 法官在R v Dixon-Jenkins (1985) 14 A Crim R 372第379頁所表達的意見適用(意譯):

終審法院的看法和Starke法官的意見同樣適用於與非 法集結罪類同但更嚴重的暴動罪。 75. 根據適用案例所確立的原則,法庭會對干犯暴動 罪的人處以具懲罰性和足夠阻嚇性的判刑,在一般情 況下即時監禁是必然的判刑選擇。

76. 在黃之鋒案,本庭在討論有關的案例後,在第131 及132段強調,在涉及暴力的非法集結的案件,犯案者 的理念並非求情理由:

「131. 當犯案者使用暴力,甚至肆意及惡意使用 暴力,即使他們說是受其堅守的道德或政治信念 驅使之下犯案,也不構成求情或輕判的理由。法 庭要考慮的主要因素是暴力的程度,還有公眾安 寧被破壞的程度:參考Caird案,上訴法庭Sachs 法官的判詞第506頁。這判刑原則背後的理念 是,在一個奉行法治的文明社會,必定有其他合 法方法或渠道,讓人們採用來提倡他們的主張或 訴求;是故他們不能以提倡他們持守的主張或訴 求為藉口,而非法使用暴力。同理,犯案者也不 能以『為勢所逼』為藉口而使用暴力,所謂『為 勢所逼』並不構成求情或輕判的理由。若是接受 這兩類的藉口為求情或輕判的理由,人們只要自 以為是便可肆意行事,因為他們最多只需要承擔 很輕微甚至是對他們來說微不足道的法律後果; 這樣,公共秩序便很容易崩潰。

132. 另外,無論犯案者對持不同意見的人看法如何,都不是向對方行使暴力的藉口。正如上訴法庭Sachs法官強調(意譯):

『任何人若認為社會上一部分堅持一種看法的人,是有充分理由聚集起來,去干擾另一些有相同看法但不及他們堅定的人、或持有不同看法的人的合法活動,這是不能容忍的,而且法庭必定要毫不猶豫拒絕接納這說法。』

然後在第134段,本庭重申:

「134. ... 在涉及暴力的非法集結,判刑主要考慮 是要懲罰那些干犯罪行的人,以儆效尤,並阻嚇 其他人不要以身試法,有樣學樣來破壞或擾亂公 共秩序,至於犯案者的個人情況、無論犯罪動機 或原因是他們自認為多麼崇高、其他違法者罪責 是否更重等,一般來說全都不是有力的求情或輕 判的理由。」

- 77. 本庭在黃之鋒案的意見同樣適用於暴動罪。
- 78. 暴動罪的控訴要旨(gravamen)是犯案者恃人多勢 眾以暴力來達到他們的共同目的......
- 79. 一般而言,暴動罪判刑的考慮因素包括:
  - (1) 暴動是即場突然發生,還是預先計劃的,若 是後者,計劃周詳及精密的程度為何;
  - (2) 參與暴動人數多少;
  - (3) 暴動者所使用暴力的程度,包括有否使用武器,若有的話,是甚麼武器和數量;
  - (4) 暴動的規模,包括發生暴動的時間、所在之 處、地點數目及範圍;
  - (5) 暴動歷時多久,包括暴動有否拖長;是否經 警方或其他公職人員重複警告後仍然進行;
  - (6) 暴動所造成的傷害:例如有否對財物造成任何損失或破壞,若有的話,其程度為何;是 否有人受傷,及若有的話,傷者人數及傷勢 為何;
  - (7) 暴動造成之威脅的嚴重性及逼近程度為何;
  - (8) 暴動對公眾造成滋擾的性質和程度;
  - (9) 暴動對社群關係的影響;
  - (10) 暴動對公共開支造成的負擔;
  - (11) 犯案者的角色及參與程度,如除自己有參 與暴動外,有否安排、帶領、號召、煽動 或鼓吹他人參與暴動;以及
  - (12) 犯案者在暴動發生期間,有沒有干犯其他 罪行......
- 80. 因為每宗暴動罪行所涉及的背景和案情都有差異,要視乎每宗案件而定,所以其他案件判刑的指導性作

用不大;法庭在判刑時必須引用適當的判刑原則,並根據個別案件的實際情況,處以適當的判刑 ......

另外,針對近日的暴動案件,法庭在香港特別行政區 訴 冼嘉豪 一案(DCCC 783/2019)<sup>3</sup> 引述了上述的*梁天琦*案並採納六年監禁作為暴動罪的量刑基準。法庭在判案書第47及65段指出:

"47. The Court of Appeal in Leung Tin Kei set out various factors to be taken into account when passing sentence on the offence of riot. Courts must consider these factors and principles to arrive at a sentence according to the facts of each individual case ......

