

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

MISCELLANEOUS PROCEEDINGS NO. 664 OF 2022

IN THE MATTER of an application by the Secretary
for Justice against WONG KWOK LEUNG (王國樑)
for an Order of Committal

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

BETWEEN

SECRETARY FOR JUSTICE

Plaintiff

and

WONG KWOK LEUNG (黃國樑)

Defendant

Before: Hon Coleman J in Court

Date of Hearing: 18 July 2023

Date of Decision: 18 July 2023

Date of Reasons for Decision: 8 August 2023

R E A S O N S F O R
D E C I S I O N

A **A. Introduction** A

B 1. This is one of the contempt of court cases arising from the
C prohibited disclosure of the personal data of a police officer (and his
D family) involved in what is generally known as the “Sai Wan Ho
E Incident”.

F 2. The disclosure is prohibited by (1) an injunction (“Police
G Doxxing Injunction”) originally made by this Court on 8 November 2019
H and last amended on 11 December 2019 in HCA 1957/2019, and (b) an
I anonymity order (“Anonymity Order”) granted by the Principal
J Magistrate on 2 June 2020 in WKCC 1553/2020.

K 3. These proceedings are brought with leave for committal
L granted by me on 24 November 2022: see [2023] 1 HKLRD 93. The
M Defendant indicated that he did not intend to contest liability for having
N been in contempt of court and the matter was fixed for hearing for
O mitigation and sentence on 18 July 2023.

P 4. At the hearing, the Plaintiff (“SJ”) was represented by
Q Mr Martin Ho of Counsel. The Defendant was represented by
R Ms Michelle LY Wong of Counsel. At the conclusion of the hearing, I
S sentenced the Defendant to 28 days’ imprisonment suspended for
T 12 months and reserved the reasons for decision to be handed down later.

U 5. These are the Reasons for Decision. V

B. The Police Doxxing Injunction and the Anonymity Order

6. The terms of the Police Doxxing Injunction had been set out by me in numerous previous decisions. Suffice it to say that it was an order made in HCA 1957/2019 to restrain persons from doing any of the following acts:

- (1) using, publishing, communicating or disclosing without consent to any other person the personal data, intended or likely to intimidate, molest, harass, threaten, pester or interfere with any police officers or their family members;
- (2) intimidating, molesting, harassing, threatening, pestering or interfering with any police officers and their family members; and
- (3) assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorising others to commit any of the above acts or participate in any of the above acts.

7. The making of the Police Doxxing Injunction was widely reported in the local media. Further, service of it was affected by way of substituted service by publishing copies of it on the webpages of the Police as well as that of the Government of the HKSAR.

8. The Anonymity Order was made in underlying criminal proceedings, WKCC 1553/2020, arising from the Sai Wan Ho Incident in which a police officer (PW1) fired three live rounds with one shot hitting a masked protester. The Anonymity Order prohibited all persons from publishing or reporting any matters that may lead the public to identify PW1, including his name and that of his wife and daughters, their photos, their residential address and their work and school addresses. The

A Anonymity Order made plain that breach of it may render the person in
B breach liable for contempt of court.

C ***C. The Facts of Contempt***

D 9. During a cyber patrol by the Police, a Facebook post (“Post”)
E was found to be published at 12:14pm on 11 November 2019. The Post
F contained the following personal data of PW1, his wife and his elder
G daughter:

- H (1) the full name of PW1 in Chinese, his UI number, his
I residential address and a link to his Facebook profile;
J (2) the mobile number of PW1’s wife; and
K (3) the name, mobile number, Instagram account, school, and
L class of PW1’s elder daughter and a link to her Facebook
M profile.

N 10. It is also stated in the Post “唔好傳！千祈唔好傳”
O (translated as “Do not spread around! Definitely do not spread around!”).

P 11. The status of the Post, as shown by the “Globe” icon, was
Q “public”, meaning that it was publicly accessible by anyone with an
R Internet connection.

S 12. On 9 January 2020, the Defendant was arrested for the
T offence of disclosing personal data without consent from data users in
U contravention of the Personal Data (Privacy) Ordinance Cap 486. Upon
V being cautioned at the scene, he admitted ownership of the relevant
Facebook account but claimed to have forgotten whether he made the
Post. In a video recorded interview (“VRI”) conducted in the same day,

A he also admitted that he was the only person that would use his Facebook
B account and only he knew the password of the account. But he
C maintained that he had forgotten whether he had made the Post.

