

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE**

MISCELLANEOUS PROCEEDINGS NO. 249 OF 2020

IN THE MATTER of an application on behalf of the
Secretary for Justice against Chan Oi Yau Riyo (陳藹柔)
for an Order of Committal

and
IN THE MATTER of civil proceedings in
HCA 1957/2019

BETWEEN

SECRETARY FOR JUSTICE

Plaintiff

and

CHAN OI YAU RIYO (陳藹柔)

Defendant

Before: Hon Coleman J in Court

Date of Hearing: 17 June 2020

Date of Decision: 17 June 2020

DECISION

A **A. Introduction** A

B 1. These committal proceedings relate to a civil contempt of B
C court, for which the Defendant has admitted liability. Therefore, this is C
D the sentencing hearing. D

E 2. The contempt arose when on 5 November 2019 the E
F Defendant posted on her Facebook account (“Facebook Post”) the F
G personal data of a particular police constable (“PW1”) and that of his G
H family members. That conduct was in clear contravention of the H
I injunction order made on 25 October 2019, as amended and re-amended I
J on 28 and 31 October 2019 (“Doxxing Injunction”). The Doxxing J
K Injunction was made in HCA 1957/2019 (“underlying action”) K

L 3. Though after the particular act of contempt by this L
M Defendant, the Doxxing Injunction was subsequently continued (though M
N slightly varied) by me on 8 November 2019. N

O 4. The committal proceedings have been brought by the O
P Secretary for Justice (“SJ”) by way of originating summons dated P
Q 17 March 2020, with prior leave granted by me on 13 March 2020. In Q
R support of the application, reliance is placed on the two affirmations of R
S PW1, as well as the affirmations/affidavits of other officers (including S
T PW2 and PW3) involved in investigating the Facebook Post. T
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V 5. The Defendant has filed an affirmation dated 11 June 2020, V
to which she has also exhibited a handwritten letter from her to the Court,
and various mitigation letters from other persons. Earlier, on 6 April
2020, the Defendant’s solicitors had filed an acknowledgement of service
stating that the Defendant did not intend to contest the proceedings.

A 6. At this hearing, the Secretary for Justice was represented by
B Counsel, Mr Martin Ho, and the Defendant was represented by Counsel,
C Mr Robert Pang SC leading Mr Sam Chow. Mr Pang and Mr Chow
D appear on a *pro bono* basis, in the best traditions of the Bar.

E ***B. Agreed Facts***

F 7. On 11 June 2020, the parties (through their solicitors) jointly
G signed and filed a Statement of Admitted Facts. That document
H helpfully encapsulates the relevant background material, and some of its
I content can usefully be taken into this Decision. I accept those facts as
J stated and agreed between the parties.

K 8. On 25 October 2019, the SJ and the Commissioner of Police
L (suing on his own behalf and on behalf of all other Police Officers and
M Auxiliary Officers) as plaintiffs commenced the underlying action
N HCA 1957/2019 and made an *ex parte* application for an injunction
O against the defendants, being named as persons unlawfully and wilfully
P conducting themselves in any of the acts prohibited under paragraphs 1(a),
Q (b) or (c) of the Indorsement of Claim.

R 9. The acts prohibited under paragraphs 1(a), (b) or (c) of the
S Indorsement of Claim are:

- T (a) using, publishing, communicating or disclosing to any
U other person the personal data of and concerning any
V Police Officer(s) and/or their spouses and/or their
respective family members (namely parents, children or
siblings), including but not limited to their name, job
title, residential address, office address, school address,
email address, date of birth, telephone number, Hong
Kong Identity Card number or identification number of
any other official identity documents, Facebook
Account ID, Instagram Account ID, car plate number,
and any photograph of the Police Officer(s) and/or their

spouses and/or their respective family members (namely parents, children and siblings) (“Personal Data”), without the consent of the Police Officer(s) and/or their family member(s) (as the case may be) concerned;

(b) intimidating, molesting, harassing, threatening, pestering or interfering with any Police Officer(s) and/or their spouses and/or their respective family members (namely parents, children or siblings); and/or

(c) assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorizing others to commit any of the aforesaid acts or participate in any of the aforesaid acts.

10. On the same day, Chow J granted an injunction order (“Interim Injunction Order”) effective until the return date on 8 November 2019. The granting of the Interim Injunction Order was widely reported in the mass media including, *inter alia*, English and Chinese newspapers with wide circulation in Hong Kong, major radio and television service providers such as Radio Television Hong Kong and various sources on the internet (“Local Media”).

11. On 28 October 2019, Chow J made an order to amend the Interim Injunction Order (“Amended Interim Injunction Order”). The material terms of the Amended Interim Injunction Order are as follows:

The Defendants and each of them, whether acting by themselves, their servants or agents, or otherwise howsoever, be restrained from doing any of the following acts:

(a) using, publishing, communicating or disclosing to any other person the Personal Data, intended or likely to intimidate, molest, harass, threaten, pester or interfere with any Police Officer(s) and/or their spouses and/or their respective family members (namely parents, children or siblings), without the consent of the Police Officer(s) and/or their family member(s) (as the case may be) concerned;

(b) intimidating, molesting, harassing, threatening, pestering or interfering with any Police Officer(s)

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B and/or their spouses and/or their respective family
members (namely parents, children or siblings); and

C (c) assisting, causing, counselling, procuring, instigating,
D inciting, aiding, abetting or authorizing others to
commit any of the aforesaid acts or participate in any of
the aforesaid acts.

E 12. The granting of the Amended Interim Injunction Order – to
F remain in force up to and including 8 November 2019 – was widely
reported by the Local Media.

