



**Written Submission to the Congressional-Executive Commission on China (CECC)**  
Chi-Sang Poon, PhD | Founder & Editor-in-Chief | Hong Kong Rule of Law Initiative (HKROLIN)  
*hkrolin.org*

## **Jimmy Lai and Two Problems Lord Sumption Identified: Sedition and NPCSC Interpretation**

---

### **HKROLIN's Mission: Lord Sumption's Warnings and Jimmy Lai's Case**

HKROLIN Institute is a U.S.-incorporated research and advocacy organization focused on human rights and the rule of law in Hong Kong. It was incorporated on June 3, 2025 and publicly launched one week later, on the first anniversary of Lord Jonathan Sumption's warning after resigning from Hong Kong's Court of Final Appeal ("CFA") that "the rule of law in Hong Kong is in grave danger."<sup>1</sup>

Sumption identified two concerns directly relevant to Jimmy Lai's case: Hong Kong's revived colonial sedition law, and the interpretation of the National Security Law ("NSL") issued by the Standing Committee of the National People's Congress ("NPCSC") after Hong Kong courts approved British barrister Timothy Owen KC to represent Lai.<sup>2</sup>

HKROLIN's founder had already raised both controversies in judicial-conduct complaints filed in March and April 2024 and submitted on May 27 to Sumption and the other serving Overseas Non-Permanent Judges.<sup>3</sup>

CECC need not resolve contested questions of Hong Kong constitutional law. Three documented developments warrant scrutiny: a dormant colonial speech offence acquired post-2020 national-security consequences; Hong Kong courts approved Jimmy Lai's chosen British counsel, but later NPCSC and national-security action prevented that representation from taking effect; and the Judiciary still has not told HKROLIN what it did with formal complaints raising those same two controversies. The Judiciary has repeatedly promised a reply. As of September 14, 2026—more than two years after the complaints were filed—HKROLIN has received no notice saying whether either complaint would be investigated or disposed of, and no final decision.

Jimmy Lai's case brings all three together.

### **I. Sedition: From Dormant Colonial Speech Law to a National-Security Watershed**

Basic Law Article 23 requires Hong Kong to enact sedition laws; it did not itself enact or rewrite the colonial offence. Before Hong Kong enacted its new Article 23 law in 2024, authorities revived that decades-dormant offence.

Hong Kong's own constitutional framework strongly protects political speech. Basic Law Article 27 guarantees freedom of speech; Article 39 preserves the International Covenant on Civil and Political Rights; and Article 16 of the Hong Kong Bill of Rights protects both the right to hold opinions without interference and freedom of expression. The CFA has described freedom of expression as fundamental to Hong Kong's system and way of life. The point, therefore, is not that Hong Kong lacks constitutional speech protection. It is that the revived sedition offence can reach political expression without proof that the speaker intended violence or public disorder. For a congressional reader, the First Amendment analogy is simply a familiar way to see the stakes.<sup>4</sup>

The first turning point came in *Ng Hau Yi* (2021), better known as the "Sheep Village" bail case.

At the CFA's three-judge leave-to-appeal stage—roughly analogous to the U.S. Supreme Court's certiorari stage—the Appeal Committee classified the existing sedition offence as an "offence endangering national security." The NSL did not create the sedition offence. *Ng* instead held that the existing Crimes Ordinance offence fell within the NSL's broader category of "offence endangering national security," relying on the NSL's

complementary operation with existing Hong Kong law and on Basic Law Article 23 and NSL Article 7. That classification brought the offence within the NSL's stricter bail rule.<sup>5</sup>

HKROLIN's Complaint #1 challenges that judicial step as exceeding the proper judicial role. CECC need not accept that argument to see the institutional point: a decades-dormant speech offence acquired materially new national-security consequences through a three-judge leave decision rather than through new legislative enactment.<sup>5</sup>

**Within two weeks of the December 14, 2021 Ng decision, prosecutors added sedition charges against Lai and other Apple Daily personnel, and Stand News was raided and its editors charged under the same colonial sedition regime. The timing is the point: Ng was the watershed after which a dormant speech offence was rapidly deployed against two major independent media organizations.<sup>6</sup>**

The second turning point came in *Tam Tak Chi*.

Tam presented two linked questions. One asked whether sedition required an intention to incite violence or public disorder. The other asked, if the answer was No, whether the offence was unconstitutional because it disproportionately restricted free expression or was not prescribed by law.

