



Hong Kong Media Law: A Guide for Journalists and Media Professionals, Doreen Weisenhaus, with contributions by Jill Cottrell and Yan Mei Ning [Hong Kong: Hong Kong University Press, 2007, xxxvi + 372 pp, Paperback, HK\$225], ISBN 9789622098084

During the more than a decade I spent as a journalist in Hong Kong,¹ I was continually struck by the lack of the most basic knowledge among many fellow reporters, and even editors, about the legal perils of what went into print. Excuses like “it’s not libel as long as we quote someone else” or “it doesn’t matter if we got the facts wrong because publication was in the public interest” were, in my experience, sadly commonplace.

Compounding the problem is the lack of in-house lawyers in most Hong Kong media organisations. At big newspapers in the United Kingdom, and other common law jurisdictions, such counsel help compensate for the average journalist’s lack of legal knowledge by offering round the clock advice on the legality of what is about to be published. But in Hong Kong’s highly competitive media market, a full-time lawyer (or, frequently, any sort of professional legal advice) is an unaffordable luxury. All too often this reviewer’s personal experience has been that the strategy is simply to publish first and hope for the best. Or to grab anyone in the newsroom with a smattering of legal knowledge and rely on them as a cheap (or free) source of legal advice (a strategy doubtless aided by the increasing number of working journalists now studying part-time for law degrees).

That is dangerous, not just for the journalists and their employers who unwittingly (although often negligently) expose themselves to legal peril, but also for the state of press freedom in Hong Kong. Hong Kong’s existing legal framework provides powerful weapons for those intent on trying to silence their critics, especially in the plaintiff-friendly defamation law that Hong Kong inherited from England. Ignorance of the law is not only no defence, but all too often serves as an excuse for those who wish to tighten the screws further, especially when the media stray into legal grey areas.² For those in the Hong Kong media who do try to fit the pieces together without professional legal advice there was, until now, no comprehensive guide in

¹ The author of this review worked as a reporter and editor at the *South China Morning Post* from 1990–2001, and at *The Wall Street Journal Asia* from 2001–2007.

² One of the best-known examples of questionable media conduct leading to pressure for tougher laws restricting the media was the August 1999 report from the privacy sub-committee of the Law Reform Commission recommending a statutory press council with the power to fine media organisations for privacy breaches. This followed concern at intrusions into privacy by paparazzi taking photos for Hong Kong’s popular Chinese-language papers. See Doreen Weisenhaus, *Hong Kong Media Law: A Guide for Journalists and Media Professionals* (Hong Kong: Hong Kong University Press, 2007) at pp 118–120.

English on the law as it affects the local media.³ Such books have long been an important feature of journalism training in other common-law jurisdictions, being required reading on college courses and frequently used as a quick-reference guide in newsrooms.⁴ It is this vacuum which *Hong Kong Media Law: A Guide for Journalists and Media Professionals* seeks to fill in Hong Kong, initially in the English-language market, although a Chinese-language translation is also in the pipeline.

Written mainly by Doreen Weisenhaus, director of the Media Law project at the University of Hong Kong's Journalism and Media Studies Centre, *Hong Kong Media Law* is likely to become similarly required reading for students on journalism courses in Hong Kong. It is accompanied by an impressively updated website on recent developments in the world of media law (<http://www.hongkongmedialaw.net>). Although unfortunately not mentioned in the book, this website when used (at least by those aware of it) in conjunction with *Hong Kong Media Law* should help ensure the book avoids suffering the same fate as so many other legal reference works that become rapidly out of date.

But the book's potentially most valuable role is in newsrooms rather than classrooms. As Mr Justice Hartmann notes in his foreword: "While it is rich in detail, and while its authors boast impeccable academic pedigrees, it is an essentially practical publication, one intended for working journalists and lawyers who practice in the field of media law."⁵ While even the best textbook will never be a proper substitute for professional legal advice, when commercial realities make the latter unattainable *Hong Kong Media Law* does at least offer those working in the media somewhere to turn for advice.