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H 13. On 29 October 2019, the Plaintiffs made an *inter partes*
I application against the Defendants for continuation of the Amended
J Interim Injunction Order. The hearing of the *inter partes* application
was fixed for 8 November 2019.

K 14. On 31 October 2019, Chow J further made a technical
L amendment to the Amended Interim Injunction Order by amending the
M date of the Order (“Re-Amended Interim Injunction Order”).

N 15. On 5 November 2019, the Hong Kong Journalist Association
O (“HKJA”) applied for the Re-Amended Interim Injunction Order to be
varied by including the following terms:

P (1) Paragraph 1 of the Re-Amended Interim Injunction
Q Order does not prohibit any lawful act(s) which are
done solely for the purpose of a “news activity” as
defined in section 61 of the Personal Data (Privacy)
Ordinance (Cap. 486) (“PDPO”); and

R (2) Paragraph 1(a) of the Re-Amended Interim Injunction
S Order does not prohibit the disclosure of Personal Data
to a data user whose business, or part of whose business,
T consists of a “news activity” where the requirements of
section 61(2)(b) of the PDPO are satisfied.

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A 16. At the hearing of the *inter partes* application and the HKJA's
B Summons on 8 November 2019, I granted the *inter partes* application by
C ordering the Re-Amended Interim Injunction Order to be continued,
D except with the removal of the reference to "interfere" in paragraphs 1(a)
E and (b) of the Re-Amended Interim Injunction Order. As regards the
F HKJA's Summons, I granted an order in terms as set out in paragraph (1)
G but refused to include the terms as set out in paragraph (2) ("Return Date
H Order"). I gave a fully-reasoned Ruling, since reported at [2019]
5 HKLRD 500. The handing down of the Ruling and the sealing of the
Return Date Order were widely reported by the Local Media.

I 17. On 29 November 2019, the Plaintiffs made an application to
J amend the Return Date Order. On 11 December 2019, I granted the
K application by amending the Return Date Order to include Special
L Constable(s), their spouses and their respective family members (namely
M parents, children or siblings) ("Amended Return Date Order"). The
granting of the Amended Return Date Order was widely reported by the
Local Media.

N 18. Pursuant to paragraph 2 of the Interim Injunction Orders,
O Chow J granted leave to the Plaintiffs to serve the Interim Injunction
P Orders on the Defendants to the underlying action by way of substituted
Q service, by publishing a copy of the Interim Injunction Orders on the
R webpages of the Police as well as that of the Government of the Hong
S Kong Special Administrative Region. The Interim Injunction Orders
were duly and validly served.

T 19. On 4 November 2019, a friend of PW1 informed PW1 that
U his personal data were posted on a Telegram Channel called "老豆搵仔"
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A with the Channel ID of “Dadfindboy” (“Telegram Channel”). As a
B result, PW1 downloaded the mobile application of Telegram and joined
C the Telegram Channel. He then discovered that a message containing
D his personal data as well as those of his family members (namely, his wife,
E father and mother) were posted on the Telegram Channel (“Telegram
F Message”). The Telegram Message contained data represented to be his
G Chinese name, telephone number, residential address, date of birth, name
H of school attended, Facebook Account ID, Instagram Account ID, job
I position, work location, work experience and hobbies as well as the date
J and venue of his wedding, the names of his wife, father and mother, the
name of the secondary school that his wife attended and the previous
employer of his father. All of the data disclosed in the Telegram
Message were correct except the residential address and the date of birth.

K 20. On 5 November 2019, the Police discovered a post on the
L Facebook page of “Riyo Chan” with a particular website address, which
M contained the personal data of and concerning PW1 and his family
N members (namely, his wife, father and mother). This was the Facebook
O Post. The Facebook Post had the same content as the Telegram Message,
P except that the Facebook Post also included additional wording such as
Q “血債血償 [PW1] 及眾黑警!!” (“An eye for an eye [PW1] and all dirty
cops”) and “#轉” (“#forward”). The time and date of the Facebook Post
was “05/11/2019, 17:02” and the status of the Facebook Post was “Shared
with: Public”.

R 21. At about 1 am on 6 November 2019, PW2 conducted an
S internet search for the personal data of “Riyo Chan” and the information
T revealed upon search included “陳藹柔 CHAN OI YAU RIYO” and an
U address in Quarry Bay, Hong Kong.
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A 22. At about 6:25 pm on 6 November 2019, PW3 together with
B other police officers arrived at the vicinity of that address. At about
C 8:31 pm on the same day, PW3 saw a female whose appearance
D resembled that of “Riyo Chan” (later known to be the Defendant) walking
E along the street to the direction of the address. When the Defendant
F started crossing the road, PW3 intercepted the Defendant and revealed to
G the Defendant her identity as a Police Officer. After they walked back
H to the pedestrian pavement and stopped outside the building address,
I PW3 showed her warrant card to the Defendant and asked if the
J Defendant was “CHAN Oi Yau” but the Defendant denied. PW3 then
K informed the Defendant of PW3’s name and unique identification (UI)
L and told the Defendant that she was now investigating a case of
M “Disclosing Personal Data Obtained from a Data User without the Data
N User’s Consent”. PW3 also asked the Defendant to produce her identity
O card. The Defendant complied by producing her identity card, which
P gave the Defendant name as CHAN Oi Yau Riyo. PW3 asked the
Q Defendant if she had previously posted the personal data of PW1 on
R Facebook. The Defendant replied in the affirmative.

