

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

MISCELLANEOUS PROCEEDINGS NO. 744 OF 2020

IN THE MATTER of an application on behalf of the
Secretary for Justice against CHAN Kin Chung (陳健聰)
for an Order of Committal

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

BETWEEN

SECRETARY FOR JUSTICE

Plaintiff

and

CHAN KIN CHUNG (陳健聰)

Defendant

Before: Hon Coleman J in Court

Date of Hearing: 28 December 2020

Date of Decision: 28 December 2020

DECISION

A **A. Introduction**

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

E 2. The contempt arose when on 11 November 2019 the
F Defendant posted on his Facebook account a series of posts (“Facebook
G Posts”) containing the personal data of a particular police constable
H (“PW1”) and that of his family members. That conduct was in clear
I contravention of the injunction order made on 25 October 2019, as
J amended and re-amended on 28 and 31 October 2019, subsequently
K continued (though slightly varied) by me on 8 November 2019 together
L (“Doxxing Injunction”). The Doxxing Injunction was made in
M HCA 1957/2019 (“underlying action”).

N 3. The proximity of the acts constituting the contempt to the
O date of the continuation of the Doxxing Order, and the significant and
P widespread publicity that followed, is marked.

Q 4. The committal proceedings have been brought by the
R Secretary for Justice (“SJ”) by way of originating summons dated 9 June
S 2020, with prior leave granted by me on 5 June 2020. In support of the
T application, reliance is placed on the affirmation of PW1, as well as the
U affirmations/affidavits of other officers (including PW2 and PW3)
V involved in investigating the Facebook Posts. There are also further
affirmations to show the procedural history and service of documents on
the Defendant.

A 5. The Defendant has himself filed an affirmation dated
B 13 November 2020, to which he has also exhibited a handwritten letter
C from him to the Court, and various mitigation letters from other persons.
D Earlier, on 25 September 2020, the Defendant's solicitors had by letter
E stated that the Defendant did not intend to contest the proceedings and so
would admit liability.

F 6. At this hearing, the Secretary for Justice was represented by
G Counsel, Mr Martin Ho, and the Defendant was represented by Counsel,
H Mr Steven Kwan.

I ***B. Agreed Facts***

J 7. On 4 December 2020, the parties (through their solicitors)
K jointly signed and filed a Statement of Admitted Facts. That document
L helpfully encapsulates the relevant background material, and in particular
M the material facts relied upon by the SJ in these committal proceedings
N that are not disputed by the Defendant. Some of its content can usefully
be taken into this Decision. I accept those facts as stated and agreed
between the parties.

O 8. I attach as Annex 1 to this Decision the history of the making
P of the Doxxing Injunction in the underlying action. The acts comprising
Q the contempt in this case took place after the matters detailed in §§1-10 of
Annex 1.

R 9. On the morning of 11 November 2019, PW1 used his
S firearm during a public order event in Sai Wan Ho, and a 21-year old
T person was injured by one shot.

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A 10. Upon Police investigation, four doxxing messages – being
B the Facebook Posts – were found posted on the Defendant’s Facebook
C account. Although the first post was a photograph of PW1, it also had
D an added comment from the Defendant (see below). The Facebook
E Posts contained PW1’s Chinese name, Police unique identification
F number, residential address, Facebook address, mobile phone number,
G photo, his involvement in the affairs at his daughters’ school, his wife’s
H mobile phone number, the names of PW1’s two daughters, and the mobile
I phone number, Instagram ID and Facebook address of and school and
J class attended by one of PW1’s daughters. All of the data disclosed in
K the Facebook Posts were accurate personal data of PW1.

L 11. One of the Facebook Posts included the words “善惡到頭終
M 有報” (English translation: “good and evil will have their just rewards”);
N another one the words “西灣河殺人犯” (English translation: “the Sai
O Wan Ho killer”); and another one the words “開真槍冇嘛? 有排同你玩
P 香港警察 Hong Kong Police” (English translation: “Firing a real gun, eh?
Q Will take (their) time playing with you, the Hong Kong Police, *Hong
R Kong Police*”).

