



A 2. The contempt occurred in May 2020. It is now almost two  
B years later. The reasons for the passage of such a long time may need to  
C be considered, as that delay may impact the approach now taken by the  
D Court.

E 3. It is common ground that the likely sentence for this  
F contempt is one of immediate imprisonment. But, Mr Shum is already  
G in prison – albeit not presently as the result of being convicted of a crime,  
H but on remand pending trial on a charge under the National Security Law.  
I Indeed, the Originating Summons in this action, dated 25 August 2021,  
J was served on Mr Shum in Stanley Prison.

K 4. This sentencing hearing was originally fixed for  
L 31 March 2022. That date was vacated on the eve of the hearing. It  
M was vacated because Mr Shum could not be brought from prison to the  
N Court, as a result of Covid-19 restrictions affecting the ability of the  
O correctional services to produce him. Therefore, I re-fixed the hearing  
P for today, 14 April 2022.

Q 5. Mr Shum has been brought to Court for this hearing. He is  
R represented by Mr Albert NB Wong of Counsel. The Plaintiff (“SJ”) is  
S represented by Mr Jonathan Kwan and Mr Ivan Suen of Counsel. This  
T hearing has been conducted with the advantage of the skeleton  
U submissions filed by Counsel for Mr Shum and the SJ.  
V

6. This is my Decision.

**B. Injunction Order Breached**

7. On 31 October 2019, the SJ, as guardian of the public interest, applied *ex parte* in HCA 2007/2019 for an interim injunction against persons unlawfully and wilfully conducting themselves in any of the acts prohibited of:

- (1) wilfully disseminating, circulating, publishing or re-publishing on any internet-based platform or medium any material or information that promotes, encourages or incites the use or threat of violence, intended or likely to cause (i) unlawful bodily injury to any person within Hong Kong or (ii) unlawful damage to any property within Hong Kong;
- (2) assisting, causing, counselling, procuring, instigating, inciting, aiding, abetting or authorising others to commit any of the aforesaid acts or participate in any of the aforesaid acts.

8. On the same date, 31 October 2019, I granted an interim injunction order in those terms (“Incitement Injunction”). The grant of the Incitement Injunction was widely reported in the mass media, including in English and Chinese newspapers with wide circulation in Hong Kong, major radio and television service providers and various sources on the internet.

9. On 4 November 2019, the SJ made an *inter partes* application for continuation of the Incitement Injunction. That application was heard on 15 November 2019, and I made an order continuing the Incitement Injunction in slightly amended terms (“Return

A Date Order”). My Judgment dated 15 November 2019 and the Return  
B Date Order were widely reported in the local media.

C 10. The Incitement Injunction was served on the defendants to  
D that action by way of substituted service, by publishing a copy of the  
E Incitement Injunction on the web page of the Hong Kong Police Force as  
F well as that of the Government of the Hong Kong Special Administrative  
G Region.

H **C. The Breach Comprising the Contempt**

I 11. I take the facts from the Statement of Facts used, pursuant to  
J RHC Order 52 rule 2(2), in the application for leave to apply for an order  
K of committal. As Mr Shum has admitted the contempt, it is those facts  
L which delineate the breach, and it can be seen that Mr Shum’s breach of  
M the Incitement Injunction occurred as follows.

N 12. On 14 May 2020, during a cyber patrol, the Police found an  
O article with the title “周梓樂被香港警察謀殺身亡，半年” (English  
P translation: The Murder of Chow Tsz Lok by Hong Kong Police, Half a  
Q year) published on the Mr Shum’s Facebook Profile on 8 May 2020 at  
R around 2219 hours (“Facebook Post”). The article was also published  
S on the Inmediahk Website on 9 May 2020 (“Inmediahk Article”).

T 13. Since the Facebook Post and Inmediahk Article (collectively  
U “Article”) contained contents of *prima facie* breach of the Interim  
V Injunction Order, the Police conducted an investigation into their  
publication.

A 14. The Article alleged amongst other things that the Police  
B “murdered” the (then) 22-year-old Chow Tsz Lok (周梓樂), who died on  
C 8 November 2019, after falling from the multi-storey Sheung Tak Car  
D Park in Tseung Kwan O on 4 November 2019. The author of the Article  
E further called on the people of Hong Kong to “take revenge” against the  
F police for the incident and appealed for not severing ties with those who  
G were prepared to resort to the use of violence, including guns and bombs,  
H against the Police.

