

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

MISCELLANEOUS PROCEEDINGS NO. 1256 OF 2020

IN THE MATTER of an application on behalf of the
Secretary for Justice against CHENG Lai King (鄭麗琼)
for an Order of Committal

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

BETWEEN

SECRETARY FOR JUSTICE

Plaintiff

and

CHENG LAI KING (鄭麗琼)

Defendant

Before: Hon Coleman J in Court

Date of Hearing: 19 October 2020

Date of Decision: 19 October 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 24 March 2020 the Defendant
F posted (“Post”) on her Facebook account the personal data of a particular
G police constable (“PW1”) including his full name and identification
H number. That conduct was in clear contravention of the injunction order
I made on 25 October 2019, as amended and re-amended on 28 and
J 31 October 2019, continued on 8 November 2019, and further amended
on 11 December 2019 (“Doxxing Injunction”). The Doxxing Injunction
was made in HCA 1957/2019 (“underlying action”).

K 3. The committal proceedings have been brought by the
L Secretary for Justice (“SJ”) by way of originating summons dated
M 28 August 2020, with prior leave granted by me on 21 August 2020. In
N support of the application, reliance is placed on the affirmation of PW1,
O his wife (“PW2”), as well as the affirmations/affidavits of other officers
P involved in investigating the Facebook Post (“PW4” and “PW5”), and a
Police Community Relations Officer (“PW3”) who spoke to the
Defendant on 24 March 2020.

Q 4. The Defendant has filed an affirmation dated 9 October 2020,
R to which she has also exhibited a handwritten letter from her to the Court,
S and various mitigation letters from other persons.

T 5. The Defendant has also made a 2nd affirmation dated
U 19 October 2020 to deal with a point on her income and allowances, in
V

A response to a further affirmation from PW4 dated 19 October 2020. By
B consent, I granted leave at the hearing for both to be filed.

C 6. At this hearing, the SJ was represented by Counsel,
D Mr Martin Ho, and the Defendant was represented by Counsel, Mr Martin
E Lee SC leading Mr Joe Chan and Mr Jeffrey Tam. Mr Lee appears on a
F complimentary basis.

G ***B. Agreed Facts***

H 7. On 16 October 2020, the parties (through their solicitors)
I jointly signed and filed a Statement of Admitted Facts. That document
J helpfully encapsulates the relevant background material facts which are
K not disputed by the Defendant, and some of its content can usefully be
L taken into this Decision. I accept those facts as stated and agreed
M between the parties.

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

U 9. The acts prohibited under paragraphs 1(a), (b) or (c) of the
V 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.

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) 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.

12. 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.

13. 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.

14. 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”).

15. 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.

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

17. 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”). The granting of the Amended Return Date Order was widely reported by the Local Media.

18. Pursuant to paragraph 2 of the Interim Injunction Orders, Chow J granted leave to the Plaintiffs to serve the Interim Injunction Orders on the Defendants to the underlying action by way of substituted service, by publishing a copy of the Interim Injunction Orders on the webpages of the Police as well as that of the Government of the Hong

A Kong Special Administrative Region. The Interim Injunction Orders
B were duly and validly served.

C 19. In the meantime, during an incident in Wan Chai on
D 29 September 2019, a female Indonesian reporter was hit in the eye.
E There was an allegation that PW1 was responsible for the injury.

F 20. In around mid-March 2020, some netizens brought this
G incident up in the Internet again and urged other netizens to find out the
H identity of PW1 before 29 March 2020 on the basis of the allegation that
I there was a six-month time limit for private prosecutions in Hong Kong
J and private prosecution against PW1 would be barred on 29 March 2020.
K Starting from 24 March 2020, PW1 and his wife PW2 became the subject
of widespread doxxing on social media platforms, such as Facebook and
L Telegram.

M 21. The Police identified a doxxing post – namely the Post –
N made at around 10:35 am on 24 March 2020 on the Facebook Page. The
O Post forwarded another post made by one Facebook user “Cryana Chan”
P in a Facebook group named “西環變幻時” (“Westerndistrict”) which
Q appears to be extracted from the Telegram channel “老豆搵仔”
R (“Dadfindboy”) (as evidenced by the “老豆搵仔編號” – English
S translation: “Dadfindboy number”) showing the portrait and personal data
T of PW1 (including his full name and Unique Identification number). In
U the Post, the Defendant further added the words “如果這名警員是有
V 良知的? 請自首! 以眼還眼” – English translation: “If this officer has
conscience, please surrender! An eye for an eye”. The status of the
Post, as shown by a “Globe” icon underneath the account name and next

A to the time stamp, was “Public” (ie. the Post was publicly accessible by
B anyone with connection to the internet) and the Post was liked, shared
C and responded to by various Facebook users.