Hence the inclusion of frequently asked questions at the start of almost every chapter. These refer readers directly to the pages where the relevant answers can be found – just what a busy editor (who lacks the time to wade through pages of academic prose) needs to try and quickly find the answer to a specific question about the legality of a story about to go press. Even more valuable are the checklists for the media, included at the end of a few of the most important chapters. These provides journalists and editors with lists of questions they should ask before publishing, and could usefully be extended to more chapters in a future edition of the book.

³ There are two Chinese-language guides to media law in Hong Kong: Johannes M. M. Chan and Kenneth Leung, *Media Law and Practice* (Hong Kong: Commercial Press, 1995) and Kevin Lau, *Media Law Handbook* (Hong Kong: Hong Kong News Executives Association, 2006).

⁴ For instance, Tom Welsh and Walter Greenwood, *McNae's Essential Law for Journalists* (Oxford: Oxford University Press, 19th edn, 2007) which is required reading on all courses accredited by the National Council for the Training of Journalists in the UK.

⁵ Weisenhaus, *Hong Kong Media Law* (see n 2 above) at p xi.

It's no surprise to see defamation as the first major chapter in the book, and the longest in length. Of all the legal issues that affect journalists, defamation arises more frequently than all the others put together. It is also an area where misconceptions are particularly prevalent (see, for instance, the examples given at the start of this review). Written by Jill Cottrell, formerly of the University of Hong Kong's law faculty, this chapter does an excellent job of demolishing such misconceptions, and warning how steeply the law is tilted against the media in Hong Kong in this area. As in England, considerations of public interest are rarely a defence, except in the very limited circumstances known as the "Reynolds privilege."⁶ That contrasts with the situation in the United States, where the common law has evolved in a way which makes it much harder to bring a successful action for libel, especially in cases involving public officials. As a result, those who enter journalism in Hong Kong after graduating from colleges in the US risk making some very expensive mistakes without the sort of education in local defamation law provided by this chapter.

Subsequent chapters take an equally practical approach toward the other major legal issues which most frequently affect journalists, notably court reporting, contempt of court, privacy, and copyright and other restrictions on newsgathering and reporting. A chapter on official secrets and sedition details both the current restrictions, and those which would have been enacted under the Hong Kong Government's abortive proposals to implement Article 23 of the Hong Kong Basic Law in 2003 – both important issues which anyone working in the media ought to be aware of, even if they infrequently arise in practice.

A chapter on access to information makes depressing reading, as it details the uselessness of the Hong Kong Government's Code on Access to Information, the full text of which is included in one of the book's appendices. Introduced in 1995 to stave off pressure for a freedom of information law, the code has proved little more than a vehicle for the distribution of official press releases that does nothing to stop the trend toward a more secretive government.⁷ Tucked away in another of the book's appendices is one of the most useful chapters of all, offering practical advice to journalists on how to search for court judgments and related records. The other

⁶ *Ibid.*, pp 47–48. The "Reynolds privilege" has developed in the case law of several common law jurisdictions in recent years, and was followed in the Hong Kong case of *Cutting De Heart v Sun News Ltd* [2005] 3 HKLRD 134. It adopts a slightly more flexible approach toward defamation cases involving public discussion of politics and matters of public interest.

⁷ *Ibid.*, pp 90–93 and 99–101. Examples given include the Hong Kong Government's refusal to release important documents relating to the development of Hong Kong Disneyland and Cyberport, and its initial refusal to release documents relating to the relocation of the Central Government Offices to the Tamar site and the construction of a controversial canopy in the proposed West Kowloon Cultural District.

appendices offer excerpts from key statutes and regulations, as well as the full text of judicial practice directions referred to in the book.

One omission is the lack of a separate chapter on Hong Kong's obscenity and indecency laws. As was demonstrated by the Edison Chen photo scandal in early 2008, when even mainstream Chinese-language papers republished sexually explicit photos circulating on the Internet of the Cantopop star and his girlfriends, issues of obscenity and indecency can easily arise in the course of news coverage. That scandal only reinforces the importance of editors having access to practical advice in this area. Obscenity and indecency are well covered as part of a general chapter on print and online regulation and self-regulation in *Hong Kong Media Law*, written by Yan Mei Ning of Hong Kong Baptist University's Department of Journalism. But given the importance of the issue, it might usefully benefit from more prominent treatment in any future edition of this book, including the sort of checklist for the media so helpfully included in other chapters.