....

65. Having considered all the relevant factors against the circumstances, I am of the view that the appropriate starting point for taking part in this riot is 6 years' imprisonment after trial. The defendant pleaded guilty at the earliest opportunity and is therefore entitled to the usual full discount of one third. Accordingly, I reduce the starting point by two years and sentence the defendant to 4 years' imprisonment." 4

## 涉及暴力之非法集結

上訴法庭在律政司司長 訴 黃之鋒及另二人 (CAAR 4/2016) 一案闡明了針對涉及暴力之非法集結的判刑原則。法庭在判案書第152-153段指出:

「152. 一般而言,就案情輕微的罪行,雖然犯罪情節不是那麼嚴重,但法庭仍要確保公共秩序要得到有效維護,所以判刑仍需要具備相稱的阻嚇。由此考慮,若案件存在Brown案所有的六個條件,或案情合適,社會服務令可以是恰當的判刑選項,因為社會服務令包含的懲罰元素,可以視為具相稱的阻嚇力,而其更

<sup>3</sup>被告人承認參與了2019年6月12日在立法會大樓外發生的暴動。

<sup>4</sup> 判案書目前只備英文本。

新的元素也可以幫助犯案者,特別是年輕的犯案者更新。

153. 至於案情嚴重的罪行,刑罰的主要目的是為懲罰犯罪者及阻嚇罪行,法庭整體的考慮定當傾向判處即時囚禁的刑罰。除非存在非常特殊的情況,而這些特別情況應屬罕見,其他非即時囚禁的刑罰,包括緩刑和社會服務令並不適合。」

終審法院在黃之鋒一案的判案書第68-69、75及120段亦指出:

"68. ... ... as Ribeiro PJ stated in HKSAR v Chow Nok Hang (2013) 16 HKCFAR 837 at [39]:

"Once a demonstrator becomes involved in violence or the threat of violence – somewhat archaically referred to as a 'breach of the peace' – that demonstrator crosses the line separating constitutionally protected peaceful demonstration from unlawful activity which is subject to legal sanctions and constraints. The same applies where the demonstrator crosses the line by unlawfully interfering with the rights and freedoms of others."

69. For this simple reason, a submission in mitigation of the offence of unlawful assembly (and certainly in the case of incitement) that the act was committed in the exercise of the constitutional rights to freedom of expression and freedom of assembly will be unlikely to carry any significant weight. The fact of a conviction of the offence will necessarily mean that the offender has crossed the separating the lawful exercise constitutional rights from unlawful activity subject to sanctions and constraints. In such a case, there is little merit in a plea for leniency on the basis offender was merely exercising constitutional rights since, by definition, he was not doing so at the time when the offence was committed. This is all the more so when the facts of

the offending involve violence, in particular on the part of the offender himself, since there is no constitutional justification for violent unlawful behaviour. In such a case involving violence, a deterrent sentence may be called for and will not be objectionable on the ground that it creates a "chilling effect" on the exercise of a constitutional right, since there is no right to be violent. Quite simply the line of acceptability has been crossed.

•••

75. ...... the court will not enter into an evaluation of the worthiness of the cause espoused. ...... It is not ...... the task of the courts to take sides on issues that are political or to prefer one set of social or other values over another.

...

120. ..... in the circumstances now prevailing in Hong Kong including increasing incidents of unrest and a rising number of large scale public protests, it is now necessary to emphasise deterrence and punishment in large scale unlawful assembly cases involving violence. In this context, the sentiments expressed by Starke J in the Court of Criminal Appeal in Victoria in R v Dixon-Jenkins (1985) 14 A Crim R 372 at p.379 are apposite:

"There are large groups in present-day society of sincere, earnest but wrong-headed people who, because their convictions are so strong, or because they pretend their convictions are so strong, will stop at nothing in order to impose those views on the community, and this, in my opinion, just like hijacking, is calculated to become contagious, and if at the first step the courts do not show that such conduct, however well intended, will not be tolerated in this community, then it is unlikely that such behaviour will be stopped in its tracks. I therefore am of opinion that this is just the

case where general deterrence has an overriding effect on the resulting sentence.""