D 22. As per Police’s checking on 24 March 2020 at around
E 6:00 pm, the Post was found to have been deleted.

F 23. The Post, despite being relatively short-lived, had attracted
G wide publicity. At the time when the Post was made, the Facebook Page
H had over 30,000 followers. The Post itself was responded to by other
I users 127 times, was shared with others 182 times, and had attracted a
total of 933 counts of “likes” and “angry”.

J 24. On 24 March 2020 at 5:47 pm, the Defendant called PW3 of
K the Police Community Relations Office with the telephone number
L 2117 4488. When PW3 answered the call, the Defendant described
M herself as “Lai King”. PW3 recognised that “2117 4488” was the
N telephone number of the Office of the Chairperson of the Central and
O Western District Council and he therefore recognised that the caller was
P the Defendant. The Defendant told PW3 that she had been informed by
Q a journalist of the existence of an injunction. She enquired with PW3 if
R the journalist’s information was true and about the consequences of
breaching the injunction. PW3 answered that the injunction had been
S posted on the internet and the Court would deal with any breaches of the
T injunction. PW3 further told the Defendant to seek advice from the
U relevant persons.

V 25. On 25 March 2020 at 4:23 am, a news article in Takungpao
reported that during an interview by Takungpao with the Defendant on

A 24 March 2020, the Defendant openly admitted having made the Post,
B denied having knowledge of the existence of the Doxxing Injunction, and
C even queried the reporter whether this is a matter that needs to be visited
D with a prison sentence.

E 26. Further investigation revealed that the user of the Facebook
F Page is the Defendant, who lives in Lai Yiu Estate, Kwai Chung, New
G Territories.

H 27. On 26 March 2020, at about 12:48 am, PW4 together with
I other Police Officers saw the Defendant entering the building. They
J then intercepted her when she was walking towards her residence and
K conducted investigation. At about 12:55 am, PW4 arrested and
L cautioned the Defendant for the offence of “Doing an Act with Seditious
M Intention” contrary to section 10(1) of the Crimes Ordinance Cap 200.
Under caution, the Defendant admitted that the account of the Facebook
Page belonged to her but she had already deleted the Post from her
Facebook Page. This was recorded in PW4’s notebook.

N 28. PW4 then seized an Apple iPhone 8 Plus (“iPhone”) from
O the Defendant at the scene. The Defendant voluntarily unlocked the
P iPhone and handed it over to PW4 for examination. The iPhone was
Q installed with a Facebook application which was logged into the
R Facebook account of “鄭麗琼” (“Cheng Lai King”). The Facebook
S Page (ie. “King 鄭麗琼 Cheng Lai King”) was in the menu of the
T account among other things, and it was shown with the Defendant’s photo
U as the profile picture, a telephone number and a remark stating “Elected
V Member (Castle Road Constituency) Registered Social Worker”).

A 29. During the on-site examination of the iPhone, it was
B revealed that the front page of the Facebook Page showed that the
C account holder of the Facebook account “鄭麗琮” (“Cheng Lai King”)
D could change the setting of the Facebook Page. This meant that the
E Defendant had control over the Facebook Page. The control was
F exclusive to her account because she was the sole administrator of the
G Facebook Page.

G 30. At around 1:40 am, PW4 asked the Defendant to confirm the
H accuracy of her cautioned statement as recorded in PW4’s notebook.
I The Defendant added “我依家想保持緘默” (English translation: “I now
J wish to remain silent”) and signed on PW4’s notebook confirming the
K accuracy of her cautioned statement as recorded in it.

K 31. In a subsequent video-recorded interview conducted at the
L Kwai Chung Police Station from 10:14 am to 10:47 am on 26 March
M 2020, the Defendant stated under caution, *inter alia*, that she has an
N iPhone with the particular telephone number registered under her name.
O The Defendant then exercised her right of silence and declined to answer
P other questions posed to her.

P 32. The Defendant is a Hong Kong politician who serves as
Q District Councillor for the Castle Road constituency. She was elected as
R Chairwoman of the Central and Western District Council for the 2020-23
S term during the Council’s first meeting on 2 January 2020. She has held
T a seat of the Central and Western District Council since its creation in
U 1994. She is a member of the Democratic Party and a registered social
V worker.