S 12. The time of the four Facebook Posts, all posted on
T 11 November 2019, were respectively 8:48am, 9:06am, 9:25am and
U 10:15am. The status of the Facebook Posts, as shown by a “Globe” icon
V underneath the account name and next to the timestamps, was “Public”
(ie. each of the Facebook Posts was publicly accessible by anyone with
connection to the internet).

A 13. The person making the Facebook Posts was subsequently
B identified by Police as being the Defendant.

C 14. On the morning of 28 November 2019, PW2 and PW3 and
D other police officers approached the Defendant at his business premises.
E PW3 identified himself and showed his warrant card and a search warrant
F to the Defendant. He explained the content of the search warrant to the
G Defendant and informed the Defendant that he was investigating into a
H case of “doing an act with a seditious intention”. PW3 asked the
I Defendant to produce his identification document, and the Defendant
J complied.

K 15. The Defendant was arrested and cautioned. Under caution,
L the Defendant admitted that he was the “Michael Chan” on Facebook,
M that he had used the account to post messages, but he had already deleted
N them a few days later as he was overwhelmed by anger at the time of
O posting. This was recorded in PW3’s notebook and was signed by the
P Defendant.

Q 16. PW3 searched the Defendant and seized an iPhone 11 Pro
R from the Defendant. The Defendant admitted that the iPhone belonged
S to him, and he voluntarily unlocked the iPhone with his passcode. PW2
T examined the iPhone at the scene and found a Facebook application
U installed on it, logged into the same account of “Michael Chan” which
V posted the Facebook Posts.

17. In a subsequent video-recorded interview conducted at the
Chai Wan Police Station on the afternoon of 28 November 2019, the
Defendant stated under caution, amongst other things, the following:

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- (1) his Facebook account name was “Michael Chan”;
- (2) he was the owner and sole user of the Facebook account, and he was the only person who knew the login password for the Facebook account;
- (3) he used his iPhone 11 Pro to log into the Facebook account and no other account;
- (4) on 11 November 2019, after reading the news about PW1’s shooting incident, he was filled with anger and hence he copied the personal data of PW1 and his family members somewhere from the internet, and posted them on his own Facebook page “Michael Chan” as the Facebook Posts;
- (5) by “開真槍㗎嘛？有排同你玩香港警察 Hong Kong Police” (English translation: “Will take time playing with you Hong Kong Police, *Hong Kong Police*”) in the Facebook Post at 8:48am, he meant he would continue to post photos of the Police in the future;
- (6) the Facebook Posts remained on the Facebook page “Michael Chan” for a few days until his alleged deletion;
- (7) he learned about PW1 only from the news and he did not know PW1’s family members;
- (8) he had not obtained the consent of PW1 or his family members to post their personal data and he believed that they would not have given such consent;
- (9) he believed that a person whose personal data is posted on the internet without his consent would be worried about his or his family members’ safety; and
- (10) he was self-employed, and he posted the Facebook Posts not for the purpose of performing any news activity.

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A 18. Though not in the agreed facts, I also note that the Facebook
B Posts contained a description of PW1 as “cockroach”. Further, the
C description of PW1 as “西灣河殺人犯” (English translation: “the Sai
D Wan Ho killer”) was handwritten, though it is not clear who is the author
E of the handwritten note. In his evidence filed for this hearing, the
F Defendant says that he simply forwarded messages which he found from
G the Dadfindboy channel. As is clear from my previous decisions, that is
H a Telegram channel set up in part specifically for the doxxing of police
I officers.

H ***C. Effect of the Doxxing***

I 19. In his affirmation, and by reference to a statement made on
J 18 March 2020, PW1 has described how he and his family have been
K subject to abuse after he was doxxed.