#### 襲警

法庭目前並未有就「襲擊警務人員」一罪訂立量刑標準。過去曾有被告人因干犯「襲擊警務人員」罪而被處監禁10至12個月。就此類案件的判刑,律政司過往不時按香港法例第227章《裁判官條例》第104條,向裁判官提出判刑覆核申請。裁判法院最近曾在香港特別行政區 訴 賴雲龍 (STCC 3290/2019)一案的判刑覆核申請的書面裁決中指出,法庭有責任保護正在執行職務的警務人員;判刑需具阻嚇性,給予公眾一個清晰的訊息;而此類案件是嚴重的,縱使被告人是初犯,一般而言即時監禁是合適刑罰。

#### 縱火

縱火是非常嚴重的刑事罪行。根據香港法例第200章《刑事罪行條例》第60及63條,任何人干犯縱火相關罪行,一經定罪,最高可判處終身監禁。在HKSAR v Chong Yam Miu, Lucas 一案(DCCC 890/2019),被告人承認分別在警察總部和跑馬地警署外投擲汽油彈<sup>5</sup>。法庭就兩項「罔顧生命是否會受到危害而縱火」罪分別採納五年半監禁和四年監禁作為量刑基準。法庭在判案書第23-28及36-37段指出:

"23. There is no question that the gravamen of the charges is the arson offences. Arson is a very serious offence which carries a maximum sentence of life imprisonment. While there is no tariff for the offence, arson has always been regarded by courts as an offence of particular gravity because of the inherent danger to life and property in an uncontrolled fire .....

24. ..... arson has always been regarded by courts as a very serious offence for which a deterrent sentence is called for. I would only

<sup>&</sup>lt;sup>5</sup> 被告人同時承認「駕駛未領牌車輛」、「沒有展示登記號碼」、「抗拒執行職責的警務人員」、「管有危險藥物」和「管有毒藥表第1部所列毒藥」等罪名。

repeat what the Court of Appeal said in The Queen v Li Mun Tong CACC 309/1994 (unreported).... The Court of Appeal stated "Arson, because of the inherent danger in any uncontrolled fire, is always regarded as an offence of particular gravity. Arsonists exhibit reckless disregard for life and property."

- 25. In determining the proper sentence, the courts looked at both the culpability of the defendant and the harm caused or at risk.
- 26. As said, there is no tariff sentencing guideline case for the offence of arson. The sentence is very much case specific.
- The Court of Appeal in Chau Yuk Kuen v The Queen (CACC 402/1980) said "We feel that the tariff sentence for this type of appeal should be at least 4 to 5 years." The learned authors of Sentencing in Hong Kong, eighth edition, comment at page 721 that the customary sentences of arson tend to start at about 5 years' imprisonment, although they may be very much higher when life and property is seriously endangered by the actions of the arsonist. The learned authors of Archbold Hong Kong 2020 at paragraph 24-24 suggest if no actual injury to other persons is involved, a customary range of between 4 to 6 years of imprisonment should be used as a starting point.
- 28. In my view, an attack by petrol bomb is a very serious crime indeed, as it gives rise to a very substantial risk of serious harm to the public. Petrol bombs are well known that they can potentially cause horrific injuries. A fire bomb with petrol as its accelerant is a most dangerous weapon. Once ignited and thrown, the fire ablaze by petrol will be unstable and uncontrollable when the bottle breaks. It harms indiscriminately. Using such weapon will have to receive condign punishment. The behavior of arson by throwing petrol bomb cannot be tolerated and in all

circumstances must result in a long custodial sentence.

....

- 36. ...... Whatever the reason, arson by using petrol bomb remains a very serious crime which will be followed by a long custodial sentence.
- 37. In all the circumstances, the starting point for Charge 1 [Arson outside the Police Headquarters] to be taken will be 5½ years' imprisonment. I would adopt 4 years' imprisonment as the starting point for Charge 4 [Arson outside Happy Valley Police Station].6

律政司最近曾就此類案件向上訴庭提出申請覆核刑罰。在 Secretary for Justice v SWS 一案(CAAR 1/2020),被告人承認 縱火及管有物品意圖摧毀或損壞財產兩罪,早前於屯門裁判法院 少年庭被判18個月感化,及須入住青年院舍9個月。上訴庭最近 在律政司申請刑罰覆核的裁決中指出,原審裁判官原則上犯錯, 判刑明顯過輕,將改判禁閉式刑罰。有關司法程序仍在進行中。

律政司檢控人員進行所有檢控工作時,會繼續嚴格按照法律和《檢控守則》下的相關指引專業地處理所有刑事案件,以最高標準來維持司法公義。律政司會繼續因應案情並審視不同因素,包括判刑是否犯了法律上的錯誤,或明顯過輕或過重,根據相關法律原則,考慮是否就個別案件的判刑向法庭申請刑期覆核。

律政司司長政務助理趙文軒



2020年9月8日

<sup>6</sup> 判案書目前只備英文本。