A 33. The photos, name and the Unique Identification number
B shown in the Post are accurate personal data of PW1. PW1 had never
C supplied his personal data to the Defendant and had never given consent
D to the Defendant to disclose any of his personal data on the Facebook
E Page.

F 34. The Police conducted forensic examination on the iPhone
G on 31 March 2020, 7 April 2020 and 16 April 2020, and discovered that:

H (1) On 28 October 2019 at around 10:01 pm, a Whatsapp user
I named “凌孟堂 Mr. Ling” sent a message through Whatsapp
J to the Defendant. The message was a link to an online poll
K titled “高等法院於日前批出臨時禁制令，禁止任何人士
L 披露警員及其家人的個人資料，你認為此禁制令合理嗎?”
M (English translation: “The High Court recently granted an
N interim injunction prohibiting disclosure of personal data of
O Police Officers and their family members. Do you think it
P is reasonable?”) (“Poll”). The status of the message was
Q “Read” which means the message had been read by the
R Defendant.

S (2) On 31 October 2019 at around 6:36 pm, a Whatsapp user
T named “DPHK 王漢明” (in English: “Wong Hon Ming”) sent a message in a Whatsapp Group to which the Defendant
U was a member. The message was a hyperlink to a news
V article titled “【抗暴之戰】 法庭頒臨時禁令 任何人不得
網上鼓勵非法用暴力或損財物 連登 TG 被點名” (English
translation: “【Fight against violence】 Court granted interim
injunction; no one is allowed to encourage on the Internet
unlawful use of violence or damage to property; LIHKG and
TG were named”), which reported that the Court had granted
four injunction orders one of which was against doxxing

against Police Officers and their family members. The status of the message was “Read” which means the message had been read by the Defendant.

(3) On 3 November 2019 at around 2:40 pm, the Defendant sent a message through Whatsapp to a Whatsapp user named “Watt Mong Wai 屈網威 堅苑”. The message included a link to the Poll and the title of the Poll. The status of the message was “Sent” which means the message had been sent by the Defendant.

(4) The Defendant is a habitual reader of news articles. The browsing history of the iPhone shows that she had 75 visits to various social media including Hong Kong In-media, Ming Pao, Now News, Stand News, HK01, on.cc, ET Net, ChinaDaily, Apple Daily, Sing Tao Daily, TVB News, RTHK and Takungpao between 24 February 2020 and 25 March 2020.

35. By a letter of 29 April 2020, the Defendant’s solicitors denied that the Defendant was aware of the existence of the Doxxing Injunction. The Defendant’s assertion was noted by the Police by a reply letter dated 9 June 2020.

36. It can be noted that there is a significant difference in stance between that taken by the Defendant in her solicitors’ letter of 29 April 2020, and that now taken before this Court. In the letter, the solicitors stated that they had been instructed by the Defendant to state categorically on record that she was not aware of the existence of any of the Doxxing Injunction orders at all before copies of them were served on her on or after 26 March 2020. The letter went on to state that, as a matter of fact the Post was promptly removed soon after the Defendant

A was made aware of the Doxxing Injunction and so she did not knowingly
B violate any of the Doxxing Injunction by sharing the Post. The letter
C even suggested that the Commissioner of Police should seek “proper legal
D advice before proceeding further with the committal proceedings”.

E 37. In light of the material found on the forensic examination of
F the Defendant’s iPhone, that stance plainly was and is untenable. The
G Defendant now recognises that fact, and says that whilst she did know of
H the Doxxing Injunction she did not have it at the forefront of her mind at
the time she shared the Post.

I 38. In the premises, the Statement of Agreed Facts concludes
J that the actions taken by the Defendant constitute a breach of the
K Injunction Orders and that she takes full responsibility for them.

L ***C. Effect of the Doxxing***

M 39. In his affirmation, PW1 has described how he and his family
N have been subject to abuse after he was doxxed.

O 40. In summary only – which summary should not be taken as in
P any way making light of his and his family’s suffering – PW1 identifies
Q that he has been subject to up to 100 nuisance calls since March 2020; his
R personal details and those of his family have been sprayed onto walls in
S public areas in Kwun Tong and Ma On Shan; he has been signed up for
organ donations without his knowledge; and he has been made the victim
of unsolicited deliveries and fraudulent loan applications.

T 41. His wife has made an affirmation to similar effect. She has
U received up to 300 nuisance calls since late March 2020. Because of the
V

A persistent nuisance, even up to this date she has not dared go out alone in
B fear of possible harassment.