N 23. At about 8:33 pm on the same day, PW3 arrested and
O cautioned the Defendant for “Disclosing Personal Data Obtained from a
P Data User without the Data User’s Consent”. Under caution, the
Q Defendant stated that she saw on the internet that someone had posted the
R personal data of PW1, she then shared the personal data of PW1 on her
S own Facebook page. This was recorded in PW3’s notebook and was
T signed by the Defendant.

A 24. At about 8:41 pm on 6 November 2019, a search warrant
B was executed and a house search was conducted at the Defendant's
C residence.

D 25. Between 8:43 pm and 8:46 pm on the same day, PW3 asked
E the Defendant to open the Facebook Post. The Defendant then used a
F laptop computer, which was placed on the desk of the living room, to
G open a Facebook webpage with the particular website address previously
H noted, and logged into the Facebook account of "Riyo Chan".
I Thereafter, PW3 asked the Defendant to open the Facebook Post again.
J The Defendant then, in the same Facebook account, opened a post which
K contained the personal data of PW1 and PW1's family members. The
L post was opened to the public and had a time stamp of "Yesterday at
M 17:02".

N 26. In a video-recorded interview conducted at the North Point
O Police Station from 11:43 pm on 6 November 2019 to 12:20 am on the
P following day, the Defendant stated under caution, *inter alia*, the
Q following:

- R (1) Her name was "Riyo Chan";
- S (2) At about 5 pm on 5 November 2019, she was making models,
T browsing the internet, cooking and feeding her pets at her
U residence;
- V (3) She saw on the internet that someone had posted the
personal data of PW1 on Facebook. She then copied the
post, including the wording of "血債血償 [PW1] 及眾黑
警!!", and shared it on her own Facebook page with the
website address of www.facebook.com/Chan.Riyo and the
login e-mail address of chanriyo@hotmail.com;

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- (4) The name of her Facebook account was “Riyo Chan”;
- (5) The Facebook account with the website address of www.facebook.com/Chan.Riyo belonged to her and she was the sole user of this Facebook account;
- (6) The wording “Shared with: Public” shown in the Facebook Post meant that the Facebook Post was open to the public for anyone to see;
- (7) The Facebook Post was liked by others, who might be her Facebook common friends (but she might have never seen them before);
- (8) She did not personally know PW1, his spouse or his parents; and
- (9) She did not obtain the consent of PW1 to post his personal data.

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27. The Defendant admits that her statements made in the cautioned video-recorded interview as summarized in the preceding paragraph are true and correct.

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28. PW1 did not consent to the Defendant using and/or disclosing the personal data of himself or that of his family members.

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29. In the premises, it is agreed by the Defendant that:

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- (1) the Defendant knew of the terms of the Interim Injunction Orders;
- (2) the Defendant used, published, communicated and disclosed to other persons on her Facebook page the personal data of and concerning PW1 (ie. a Police Officer), his wife and his family members (namely, his father and his mother),

A including PW1's Chinese name, telephone number, name of
B school attended, Facebook Account ID, Instagram Account
C ID, job position, work location, work experience and
D hobbies as well as the date and venue of his wedding, the
E names of his wife, father and mother, the name of the
secondary school his wife attended and the previous
employer of his father, without the consent of PW1;

F (3) the Defendant, by using, publishing, communicating and
G disclosing the personal data of PW1, his wife and his family
H members (namely, his father and his mother) on her
I Facebook page and by making such information public to
J everyone, had intended and been aware that her acts
mentioned in sub-paragraph (2) above were likely to
intimidate, molest, harass, threaten or pester PW1, his wife
and his family members (namely, his father and his mother);

K (4) the Defendant, by using, publishing, communicating and
L disclosing the personal data of PW1, his wife and his family
M members (namely, his father and his mother) on her
N Facebook page together with the wording of “血債血償
[PW1] 及眾黑警!!”, and by making the Facebook Post
public to everyone:

O (a) intimidated, molested, harassed, threatened and
P pestered PW1, his wife, his father and his mother;
and/or

Q (b) assisted, caused, counselled, procured, instigated,
R incited, aided, abetted and authorized others to
S commit or participate in any of the acts mentioned in
sub-paragraphs (2), (3) and (4)(i) above; and

T (5) the Defendant's acts constitute a breach of the Interim
U Injunction Orders.
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C. Effect of the Doxxing

30. In addition to the evidence originally filed by the SJ, a second affirmation has been filed by PW1. In it, he addresses how his family members and he were affected by the unlawful use, publication, communication and disclosure of the personal data of and concerning himself, his spouse and his family members (namely, his father and his mother).

31. PW1 says that after disclosure of that personal data:

- (1) PW1 was concerned about his personal safety and the safety of his family members. After extending a pre-planned trip overseas, extended through a hesitancy to return to Hong Kong, he and his wife moved into a safe house arranged by the Hong Kong police force for a period of three months.
- (2) PW1 was worried that his personal data would be used by criminals for legal purposes, such as the making of fraudulent loan applications, as well as unsolicited food deliveries. Those have become a common nuisance to doxxing victims. After being doxed, his personal data was used without his knowledge and consent for the registration of organ donation and green burial.
- (3) PW1 and his wife received numerous harassing telephone calls, at least 20 a day in the period after the personal data was first unlawfully leaked. The callers used foul language and cursed him and his wife, as well as family members. They had no choice but to change their respective mobile phone numbers.
- (4) PW1 and his family members suffered from psychological distress and emotional discomfort, upon finding their names

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and personal data written on the walls of a car park. His
wife had insomnia, and was worried she would be
recognised when walking in the street. At one point in
January or February 2020, PW1 was recognised by a sales
person in a shop and was scolded and described as “black
cop” and cursed with “black cop whole family go to hell”.