The three-judge Appeal Committee allowed the first question to proceed but, after itself addressing legal-certainty and proportionality arguments, refused the constitutional question as “not reasonably arguable.”<sup>7</sup>

The five-judge CFA later answered the first question No: sedition did not require an intention to incite violence or public disorder.<sup>8</sup>

**The statutory question passed through the gate; the constitutional question designed for that very outcome did not. The five-judge Court therefore held that violence was unnecessary—but never properly heard the accompanying constitutional challenge to that result because leave had been denied.**

That distinction matters because the three-judge Appeal Committee was acting as a gatekeeper: it decided which questions the five-judge Court would hear on the merits. Its refusal of leave therefore kept the constitutional question from reaching the full Court as an admitted question for decision.

The two turning points converged in Jimmy Lai's prosecution.

Lai's 2025 judgment relied on *Tam* for the rule that sedition required no intention to incite violence or public disorder. It also stated that the Court of Appeal's ruling upholding the constitutionality of sedition “was not challenged on further appeal to the Court of Final Appeal.”<sup>9</sup>

The published CFA record shows that *Tam* did seek further review of that constitutional issue, but the three-judge Appeal Committee refused leave.<sup>9</sup>

**The constitutional challenge was made. Three judges stopped it at the leave stage; the five-judge CFA never properly heard it on the merits.**

## II. Judicial Independence: NPCSC Intervention After the Courts Had Ruled

Hong Kong's courts approved Timothy Owen KC to represent Jimmy Lai in his national-security trial.

The Court of Appeal found no valid basis to disturb his admission and said it would itself have reached the same result.<sup>10</sup>

At the final leave stage, the Government materially recast its case, advancing what the CFA described as effectively a “blanket ban” on overseas counsel absent exceptional circumstances. The CFA refused leave on the *Flywin* principle because those “radically new points” had not been litigated or factually developed below.<sup>11</sup>

**By that point, the Government had failed to overturn Owen's admission through the ordinary judicial process.**

The same day, the Chief Executive announced that he would seek an NPCSC interpretation of the National Security Law. The Interpretation followed on December 30, 2022.<sup>12</sup>

It did not formally vacate the judgments admitting Owen.

What followed instead was an interpretive, national-security and administrative process.

Owen's immigration application was withdrawn on January 3, 2023. When Hong Kong's Committee for Safeguarding National Security ("NSC") acted on January 11, there was no live Owen immigration application pending.

The NSC nevertheless made an anticipatory national-security determination about Owen's proposed representation and advised that any renewed immigration application be refused. Immigration said it would "respect and implement" that decision. In practical terms, the route Owen needed to enter Hong Kong and appear for Lai was closed.<sup>13</sup>

**Owen therefore never appeared for Lai at trial. Hong Kong's courts had authorized him to act; post-Interpretation action prevented that court victory from taking effect—without overturning the judgments that produced it.**

That is the institutional concern for CECC: judicial independence means more than preserving an order on paper. If a litigant wins in court but later government action removes the practical benefit of that victory, judicial finality is rendered meaningless in practice.

The Court of Appeal later treated the NPCSC Interpretation as binding and held that there was no justification for confining the NSC to the three duties and functions listed in Article 14. It also held the challenged decisions non-reviewable and, on that basis, said there was "no need" to decide Lai's separate *ultra vires* ground.<sup>14</sup>

Lai then sought CFA review of three questions: whether NSC decisions were judicially reviewable; whether the Interpretation enlarged the NSC's powers; and whether the NSC had acted beyond those powers.<sup>15</sup>

None received a five-judge merits hearing.

On March 17, 2025, a three-judge Appeal Committee dismissed the application under Rule 7(2), stating that it disclosed "no reasonable grounds for leave to appeal."<sup>15</sup>

Sumption had already identified the Owen episode as a major rule-of-law concern. He described the NPCSC Interpretation as having "reversed" the courts' decision.<sup>16</sup>

Sumption's shorthand captured the practical result, not the formal mechanism: the admission judgments survived, but the representation they authorized was blocked in practice.

### **III. Judicial Accountability: Still No Answers—and Why That Matters to Jimmy Lai**

HKROLIN used Hong Kong's own judicial-conduct mechanism, submitting misconduct allegations concerning the same two controversies.

Complaint #1 concerning seditious speech was filed on March 9, 2024. Complaint #2 concerning Owen and the NPCSC controversy followed on April 15. Both were later sent to the serving Overseas Non-Permanent Judges, including Sumption.