C ***D. Defendant's Evidence***

D 42. In the Defendant's affirmation, she introduced its purpose as
E being to address the Court on her personal and family background, as
F well as the circumstances leading to her "unintentional breach" of the
G Doxxing Injunction, and to tender her sincere apology to the Court.

H 43. The Defendant was born in Hong Kong and is now 61 years
I old. She is married, and her husband retired last year. They have two
J children in their mid-20s, the younger of whom still lives with them.
K The Defendant is now the person solely responsible for paying the
L household expenses of her family.

M 44. The Defendant received a diploma in Social Work in 1990,
N and is a Registered Social Worker, as well as an elected member of the
O Central and Western District Council since 1994. She is currently the
P Chairwoman of that District Council, and was Chairwoman at the time of
Q the events giving rise to these proceedings. Since elected Chairwoman,
R she has been receiving a monthly honorarium and an expenses allowance,
S together comprising approximately \$78,000. However, the Defendant
T uses about half of the amount to employ part-time staff for note-taking at
U District Council meetings.

V 45. In her 2nd affirmation, the Defendant has given greater detail
as to the various income and allowances available in her post, and how
she deploys them. With the benefit of her extended explanation,
therefore, the Defendant says that her financial means are limited and she

A has savings of no more than \$120,000. She lives in public housing and
B does not own any property.

C 46. The Defendant has been law abiding all her life, and has no
D criminal record. She had never been arrested before the arrest detailed
E above. She says she has always strived to be a role model for young
F people, both in her public service and as a social worker. She says she
G has always tried to be careful in what she says and does, particularly in
H relation to public affairs.

I 47. Her public service for the community began in 1986.
J Throughout her years of public service, she has been particularly keen on
K conservation issues, including heritage conservation.

L 48. The Defendant offers an explanation for failing to admit
M liability at the earliest opportunity. Though she does not directly address
N her solicitors letter of 29 April 2020, she does explain that after receiving
O the Originating Summons she ticked the box to show her intention to
P contest this action on 29 September 2020 so as to preserve her position
Q pending leading Counsel's advice. After receiving that advice on
R 30 September 2020, she decided to admit liability without further delay,
S and her solicitors wrote to do so on 6 October 2020.

T 49. As to the circumstances leading to the breach of the Doxxing
U Order, the Defendant says she was sympathetic to the Indonesian
V journalist whose eye was injured by a rubber bullet fired by a police
officer. She also refers to the fact it was widely reported that questions
were raised as to whether the firing could be justified at all since there
were no protesters nearby, so she was extremely sympathetic to the

A journalist who reminded her of her previously employed Indonesian domestic helper whom her family treated as part of their family. She says she was particularly upset when it was reported that the Indonesian journalist could not even lodge a formal complaint against the police officer concerned because the Police had persistently refused to disclose the identity of that police officer.

50. The Defendant says that on the morning of 24 March 2020, she noticed on her Facebook account that a user, who she did not know, had posted the name of the police officer to the Facebook group of “Westerndistrict”, alleging that he was the person who had shot the Indonesian journalist. It was on the face of it a reposting. The Defendant said that was good news, as it would permit the Indonesian journalist to be able to take action against the police officer, and in response to the Facebook request to help by spreading widely, the Defendant shared the post after adding her own comments. That is the Post.

51. As she explains it, the Defendant shared the Post “without a second thought”. She says she was “wholly oblivious” of the Doxxing Order at the time and did not appreciate that both the person sending the original post and her further sharing of it might be in breach of that order. She says she was not aware, because she had not read it in full, that the information was copied from the ‘Dadfindboy’ group, with which group she was in any event unfamiliar. In other words, at the time she made the Post, she did not have the Doxxing Order at the forefront of her mind. Had she done so, she says she most certainly would not have made the Post.

A 52. The Defendant says she now realises that she “should have
B thought twice”, because a “cavalier sharing” of the Post might have
C serious consequences for the police officer and his family, and get her
D into trouble. She recognises that the rule of law is important for Hong
E Kong, and a breach of a Court order will set a bad example, particularly
for young people.

F 53. Later in the afternoon of 24 March 2020, the Defendant
G received a call from a Takungpao journalist informing her that the Post
H might possibly contravene the Doxxing Order. She says she was
I shocked. Her first reaction was to seek clarification from a police
J officer from the Police Public Relations Branch, who she had known for
K many years. However, he only told her that the matter concerned would
L be dealt with by the persons concerned, which did not find particularly
M helpful. So she took legal advice, which was to delete the Post right
away. So she immediately removed it before 6 pm on the same day.
As a result, the Post remained on her Facebook page for less than eight
hours.