D 13. The Defendant also provided to the police the passcode to
E access his mobile phone. The mobile phone was logged in with the
F Defendant's Facebook account but by that time the Post had already been
G deleted and the police could not find the Post in the account.

H ***D. Effect of the Doxxing***

I 14. The Post was, intentionally or otherwise, part of a doxxing
J campaign against PW1, which caused immense stress and anxiety to his
K whole family.

L 15. In his evidence, PW1 has: (1) confirmed the accuracy of the
M personal data disclosed; (2) confirmed that neither he nor his family had
N consented to that personal data being so disclosed; (3) stated that, as a
O result of the doxxing campaign conducted against him and his family, his
P and his family's emotional well-being had been severely impacted, to the
Q extent that they had to move out of their home and change their telephone
R numbers, and his two daughters had to change school.

S ***E. Sentencing Principles***

T 16. In a number of previous decisions, I have set out the
U sentencing principles for breaches of the Police Doxxing Injunction: see,
V for example *SJ v Chan Oi Yau Riyo* [2020] 3 HKLRD 494 at §§54-63; *SJ v Cheng Lai King* [2020] 5 HKLRD 356 at §§64-72; and *SJ v Chan Kin Chung* [2021] 1 HKLRD 563 at §§38-45.

17. A brief summary of these principles can be repeated as follows:

- (1) The prime consideration in sentencing is to demonstrate to litigants that orders of the court are to be obeyed. Contempt of court orders is a serious matter.
- (2) The imposition of the penalty requires a balance between (a) the strong public interest in ensuring that orders of court will not be flouted and (b) 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 an immediate custodial sentence, and one perhaps measured in months.
- (4) Nevertheless, imprisonment is ordinarily regarded as a sanction of last resort, and any custodial term should be as short as possible and consistent with the circumstances of the case.
- (5) In typical civil proceedings, the party in contempt may be punished through procedural steps within the action, if the contempt is not purged. However, the nature of the Police Doxxing Injunction and the breach of it are not exactly analogous (though the preference can be noted to avoid a sentence of imprisonment of other means of sanction would appear to be sufficient and proportionate).
- (6) A consideration of the particular circumstances will require regard to both aggravating factors and mitigating factors, including whether any prejudice suffered by the plaintiff, whether the prejudice is capable of being remedied, whether

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B the contemnor has cooperated and purged the contempt, as
C well as the personal circumstances of the contemnor.

D (7) The facility afforded by the internet and social media to
E broadcast and publish material widely makes breaches
F involving such actions worse rather than less serious.

G (8) The fact that the person in contempt is in a position of
H influence and is a person to whom others may look as an
I example is an aggravating factor.

J 18. I also repeat the point made that rights and freedoms do not
K exist in a vacuum. They come with responsibilities. Any person
L claiming to exercise their own rights and freedoms must simultaneously
M have respect for the rights and freedoms of others. In order to do that,
N the person must apply his or her mind to affording that respect.

O 19. Further, I have previously noted that the breach of the
P Anonymity Order involves a criminal contempt of court, and is a serious
Q interference with the due administration of justice.

R 20. There can be no doubt, therefore, that the appropriate
S starting point for the Defendant's contempt is one of an immediate
T custodial sentence, perhaps measured in months.

U 21. It is also relevant to consider the impact of delay on the
V appropriate sentence to be passed. This was a topic explored by me in
SJ v Wong Chi Fung [2023] HKCFI 1023 at §§47-61.

22. In this case, Mr Ho on behalf of the SJ has noted that there is
no logical connection between the time lapsed and the passing of a more

lenient sentence. This is because (1) whilst the delay is unfortunate, the application cannot be said to be oppressive to the Defendant or otherwise constitute an abuse of court process, given the serious nature of the contempt and the fact that the Defendant does not contest liability; and (2) there is nothing to suggest that the Defendant has in some way been hampered in his efforts to respond to these proceedings, not least when he admits liability for the contempt.