Particularly commendable is a chapter that provides some insight into the legal perils of reporting on the mainland. It is rare these days to find a Hong Kong journalist whose work does not, at least occasionally, take them to the mainland. This makes a working knowledge of the mainland legal system as it affects news gathering activities increasingly vital for anyone working in the Hong Kong media. It is not a chapter that provides reassurance, particularly when it comes to the extremely wide definition of state secrets adopted on the mainland. This has been used against many journalists including, most recently, Ching Cheong, a Hong Kong correspondent for *The Straits Times* of Singapore.⁸ As Ms Weisenhaus notes, "Divorce statistics, national exam questions, interest rates, economic growth figures, criminal investigations, and scientific developments have all been classified at some point as state secrets."⁹

The checklist for the media at the end of this chapter makes for grim reading, with its warnings as to how publicly available information can still be considered a state secret, and the classification of what constitutes a state secret can change over time, sometimes even retrospectively.¹⁰ Particularly troubling is the book's warning that the case of Ching Cheong, the first Hong Kong journalist and permanent resident to be convicted of state

⁸ *Ibid.*, pp 177–178. In 2006, Mr Ching was convicted of passing state secrets and confidential information and sentenced to five years in prison. He was released on parole in February 2008.

⁹ *Ibid.*, p 178.

¹⁰ *Ibid.*, p 180.

secrets charges on the mainland, suggests that Hong Kong journalists may have become increasingly vulnerable.¹¹

Of course, simply knowing the law is no guarantee of protection. Given the wide ambit of state secrets on the mainland, many reporters would be unable to do their job if they steered clear of all potentially troublesome areas. But, at least, forewarned is forearmed and, with this chapter as a guide, it will be much easier for journalists to calibrate the risks they face in reporting from the mainland.

Much the same can be said of the other chapters in this book. No amount of legal knowledge will stop all lawsuits against the media in Hong Kong, especially from those determined to sue on the slightest pretext. But, at least in this reviewer's experience, far too many threats of law suits result from small, and often silly, mistakes which are easily avoidable if only the reporters and editors involved had a basic understanding of the relevant legal principles. Such silly mistakes do no favours to press freedom either, when they provide an easy excuse to attack important articles on issues of public interest.

From self-censorship at the behest of media proprietors to warnings from mainland officials, there are numerous facets to the threats to press freedom in Hong Kong. This book, with its specific remit, makes no pretence to comprehensively examine all aspects of the issue.¹² But one, sometimes overlooked, aspect of the issue is another type of self-censorship: how effectively the present legal framework, coupled with most journalists' lack of legal knowledge, acts as a deterrent against any critical reporting on those who are known to be more prone to respond with a law suit.

Too often, such articles are seen as "too much trouble to print" in an environment where editors can not be sure (and do not have the necessary expertise to check) that their reporters know enough about the law to ensure they have covered all their bases as far as any potential law suit is concerned. This is an important book that goes a long way to filling a serious vacuum as far as the Hong Kong media is concerned. If it helps educate Hong Kong journalists and editors enough for them to feel more confident in publishing articles about even the most litigious subjects without fear of

¹¹ *Ibid.* Although Xi Yang, another Hong Kong-based journalist, was convicted of state secrets charges by a Beijing court in 1994, he was not a Hong Kong permanent resident. It was thought at the time that the harshness of his 12-year sentence (although Mr Xi was ultimately released after serving only three years) was related to the fact that he has only recently moved to Hong Kong from the mainland.

¹² For an excellent overview of this issue, see Cheung, Anne S.Y., *Self-Censorship and the Struggle for Press Freedom in Hong Kong* (The Hague: Kluwer Law International, 2003).

losing the resulting court case, the book will also play its part in protecting press freedom in Hong Kong.

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