N 54. Unfortunately, her breach of the Doxxing Injunction was
O widely reported, leading to a massive online mobilisation for reporting
P her involvement to the police as well as the Privacy Commissioner for
Personal Data.

Q 55. As to her knowledge of the Doxxing Injunction, the
R Defendant says she is often added to various groups of social media or
S instant messaging. She receives numerous messages every day, and
T could not and would not read all of them, though she would skim through
U most of them. She says she often receives news from friends and
V

A sometimes “just follow[s] the herd” and forward messages when
B requested to do so. That was how she came to forward the news
C regarding the Doxxing Injunction in November 2019.

D 56. Though she did not have it in mind at the time of the Post on
E 24 March 2020, she now realises that she did have knowledge of the
F Doxxing Injunction. But, having forgotten about it, she says her breach
G was unintentional. Now, she wishes to take full responsibility and to
H convey her sincere apology to this Court and to PW1 and members of his
I family, and for any inconvenience caused to anyone. Though she meant
no disrespect, she admits that she was reckless in what she did and
deserves punishment.

J 57. After being arrested, the defendant was cooperative with the
K Police and frankly admitted owning the relevant Facebook account. She
L voluntarily tendered her phone for inspection and seizure after unlocking
M it herself. Her overnight detention in the police station caused her to
N regret having done such a “stupid thing which caused harm to [PW1] and
his family” as well as to her own family.

O 58. The Defendant has since re-examined all posts on her
P Facebook account to make sure they do not contain any information
Q which might possibly harm others or breach any law. Now she manages
R that account with great caution, to make sure that she does not make the
same or similar mistake again.

S 59. The Defendant says she has been under great stress since the
T arrest, and feels bad for letting her family down. Months of
U self-reflection have followed, and she is genuinely sorry for her act. She
V

A attaches her “heartfelt apology” in a letter to this Court, as well as various
B mitigation letters from family, colleagues and friends.

C 60. The apology letter sets out greater detail of her family
D background, and some detail of her public service over the last decades.
E It emphasises her deep remorse towards breach of the Doxxing Order,
F and her thorough regret. She asks for leniency, so as to allow an
G opportunity to start afresh, and promises never to violate the Doxxing
Order again.

H 61. The mitigation letters are consistent – to use Mr Lee’s words,
I they speak with one voice – in describing the Defendant as a caring and
J compassionate person, who is conscientious and hard-working, someone
K who has devoted much time and effort in support of the community, and
L who has clearly shown deep regret and remorse for her actions, which
most of her supporters consider must have been a temporary lapse of
judgment.

M 62. The Defendant says she will serve “in all humility” whatever
N sentence is passed, and will continue to serve the community as a District
O Councillor or in some other capacity.

P ***E. Applicable Principles on Sentencing***

Q 63. In my previous decision of *Secretary for Justice v Chan Oi*
R *Yau Riyo* [2020] 3 HKLRD 494, I set out the appropriate principles. The
S gist of those principles can be repeated here.

T 64. As a superior court of record, the Court of First Instance is
U invested with the inherent power to punish for contempt in maintaining
V

A its authority and preventing its process from being obstructed and abused.
B The common law powers to fine or imprison, to give an immediate
C sentence or to postpone it, remain intact. The power of the Court to
D hand down a suspended sentence is specifically codified in Order 52
E rule 7(1). The power to order payment of a fine, or giving security for
good behaviour, is preserved by Order 52 rule 9.

F 65. The general principles on sentencing in cases of civil
G contempt are as follows:

- H (1) In civil contempt, the prime consideration in sentencing is to
I demonstrate to litigants that orders of the court are to be
obeyed. Contempt of civil court orders is a serious matter.
- J (2) However, a delicate balance has to be maintained in the
K imposition of the penalty for civil contempt between the
L 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.
- M (3) Subject to mitigating factors, if any, the starting and primary
N penalty for contempt of court in breaching an order in the
O nature of an injunction is imprisonment. The normal
penalty for breaches of injunction orders is imprisonment
P measured in months.
- Q (4) In a case where there has been a failure to comply with an
R order of the court and where there is no evidence to suggest
S that compliance was in any way difficult or impossible, a
sentence of imprisonment would not be inappropriate. This
T would be particularly so in a case where the sentence was
U designed to enforce compliance. A sentence of
V

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.

66. 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.

