

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

MISCELLANEOUS PROCEEDINGS NO. 586 OF 2022

IN THE MATTER of an application by the Secretary
for Justice for an Order of Committal

and

IN THE MATTER of civil proceedings in
HCA 1957/2019

and

IN THE MATTER of criminal proceedings in
WKCC 1553/2020

BETWEEN

SECRETARY FOR JUSTICE

Plaintiff

and

TSANG CHI SING (曾子成)

Defendant

Before: Hon Coleman J in Court

Date of Hearing: 17 April 2023

Date of Decision: 17 April 2023

Date of Reasons for Decision: 23 August 2023

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

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A. Introduction

1. This is one of the contempt of court cases arising from the prohibited disclosure of the personal data of a police officer (and his family) involved in what is generally known as the “Sai Wan Ho Incident”, where the police officer fired three live rounds with one shot hitting a masked protester.

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 The disclosure was prohibited by (1) an injunction (“Police Doxxing Injunction”) originally made by this Court on 8 November 2019 and last amended on 11 December 2019 in HCA 1957/2019, and (b) an anonymity order (“Anonymity Order”) granted by the Principal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

3. These proceedings were brought with leave for committal granted by me on 24 November 2022: see [2023] 1 HKLRD 93. The SJ served the Originating Summons on the Defendant on 8 December 2022. But the Defendant had not responded to the Originating Summons or corresponded with the Court or the SJ before the hearing fixed for 17 April 2023.

4. At that hearing, the SJ was represented by Mr Martin Ho of Counsel, who had provided written submissions for the purpose of the hearing. Understandably, Mr Ho was then working on the assumption that the hearing would be a directions hearing, and he proposed in his written submissions a set of directions to bring the matter to trial.

5. The Applicant appeared at the hearing in person, with the benefit of a Cantonese/English interpreter. He indicated his intention to

A admit liability and submitted a letter penned and signed by him for the
B purpose of mitigation. He was apparently under the impression that his
C sentencing would be dealt with there and then. I indicated that the Court
D would be willing to adjourn the hearing to enable him to file evidence in
E support of his mitigation. But he said he would prefer to be sentenced,
F and to have the matter concluded, at that hearing. Mr Ho said that the
G SJ would be prepared to make submissions on that basis, if so requested.
H I thus dealt with the Applicant's sentencing at that hearing.

6. At the conclusion of the hearing, I sentenced the Applicant to
H 21 day's imprisonment suspended for 12 months and ordered him to
I contribute \$8,000 towards the SJ's costs. I reserved my reasons for
J decision.

7. These are my Reasons for Decision.

L ***B. The Police Doxxing Injunction and the Anonymity Order***

M 8. The terms of the Police Doxxing Injunction have been set
N out by me in numerous previous decisions. Suffice it to say that it was
O an order made in HCA 1957/2019 to restrain persons from doing any of
P the following acts:

- Q (1) using, publishing, communicating or disclosing without
R consent to any other person the personal data, intended or
S likely to intimidate, molest, harass, threaten, pester or
T interfere with any police officers or their family members;
U (2) intimidating, molesting, harassing, threatening, pestering or
V interfering with any police officers and their family members;
and

(3) assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorising others to commit any of the above acts or participate in any of the above acts.

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

10. The Anonymity Order was made in underlying criminal proceedings, WKCC 1553/2020, arising from the Sai Wan Ho Incident. The Anonymity Order prohibited all persons from publishing or reporting any matters that may lead the public to identify the relevant police officer, including his name and that of his wife and daughters, their photos, their residential address and their work and school addresses. The Anonymity Order made plain that breach of it may render the person in breach liable for contempt of court.

11. The relevant police officer was referred to as PW1 in the SJ's documents and I shall adopt that abbreviation.

C. Relevant Facts

12. I take the following facts from the "Statement of Facts" filed by the SJ on 13 May 2022. I understood from the hearing that the facts stated were not in dispute.

13. During a cyber patrol by the police on 17 June 2020, the police found 3 Facebook posts ("Posts") containing messages disclosing

A the personal data of PW1. They were all made from the same Facebook
B user account under the name of “Chj Sing Tsang”.