L 20. In summary only – which summary should not be taken as in
M any way making light of his and his family’s suffering – PW1 identifies
N that:

- O (1) he has feared that the safety of himself and his family would
P be under threat, and that his family would be harassed;
Q (2) he and his family have moved away from the address which
R had been made public;
S (3) they have nevertheless remained worried about being
T attacked in public places;
U (4) his two daughters have been distanced and bullied by their
V schoolmates;
 (5) the doxxing incident has had very negative impact on the
 family’s emotion, including causing insomnia at night;

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- (6) there have been continuous harassing calls made to their phone numbers;
- (7) calls have also been received from different banks and money lending companies alleging that PW1 had applied for loans and requesting provision of documents, when PW1 had not in fact applied for any loan;
- (8) PW1 has stopped using his prior phone number due to the constant malicious harassment.

21. In his written submissions, Mr Kwan points out that the identification of the impact of doxxing on PW1 and his family is restricted to the statement given by him on 18 March 2020. Whilst recognising that prejudice suffered by PW1 and his family is a highly relevant consideration in the sentencing exercise, Mr Kwan points out that there is no further evidence that the adverse impact on him and his family exacerbated after March 2020. Insofar as that submission seeks to suggest that any impact was effectively over by, or at least not exacerbated after, March 2020, I think that is not a good point.

D. Defendant's Evidence

22. As summarised by Mr Kwan, the personal background matters of the Defendant as set out in his affirmation are as follows:

- (1) the Defendant is an ordinary citizen, and is not in a position of influence (by which I assume it is meant that he has no public or political appointment or other position of influence);
- (2) he has lived a law-abiding life, and the breach of the Doxxing Injunction would be a smear on his life;

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- (3) he was born, raised and educated in Hong Kong, and aged 27 at the time of the breach;
- (4) in 2015, he started his own small business selling Thai Bhudda amulets, from a shop in Sai Wan Ho. In 2016, the shop was moved to another location in Sai Wan Ho;
- (5) he has always strived to promote Buddhist values through his business;
- (6) in 2018, his business was suspended because of a flare-up of eczema. The plan to relaunch the business was delayed by the social unrest in 2019;
- (7) he currently relies on savings derived from the time when the business was still running;
- (8) he does not own any landed property in Hong Kong, and his saving stood at HK\$20,000 as of mid-November 2020;
- (9) his wife, who used to work as a sales-person, has been recently out of a job.

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23. As to the circumstances leading to the breach of the Doxxing Injunction, the Defendant says he was reading the news feed on Facebook on 11 November 2019, when his attention was drawn to the widely-reported news that a traffic police officer (PW1) had opened fire striking a person the Defendant describes as “an unarmed protester”. The Defendant says he was particularly upset and emotional about this, since the incident took place in his neighbourhood and he was sympathetic to the shot protester who was still in his early 20s.

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24. During last year, there was much news regarding public order events in Hong Kong. Like many others in Hong Kong, the Defendant closely followed the news and subscribed to many Telegram

A Channels providing such news, including the Dadfindboy channel –
B though the Defendant says that, although he subscribed to that channel,
C he seldom read the information on it and had muted it to prevent constant
D notifications from the channel.

E 25. Incidentally, it might conveniently be noted here that: (1) I
F do not think the Dadfindboy channel is properly described as a news
G channel, when one of its primary purposes appears to have been to
H facilitate and encourage the doxxing of police officers; and (2) the
I Defendant’s statement that he closely followed the news means that he
J cannot have failed to have seen the widespread publicity following the
K making of the Doxxing Injunction (and the fully-reasoned decision for
L doing so) just two or three days beforehand.

M 26. After the shooting incident on the morning of 11 November
N 2019, the Defendant saw on his Telegram chats a lot of messages in the
O Dadfindboy channel, and “out of curiosity” decided to click into it and
P scrolled through the messages showing the personal data of PW1 posted
Q by other people. He says that “without a second thought” at around
R 8:48am he reposted a photograph of PW1 and made the personal
S comment “開真槍㗎嘛? 有排同你玩香港警察 Hong Kong Police”
T (English translation: “Firing a real gun, eh? Will take time playing with
U you, the Hong Kong Police, *Hong Kong police*”) on his own Facebook
V page. He did so purely because he was so upset and overwhelmed by
anger at that time. He says in his affirmation that he did not intend to
incite any violence against PW1.