23. I will return to the impact of the delay, in my analysis below.

F. SJ's Comments on Appropriate Sentence

24. In his submissions, Mr Ho has sought to highlight the following matters:

- (1) The Defendant could not be said to have exhibited any genuine remorse: (a) he did not respond to these proceedings until 12 April 2023 which necessitated this case to be adjourned for mitigation rather than being resolved at the hearing originally fixed for 17 April 2023; (b) at the scene of arrest and cautioned, he said he had forgotten whether he had made the Post which is unlikely to be truthful.
- (2) Connected to the previous point, Mr Ho said the Court should mark its disapproval of the Defendant's giving untruthful accounts during Police investigation.
- (3) Extensive personal data of PW1 and his family members were disclosed, including that of a child being PW1's elder daughter.
- (4) As the Court had previously observed, by the very nature of the internet and social media, personal data once publicly

revealed will almost certainly remain forever publicly available even if the original point of disclosure is subsequently removed. The Defendant cannot point to that the Post was short-lived.

(5) The Court should send a clear message to the public that such conduct is not to be tolerated in a civilised society. The sentence imposed should have a deterrent effect on would-be-contemnors.

25. I had those points well in mind and weighed them with other points as seemed to me to be appropriate.

G Defendant's Evidence and Mitigation

26. In his affirmation, the Defendant explained his personal and family background, and said he regretted very much the mistake he made, being the making of the Post.

27. The Defendant is a single man, age 34, and is apparently from a humble background. He was educated up to Form 5 and thereafter has been working till now. Except in the first two or three years after graduation when he worked as a warehouse keeper, he has been working as driver since. At the time when the contempt was committed, he was a bus driver. Since April 2023, he has been working as a part-time taxi driver and a part-time truck driver.

28. He has no criminal record. He has only one record of violating a traffic regulation some five years ago, when he had to run a red light to avoid an abrupt stop which might cause injury to the passengers on the bus he drove.

A 29. The Defendant currently resides in a public housing estate
B with his father (age 69) and his mother (age 68). He earns about
C HK\$22,000 per month. Every month he would contribute half of his
D salary, i.e. HK\$11,000, towards family expenses and his mother's medical
E expenses. His mother suffers from various chronic diseases and breast
F cancer. The other half of his monthly salary goes towards his personal
G expenses (including the costs of driving a taxi) and helping one of his
H brothers who resides in another public housing unit and is currently in
financial difficulties. The Defendant also helps with household chores
and accompanies his mother to attend various medical appointments.

I 30. The Defendant's mother, brother, former colleagues and
J friends have written mitigation letters for the Defendant. The mother
K describes the Defendant as a caring son, and sets out his various
L contributions to the family. The brother describes him as a kind hearted,
M hard-working, and dutiful man, who has been the one amongst the three
N children to shoulder the responsibility of taking care of their parents, both
in terms of finance and daily care. These observations are echoed by his
colleagues and friends.

O 31. On 11 November 2019, the Defendant was on duty as a bus
P driver. He worked from early 6.45am to 8.45pm, with a 3 hours break in
Q the afternoon. He went home during the break as he usually would.
R The Post was made during the afternoon break. He was surfing the
S internet on his mobile phone for relaxing. He came across the content
T which he then reposted on his Facebook. He said he did it without much
U thought. He was already mentally drained from the high level of
V concentration required for driving a bus. He held no political views
towards the ongoing social unrest or the Sai Wan Ho Incident.

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32. But he was later reminded by a friend that his Post might be in breach of the Police Doxxing Injunction and only then he realized his mistake. He immediately deleted the Post. He had forgotten when he deleted it but it was before the arrest on 9 January 2020.

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33. The Defendant accepts that he was not fully frank with the police upon arrest – referring to his claim that he had forgotten if he had made the Post. The Defendant was in the middle of his work when arrested and, as he explained by way of affidavit evidence, he worried about the grave consequences that would fall onto him and his family at the time.

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34. Against such factual circumstances, Ms Wong put forward the following mitigation factors:

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- (1) The breach was not deliberate. (I think Ms Wong was referring to the fact that the Defendant said he made the Post without much thought.)
 - (2) The Defendant has learnt a lesson on the fast dissemination and far reaching consequence of a mindless post made on social media. He now understands that he must always be cautious and responsible in receiving and sharing information in the virtual domain.
 - (3) The Defendant did not initiate the propagation of the materials. He reposted the exact content he had received.
 - (4) Whilst the Post was set to be “public”, the Defendant only had 232 Facebook friends at the time and it can be assumed that there was little attraction drawn by the Post.