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(5) PW1 felt terrified each time he was asked to provide his
name and other personal data when subscribing to services,
for fear that the data would be mishandled and misused.
He would inevitably recall the unpleasant doxxing
experience. He is also afraid of another wave of nuisances
and unauthorised disclosure of his personal data.

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32. I accept that evidence.

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33. Mr Pang says that, without in any way wishing to downplay
the effect of doxxing on PW1 and his family members, the content of
PW1’s second affirmation is of marginal relevance to the present
proceedings on the proper application of principle (see below). Mr Pang
says that whilst PW1 and his family fall within the subject matter that
came under the protection of the Doxxing Injunction, the impact on them
should carry only little, if any, weight in the present proceedings.

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34. Though I will deal later in this Decision with the principles
to be applied, I do not accept that the effect of the breach should be of
only marginal relevance. The weight to be given to this feature will
vary from case to case depending on the other particular features of the
case. But no one should lose sight of the fact that the Doxxing
Injunction was granted for the specific purpose of seeking to prevent
precisely the kind of activity which has since occurred, and it was granted

A in specific recognition of the potential adverse impact on individuals who
B are doxxed as well as the chilling effect on society as a whole. The
C prejudice suffered by PW1 and his family members, as well as by society
D in general, from doxxing activities is something which seems to me to be
E a very relevant consideration in the current exercise.

F ***D. Defendant's Evidence***

G 35. In the Defendant's affirmation, she introduced its purpose as
H being to address the Court on her personal and family background and to
I tender her sincere apology to the Court.

J 36. The Defendant was born and raised in Hong Kong, educated
K to Form 5, and is now 39 years old. She is a freelance graphic and
L jewellery designer. Her earnings are unstable, and particularly recently
M her earnings have been limited to about HK\$2,000-HK\$3,000 a month.
N She has limited savings of about HK\$40,000, and no other assets.

O 37. The Defendant recently married, in February this year, and
P now lives with her husband in a rented unit in Quarry Bay. The
Q Defendant's husband is a computer programmer.

R 38. The Defendant says that she has lived a law-abiding life, and
S she has no criminal record. She has also been an active participant in
T charitable works, such as sponsoring children through the Plan
U International Child Sponsorship Program and volunteering at Hong Kong
V Caritas Social Work Services Division.

39. The Defendant is an artistic person, and after various
employment began freelance design work in 2011. She used to have a

A successful career in jewellery design, having established her own jewellery brand which received international recognition. However, in September 2019 she was suddenly put out of her job, and experienced the lowest point in her career.

40. To take a break, and to get away from all the negativities in Hong Kong, the Defendant travelled outside Hong Kong (to UK and Japan) between 14 and 26 October 2019. During her travels, she deliberately did not keep herself abreast of the news in Hong Kong. In the week following her return from overseas, the large-scale protests and escalation filled the news. The Defendant's emotion was affected again, and her focus was mainly on the development of the protests.

41. The Defendant says she has no specific recollection of seeing any news about the Doxxing Injunction. But, from the Statement of Agreed Facts which she has signed, it seems to me that she accepts that she must have been aware of it.

42. One particular news item, about a young student falling from a car park, caused the Defendant to become very upset and emotional. At about 5 pm on 5 November 2019, the Defendant came across a post on her Facebook newsfeed page that showed the personal data of and concerning PW1. She says that, without thinking about it, she copied and shared the post publicly on her own Facebook page. She also followed others examples and copied certain words – eye for an eye, or blood for blood, etc – onto her Facebook page. However, she says, she did not really intend to incite any violence against PW1, but did what she did because she was upset at the time. She did not stop to think about the consequences of her actions.

A 43. At the time, she did not have the Doxxing Injunction in mind,
B and had she known that her act would be in breach of the injunction, she
C would not have done it. The Defendant says she has great respect for
D the Courts in Hong Kong, and she would not deliberately breach an order
E of the Court. However, she takes full responsibility for her act, which
she accepts was at least reckless.

F 44. The Defendant says that she meant no disrespect to the Court,
G and would like to convey her sincere apology to the Court and to anyone
H affected by her act for any inconvenience caused. The Defendant says
I that the incident was caused by her error in judgment and ignorance of
the law, and that it was totally out of her character.

J 45. The Defendant explains how she was arrested, and how she
K was all along cooperative with the police and honest with them, giving a
L detailed explanation for making the Facebook Post on her Facebook page.
M Immediately after being released from initial police custody, she deleted
N the Facebook Post that she had shared. After a period of monthly
reporting to a police station, she has now been unconditionally released
and told that the criminal case against her would be discontinued.

O 46. The Defendant says that since her arrest, she has refrained
P from sharing posts that contain sensitive personal information of others,
Q and has become generally more cautious with what she posts. After a
R while, she terminated her Facebook account entirely and indefinitely.

S 47. The Defendant says she has been fortunate to have been
T given a lot of support by her husband, but these committal proceedings

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A have devastated her life again and put her under a lot of stress. She has
B had to put various plans on hold.

C 48. In her handwritten letter to the Court, the Defendant makes
D many of the same or similar points. She emphasises that she has not
E committed any offence in her entire life and that she is a charitable person.
F She says that in future she will devote her time and effort into promoting
G arts and design in the hope that she can use her expertise to contribute to
H the Hong Kong society. She expresses that she is now deeply
I remorseful, and from now on will observe Hong Kong law to avoid
J violation of it. She humbly asks for the Court to give her a chance.