I 15. The Article contained, amongst others, the following  
J references:

- K (1) 兇手正是香港警察 (English translation: The murderer is  
L the Hong Kong Police Force.)
- M (2) 但我是確信，周梓樂是被香港警渣所謀殺的。 (English  
N translation: But I firmly believe that Chow Tsz Lok was  
O murdered by the Hong Kong Police scum.)
- P (3) 從那天開始，我們的口號由「香港人加油」、「香港人反  
Q 抗」，變為「香港人，報仇」。香港警察親手殺害了我們  
R 的手足，制度不彰，公義不顯，報仇是理所當然。 (English  
S translation: From that day onward, our slogan had been  
T changed from “Hong Kong people, keep it up”, “Hong Kong  
U people, rebel”, to “Hong Kong people, take revenge”.  
V Hong Kong Police murdered our comrade with their own  
hands but the institution was faulty and justice was not seen.  
Taking revenge is a matter of course.)
- (4) 「香港人報仇」.....也不能只是流於口號，因為牠們是切  
實地殺害了我們親友的仇人。 (English translation: “Hong  
Kong people, take revenge” ... should not remain as a slogan

only, as they [using the animal form of “they”] are the enemy who actually murdered our close family and friends.)

(5) 自此之後，有些手足向著更高規格的裝備發展，有槍有炸彈。(English translation: Since then, some comrades have been advancing the level of their equipment, there are guns and bombs.)

(6) 其實我一路都想講，如果佢地真係做左，行埋未行到果步，其實一定唔會割，至少我一定唔會割。(English translation: As I have been wanting to say all along, if they actually do it, taking the step that has not been taken yet, we are definitely not going to sever ties with them. At least I myself am definitely not going to sever ties.)

(7) 自從周梓樂那夜，香港人要報仇，是一個實在的任務來。香港警畜是實實在在地謀殺了我們一位手足。或許是多位。(English translation: Since the night Chow Tsz Lok (was killed), it has become a real mission for Hong Kong people to take revenge. Hong Kong Police beasts have actually murdered one of our comrades, or possibly more)

(8) 如果香港人報仇，不再是口號，而是真的有手足做了，一定不割。(English translation: If “Hong Kong people, take revenge” is no longer a slogan but actually done by our comrades, definitely will not sever ties.)

16. The SJ submits that, reading the lines together and in context, the Article incited hatred against the Police, promoted, encouraged and condoned the use of violence, guns and bombs against the Police. I agree.

17. Mr Shum’s Facebook Profile bore his name and photo. It had a blue tick to show that Facebook, based on its internal vetting process, had confirmed that the account is the authentic presence of the public figure, celebrity, or global brand it represents. The status of the Facebook Post, as shown by a “Globe” icon underneath the account name and next to the time stamp, was “Public” (meaning the Facebook Post was publicly accessible by anyone browsing the Facebook Profile).

18. As of 25 May 2020, the Facebook Profile had attracted 53,714 followers. The Facebook Post had attracted 13 comments from other Facebook users, and had been shared on 646 occasions to other Facebook accounts. 1,624 Facebook users had responded to the Facebook Post with emotion icons. Those statistics imply that at least 1,624 Facebook users had read the Facebook Post. Of the 13 comments left under the Facebook Post, four posts contained expressions promoting, encouraging or inciting the use of violence:

| No. | Facebook User Date and Time | Content  | English Translation   |
|-----|-----------------------------|--|---|
| 1.  | 21 May 2020, 09:05am        | 我轉載呢篇文, 告埋我煽動暴力好冇? ?   | Would you prosecute me with “inciting the use of violence” for relaying this article?   |
| 2.  | 21 May 2020, 08:37am        | 多謝發聲 黑警死全家   | Thank you for voicing out. The whole family of corrupt police should die.   |
| 3.  | 9 May 2020, 12:01am         | 岑敖暉, 6年前雨傘運動, 我一直覺得你地學聯係食緊人血饅頭, 好撻討厭你地。6年後的今日, 我要感謝你。因為你一直冇放棄過一班前線嘅手足。皇軍殺周梓樂, 係鐵一般的事實, 721, 831等等, 係唔會再返得到轉頭。我相信心水 | Lester Shum, in the Umbrella Movement 6 years ago, I always thought you guys in the Federation of Students [Hong Kong Federation of Students] were eating steamed human-blood buns and I fucking hated you guys. 6 years later, I have to thank you today, because you have never given up on the comrades at the frontline. The royal army killed Chow Tsz Lok, it is an undeniable truth. After the events of 721, 831, |