27. Subsequently, at 9:06am, 9:25am and 10:25am, the
Defendant shared three posts copied from the channel onto his own

A Facebook page. The captions were simply copied from the posts.
B Again, he says, he was overwhelmed by anger at that time and without
C pausing to think copied the posts and re-posted them on his own
D Facebook page.

E 28. The Defendant also says that when he made the Facebook
F Posts, the Doxxing Injunction “was not in the forefront” of his mind.
G He did not put the acts together, but had he thought hard and calm enough
H to realise that his act would amount to a breach of the Doxxing Injunction,
I he certainly would not have done it. The Defendant says he has the
J utmost respect for the Courts of Hong Kong, and would not dream of
K deliberately breaching an order of the Court.

L 29. The Defendant also says that he did not realise the posts on
M his Facebook page were open to the public. Rather, he always thought
N his Facebook Posts were only accessible to his personal Facebook friends,
O at the time numbering around 600 (around 400 of whom were friends
P from Thailand, or clients, or people in the same business as him). So, he
Q says, he did not intend to share his posts publicly to the public at large.

R 30. After a few days, he calmed down and started to realise he
S had done something out of line and wrong. Therefore, on the third day
T after the post, he deleted all four offending posts from his Facebook page.

U 31. As indicated above, the Defendant exhibited to the
V affirmation a letter to convey his sincere apology to the Court. The
letter is dated 27 September 2020. Some of that letter essentially
restates some of the content of his affirmation. However, it seems to me
that there are some potentially significant differences or inconsistencies

A between the two documents. In the letter, the Defendant suggests that
B he did not pay attention to the news related to the Doxxing Injunction,
C and that it was not until he was arrested that he learned from the Police
D that there is such an injunction. But, in the affirmation, he says that the
E injunction was not at the forefront of his mind (and therefore, impliedly at
F least, did know about it), but had failed to make the connection between
G his own acts and the injunction. As Mr Kwan says, the affirmation must
H be the version accepted by the Court.

32. The letter emphasises that he has co-operated with the Police
and admitted his mistake, and had earlier removed the Facebook Posts
because he realised that publishing personal information of anyone is not
correct. He says that after his arrest, he reflected and felt sorry for the
mistake he made, and he promises never to commit any crimes again.
He says he is a good citizen, and sticks to his moral and ethical principles
and values. He believes in Buddhism, promoting it through his business.
Indeed he says that, other than to earn a living, he founded the shop to
promote Buddhist principles of kindness and the elimination of hatred
between people. That idea is, of course, at odds with his own actions
which comprise the breach of the Doxxing Injunction.

33. The letter goes on to admit that the Defendant acted on
impulse, and did not consider the consequences of his actions, which
were made out of anger and without thinking. He expresses
understanding that there is freedom of speech in society, but that it is
wrong to infringe other people's privacy. He therefore offers his deepest
apologies to any affected persons.

A 34. He has experienced much pressure as a result of the legal
B procedures and long wait, making him feel gloomy and deeply regretting
C his mistake. He says he felt like he was “already imprisoned”, but
D understands that he has to take responsibility for his mistake. Hence his
E plea of guilty after taking legal advice. The letter asks for the Defendant
to be given a chance and for the Court’s leniency.

F 35. The letters of support exhibited to the affirmation come from
G his father, a good friend and client and a friend and former classmate.
H Each of them praises his character, including his integrity and sincerity.
I Each asserts that the mistake was caused by the social environment at the
J time, and that the clearer thinking later led to the deletion of the Facebook
K Posts. One says the deletion was to minimise the bad consequence that
L might possibly happen.