On June 5, the Judiciary replied:

"We are looking into the matters and will respond to you."<sup>17</sup>

The Judiciary's published process begins with a basic screening decision: is a complaint "pursuable"—in plain English, will it proceed to investigation, or be disposed of without one? Pursuable complaints move to investigation and review, with additional safeguards for serious, complex, widely noticed, or specified senior-judge complaints.<sup>18</sup>

The Judiciary's published process provides that investigation of a complaint associated with ongoing court proceedings will normally be deferred until those proceedings conclude.<sup>18,19</sup>

By March 17, 2025, both case lines related to HKROLIN's complaints had reached the end of the CFA process: the sedition case in *Tam Tak Chi* on March 6, and Lai's attempt to obtain CFA review of the unresolved NSC and NPCSC issues arising from the Owen episode on March 17.

Yet the Judiciary's promised reply on the complaints still did not come.

On May 2, 2025, the Judiciary addressed "your complaints against the judges sent to the Secretariat for Complaints against Judicial Conduct" and said that a reply would be provided "as soon as they are in a position to do so."<sup>19</sup>

On June 20, after the Judiciary referred HKROLIN's June 10 judicial accountability letter to the CFA, the Court replied:

"Save and except that we disagreed with what has been expressed in your email of 10 June 2025, we have no further comment on the same."<sup>19</sup>

Three days later, however, the Judiciary Administrator separately addressed:

"your complaints against the judges sent to the Secretariat for Complaints against Judicial Conduct" and said:

"a reply will be provided to you as soon as they are in a position to do so."<sup>19</sup>

The CFA rejected HKROLIN's June 10 public allegations and declined further comment. The Judiciary Administrator nevertheless confirmed three days later that a reply concerning the formal complaints would still be provided.

Nothing in the June 20 CFA message says it was a decision on Complaint #1 or Complaint #2 under the Judiciary's published complaints process. It gives no pursuable/non-pursuable classification, no investigation result, and no final disposition. The June 23 Judiciary message instead continued to promise a future reply on the formal complaints.<sup>19</sup>

As of September 14, 2026, HKROLIN still has received neither a notice saying whether Complaint #1 or Complaint #2 would be investigated or disposed of, nor a final decision—despite the Judiciary's repeated promises that a reply would be provided.<sup>19</sup>

This is more than delay. From the Judiciary's communications, HKROLIN still cannot tell whether the complaints were screened out, investigated, deferred, or decided at all.

**Two complaints. More than two years. Repeated promises of a reply. Still no answer: Did the Judiciary investigate them, reject them, or reach any decision at all?**

## **Conclusion — Three Rule-of-Law Implications for CECC**

**First, free expression and due process.** Hong Kong's own constitutional order strongly protects political speech. Yet a three-judge leave panel classified a dormant colonial speech offence as an "offence endangering national security," bringing stricter national-security consequences; another three-judge leave panel refused the constitutional question framed for the possibility that violence was unnecessary; and the five-judge CFA ultimately held that violence was unnecessary without properly hearing the accompanying constitutional challenge. The practical result is stark: political speech can attract sedition liability without proof of intended violence or public disorder, while the central constitutional challenge to that rule had never received a five-judge merits hearing when Lai was convicted of sedition. For CECC, that is a human-rights and due-process concern—not merely a technical dispute about appellate procedure.

**Second, judicial independence and finality.** Hong Kong's courts authorized Timothy Owen KC to represent Jimmy Lai, and the Government failed to overturn that authorization through the ordinary judicial process. After the NPCSC Interpretation, the NSC and Immigration process prevented that court victory from taking effect without formally vacating the judgments. A judicial victory that later non-judicial action can prevent from taking effect is a victory on paper only. Judicial finality is defeated in practice—and judicial independence with it.

**Third, judicial accountability.** HKROLIN used the Judiciary’s own complaints mechanism to challenge the two institutional problems that ultimately converged in Jimmy Lai’s case: the judicial treatment of revived sedition as an offence endangering national security, under which Lai was later convicted, and the Owen/NPCSC controversy that prevented his court-authorized counsel from representing him. The Judiciary repeatedly promised a reply. More than two years later, HKROLIN still has not been told whether either complaint was investigated or disposed of, and it has received no final decision. The unanswered complaints therefore concern not an abstract institutional dispute, but two rule-of-law problems now embodied in Lai’s prosecution and defence.

**CECC need not adjudicate HKROLIN’s underlying constitutional claims.** It can demand an answer to a simpler oversight question: What did the Hong Kong Judiciary actually do with Complaints #1 and #2? Were they found pursuable or non-pursuable? If pursuable, were they investigated, what review occurred, and what decision was reached? This is not premature oversight. After more than two years of repeated promises of a reply, the answer is long overdue.