C 14. For Post 1:

D (1) The post was published at 18:55 on 2 June 2020 with the
E caption of “仆街冚家剷死全家” (translated as “Bastard, the
F one whose whole family die, your family will all die”)
G sharing a cropped news article containing photos of PW1
and his academic qualifications and occupation as police.

H (2) The news article titled “西灣河開真槍警疑[redacted] 傳接
I 走兩女兒後 校外才放催淚煙 [redacted]緊急停課叫家長
J 接放學” (translated as “the policeman who filed live bullet
K in Sai Wan Ho was suspected to be the [redacted] it is
L rumoured that tear gas was only shot outside a school after
his two daughters were picked up, [redacted] urgently
suspended classes and asked parents to pick their kids up
after school”).

M (3) As of 17 June 2020, the Post attracted 5 comments (amongst
N which 2 were made by the poster himself and the other 3
O were all made by another Facebook user) and 7 emotion
icons, and was shared once.

P 15. For Post 2:

Q (1) It was published at 20:59 on 2 June 2020 with the captioned
R “唔比開名” (translated as “not allowed to disclose name?”).

S (2) The post contained various images the effect of which was to
T show a photo of PW1, his Chinese name and his personal
U information.

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(3) It also showed a document concerning the internal affairs of the school of PW1's daughters.

(4) It further showed a digitally edited photo of PW1 and his 2 daughters who were each holding a knife with the words “我地老豆係殺人犯” (translated as “our father is a murderer”).

(5) As of 17 June 2020, the post attracted 5 comments (amongst which 2 were made by the poster himself and the other 3 were all made by another Facebook user) and 16 emotion icons, and was shared 12 times.

16. Post 3 was published at 08:06 on 3 June 2020.

(1) The caption of the post was “晨早流流，同條仆街冚家剷死全家打聲招呼先！條仆街冚家剷死全家啲電電郵地址會唔會已經改 X 晒呢...橫掂佢人都可以唔做而改做禽獸，真係改乜都得啦” (translated as “it's early in the morning, let me greet the bastard, the one whose whole family die. [I wonder] whether the telephone [numbers] and email [addresses] of the bastard, the one whose whole family die, have all been fxxking changed... Anyway, if he can change to be a beast instead of being human, he can change whatever he wants!”)

(2) The post also showed the personal information of PW1 including his full name in English and Chinese, date of birth, telephone numbers (mobile and home), email address, his HKID number, residential address in both English and Chinese and his unique identification number.

A 17. The SJ also relied on an earlier Facebook post (“Earlier
B Post”), not for the purpose of showing prohibited disclosure but to show
C that the disclosure in the other 3 Posts was deliberate and with knowledge
D of the breaching of the Anonymity Order.

E 18. The earlier Post was made at 18:32 on 2 June 2020.

F (1) The caption of this post was “中槍係被告，開槍唔洗
G 告……仲要幫條仆街冚家剷死全家保密身分？攞返條仆
H 街啲相出嚟晒下先！” (translated as “the one who got shot is
I the defendant, the one who fired gun is not charged... And
J [the court] still helps the bastard, the one whose whole
K family die, to keep his identity confidential? [Let me] search
L and post the bastard’s photos!”

M (2) The post shared a Stand News article which reported that the
N Court had made the Anonymity Order prohibiting
O publication of information which could enable the general
P public to identify PW1, his wife and his two daughters.

Q 19. Police intelligence revealed that the Facebook user account
R “Chj Sing Tsang” was registered by the Defendant.

S 20. The Defendant was arrested on 24 June 2020. At the scene
T and in a video recorded interview conducted on the same day, he admitted
U to the following under caution:

V (1) He was the owner of the Facebook account name “Chj Sing
Tsang” on the Facebook page.

(2) He had made the 3 Posts.

(3) The personal data and photos of PW1 that he published in the posts were obtained from Google search.

(4) He had knowledge of both the Anonymity Order and the Police Doxxing Injunction based on news reports.

(5) He made the Posts knowing that they were in breach of the Anonymity Order and the Police Doxxing Injunction.