K 49. The letters in support and mitigation provided by others,
L who have previously worked with her, speak to the Defendant's
M dedication and sensitivity towards people, care and kindness to animals,
N and her eagerness to assist younger people. One expresses the belief
O that good designs come from good hearts and benevolent intentions, and
P the Defendant is one of those rare designers with such quality. Another
Q emphasises the incident being out of the Defendant's character. Another
R comments on the clear remorse shown by the Defendant from her "snap
S of judgment" which has caused enormous impact to her friends, family
T and her business.

Q ***E. Role of the SJ***

R 50. In §§25-30 of my 8 November 2019 Ruling in the
S underlying action, I recognised that the SJ represents the public at large in
T the application for the Doxxing Injunction, in her capacity as the guardian
U of the public interest.
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A 51. Mr Ho submits that the same may be said of the SJ in taking
B enforcement measures, including by way of committal applications
C flowing from the Doxxing Injunction. Whilst these proceedings are
D ‘civil’ in their procedural character, the SJ is not seeking to protect the
E interests of the executive arm of the Government in these contempt
F proceedings. Nor is she properly to be regarded as advancing any
G private interests of those persons doxed. Rather, the SJ is seeking to
H uphold the rule of law and to safeguard the administration of justice.

I 52. I accept that that is indeed the role of the SJ in proceedings
J such as the present proceedings. The SJ is seeking to safeguard the
K public interest, including the public interest in the proper administration
L of justice and upholding the rule of law.

M 53. That role also requires the SJ, and Counsel representing her,
N to endeavour to assist the Court with the sentencing process in a fair and
O impartial manner. That is consistent with the proper approach to the
P ‘procedural framework’ in contempt proceedings, where it is an
Q established norm for the plaintiff (here, in effect, the general public
R represented by the SJ) to make detailed submissions to assist the Court on
S the appropriate penalty to be imposed on the contemnor: see for example
T *La Dolce Vita Fine Dining Co Ltd v Zhang Lan* [2019] 2 HKLRD 341 at
U §4. Though Mr Ho has made suggestions as to a possible sentence he
V says would be appropriate, I do not think he has over-stepped any mark.

F. Applicable Principles on Sentencing

54. As a superior court of record, the Court of First Instance is
invested with the inherent power to punish for contempt in maintaining
its authority and preventing its process from being obstructed and abused:

see *Secretary for Justice v Cheng Kam Mun (No 3)* [2017] 2 HKLRD 768 at §34.

55. The common law powers to fine or imprison, to give an immediate sentence or to postpone it, remain intact. The power of the Court to hand down a suspended sentence is specifically codified in Order 52 rule 7(1). The power to order payment of a fine, or giving security for good behaviour, is preserved by Order 52 rule 9.

56. As summarised by B Chu J in *Willwin Development (Asia) Co Ltd v Wei Xing* (unreported, HCMP 2946/2014, 16 November 2015) at §4, the general principles on sentencing in cases of civil contempt are as follows:

- (1) In civil contempt, the prime consideration in sentencing is to demonstrate to litigants that orders of the court are to be obeyed. Contempt of civil court orders is a serious matter.
- (2) However, a delicate balance has to be maintained in the imposition of the penalty for civil contempt between the strong public interest in ensuring that orders of the Hong Kong Courts will not be flouted and the evaluation of the individual circumstances of each case.
- (3) Subject to mitigating factors, if any, the starting and primary penalty for contempt of court in breaching an order in the nature of an injunction is imprisonment. The normal penalty for breaches of injunction orders is imprisonment measured in months.
- (4) In a case where there has been a failure to comply with an order of the court and where there is no evidence to suggest that compliance was in any way difficult or impossible, a

A sentence of imprisonment would not be inappropriate. This would be particularly so in a case where the sentence was designed to enforce compliance. A sentence of imprisonment for a wilful failure to observe a court order can often be appropriate.

(5) The court is empowered with quite a few sentencing options under its inherent powers and the common law.

(6) Imprisonment should be regarded as a sanction of last resort in civil contempt. Where the conclusion is reached that the contempt was not deliberate or not contemptuous, it would be only in very rare circumstances that a sentence of imprisonment would be appropriate.

57. Similar comments were made by Mimmie Chan J in *La Dolce Vita Fine Dining Co Ltd v Zhang Lan* [2019] 2 HKLRD 341 at §8, in part quoting from *RACP Pharmaceutical Holdings Ltd v Li Xiaobo* [2007] 2 HKLRD 331. The purpose of the law of contempt is not to protect the dignity of judges, but to prevent interference with the due administration of justice. The first principle is that court orders are made to be obeyed. They are not guidelines, to be ignored or paid lip service to at the behest of the parties affected. They are the building blocks by which the administration of justice is made workable. Litigants who wilfully breach orders at the expense of their opponents to their advantage do so at the risk of losing their liberty for being in contempt of court.

58. I agree with those statements of principle. Indeed, it is fundamental to the rule of law that orders of the court are obeyed. Injunctions generally are granted, and the particular injunction in this

A case was granted, by the court only after careful consideration of the
B evidence and the applicable law and arguments advanced. If anyone
C suggests that the court has made an error in granting the injunction, there
D is the possibility of an appeal, or of a variation application.