## Footnotes

1. HKROLIN Institute, About HKROLIN; State of Delaware corporate record concerning HKROLIN Institute, 3 June 2025; HKROLIN Institute, Launch of HKROLIN Institute: A Call for Accountability at Hong Kong’s Top Court, 10 June 2025.
2. Jonathan Sumption, “The rule of law in Hong Kong is in grave danger,” *Financial Times*, 10 June 2024 (identifying the National Security Law and colonial sedition law as one problem and NPCSC interpretation following the courts’ approval of UK counsel for Jimmy Lai as another).
3. HKROLIN Institute, Complaint #1, filed 9 March 2024; Complaint #2, filed 15 April 2024; En Banc Review of HKCFA Judicial Misconduct Complaints, communication to Overseas Non-Permanent Judges, 27 May 2024.
4. Basic Law arts. 27, 39; Hong Kong Bill of Rights art. 16(1)–(2); former Crimes Ordinance (Cap. 200) ss. 9–10; *HKSAR v Ng Kung Siu* [1999] HKCFA 10.
5. *HKSAR v Ng Hau Yi Sidney* [2021] HKCFA 42, ¶¶29–32; HKROLIN Institute, Complaint #1, filed 9 March 2024.
6. *HKSAR v Lai Chee-Ying* [2025] HKCFI 6291, ¶23; *HKSAR v Best Pencil (Hong Kong) Ltd, Chung Pui-ken and Lam Shiu-tung* [2024] HKDC 1430, ¶¶1–3; Jimmy Lai and six Apple Daily staff were additionally charged with sedition on 28 December 2021, and Stand News editors were charged on 30 December 2021.
7. *HKSAR v Tam Tak Chi* [2024] HKCFA 25, ¶¶1–3, 24–25.
8. *HKSAR v Tam Tak Chi* [2025] HKCFA 4, ¶79; The Witness, “譚得志煽動案終極上訴,” 10 Jan. 2025 (reporting Cheung CJ’s objection that defence counsel was seeking to reintroduce constitutionality “through the back door,” and Li PJ’s observation that leave had not been granted on that issue).
9. *HKSAR v Lai Chee-Ying* [2025] HKCFI 6291, ¶¶66–67; *Tam* [2024] HKCFA 25, ¶¶1–3, 24–25.
10. *Secretary for Justice v Timothy Wynn Owen KC* [2022] HKCFA 23, ¶¶3–6; *Re Mr Timothy Wynn Owen KC* [2022] HKCA 1689, ¶51.
11. *Owen* [2022] HKCFA 23, ¶¶8, 27–32.
12. Chief Executive, HKSAR, statement, 28 November 2022; Standing Committee of the National People’s Congress, Interpretation of Articles 14 and 47 of the Hong Kong National Security Law, 30 December 2022.
13. *Lai Chee-Ying v Committee for Safeguarding National Security of the HKSAR & Ors* [2024] HKCA 400, ¶¶13–16; *HKSAR v Lai Chee-Ying* [2025] HKCFI 6291, counsel list.
14. *Lai Chee-Ying v Committee for Safeguarding National Security of the HKSAR & Ors* [2024] HKCA 400, ¶¶20–23, 34–46.
15. *Lai Chee-Ying v Committee for Safeguarding National Security of the HKSAR & Ors* [2024] HKCA 611, ¶¶6–10; *Lai Chee-Ying v Committee for Safeguarding National Security of the HKSAR & Ors*, FAMV 103/2024, Court of Final Appeal, Order under Rule 7(2), 17 March 2025.
16. Sumption, *supra* note 2; HKSAR Government, “HKSAR Government strongly disagrees with opinions expressed by Lord Sumption,” 11 June 2024.
17. HKROLIN Institute, Complaint #1, 9 March 2024; Complaint #2, 15 April 2024; communication to Overseas Non-Permanent Judges, 27 May 2024; Judiciary Administrator, email to Chi-Sang Poon, 5 June 2024 (“We are looking into the matters and will respond to you.”).
18. Hong Kong Judiciary, Complaints Against Judicial Conduct, current materials and Annex B; Advisory Committee on Complaints against Judicial Conduct, Annual Report 2024, ¶2.3.
19. Judiciary Administrator, emails to Chi-Sang Poon, 2 May and 23 June 2025; Court of Final Appeal, email to HKROLIN Institute, 20 June 2025; HKROLIN correspondence record reviewed through 14 September 2026. In the correspondence record reviewed through that date, no communication identified Complaint #1 or Complaint #2 as pursuable or non-pursuable or gave a final disposition.