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

68. Reference can also be made to the decision of Au-Yeung J in *Bruno Arboit as Sole Liquidator of Highfit Development Co Ltd v Koo*

Siu Ying [2015] 3 HKLRD 319, where that judge emphasised a prime consideration of the court in sentencing contempt is to signal the importance of demonstrating to litigants that the orders of the court are to be obeyed. Au-Yeung J also made the following points:

- (1) Not only should imprisonment be regarded as a sanction of the last resort, any custodial term should be as short as possible and consistent with the circumstances of the case.
- (2) The court has an absolute discretion to suspend the sentence of imprisonment for such period and on such terms as it deems fit.
- (3) The court will have to consider all the circumstances of the contempt, including the nature of the order and extent of the breach; whether the contempt was contumacious or unintentional; the reasons, motives and state of mind of the contemnor; and whether the contemnor appreciates the seriousness of the deliberate breach.
- (4) The court will have to consider aggravating and mitigating 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.

69. Therefore, encompassed within the above principles are those factors which Mr Lee seeks to emphasise, namely 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.

A 70. 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 71. In the *Chan Oi Yau Riyo* case, I also accepted as being
J particularly relevant to cases like this one that there is a difference
K between today and the pre-internet and social media era. That
L difference is the very easy practical way any individual can breach an
M order of the court and widely disseminate information. The facility to
N broadcast and publish material widely makes these breaches worse rather
O than less serious.

N 72. Again, there can be a reminder that rights and freedoms do
O not exist in a vacuum. They come with responsibilities. In this context,
P I accept that it may be an aggravating feature where the person in breach
Q of the court order is in a position of influence, a person to whom others
R may look for an example. The greater the reach of a person's actions,
S the greater that person's responsibility is likely to be.

F. Suggested Orders

73. For the SJ, Mr Ho submits that the Court should adopt the general position of the normal penalty imposed for breaches of injunction orders, namely a period of imprisonment measured in months.

74. Mr Ho first quite properly asks that the Court should note that certain mitigating factors may be advanced on behalf of the Defendant. Those factors include: that the Defendant's breach appears to be one-off in nature; the Post was promptly removed; the Defendant re-posted PW1's personal data found on Facebook, rather than having initiated the propagation of material herself; it may be said that the personal data disclosed of PW1 in the Post itself was not extensive (though it could readily lead to further material); the Defendant has indicated her intention to admit liability at a relatively early stage of these proceedings; and the Defendant's breach of the Doxxing Injunction was committed prior to Judgment in the *Chan Oi Yau Riyo* case being rendered.

75. Against those factors, Mr Ho submits that the following matters – some of them aggravating – justify an immediate custodial sentence against the Defendant:

- (1) Despite the Defendant's assertion to the contrary (in media interviews and solicitors' correspondence), the objective evidence shows that the Defendant was plainly aware of the existence of the Doxxing Injunction shortly after it was granted. She even sent a message to another WhatsApp user relating to the Poll on the reasonableness of the Doxxing Injunction.

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- (2) The Defendant claims that she shared the offending Post “without a second thought”, and that when she did she did not have the Doxxing Injunction at the forefront have a mind. But, as noted in the *Chan Oi Yau Riyo* case at §75, 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 will be, far wider and last for far longer.
- (3) The impact of doxxing on victims, specifically on PW1 and his family members, is severe and long-lasting. The Court should send a clear message to the public that such conduct is not tolerated in a civilised society. In other words, the sentence imposed should have a deterrent effect on would-be defendants or contemnors.
- (4) The fact that 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. This is particularly so where the Defendant is a well-known public figure and where her Facebook page was widely followed and the contents widely shared in the community. This is exacerbated by the fact that the Post contains a message encouraging others widely to disseminate PW1’s personal data (even if that encouragement was not personally added by the Defendant herself).
- (5) The words which were added by the Defendant in the Post shows that she was seeking “an eye for an eye”. It is fundamental to the rule of law that court orders are to be obeyed. Irrespective of one’s political stance, one should never engage in doxxing activities against other members of society, in particular when such an act is in contravention of

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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.

(6) Because the Defendant occupies a public office in Hong Kong, as Chairwoman of the Central and Western District Council, she is plainly someone to whom others would look as an example. That a notable politician has engaged in doxxing activities against police officers would clearly set a bad example and send the wrong message to others in our society that such conduct may be tolerated and regarded as acceptable. Such misguided thinking by any member of society should be corrected by way of the sentence to be imposed.