E 59. Reference can also be made, as it was by Mr Pang, to the
F decision of Au-Yeung J in *Bruno Arboit as Sole Liquidator of Highfit*
G *Development Co Ltd v Koo Siu Ying* [2015] 3 HKLRD 319, where that
H judge endorsed what was said by B Chu J in the *Willwin* case, and where
I she emphasised a prime consideration of the court in sentencing contempt
is to signal the importance of demonstrating to litigants that the orders of

- J (1) Not only should imprisonment be regarded as a sanction of
K the last resort, any custodial term should be as short as
L possible and consistent with the circumstances of the case.
M (2) The court has an absolute discretion to suspend the sentence
of imprisonment for such period and on such terms as it
N deems fit.
O (3) The court will have to consider all the circumstances of the
P contempt, including the nature of the order and extent of the
Q breach; whether the contempt was contumacious or
R unintentional; the reasons, motives and state of mind of the
S contemnor; and whether the contemnor appreciates the
T seriousness of the deliberate breach.
U (4) The court will have to consider aggravating and mitigating
V factors, including whether any prejudice is suffered by the
plaintiff; whether the prejudice is capable of being remedied;
whether the contemnor has cooperated and purged the
contempt; and the personal circumstances of the contemnor.

A 60. As regards the principle that a sentence of imprisonment is a
B sanction of last resort, that may sometimes reflect the context in which
C there are other ways of obtaining compliance with the Court's order. In
D typical civil proceedings, the party in contempt may for example be
E punished by being debarred from deploying certain evidence, or from
F prosecuting or defending the claim at all, if the contempt is not purged.
G The nature of the Doxxing Injunction and the breach of it may not be
H exactly analogous, though I acknowledge the preference to avoid a
I sentence of imprisonment if other means of sanction would appear to be
J sufficient and proportionate.

I 61. I also accept as being particularly relevant to the current case
J that there is a difference between today and the pre-internet and social
K media era. That difference is the very easy practical way any individual
L can breach an order of the court and widely disseminate information.
M Like Lord Burnett CJ in *Jon Venables v News Group Newspapers Ltd*
N [2019] EWHC 241 (QB) at §12, I think that the facility to broadcast and
O publish material widely makes these breaches worse rather than less
P serious.

O 62. The Defendant has not sought to justify her contempt by
P saying that she was merely expressing her freedom of expression to
Q criticise certain police officers. That is wise, because such a submission
R would risk being one of aggravation rather than mitigation. As put by
S Sir James Munby P in *Re An Application by Gloucestershire County*
T *Council for the Committal to Prison of Matthew John Newman (No 1)*
U [2015] 1 FLR 1359 at §45, there is a fundamental difference between
V (a) ideas, views, opinions, comments or criticisms, however strongly or
even offensively expressed, and (b) harassment, intimidation, threats or

A menaces. The former is to be safeguarded; the latter can legitimately be
B prevented. I also echo what he said at §46, namely that the freedom of
C speech of those who criticise public officials or those exercising certain
D functions, their right to criticise, is fundamental to any democratic society
E governed by the rule of law. Public officials and those exercising public
F functions must, in the public interest, endure criticism, however strongly
G expressed, unfair and unjustified that criticism may be. But there is no
reason why public officials and those exercising public functions should
have to endure harassment, intimidation, threats or menaces.

H 63. As I indicated in my Ruling of 8 November 2019, rights and
I freedoms do not exist in a vacuum. They come with responsibilities.
J Any person exercising their own rights and freedoms must
K simultaneously have respect for the rights and freedoms of others.
L Freedom of speech does not mean that the use of words is always
M protected, whatever the context and whatever the purpose. Freedom of
N speech certainly does not embrace any right to harass or intimidate,
threaten or menace. Rather, it is the victim of such activities who is
entitled to demand the protection of the law.

O ***G. Similar Cases for Sentencing***

P 64. As Mr Ho submits, given the specific social and legal
Q context in which the Doxxing Injunction was granted, it is not surprising
R that there is no directly applicable sentencing guideline or case precedent
S which could be said to be on all fours with the present application.
T Indeed, this is the first case of enforcement action taken in respect of the
U Doxxing Injunction by way of committal proceedings (though there may
V be others also in train).

A 65. Mr Ho has, however, attempted to identify cases with some
B degree of similarity on the facts. He says that some of them flow from
C the *Venables* case, where the grant of an injunction has generated a
D number of committal applications. Mr Ho referred me to *Attorney*
E *General v Harkins* [2013] EWHC 1455 and *Attorney General v Baines*
F [2013] EWHC 4326. In each of the cases, offending Facebook or
G Twitter account posts had been made in breach of the injunction, and after
H taking into account the mitigating factors (and to some extent, in the
I *Baines* case, some aggravating factors), the court committed the
J defendants to prison for 9 months and 14 months respectively, though
K each sentence was suspended for 15 months.

L 66. In the *Harkins* case, amongst other comments, Lord
M Thomas CJ stated at §§30-31 that the court would take into account the
N very serious nature of publication on social media or otherwise on the
O internet. This is because of the potential of the very widespread use of
P the information that was placed on the internet. Therefore, the conduct
Q of anyone who publishes such information, whether it be on social media
R or elsewhere on the internet, has that very serious consequence. On that
S basis, the court must consider the imposition of a custodial sentence, not
T only to punish for those consequences, but also to deter others.

U 67. In other cases connected with the *Venables* case, other
V persons breaching the relevant injunction were sentenced to custodial
sentences of between 4 and 9 months, and not all of them were
suspended.

68. But there is force in Mr Pang's submissions that the *Venables*
line of cases arises from a different jurisdiction, and may not be

A sufficiently factually similar to provide much assistance to current
B considerations. Certainly, Mr Pang is correct to point out that in the
C *Harkins* case, both defendants knew of the injunction but went ahead with
D the breach as they thought it was worth the risk; in the *Baines* case, the
E defendant responded abusively to warnings of contempt proceedings and
F made clear that it was indeed his intention to harm Venables; and in the
G *Venables* case, again the intention was to publicise as widely as possible
H in the certain knowledge that such conduct was expressly prohibited by
I an injunction, and where one of the defendants was a persistent offender.
J Those factual circumstances do not seem to me to be close to the facts of
K the present case.