M 36. The Defendant also explains in his affirmation why he did
N not admit liability at the earliest opportunity. He received the
O originating summons and accompanying documents on 10 June 2020, and
P on 23 June 2020 gave notice of his intention to defend merely to preserve
Q his position. On the same day, he applied for Legal Aid. As the Legal
R Aid application took some time, the originally fixed hearing for
S 10 September 2020 was adjourned to a later date. Notification of refusal
T of Legal Aid was given to the Defendant on 23 September 2020.
U Immediately thereafter, he sought legal advice from his current solicitors,
V and from Counsel, following which he decided to admit liability. That
was indicated by his solicitors’ letter dated 25 September 2020. In those
circumstances, the Defendant asks that notwithstanding the time taken,
essentially to obtain legal advice, his admission should be regarded as “an

early admission and [his] sincere wish to save Court's time and resources".

37. In light of the earlier cooperation with the Police, and the admissions made in the Police interview, I do not take the time taken for the Defendant to provide a formal admission of liability in these proceedings against him.

E. Applicable Principles on Sentencing

38. In my previous decisions of *Secretary for Justice v Chan Oi Yau Riyo* [2020] 3 HKLRD 494 and *Secretary for Justice v Cheng Lai King* [2020] HKCFI 2687, I set out the appropriate principles. The gist of those principles can be repeated here.

39. 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. 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.

40. 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.

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- (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 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, and any custodial term should be as short as possible and consistent with the circumstances of the case.
- (7) The court has an absolute discretion to suspend the sentence of imprisonment for such period and on such terms as it deems fit.

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(8) Where the conclusion is reached that the contempt was not deliberate or not contumelious, it would be only in very rare circumstances that a sentence of imprisonment would be appropriate.

41. Encompassed within the above principles are the factors that the Court should take into account when sentencing for civil contempt the degree of culpability (including considering whether the contempt was contumacious or unintentional), the reasons and motives and state of mind of the contemnor as well as whether the contempt has been purged. Those factors can also be found referenced in the case of *Crystal Mews Ltd v Metterick* [2006] EWHC 3087 (Ch), to which Mr Kwan has drawn my attention.

42. 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 do so at the risk of losing their liberty for being in contempt of court.

43. 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 case was granted, by the court only after careful consideration of the evidence and the applicable law and arguments advanced. If anyone suggests that the court has made an error in

A granting the injunction, there is the possibility of an appeal, or of a
B variation application.

C 44. In the *Chan Oi Yau Riyo* case, I also accepted as being
D particularly relevant to cases like this one that there is a difference
E between today and the pre-internet and social media era. That
F difference is the very easy practical way any individual can breach an
G order of the court and widely disseminate information. The facility to
H broadcast and publish material widely makes these breaches worse rather
than less serious.

I 45. Again, there can be a reminder that rights and freedoms do
J not exist in a vacuum. They come with responsibilities.

K ***F. Suggested Orders***

L 46. For the SJ, Mr Ho submits that the Court should adopt the
M general position of the normal penalty imposed for breaches of injunction
N orders, namely a period of imprisonment measured in months. Mr Ho
O submits that it is appropriate to proceed on the basis of such a starting
point, not only as a matter of principle, but also to take into account the
following factors:

- P (1) Not only was the Defendant “reckless” as he admitted, his
Q first Facebook Post made it clear that he was intent on
R causing at least nuisance to PW1. However, it is
S fundamental to the rule of law that court orders are to be
T obeyed. Irrespective of one’s political stance, one should
U never engage in doxxing activities against other members of
V society, particularly when such an act is in contravention of
an extant court order. There are proper channels to express

one's views, however strongly, in a legitimate and proper manner. Vigilantism has no place in Hong Kong.

(2) Though the Defendant claims that he shared the offending Facebook Post without a second thought, when the Doxxing Injunction was not at the forefront of his mind, the Court has previously recognised (see the *Chan Oi Yau Riyo* case at §75) that that is precisely part of the problem: it is easy to post something on social media or the internet with just a few clicks or keystrokes, but the effects can be, and sometimes likely will be, far wider and last for far longer.

(3) The Defendant posted a series of offending posts which extensively documented various aspects of the personal and private data of PW1, including publication of material relating to PW1's daughter's school (rather than just one post as in some previous cases).