(6) He thought that the Anonymity Order was unreasonable and he made the Posts out of grievance towards it.

21. All the 3 Posts and the Earlier Post were set to be publicly accessible.

22. Also on 24 June 2020, the Defendant consented to the police's examination of his mobile phone.

23. By a letter faxed to the DOJ on 8 August 2020, the Defendant said he had deleted his Facebook account "Chj Sing Tsang" in early July 2020 but he had forgotten the exact date. But it would seem that the exact date was 30 June 2020, as reflected in an email issued by Facebook to him which was attached to his letter to the DOJ. The email was dated 30 June 2020 and the Defendant was informed by Facebook that his account had been scheduled for permanent deletion which process would start in 30 days.

D. Effect of the Doxxing

24. The Posts were, intentionally or otherwise, part of a doxxing campaign against PW1, which caused immense stress and anxiety to his whole family.

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

E. Sentencing Principles

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

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

- (1) The prime consideration in sentencing is to demonstrate to litigants that orders of the court are to be obeyed. Contempt of court orders is a serious matter.
- (2) The imposition of the penalty requires a balance between (a) the strong public interest in ensuring that orders of court will not be flouted and (b) the evaluation of the individual circumstances of each case.
- (3) Subject to mitigating factors, if any, the starting and primary penalty for contempt of court in breaching an order in the nature of an injunction is an immediate custodial sentence, and one perhaps measured in months.

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- (4) Nevertheless, imprisonment is ordinarily regarded as a sanction of last resort, and any custodial term should be as short as possible and consistent with the circumstances of the case.
- (5) In typical civil proceedings, the party in contempt may be punished through procedural steps within the action, if the contempt is not purged. However, the nature of the Police Doxxing Injunction and the breach of it are not exactly analogous (though the preference can be noted to avoid a sentence of imprisonment of other means of sanction would appear to be sufficient and proportionate).
- (6) A consideration of the particular circumstances will require regard to both aggravating factors and mitigating factors, including whether any prejudice suffered by the plaintiff, whether the prejudice is capable of being remedied, whether the contemnor has cooperated and purged the contempt, as well as the personal circumstances of the contemnor.
- (7) The facility afforded by the internet and social media to broadcast and publish material widely makes breaches involving such actions worse rather than less serious.
- (8) The fact that the person in contempt is in a position of influence and is a person to whom others may look as an example is an aggravating factor.

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

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

30. There could have been no doubt, therefore, that the appropriate starting point for the Defendant's contempt was one of an immediate custodial sentence, perhaps measured in months.

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

F. SJ's Comments on Appropriate Sentence

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

- (1) The breach of court orders was intentional and deliberate because the Defendant disclosed the information knowing that they would breach the Anonymity Order and the Police Doxxing Injunction.
- (2) There was no excuse for the Applicant to vent his grievance by disclosing personal information on the Internet. There were proper channels to do so.
- (3) What was disclosed expanded to the personal aspects of PW1's life, including his daughters' school.
- (4) The personal data disclosed was not only of PW1, but also of his 2 daughters.
- (5) The Posts were accessible by the general public, though Mr Ho accepted that the circulation and exposure of the

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Posts may not have been as wide as in some other contempt cases.

(6) Information disclosed on the Internet could travel quickly and widely, making the impact on the victims more severe and long lasting.

(7) It is essential for the courts to send a clear message to deter such behaviour which is not to be tolerated in our society.

G. Defendant's Evidence and Mitigation

33. As I said, the Applicant submitted at the hearing a mitigation letter signed by himself. I troubled the interpreter to translate the letter, written in Chinese, into English in open court. The letter said the following:

(1) The Defendant said he had already deleted his Facebook account and has stopped using social media platforms altogether.

(2) Ever since the incident, he had been deeply troubled. He also deeply regretted having done what he now recognised as stupid and silly.

(3) He worked in the comic book industry when he was young. But because the industry was winding down, he was forced to change into another trade.

(4) Because he did not have much education, he could only work in some labour jobs in recent years. He now delivers takeaway in the Central.

(5) His income is very unstable. He pleads for a lenient sentence.

