

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

MISCELLANEOUS PROCEEDINGS NO. 587 OF 2022

IN THE MATTER OF an application on behalf of the
Secretary for Justice against LEE Pak Nap (李柏納)
for an Order of Committal

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

and
IN THE MATTER OF criminal proceedings in
WKCC1553/2020

BETWEEN

SECRETARY FOR JUSTICE Plaintiff

and

LEE PAK NAP (李柏納) Defendant

Before: Hon Coleman J in Court
Date of Hearing: 31 July 2023
Date of Decision: 31 July 2023

D E C I S I O N

A. Introduction

1. These contempt of court proceedings are brought with leave for committal granted by me on 24 November 2022: see [2023] 1 HKLRD 93.

2. The Defendant having indicated that he does not intend to contest liability for having been in contempt of court, the matter comes on for mitigation and sentencing on 31 July 2023, today.

3. The Defendant is Lee Pak Nap (Bernard Lee). The conduct of the Defendant giving rise to these proceedings is that he acted in breach of: (1) an injunction order made by this Court on 8 November 2019, amended on 11 December 2019, in HCA 1957/2019, which enjoined doxxing activities against police officers and their family members (“Police Doxxing Injunction”); and (2) an anonymity order granted by the Principal Magistrate on 2 June 2020 in WKCC 1553/2020 (“Anonymity Order”).

4. At the hearing, the Plaintiff (“SJ”) has been represented by Mr Martin Ho of Counsel. The Defendant has been represented by Mr Jeffrey Tam of Counsel. The parties have helpfully provided an agreed statement of facts. I can set out below such of the facts as are necessary for a proper understanding of this case.

B. Facts of the Contempt

5. The terms of the Police Doxxing Injunction had been set out by me in numerous previous decisions. Suffice it to say that it was an

A order made in HCA 1957/2019 to restrain persons from doing any of the
B following acts:

C (1) using, publishing, communicating or disclosing without
D consent to any other person the personal data, intended or
E likely to intimidate, molest, harass, threaten, pester or
interfere with any police officers or their family members;

F (2) intimidating, molesting, harassing, threatening, pestering or
interfering with any police officers and their family members;
G and

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

J 6. The making of the Police Doxxing Injunction was widely
K reported in the local media. Further, service of it was affected by way of
L substituted service by publishing copies of it on the webpages of the
Police as well as that of the Government of the HKSAR.

M 7. The Anonymity Order was made in underlying criminal
N proceedings, WKCC 1553/2020, arising from a public order incident
O (“Sai Wan Ho Incident”) when a police officer (PW1) fired three live
P rounds with one shot hitting a masked protester. The Anonymity Order
Q prohibited all persons from publishing or reporting any matters that may
R lead the public to identify PW1, including his name and that of his wife
and daughters, their photos, their residential address and their work and
S school addresses. The Anonymity Order made plain that breach of it may
render the person in breach liable for contempt of court.

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A 8. During a cyber patrol by the Police on 17 June 2020, a post
B (“Post”) was found published at 19:43 on 2 June 2020 captioned (in
C English translation) “no one knows your name is [PW1’s full Chinese
D name]”. The Post also shared a news article referencing the grant of the
E Anonymity Order. The Post was published on the Defendant’s Facebook
F page.

F 9. The status of the Post, as shown by the “Globe” icon, was
G “public”, meaning that it was publicly accessible by anyone with an
H Internet connection. As of 17 June 2020, the Post had been shared with
I others once, and it had attracted a total of 10 counts of reaction.

I 10. The Defendant was arrested on 24 June 2020 for the offence
J of “Contempt of Court”.

K 11. Later on the same day, 24 June 2020, the Defendant was
L interviewed under caution and admitted (amongst other things) that:
M (1) he was the sole user of the relevant Facebook account and the only
N person who used the login password; (2) he forwarded the news report
O from the website of the paper to his Facebook page, with his mobile
P phone and added the caption; (3) he did so with the intention to remind
Q the public of the Sai Wan Ho Incident; and (4) he understood when he
R made the Post, from the title of the news report, that PW1 was granted the
S Anonymity Order.

