

**Statement of the Hong Kong Bar Association**  
**on the attendance at jury trials by members of the public**

The Hong Kong Bar Association (“HKBA”) wishes to express its concerns about a recent judgment in which comments were made about the presence of certain public figures attending a jury trial, suggesting that their presence might be a part of an attempt to influence the jury. The Court suggested that the defendant might have agreed to or acquiesced in public relations professionals arranging these public figures to attend the trial for the purpose of introducing apparent good character of the defendant to the jury “through the back door” because direct evidence of his character could not, for good legal reasons, be presented directly. The Court observed that, had its attention been drawn to the matter earlier, the Court might have considered discharging the entire jury.

The Basic Law and the Hong Kong Bill of Rights guarantee residents the right of a public hearing when tried for a criminal offence. That right carries with it the associated right of the public to observe the due process of the law. This is at the heart of the right of an accused person to have an open and transparent criminal process. These constitutionally guaranteed rights are fundamental. They should not in any way be restricted without a very strong and compelling reason. The HKBA is concerned that the Court’s remarks may be seen to carry an implication that some members of public, because of their own public profile or reputation, should not attend a criminal trial, notwithstanding that the Court does, in other parts of the judgment, appear to acknowledge that every citizen is entitled to observe legal proceedings conducted in public.

The HKBA observes that there is no indication in the judgment that any evidence had been adduced at the trial or at a subsequent hearing dealing with the costs of the trial to substantiate any suggestion that the attendance of public figures had been organized by public relations professionals for the purpose of influencing the jury. Some of the public figures named in the judgment have stated openly that their attendance was voluntary and not at the request of public relations professionals.

Before any conclusion or inference is drawn that an accused might have engaged in conduct which was meant to influence a jury, elementary fairness requires that the accused be offered an opportunity to answer the allegation; equally, persons who are thought to be complicit in arrangements to influence a jury should be given an opportunity to explain why they were at court. Nothing in the judgment indicates that any such party was invited to make any representation to answer the allegation.

The HKBA accepts that any juror discharging his or her civic duty must be protected against threats or improper influence. Any attempts to tamper with any jurors strike at the very foundation of our criminal justice system and must be forcefully dealt with. If threats or improper influences are suspected to have been made, or that jurors complain that they feel inhibited in performing their duties by the presence of any persons attending a criminal trial, the matter needs to be inquired into by a judge. In a proper case, the judge should refer the matter to the Police for investigation and further handling by the Department of Justice.

HONG KONG BAR ASSOCIATION

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