I 69. Mr Ho's researches reveal one case in the local context,
J which he says slightly resembles the present situation (though, in Mr Ho's
K submission, is one of less severity). In *Shuchi Singh v Anamika Chhaal*
L (unreported, HCMP 2410/2014, 23 March 2015) DHCJ Kent Yee was
M faced with defendants who had been restrained from publishing
N statements defamatory of the plaintiff, and who had been asked to remove
O existing defamatory statements posted on Facebook. The defendants
P failed to comply with the order for removal, albeit they subsequently
Q showed remorse and the 1st defendant made apologies to the plaintiff.
R Taking into account what he saw as strong personal mitigating factors, the
S judge sentenced the 1st defendant to 21 days' imprisonment, suspended
T for 24 months, and fined the 2nd defendant (who took a passive role)
U HK\$5,000.

S ***H. Suggested Orders***

T 70. For the SJ, Mr Ho submits that the Court should adopt the
U general position of the normal penalty imposed for breaches of injunction
V

A orders, namely a period of imprisonment measured in months. Mr Ho
B submits that the following matters justify an immediate custodial
C sentence against the Defendant:

D (1) The Defendant's act of posting the Facebook Post was
E deliberate and hence contemptuous.

F (2) The impact of doxxing on victims, specifically on PW1 and
G his family members, is severe and long-lasting. The Court
H should send a clear message to the public that such conduct
I is not tolerated in a civilised society. In other words, the
J sentence imposed should have a deterrent effect on would-be
K defendants or contemnors.

L (3) It is fundamental to the rule of law that court orders are to be
M obeyed. Irrespective of one's political stance, one should
N never engage in doxxing activities against other members of
O society, in particular when such an act is in contravention of
P an extant court order. There are proper channels to express
Q one's views, however strongly, in a legitimate and proper
R manner. Vigilantism has no place in Hong Kong.

S (4) The fact that this internet-age information can be
T disseminated very quickly and widely online makes the
U Defendant's breach (by the utilisation of social media) worse
V rather than less serious.

71. But Mr Ho also quite properly asks that the Court should
note, as against the above factors, that the Defendant's breach appears to
be one-off in nature; the Facebook Post is no longer in the public domain;
the Defendant re-posted PW1's personal data found on Facebook, rather
than having initiated the propagation of material herself; and the
Defendant has indicated her intention to admit liability at an early stage.

A 72. For the Defendant, Mr Pang submits that the Court should
B first consider a bind over or a fine, taking into account the circumstances
C of the present case, including:

D (1) the Defendant's early admission of liability and cooperation
E with law enforcement;

F (2) the Defendant's acts were not done with the Doxxing
G Injunction in mind;

H (3) the nature of the breach and the Defendant's culpability;

I (4) the Defendant's background and financial means;

J (5) the fact that the arrest and these proceedings have brought
K home to the Defendant that orders of the Court are to be
L obeyed;

M (6) the Defendant is remorseful and repentant, and as regards
N personal deterrence it is highly unlikely that she would act in
O contempt of Court again;

P (7) as regards general deterrence, the acknowledgement by the
Q Defendant of her liability and her willingness to accept the
R sanction of the Court goes far to encourage observance by
S others towards the Court's order.

T 73. In the alternative, Mr Pang submits that if the Court finds
U imprisonment inevitable, that should be suspended, as that would be
V sufficient to reflect the seriousness of the Defendant's breach
proportionately.

I. The Sentence

74. I start from the proposition that it is indeed fundamental to
the rule of law that court orders are to be obeyed. Such orders are not

A guidelines, and the requirement to obey court orders does not vary
B depending on one's personal or political views, or state of emotion.

C 75. I acknowledge that the Defendant says that she acted as she
D did, without thinking too much about it, and without stopping to think
E about the consequences of her actions. But that is precisely part of the
F problem. It is easy to post something on social media or the internet
G with just a few clicks or keystrokes, but the effects can be, and sometimes
likely will be, far wider and last for far longer.

H 76. The potential for fast and widespread dissemination only
I raises the requirement for carefully considered action, and to have regard
J to the rights and freedoms and legitimate expectations of persons who
K might be affected by that action. This case is typical in identifying that
L the apparently impersonal and distant use of social media and the internet
M has real consequences in the real world, causing real harm – real nuisance,
N real harassment, real anxiety – to real people. It is not very impressive
or very persuasive to state that was not actually intended when it is the
likely and logical consequence of the action.

O 77. As has been previously noted, it is also important to
P recognise the chilling effect on society when many individuals or targeted
Q groups or sectors of the public are intimidated into silence or suppressed
R in expressing their opinions openly and honestly or conducting their
S affairs or pursuing their life in the way they would wish for fear of being
T victimised by doxxing.
U
V

A 78. Those various features, as well as the matters of principle,
B indicate the appropriate starting point in this case is one of an immediate
C custodial sentence, and one perhaps measured in months.

D 79. As to mitigating factors, I take account of the following.
E The Defendant is of good character, and is usually caring and considerate
F to other people (and animals). What she says about herself is
G corroborated by those who have written on her behalf. The offending
H conduct appears to have been a one-off event, out of her general character.
I When confronted, she was quick to cooperate with and be honest with the
police. She surrendered passwords to her Facebook, phone and
computer as soon as asked for them.