R 12. The Defendant deleted the Post on 25 June 2020.
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C. *Effect of the Doxxing*

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

14. In his evidence, PW1 has: (1) confirmed the accuracy of the personal data disclosed; (2) confirmed that he had not 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.

D. *Sentencing Principles*

15. 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.

16. 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

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will not be flouted and (b) the evaluation of the individual circumstances of each case.

(3) Subject to mitigating factors, if any, the starting and primary penalty for contempt of court in breaching an order in the nature of an injunction is an immediate custodial sentence, and one perhaps measured in months.

(4) Nevertheless, imprisonment is ordinarily regarded as a sanction of last resort, and any custodial term should be as short as possible and consistent with the circumstances of the case.

(5) In typical civil proceedings, the party in contempt may be punished through procedural steps within the action, if the contempt is not purged. However, the nature of the Police Doxxing Injunction and the breach of it are not exactly analogous (though the preference can be noted to avoid a sentence of imprisonment of other means of sanction would appear to be sufficient and proportionate).

(6) A consideration of the particular circumstances will require regard to both aggravating factors and mitigating factors, including whether any prejudice suffered by the plaintiff, whether the prejudice is capable of being remedied, whether 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.

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(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.

17. 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.

18. 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.

19. There can be no doubt, therefore, that the appropriate starting point for the Defendant's contempt is one of an immediate custodial sentence, perhaps measured in months.

20. It is 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.

21. In this case, Mr Ho on behalf of the SJ has noted that there is no logical connection between the time lapsed and the passing of a more lenient sentence. This is because (1) whilst the delay is unfortunate, the application cannot be said to be oppressive to the Defendant or otherwise constitute an abuse of court process, given the serious nature of the contempt and the fact that the Defendant does not contest liability; and

A (2) there is nothing to suggest that the Defendant has in some way been
B hampered in his efforts to respond to these proceedings, not least when he
C admits liability for the contempt.

D 22. I will return to the impact of the delay, in my analysis below.

E ***E. SJ's Comments on Appropriate Sentence***

F 23. In his submissions, Mr Ho has sought to highlight the
G following matters:

- H (1) As acknowledged by the Defendant in his video-recorded
I interview, he was aware (from the title of the news report he
J forwarded) that PW1 was granted anonymity by the Court.
K Hence, the Post was a deliberate flouting of and direct
L challenge to the authority of the Hong Kong courts.
- M (2) The timing of the Defendant's admission of liability casts
N serious doubt on the genuineness of any remorse on his part.
O Though served with these proceedings on a December 2022,
P he did not respond to the proceedings until 26 April 2023,
Q necessitating the adjournment from the originally scheduled
R hearing date of 17 April 2023.
- S (3) It is not the point to say that the Post was short lived. As has
T been previously observed by the Court, once personal data
U has been publicly revealed on the Internet or social media,
V 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 very consequence of the
repeated re-posting of earlier posts. It is, in common

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parlance, impossible to put the genie back into the bottle. The kind of damage caused is also likely to have long-lasting effect.

(4) The fact that information can be disseminated quickly and widely online makes the Defendant's breach (by utilisation of social media) worse rather than less serious.

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

24. I have those points well in mind. Indeed, where the granting of the Anonymity Order was made clear in the headline of the article forwarded by the Defendant, there is force in the first point that the breach was deliberate, and therefore the sentence to be imposed should reflect that. I will also weigh the other points as seem to me to be appropriate.

F. Defendant's Evidence and Mitigation

25. In his affirmation, the Defendant has sought to explain his personal and family background and has offered his "sincere apology" to the Court in respect of the contempt to which he has pleaded guilty.

26. The Defendant was born in 1987, and is now 36 years old. He obtained a Higher Diploma in Social Work in Hong Kong in 2008. Subsequently, obtained a degree in Applied Social Science (Bachelor of Arts) from an English university in 2015. Since originally graduating, he has worked as a social worker, up to date.

A 27. He currently works as a social worker at an elderly centre,
B with a basic salary increased in March 2023 to approximately HK\$33,000.

C 28. He is the youngest of three children, and remains living with
D his parents in a small flat on a public housing estate in the Southern
E District of Hong Kong Island. His father passed away in 2020, and he
F continues to live with his mother, for whom he cares on a daily basis (his
G siblings being married and living elsewhere).