(4) The Defendant unlawfully and directly divulged extensive personal data of four victims – not only relating to PW1, but also to his wife and two young children.

(5) All of the Defendant's post were made public. Even on his own evidence, he knew that his Facebook posts were at least accessible to his 600 or so Facebook friends.

(6) The fact that, in this internet-age, information can be disseminated very quickly and widely online makes the Defendant's breach (by the utilisation of social media) worse rather than less serious.

(7) The impact of doxxing on victims is severe and long-lasting. 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 defendants or contemnors.

A 47. I accept those submissions. B

C 48. Mr Ho also fairly accepts that certain mitigating factors may
D be advanced on behalf of the Defendant, including (1) that he removed
E the Facebook Posts a few days after he posted them; (2) that the
F Facebook Posts mainly consisted of re-posting of information found
G online, and the Defendant did not himself initiate the propagation of
H material; (3) he indicated his intention to admit liability at a relatively
I early stage of these proceedings; and (4) the Defendant's breach was
J committed prior to the decision in the *Chan Oi Yau Riyo* case. K

L 49. Mr Kwan for the Defendant does not contend that a custodial
M sentence is inappropriate in this case, but submits that the custodial
N sentence should be suspended on account of the various mitigating factors
O advanced. In particular, Mr Kwan relies on the points: P

Q (1) The prejudice to PW1 can be remedied, albeit not fully.
R The Police have taken steps to prevent further doxxing, and
S there is no evidence that the relevant doxxing continued
T unabated after March 2020. U

V (2) The Defendant was acting under emotional pressure, partly
because the shooting incident took place in his
neighbourhood.

(3) The breach was unintentional or at least not deliberate, and
the Defendant seek used a Facebook account which did not
in any way conceal his identity.

(4) The degree of culpability is not great. The Defendant on
his own initiative removed the posts well before the arrest.

(5) The defendant did not obtain the personal data of PW1 from
other sources or create the original posts on Telegram.

(6) The Defendant has cooperated fully, and admitted liability at an early stage.

50. Subject to what follows, I take all those matters into account.

G. Sentence

51. However, I do not agree that the kind of prejudice which is caused to police officers and their families from doxxing activities is really able to be remedied. Once personal data has been publicly revealed on the internet or social media, even if the original point of revelation is subsequently removed, that personal data will almost certainly forever remain publicly available. That is the very nature of the internet and social media, and is the obvious consequence of the repeated re-posting of earlier posts. To use a phrase in common parlance, it is impossible to put the genie back into the bottle. The kind of damage caused is also likely to have long-lasting effect.

52. Indeed, the very point of doxxing activities is to put private personal data into the public domain, and precisely to facilitate or to encourage the kinds of interference and harassment as have typically followed. It is also to intended cause the kind of ‘ripple effect’ that has been seen, by wider and wider dissemination of the offending material. I do not think the ease of repeating the post “cuts both ways”, as Mr Kwan suggested.

53. In this very case, the Defendant clarified in his cautioned interview that when he added his own caption about taking time to play with the Police, he meant that he would continue to post photos of the

A Police in the future, and he must be taken to have intended to have caused
B nuisance at least PW1 himself. The taunting is unattractive and obvious.

C 54. I acknowledge that he seems to have thought better of it after
D a few days. This is obviously to his credit. But the initial intention is
E clear, and it seems to me it was deliberate. The data made public was
F extensive.

G 55. Further, the publication of the private and personal data of
H PW1's wife and his two young daughters, which was bound to have
I similar adverse consequences for them, is also difficult to comprehend
J and is despicable. Most right-minded people (whatever their political
K views) would rightly think it wholly unforgivable, and that it should not
L be tolerated.

M 56. To assert that it was done without thinking about it or the
N consequences of it, seems to me to be not a matter of mitigation. Acting
O without any thought as to the obvious and logical consequences of that
P act – even if not consciously intended – is likely to be an aggravating
Q feature. In any event, in this case, the taunting added by the Defendant
R suggests that the intention was conscious.