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- (5) The Defendant immediately deleted the Post upon being reminded by this friend.
- (6) The Defendant is of good character and is deeply committed to his family. The contempt was out of his character and was a one-off event.
- (7) Whilst he was not being full and frank with the Police upon arrest, this does not necessarily entail a lack of genuine remorse. Elsewhere in the written submissions, Ms Wong pointed out that the Defendant was generally cooperative with the Police, including providing the passcode to his phone on the day of arrest.
- (8) The Defendant admitted liability at an early stage. As a layman with limited education, he did not know what to do upon being served with the relevant court documents on 23 February 2023. He eventually sought legal representation as the originally hearing scheduled for 17 April 2023 was approaching.
- (9) He was arrested on 9 January 2020, more than 3 years ago, for a potential criminal offence. He was then released on bail, but was required to report to the police once a month for half a year before he was unconditionally released. It was only upon the receipt of court documents on 23 February 2023 and subsequent legal advice that he came to realise that the SJ would pursue the matter in the form of civil proceedings. As the Court observed in previous decisions, the renewed focus on the matter would have caused further stress to the Defendant and could be accounted for in mitigation.
- (10) The Defendant is the primary and only capable carer of his mother, and he is the breadwinner of the family. An

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immediate custodial sentence would result in the mother's needs being unattended to, and his financial contribution to the family would be interrupted, causing his parents much difficulty in their lives.

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H. Decision on Sentence

35. I accept that the Defendant has previously been a man of good character and a contributing member to society before the breach, and has continued to act as such in the three years after the breach. I accept that the breach was most likely a one-off event, which does not otherwise reflect his general character.

36. The breach was not the most serious of its kind. The Defendant was not the author of the original post. He is not a public figure and his Facebook account with 200 odd friends would, presumably, have attracted little attention. There is no consequent aggravating factor as has existed in some other cases. Whilst the exact date he removed the Post was unknown, I accept that the Applicant had removed it on his own initiative before he was arrested. Where the Defendant is now fully aware that he has to be mindful and take a more responsible approach in using his social media account, I accept that the risk of future similar acts of contempt of court is relatively low. This is also supported by his good record as consistently maintained in the past three years since January 2020.

37. I also take into account that the Defendant was initially arrested for a personal data offence arising from the same incident, which criminal investigation was not further pursued after the Defendant was put on bail for 6 months. It is understandable that the Defendant, a

A layman with moderate education, would think that the matter arising from
B the Post had been brought to a close and that he could resume his normal
C life without having to worry about going to prison. The service of the
D courts documents on him more than 2 years later must have put stress on
E his otherwise settled life, which I accept could be taken as a mitigation
F factor.

F 38. On the other hand, whilst noting that the Applicant was
G broadly cooperative with the police when he was arrested, claiming that
H he had forgotten whether he actually made the offending Post was less
I than impressive, and I think simply an untruth. That lessens the
J mitigating effect of the earlier cooperation.

J 39. As to the feature of delay, I have accepted that there was no
K deliberate delay by the SJ in this case. But, where the SJ has collected
L most if not all information needed within two months or so after the
M breach but only applied for leave for committal in May 2022, again I do
N think there was an inordinate delay in bringing these proceedings. The
O appropriate way to reflect the impact of delay is within the sentence, and
P its proportionality. Further, as in some other cases, the passage of time
Q has allowed society to move on, and given time for the Defendant to
R demonstrate a return to behaviour more in line with his previous good
S character.

R 40. Bearing in mind all of the above features and factors, all of
S which I weighed and balanced in the case, it seemed to me that the
T appropriate and proportionate penalty was to impose 28 days'
U imprisonment, suspended for 12 months.
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A 41. As to costs, it was obviously correct that the Defendant was
B not in a position to meet an indemnity costs order. I have observed in
C some previous decisions that making a costs order a defendant cannot
D afford risks being disproportionate, when the penalty and costs are
E considered together. In this case, Ms Wong invited me to order a
contribution to the SJ's costs.

F 42. Having considered the Defendant's financial means in light
G of all the other factors, I ordered the Defendant to contribute HK\$25,000
H to the SJ's costs.

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

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

N Mr Michelle L.Y. Wong, instructed by K.W. Luk & Co., for the defendant
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