76. For the Defendant, Mr Lee submits that the Court should first consider a bind over or a fine, taking into account the circumstances of the present case, including:

- (1) the contempt has been purged, which is an important factor in considering sentence;
- (2) the purging of the contempt occurred by deletion of the Post immediately after the Defendant realised that it might contravene the Doxxing Injunction;
- (3) the Defendant has tendered her most sincere apology to the court and PW1 and his family for her reckless breach of the court order;
- (4) not only has she demonstrated remorse for her wrongdoing, the Defendant feels guilty, as a social worker who has devoted service of the community for over two decades, for letting her supporters down;

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- (5) the Defendant stands before the Court with a “contrite heart”;
- (6) the breach was not contumacious or contumelious, in that she did not have the Doxxing Injunction at the forefront of her mind at the time she shared the Post;
- (7) viewed objectively, there was no intentional flouting of the Doxxing Injunction, and her action was done “without a second thought”;
- (8) though unintended, the Defendant takes full responsibility for the breach;
- (9) the reference to “an eye for an eye”, added by the Defendant when sharing the Post, needs to be read in context of the previous words encouraging the police officer to turn himself in;
- (10) the breach occurred more than 2½ months before the decision in the *Chan Oi Yau Riyo* case, with its warning to those persons who might continue to breach the Court’s order after that judgment that future offenders may not be so fortunate in avoiding an immediate custodial sentence;
- (11) the Defendant is of good character with a clear record, and nearly half her life has been devoted to public service;
- (12) the Defendant is well-regarded by her colleagues and her family as a selfless and conscientious person;
- (13) the Defendant admitted sharing the Posts under caution and cooperated with law enforcement;
- (14) this was a one-off incident, and the Defendant promises not to re-offend, and she is remorseful and repentant;
- (15) the Defendant is highly unlikely to act in contempt of Court again;

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(16) as regards general deterrence, the acknowledgement by the Defendant of her liability and her willingness to accept the sanction of the Court will help encourage observance by others of Court orders.

77. In the alternative, Mr Lee submits that if the Court finds imprisonment inevitable, that should be suspended.

78. Another point made by Mr Lee, that since the judgment in the *Chan Oi Yau Riyo* case there is no evidence that there has been continuation of doxxing of police officers, so that the message sent in that case has been heard, has led to Mr Ho's request to admit further evidence on the point. I have allowed that evidence, and it identifies that there has been a significant increase in doxxing activity in and since August this year, contemporaneous with (and possibly the result of) the news which has broken about various arrests for previous doxxing activities. But I agree with Mr Lee that these facts have little to do with the weighing exercise in this case.

G. The Sentence

79. I start again from the proposition that it is fundamental to the rule of law that court orders are to be obeyed. It is worth repeating that such orders are not guidelines, and the requirement to obey court orders does not vary depending on one's personal or political views, or state of emotion.

80. I acknowledge that the Defendant says that she acted as she did, without a second thought, and without stopping to think about the consequences of her actions. But I repeat that is precisely part of the

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problem. It is because it is easy to post something on social media or the internet with just a few clicks or keystrokes, though the effects may be far wider and last for far longer, that people should stop to think about the consequences of their actions.

81. The potential for fast and widespread dissemination only raises the requirement for carefully considered action, and to have regard to the rights and freedoms and legitimate expectations of persons who might be affected by that action. As I have said before, it is not very impressive or very persuasive to state that harm was not actually intended when it is the likely and logical consequence of the action, as the Defendant herself now accepts.

82. Again, I note the chilling effect on society when individuals or targeted groups or sectors of the public are intimidated into silence or suppressed in expressing their opinions openly and honestly or conducting their affairs or pursuing their life in the way they would wish for fear of being victimised by doxxing.

83. Mr Lee acknowledges the logic that if a person has a large social media following, the harm caused by a post may be greater. But, he says that factor must be weighed against the degree of culpability or moral blameworthiness. In this case, Mr Lee emphasises that the Defendant did not have the Doxxing Injunction at the forefront of her mind because she had forgotten about it, and it is not the Court's role to punish someone for having forgotten about the order. But it seems to me that that submission is misplaced. The Court's punishment is not imposed to punish any forgetfulness, but rather to punish the failure to

A have thought through the consequences of the chosen actions before the
B actions were performed.

C 84. In this case, sight must also not be lost of the fact that
D doxxing is inherently deeply unattractive and itself capable of
E constituting criminal activity. All persons, but perhaps particularly
F those such as the Defendant who are in positions of responsibility and
G who may provide examples for others, should consider the qualities and
H consequences of potential action irrespective of the existence of any court
I order, and irrespective of whether that action might or might not breach a
J court order.