|    |                        |  |  |
|----|------------------------|--|--|
|    |                        | 清既人，一定一定一定<br>會繼續呢場逆權<br>運動，持續抗爭！              | etc., there is no turning back. I<br>believe those with a clear mind<br>will definitely continue with this<br>anti-establishment movement,<br>carry on fighting! |
| 4. | 9 May 2020,<br>07:16am | 由梁義士墮下一刻<br>開始，向政權報仇/<br>問責已經開始，我們<br>都已經難以回頭。 | Since the fall of martyr LEUNG,<br>the revenge or fault finding against<br>the regime has begun. There is<br>no way back.  |

19. According to the guidelines published on the Inmediahk Website, any person who wishes to publish articles on the website should submit an account creation application. After creating an account, the registered user may login via the website to publish articles. Registered users may edit the articles before and after publication.

20. The Inmediahk Article was published by the registered account user “岑敖暉 Lester”. Next to the author’s name was a photo of Mr Shum and references to the posts “District Councillor of Tsuen Wan” and “former Deputy Secretary-General of the Hong Kong Federation of Students”. The account was registered some years ago with 126 articles issued in total since 20 April 2014.

21. On 9 May 2020, at around 5:15 pm, a post was created on the Facebook page of Inmediahk which relayed the Inmediahk Article. As of 14 May 2020, the post attracted 216 comments, 248 shares to other Facebook accounts and 1,184 replies in form of emotional icons. Of the 216 comments on the Facebook page of Inmediahk, two comments promoting, encouraging or inciting the use of violence could be identified:

| No. | Content   | English translation                                      |
|-----|-----------|--|
| 1.  | 黑警死全家 冇懸念 | The whole family of Police scum, in no doubt, shall die. |



|    |                               |   |
|----|-------------------------------|---|
| 2. | 黑警老婆或老公,父母子女, 兄弟姊妹, 全必死於非命。。。 | Wife or husband, parents, children and siblings of Police scums will die in misfortune. |
|----|-------------------------------|---|

22. On 15 May 2020, Police wrote to Mr Shum, refuting the allegation made in the Article that Police murdered Chow Tsz Lok and warning of legal action (“Police Letter”). On the same day, Mr Shum posted a photo of the Police Letter on his Facebook Profile, remarking that the Police had sent him an “intimidating letter”.

23. On 20 May 2020, the Department of Justice (“DoJ”) wrote to Mr Shum and Inmediahk (collectively, “DoJ Letters”) pointing out that the Inmediahk Article was, on its face, in breach of the Interim Injunction Order and requesting for removal of the Inmediahk Article from the Inmediahk Website within 7 days. On the same day at around 9:30 pm, Mr Shum posted the DoJ Letter to him on his Facebook Profile. In the post, he stated that he refused to remove the Inmediahk Article, nor ‘back down’. The post also included the words “指我指控警察謀殺周梓樂的文章” (English translation: ...[they] alleged that my article which accused the Police of murdering Chow Tsz Lok) and “會不會靜靜雞 del post 就算” (English translation: ...whether things would end if [I] quietly deleted the post).

24. Upon Police’s check on 25 May 2020, a post was made on the Inmediahk Facebook page and Inmediahk Website explaining that the Inmediahk Article had been temporarily removed in light of the DoJ’s Letter to Inmediahk, and the Inmediahk Article was found to be inaccessible. On 25 May 2020, solicitors for Mr Shum wrote to the DoJ informing that the Inmediahk Article had been removed from the

A Inmediahk Website by Inmediahk. On 27 May 2020, solicitors for  
B Inmediahk also wrote to the DoJ informing that the Inmediahk Article  
C had been removed from the Inmediahk Website at around 2:50 pm on  
D 23 May 2020.