A 34. I invited him to make any further oral submissions, but he
B said he had nothing to add to the letter. But later, in the context of costs
C submissions, it was also revealed that he has 2 children who depend on
D him financially and he earned a modest salary every month.

E ***H. Decision on Sentence***

F 35. I agreed with Mr Ho that the breach was serious in that it
G was done deliberately knowing that it was in breach of the Anonymity
H Order and the Police Doxxing Injunction. The disclosure was
I particularly repugnant in that the personal data disclosed also concerned
J PW1's teenage daughters and personal aspects of their lives. The Posts
K were not simply re-posts of contents created by other people, but the
L Defendant put together those Posts from information he gathered from
M online sources and added captions to them.

N 36. I took the view that it was perhaps fortunate that Applicant
O was not a public figure and his Facebook did not appear to have any
P substantial following. The Posts had attracted relatively little attention
Q and all comments, except those made by himself, appeared to have come
R from a single other Facebook user. The SJ said at least 16 Facebook
S users had read the Posts or part of them.

T 37. But I accepted that the Defendant has since then deeply
U regretted what he did. This was demonstrated in part by his early frank
V cooperation with the police and his early admission of liability. He
essentially admitted all that which the SJ had to establish on the day of
his arrest. He had also admitted liability at the first hearing. Albeit he
did not respond to the SJ's Summons until then, having observed him

A during the hearing, I was of the view that the failure to respond genuinely
B stemmed from his inability, as a layman of his background, properly to
C engage with the legal process – rather than as a result of any attempt, for
D example, to buy time or unnecessarily to prolong the process. In fact, he
E was evidently more than eager to bring these proceedings to an end as
soon as possible.

F 38. Such deep regret was also shown in his request for Facebook
G permanently to delete his account on 30 June 2020. Albeit,
H chronologically, the request only came after he was approached by the
I Police on 24 June 2020, it still indicated that the Defendant had quickly
J come to realise the grave consequences which might be brought by the
K use of social media. His determination to stop using any social media
platforms altogether reflected his recognition that he had to be careful in
his approach towards social media.

L 39. Because of the lack of affidavit evidence, the Court knew
M very little about the personal background of the Defendant, except what I
N had already set out above. But since I was not informed by the SJ that
O the Defendant had any criminal record, I worked on the basis that he was
P of clear record before the breach and had since then managed to steer
clear of breaking the law. I accepted that the breach did not otherwise
reflect his general character.

Q 40. As to delay, the SJ had collected most if not all information
R needed by the Defendant's admissions on 24 June 2020, but only applied
S for leave for committal in May 2022. I thought there was an inordinate
T delay in bringing these proceedings, and that the appropriate way to
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A reflect the impact of delay was within the sentence, and its proportionality.
B But for the delay, it is likely that I would have imposed a more serious
C penalty. But, as I have indicated in earlier decisions, the passage of time
D can also benefit a defendant in allowing him or her to show that a return
E to the previous good character before the breach. For the Defendant in
F the instant case, he stopped using any social media in the past three years
and managed to stay away from any transgression of the law.

G 41. Bearing in mind all of the above features and factors, all of
H which I weighed and balanced in the case, it seemed to me that the
I appropriate and proportionate penalty was to impose 21 days'
imprisonment, suspended for 12 months.

J 42. As to costs, from what I was told in Court, it was obviously
K correct that the Defendant was not in a position to meet an indemnity
L costs order. I have observed in some previous decisions that making a
M costs order a defendant can never afford risks being disproportionate,
N when the penalty and costs are considered together. Hence, an order of
a contribution to costs may be appropriate.

O 43. Having considered the Defendant's financial means in light
P of all the other factors, I ordered the Defendant to contribute HK\$8,000 to
the SJ's costs.

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R ***I. Result***

S 44. In conclusion, for the reasons I have explained above, I
T imposed a penalty of 21 days' imprisonment, suspended for 12 months,
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A and I ordered the Defendant to pay a contribution to the SJ's costs in the
B sum of HK\$8,000.
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D
E (Russell Coleman)
F Judge of the Court of First Instance
G High Court

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

I The defendant, acting in person
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