K 85. As Mr Lee himself properly accepted, the greater a person's
L following, the greater the degree of care that may be expected of that
M person in recognition of the potentially greater consequences. Influence
N may be important and attractive to various persons, not just politicians,
O but influence comes with its own inherent dangers. If a person has a
P large social media following, including as a result of holding political
Q office, the person wielding that potential influence needs to guard against
R those inherent dangers.

S 86. Those various features, as well as the matters of principle,
T indicate the appropriate starting point in this case is one of an immediate
U custodial sentence, and one perhaps measured in months.

V 87. As to mitigating factors, I take account of the following.
The Defendant is of good character, and is usually a compassionate
person. She has contributed significant time over decades to public
service. The offending conduct appears to have been a one-off event,

A out of her general character. When contacted about a possible breach of
B the injunction, she was quick to take advice and to remove the Post.
C When confronted by law enforcement, she was quick to cooperate with
D and be honest with the police (except, perhaps, as to her knowledge of the
E Doxxing Injunction). She surrendered passwords to her phone as soon
as asked for them.

F 88. The Post by the Defendant was a re-posting, and she did not
G initiate the propagation of that material (though I do not lose sight of the
H fact that she also appended to her re-posting the additional words). I
I accept on the evidence that, at the time, the Doxxing Injunction was not
J at the forefront of her mind, and so it might be said that the Post was not
contumacious.

K 89. The Defendant says that she will be more careful about
L future use of social media and the internet. A lesson has been learned.
M She has promised not to re-offend.

N 90. Once these committal proceedings were actually commenced,
O the Defendant fairly quickly indicated that she did not intend to contest
them, and would therefore admit liability for her civil contempt of court.

P 91. The Defendant has also fairly and properly accepted full
Q responsibility for her actions. I accept as genuine her expression of
R remorse. I accept that she is contrite, and that her apology is sincere,
S both to the Court and those affected by her actions. I also anticipate that
T the overnight stay in police custody will have been a sharp reminder of
U the need to guard against future transgression.
V

A 92. In the end, after taking into account the circumstances of the
B present case and balancing all matters, I am of the view that the
C appropriate and proportionate sentence would be one of imprisonment,
D but that in the circumstances it should be suspended. That sentence is
E one of 28 days' imprisonment, suspended for 12 months.

F ***H. Costs***

G 93. As Mr Ho submits, the usual order in a successful committal
H procedure is for costs to follow the event and so to be payable by the
I person found guilty of contempt, and such costs are usually ordered to be
J paid on an indemnity basis. He seeks a summary assessment by
K reference to a statement of costs totalling around HK\$334,000.

L 94. Mr Lee points out that the Defendant is of limited financial
M means, and asks me to make an order that the Defendant pay only a
N contribution towards the costs. In part, Mr Lee relies upon the fact that I
O made a similar order in the *Chan Oi Yau Riyo* case.

P 95. In that case, I said that approaching costs by requiring
Q payment of a contribution only, rather than on a full indemnity basis, may
R in appropriate circumstances also reflect the appropriate degree of
S proportionality when the penalty and costs can be regarded as composite
T elements of the proceedings' impact on a defendant. But I also pointed
U out that each case will fall to be determined on its own particular facts
V and circumstances, and I was not intending to set a precedent.

96. In the circumstances of this case, and in the exercise of my
discretion as to costs, I see no reason to depart from the usual order.
Therefore, I order that the Defendant shall pay the Secretary for Justice's

A costs in these proceedings, to be summarily assessed by me, on the
B indemnity basis. I shall deal with the summary assessment on paper
C submissions.

D ***I. Postscript***

E 97. In my Judgment in the *Chan Oi Yau* case, I made the point
F that if such doxxing activities were continued in breach of the Court's
G order, and if those engaging in such activity are brought before the Court
H – particularly if the offending activity takes place after this Decision –
I those persons may not be so fortunate in avoiding an immediate custodial
J sentence.

K 98. In case that was not clear enough, I did not state that if the
L offending activity takes place before that Judgment, the offending person
M would avoid an immediate custodial sentence. Though each case will
N turn on its own particular circumstances, it seems to me likely that the
O starting point for the consideration of the sentence of a contempt of the
P Doxxing Injunction will be an immediate custodial sentence, perhaps
Q measured in months.

R (Russell Coleman)
S Judge of the Court of First Instance
T High Court

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

V Mr Martin Lee, SC and Mr Joe Chan and Mr Jeffrey Tam, instructed by
Ho Tse Wai & Partners, for the defendant