E 25. On the same day, the DoJ wrote to Mr Shum's solicitors  
F further requesting that he remove the Facebook Post from the Facebook  
G Profile. As at 10 August 2021, no reply had been received, and the  
H Facebook Post remained on the Facebook Profile. Nor was any reply  
subsequently received.

I 26. It is Mr Shum's own admission that the Facebook Post was  
J only removed from public sight on his instructions in September 2021.  
K That is a date after he became aware of the commencement of these  
proceedings.

L 27. On 11 August 2021, the SJ made an *ex parte* application for  
M leave to apply for committal. I granted leave on 17 August 2021. But,  
N in doing so, I was conscious of the delay from May 2020 until  
O August 2021 – a period of 15 months – between the discovery of the  
P breach and the application for leave to pursue committal proceedings in  
Q respect of that breach. With the time taken in bringing the matter to an  
effective mitigation and sentence hearing, therefore, I am dealing with  
this matter almost 2 years after the contempt occurred.

R ***D. The Delay***

S 28. In *Secretary for Justice v Sung Ho Tak Edward* [2022]  
T HKCFI 227, I commented on the long period of delay in that case.

A There, the relevant breach was not sought to be brought back to this Court  
B until almost 2 years after the date of the breach. I described that (at §27)  
C as “more than just disappointing”. At §§28-30, I stated:

D 28. By nearly 2 years after the date of the breach,  
E committed in the midst of the deep social unrest, that  
F social unrest had largely calmed down. Of course, I do  
G not say that it is improper to bring these contempt  
H proceedings (or else I would not have granted leave).  
I But it might be said that pursuing the contempt so long  
J after the event, well after the fraught social situation at  
K the time of the Incitement Injunction has calmed down,  
L risks unhelpfully raking over the embers.

H 29. Further, I think the Court is entitled to expect actions  
I which are said to be clear breaches of Court orders to be  
J brought to the attention of the Court within a fairly short  
K time, if the matter is to be pursued at all. Court orders  
L are not advisory; they mandate what must be done or  
M not done. In a case such as the present, the Court itself  
N is unlikely to be aware of any specific details of  
O breaches of the Court’s order. The Court relies on one  
P of the parties to the proceedings – here the SJ, who  
Q sought and obtained the injunction – to bring the matter  
R to the attention of the Court timeously, so that the Court  
S is in a position to enforce its order through contempt  
T proceedings and orders for committal if necessary.

M 30. Significant delay is almost bound to frustrate the  
N Court’s ability properly to police its own orders. The  
O value of late steps may well be less than the value of  
P steps taken timeously. Enforcement steps which are  
Q considered to be necessary, appropriate and  
R proportionate if taken within weeks or months of the  
S breach of the order may no longer be considered either  
T necessary or appropriate or proportionate if only  
U pursued years later.

Q 29. I expressly adopt and repeat those points for present  
R purposes.

S 30. At the call over hearing on 21 January 2022, I asked  
T Mr Kwan why it had taken so long to bring this matter to the attention of  
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V

A the Court. Mr Kwan promised to take instructions on the matter, and to  
B address the Court at this hearing. In his skeleton submissions filed for  
C this hearing, Mr Kwan explained the SJ's "understanding is that  
D significant time was taken for the following matters":

E (1) Firstly, and primarily, time was taken in continually  
F reviewing and advising on the relevancy and sufficiency of  
G the evidence as collected by the Police from time to time,  
H and for the Police to conduct further investigation from time  
I to time upon DOJ's advice and request regarding various  
J aspects of the case. The activity went beyond the general  
K consideration of whether the Article was a breach of the  
L Incitement Injunction, for example extending to evidence as  
to Mr Shum's knowledge of the injunction and his  
connection to the relevant Facebook Page and Inmediahk  
account. The relevant investigations were finalised, and the  
supporting exhibits collated were translated, only in around  
March 2021.

M (2) Secondly, for the DOJ to take advice from counsel, and to  
N review and revise the draft court documents in light of the  
O evidence collected by the Police from time to time during  
further investigation.