H 29. The Defendant pays for all outgoings and expenses of the
I flat except rent, and the daily expenses of his mother. He also provides
J his mother with around HK\$6,000 each month as pocket money. His
K outgoings are barely met by his income, and his net bank balance is
L around HK\$50,000.

M 30. As a social worker, the Defendant has always paid close
N attention to the social and political developments in Hong Kong. At the
O time material to the contempt, he had been reading news on social media
P about the social unrest in 2019. On about 11 November 2019, he saw a
Q video on social media about a police officer who had shot a student
R during practice. The Defendant says he had sympathy with the student,
S because he looked so young, and when in about June 2020 he later read
T that the student had charges pressed against him for robbery, he (the
U Defendant) was angry.

V 31. On 2 June 2020, the Defendant forwarded the relevant news
article to his personal Facebook account and added the caption (see
above). The Defendant says it was something he decided to write out of

A impulse, but he now accepts it was stupid, or at least reckless, to write
B something which had no meaningful purpose and in particular that put
C him in breach of the relevant injunction orders.

D 32. Indeed, the Defendant accepts that he had previously come
E across headlines about the Court granting injunctions against third parties
F prohibiting them from disclosing the personal information about police
G officers and their immediate family members. But he says he does not
H know whether those headlines related to either the Police Doxxing
I Injunction or the Anonymity Order.

J 33. The Defendant says it is fortunate that he is not a well-
K known person in society. As a result, whilst the Post was made public, it
L only attracted 10 reactions and was shared once as of 20 June 2020.
M However, he takes full responsibility for the acts, and he expresses a
N sincere apology to the Court and to anyone, especially PW1 and his
O family, who were affected by his acting for any distress and/or
P inconvenience caused by his act.

Q 34. Following his arrest, the Defendant was cooperative with the
R Police and honest. He admitted being the owner/administrator of the
S Facebook account, and that he had published the Post. He gave the
T Police the passwords to his Facebook, phone and computer.

U 35. Specifically relating to mitigation, the Defendant says the
V incident was caused by his error in judgment and ignorance of the law.
He says it was totally out of his character. He says he now fully
understands that Court orders should be followed in a rule of law society,

A and is willing to take full responsibility for his mistake as well as being
B more careful in future.

C 36. The Defendant also says that he has engaged in much self-
D introspection and is genuinely sorry for what he did, as well as the
E inconvenience caused to all affected parties.

F 37. The Defendant has exhibited mitigation letters written on his
G behalf, from his mother and supervisor.

H 38. As to the time since the events leading to his arrest, the
I Defendant says the lengthy waiting period has naturally added to his
J anxiety, because he had already admitted everything during his cautioned
K interview. He offers the suggestion, on advice, that the delay reflects that
his case is at the less serious end of the spectrum of seriousness.

L 39. Nevertheless, he also anticipates that he will most likely be
M disciplined by the Disciplinary Board of Social Workers soon after this
N hearing.

O 40. In his submissions, Mr Tam says that the Defendant's
P admission of liability at an early stage of the proceedings is the biggest
Q mitigating factor, because it demonstrates the feeling of guilt as well as
R respect towards the Court. The time taken for the Defendant to respond
S to the action – the subject of criticism by Mr Ho – was only to preserve
T the Defendant's legal position and for him to seek independent legal
U advice (and where time was taken to obtain legal aid for such advice and
V representation). Indeed, Mr Tam correctly points out that it is clear that

A the Defendant had already made a full admission in his interview under
B caution, long before these proceedings were launched.

C 41. Mr Tam further submits that the Defendant's remorse is
D evidenced by: (1) the Defendant's full cooperation with the Police,
E including the voluntary giving of passwords; (2) the Defendant's purging
F of the contempt by removing the Post on 25 June 2020, once released
G from police custody; and (3) the Defendant's admission that he forwarded
H the news report in the Post with the intention to remind the public of the
I November 2019 incident, whilst understanding from the title of the news
J report that PW1 had been granted the Anonymity Order.