S 57. Acting out of anger is also an unimpressive piece of offered
T mitigation. In this case, the Defendant posted a series of offending posts.
U Even though they were all quite close in time, and might be thought of as
V a “single transaction” (in Mr Kwan's words), this seems to me to be a
more serious breach than a ‘one-off’ post. He also added his own
comments. Of course, I also recognize that the Defendant accepts he
has fallen below the standards he says it is his usual intention to promote.

A I accept his remorse is genuine. So, I hope that in future he will return
B to his higher standards.

C 58. But, notwithstanding the Defendant's prior clear record, and
D the things said about him by those who know him, and the other matters
E of mitigation which I have taken into account, I do not think the contempt
F in this case would properly be reflected in a suspended custodial sentence.
G On the particular facts of this case, the mitigating factors are more
H properly reflected in the reduction of the custodial sentence to a relatively
short period.

I 59. In the circumstances, the Defendant is to serve an immediate
J custodial sentence of 21 days.

K **H. Costs**

L 60. As Mr Ho submits, the usual order in a successful committal
M procedure is for costs to follow the event and so to be payable by the
N person found guilty of contempt, and such costs are usually ordered to be
O paid on an indemnity basis. He seeks a summary assessment by
reference to a statement of costs totalling around HK\$276,000.

P 61. Mr Kwan points out that the Defendant is of limited
Q financial means, and asks me to make an order that the Defendant pay
R only a contribution towards the costs. In part, Mr Kwan relies upon the
fact that I made a similar order in the *Chan Oi Yau Riyo* case.

S 62. In that case, I said that approaching costs by requiring
T payment of a contribution only, rather than on a full indemnity basis, may
U in appropriate circumstances also reflect the appropriate degree of
V

A proportionality when the penalty and costs can be regarded as composite
B elements of the proceedings' impact on a defendant.

C 63. Mr Kwan emphasises that though the Defendant's Legal Aid
D application appears to have been refused in part because of his financial
E resources exceeding the statutory limit, the relevant financial resources
F are in fact a property owned by the Defendant's wife in mainland China,
G held in her sole name, and where the Defendant's father-in-law is now
H living. The Defendant's own financial resources are in reality very
I limited; his savings amount to around HK\$20,000 (though he has some
J financial support available from his wife).

K 64. Taking into account all the circumstances, including the fact
L that I have passed an immediate custodial sentence, I order the Defendant
M to make a contribution to the SJ's costs in the sum of HK\$20,000.

N (Russell Coleman)
O Judge of the Court of First Instance
P High Court

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

R Mr Steven Kwan, instructed by Ho Tse Wai & Partners, for the defendant
S
T
U
V

ANNEX 1

The Doxxing Injunction

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

2. The acts prohibited under paragraphs 1(a), (b) or (c) of the Indorsement of Claim are:
 - (a) using, publishing, communicating or disclosing to any other person the personal data of and concerning any 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.

3. 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”).

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

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

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

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

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

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

9. At the hearing of the *inter partes* application and the HKJA’s Summons on 8 November 2019, I granted the *inter partes* application by ordering the Re-Amended Interim Injunction Order to be continued, except with the removal of the reference to “interfere” in paragraphs 1(a) and (b) of the Re-Amended Interim Injunction Order. As regards the HKJA’s Summons, I granted an order in terms as set out in paragraph (1) but refused to include the terms as set out in paragraph (2) (“Return Date Order”). I gave a fully-reasoned Ruling, since reported at [2019] 5 HKLRD 500.

10. The handing down of the Ruling and the sealing of the Return Date Order were widely reported by the Local Media.

11. On 29 November 2019, the Plaintiffs made an application to amend the Return Date Order. On 11 December 2019, I granted the application by amending the Return Date Order to include Special Constable(s), their spouses and their respective family members (namely parents, children or siblings) (“Amended Return Date Order”).

12. The granting of the Amended Return Date Order was widely reported by the Local Media.