J 80. The Facebook Post by the Defendant was a re-posting, and
K she did not initiate the propagation of that material (though I do not lose
L sight of the fact that she also appended to her re-posting an exhortation
M that others should do likewise). At the time, the Doxxing Injunction was
N not at the forefront of her mind, and so it might be said that the Facebook
Post was not contumacious.

O 81. She removed the Facebook Post immediately after the police
P intervention and so, to the extent that she could do so, the Defendant was
Q quick to purge her contempt. The Defendant says that she will be more
R careful about future use of social media and the internet. She has
promised not to re-offend.

S 82. Once these committal proceedings were commenced, the
T Defendant quickly indicated that she did not intend to contest them, and
U would therefore admit liability for her civil contempt of court. Mr Pang
V

A says that the Defendant has chosen to admit liability notwithstanding that
B she might have disputed whether she had notice of the Doxxing Order.

C 83. The Defendant has also fairly and properly accepted
D responsibility for her actions. I accept as genuine her expression of
E remorse, and her intent to apologise sincerely to the Court and those
F affected by her actions. I also accept that the arrest, the potential for
G criminal prosecution (albeit now gone), and these committal proceedings
H have had a deep and sobering effect on the Defendant.

I 84. In the end, after taking into account the circumstances of the
J present case and balancing all matters, I am of the view that the
K appropriate and proportionate sentence would be one of imprisonment,
L but that in the circumstances it should be suspended. That sentence is
M one of 28 days' imprisonment, suspended for 12 months.

N ***J. Costs***

O 85. As Mr Ho submits, the usual order in a successful committal
P procedure is for costs to follow the event and so to be payable by the
Q person found guilty of contempt, and such costs are usually ordered to be
R paid on an indemnity basis. He seeks a summary assessment by
S reference to a statement of costs totalling HK\$358,000, a figure which, as
T Mr Pang says, seems high when the Defendant has made clear from an
U early stage that she will admit liability.

V 86. In this context, it seems to me that it is relevant that the SJ is
exercising a public function in these proceedings. These are not
proceedings between two private individuals. But perhaps that cuts both
ways. On one side, it might be wondered why the general public should

A bear any cost of bringing enforcement proceedings relating to a civil
B contempt of an order specifically designed to protect and benefit the
C general public. On the other side, the SJ and her Department are of
D course funded to carry out public roles in general.

E 87. As Mr Pang points out, the Defendant is of very limited
F financial means. As Mr Pang also says, that is so even if one were to
G take the Defendant together with her husband. But, where there is no
H suggestion that the husband has any culpability in the matters giving rise
I to these proceedings, it might be asked why he should bear any liability
J for the costs of them (however much he might otherwise be supporting
K his wife). In any event, in practical terms, the Defendant simply cannot
L afford to pay costs on an indemnity basis. There is no reason to doubt
M what she says as to her assets, even though she has not exhibited any
N documents. The best that might be achievable is for the Defendant to
O contribute to costs, using some part of her little savings of not more than
P HK\$40,000.

Q 88. Mr Pang says that a contribution was the approach adopted
R by Hartmann JA (when sitting as an additional Judge of the Court of First
S Instance) in *Secretary for Justice v Ocean Technology Limited*
T (unreported, HCMP 71/2008, 24 November 2009). There, Hartmann JA
U identified that the request for payment of costs on an indemnity basis
V cannot simply be dismissed. He noted that if the costs are due, it may be
said that it is irrelevant that, on any common sense approach, the amount
of money involved is way beyond anything that the respondent is capable
of paying. Nevertheless, recognising that in civil contempt proceedings
costs almost always follow the event and are ordered almost always on an
indemnity basis, he felt the circumstances of the particular case should

A lead to an order for payment of the contribution only. It is true that he
B ordered a contribution from several respondents, but that does not change
C the underlying rationale.

D 89. I also note that in some of the English cases, the Attorney
E General made no application for costs, it being clear that the respondents
F would not be in a position to meet any order.

G 90. Approaching costs by requiring payment of a contribution
H only, rather than on a full indemnity basis, may in appropriate
I circumstances also reflect the appropriate degree of proportionality when
J the penalty and costs can be regarded as composite elements of the
K proceedings' impact on a defendant. Whilst other cases will fall to be
L determined on their own particular facts and circumstances, and this is
not intended to set a precedent, I think such an approach is apposite to
this case.

M 91. In the circumstances, and in the exercise of my discretion as
N to costs, I order that the Defendant must contribute the sum of
HK\$30,000 for the Secretary for Justice's costs in these proceedings.

O
P ***K. Postscript***

Q 92. With the benefit of written skeleton submissions from
R Counsel, I have had the opportunity to give this matter anxious
S consideration in advance of the hearing, as well as during the argument at
the hearing.

T 93. By the sentence I have passed, I have accepted that the
U particular breach for which the Defendant has admitted liability for civil
V

A contempt was not at the most serious end of potential breaches, and that
B there is some strong mitigation in her case, including her good character,
C the rapid removal of the offending post, the full and early cooperation
D with enforcement authorities, and her genuine remorse. But, if such
E doxxing activities are continued in breach of the Court’s order, and if
F those engaging in such activity are brought before the Court – particularly
G if the offending activity takes place after this Decision – those persons
H may not be so fortunate in avoiding an immediate custodial sentence.

I
J (Russell Coleman)
K Judge of the Court of First Instance
L High Court

M Mr Martin Ho, instructed by Department of Justice, for the plaintiff

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Mr Robert Pang, SC and Mr Sam Chow, instructed by Ho Tse Wai &
Partners, for the defendant