K 42. Mr Tam points to the Defendant's self-introspection about
L his acts, and the apologies now offered to all affected. He also refers to
M the acknowledgement by the Defendant that it was stupid, or at least
N reckless, to write something with no meaningful purpose and to commit
O the breaches.

P 43. Mr Tam refers to the mitigation letter from the Defendant's
Q mother, which describes the Defendant as honest, filial and a responsible
R character. The mother has mobility issues, and the Defendant says he
S helps with household chores, and she asks for the Court to pass a lenient
T sentence so that the Defendant may reform himself, as well as continue to
U support the household and take care of her. Reference is also made to the
V mitigation letter from the Defendant's supervisor which certifies his work
performance as "satisfactory" from 2021 to 2023.

A 44. Mr Tam asks me to accept – and I do – that Defendant has
B generally been a hard-working young man of good and humble character.

C 45. Mr Tam also says that the Defendant was overwhelmed by
D his emotions and committed the breach under the influence of the Internet.
E Though the Defendant was aware of the Police Doxxing Injunction and
F the Anonymity Order, he was unaware of their details, so that the
G impulsive act was out of character and was not challenge to the authority
H of the Court. No steps were taken to hide his identity, or to evade
I detection. Since his arrest, the Defendant has sought to put his life back
on the right track, evidenced by his satisfactory performance at work as a
social worker.

J ***G. Decision on Sentence***

K 46. I accept that the Defendant has previously been a man of
L good character, and that he performs an important job in society. I also
M accept that the breach was a one-off event, and that the Defendant took
the initiative to remove the Post after his arrest and release.

N 47. There is force in the argument that the gravity of the breach
O is relatively low, where the Post was made by the Defendant on his
P personal profile. The reactions to the Post were, fortunately, few in
Q number. But they were made publicly. That the Defendant is not a well-
R known person with any large social media following might be thought
S merely to be the absence of an aggravating factor. However, where the
T Defendant is now fully alive to the need properly to obey court orders,
U and has acknowledged the need to be more careful, I accept that the risk
V

A of future similar acts of contempt of court by the Defendant is relatively
B low.

C 48. As to the feature of delay, I have accepted that there was no
D deliberate delay by the SJ in this case. But, where the Defendant had
E admitted all facts relevant to the contempt within a month or so after the
F Post, I do think the delay of 22 months in bringing these proceedings was
G inordinate. It is fair to think that the SJ must have considered this
H particular contempt at least not so serious that it should warrant priority
I of dealing. The appropriate way to reflect the impact of delay is within
J the sentence, and its proportionality. Further, as in some other cases, the
K passage of time has not only allowed the earlier febrile atmosphere to
L dissipate, it has also given time for the Defendant to demonstrate a return
M to behaviour more in line with his previous good character.

N 49. Bearing in mind all of the above features and factors, all of
O which I have weighed and balanced in the case, it seems to me that the
P appropriate and proportionate penalty to impose 21 days' imprisonment,
Q suspended for 12 months.

R 50. As to costs, it is obviously correct that the Defendant is not
S in a position to meet an indemnity costs order, and Mr Tam is correct
T when he submits that punishing the Defendant by making a costs order he
U cannot afford risks being disproportionate, when the penalty and costs are
V considered together.

51. Mr Tam invites me to order a contribution to the SJ's costs of
between HK\$15,000 and HK\$30,000. However, whilst I accept that a

A contribution to costs (rather than an indemnity costs order) is appropriate, in my view those offered figures are too low. It seems to me that the appropriate contribution to order is HK\$50,000, and I so order.

H. Postscript

52. Mr Ho informed me during the hearing that not only is this case the last of the four cases in which I gave leave by my decision reported at [2023] 1 HKLRD 93, this is the last case presently contemplated by the SJ arising from matters amounting to alleged contempt of court in breach of the Police Doxxing Injunction.

53. As Mr Ho submits, it is to be hoped that the line of cases ending with this one has demonstrated the need for court orders to be obeyed, and for proper respect to be given to the rights and freedoms of other persons by persons who use the Internet or social media. Hopefully, with this reminder, a line can now be drawn under these cases.

(Russell Coleman)
Judge of the Court of First Instance
High Court

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

Mr Jeffrey Tam, instructed by Ho, Tse, Wai & Partners, for the defendant