P 31. Mr Kwan submits that the lapse of time, whilst unfortunate,  
Q was not unreasonable and that there was no undue delay in view of the  
R required preparatory work in instituting the proceedings. Further, whilst  
S accepting that the lapse of time may be one factor taken into account in  
T determining the appropriate sentence, he submits it is not a determinative  
U or major factor. There is also the statement that, with the benefit of  
V

A hindsight, areas for improvement and room for expedition are noted, and  
B my previous observations will be borne in mind.

C 32. As to the first point, about the time taken in investigating  
D and seeking advice on various matters, I would note the following:

- E (1) The Article was published on 8 and 9 May 2020.
- F (2) The Police had discovered the publication by 14 May 2020.
- G (3) There was plainly no difficulty in identifying the author of  
H the Article. It was published on Mr Shum’s Facebook Page,  
I which had his name and photo and various other identifying  
J descriptions. It was published on the Inmediahk account  
K also clearly directly linked to Mr Shum.
- L (4) Indeed, the Police were able to write to Mr Shum on  
M 15 May 2020 (within a day or so of discovering the Article),  
N specifically drawing attention to the Incitement Injunction  
O and warning of legal action.
- P (5) On the same day, Mr Shum posted the Police Letter on his  
Q Facebook Page, describing it as an “intimidating letter” and  
R stating that he might have breached the Incitement  
S Injunction.
- T (6) As early as 20 May 2020, the DoJ were able to write to  
U Mr Shum and to Inmediahk to point out that the Article was,  
V on its face, in breach of the Incitement Injunction and  
requesting its removal.
- (7) On the same day, Mr Shum posted the DOJ Letter, saying  
that he would not remove the Article nor back down.

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(8) On 25 and 27 May 2020, solicitors for Mr Shum and for Inmediahk wrote to the DoJ confirming the removal of the Inmediahk Article.

(9) On 27 May 2020, the DoJ wrote to Mr Shum’s solicitors requesting the Facebook Post’s removal within five days. There was no response within five days (nor five weeks, nor even five months).

(10) The DoJ Letter also specifically identified that contempt proceedings were being contemplated.

(11) The various Facebook posts now relied upon to demonstrate the likelihood that Mr Shum must have been aware of the Incitement Injunction cover the period between 15 October 2019 and 23 November 2019, and must have been available to see on Mr Shum’s Facebook Page in May 2020.

33. Hence, it can be seen that:

- (1) the Article was almost immediately recognised as being in clear breach of the Incitement Injunction;
- (2) there was clearly no question as to the author of the Article;
- (3) correspondence immediately ensued between the Police/DoJ and Mr Shum and Inmediahk and their solicitors;
- (4) the requests to remove the Article must have been based on the DoJ’s view that the Article was posted in breach of the Incitement Injunction, and indeed the requests said so in terms, specifically mentioning contemplated contempt proceedings;

(5) material was also readily available to demonstrate the likelihood of knowledge of the Incitement Injunction; and

(6) the DoJ's request for removal of the Article from Mr Shum's Facebook Page was not complied with within the 5-day time limit set, and was apparently effectively ignored.

34. Therefore – and bearing in mind that the SJ herself is the head of the DoJ – I confess I find it difficult to understand how it could conceivably take 15 months to conduct any such further activity as would be appropriate or necessary for the SJ to bring the matter to the attention of the Court by way of the application for leave to apply for committal.

35. Indeed, the only significant – but, ultimately, irrelevant – evidential materials deployed in these proceedings which post-date May 2020 are various media reports about the conviction of Mr Shum in May 2021 (relating to participation in an unlawful assembly on 4 June 2020), and his disqualification as a District Councillor in the same month.

36. It would be unfortunate if the delay in bringing these committal proceedings until August 2021 were to be thought in any way connected with the chronology of Mr Shum's conviction and disqualification in May 2021, and the further charges preferred against him under the National Security Law, on which he is currently remanded in custody awaiting trial, or to be seen as part of a concerted course of action against him.

37. But I think Mr Wong floats the idea that the chronology perhaps puts some wind in the sails of his argument that the SJ – through

Mr Kwan’s written submissions – has crossed the line from placing facts before the Court to advocating for a stronger sanction or harsher quantum.

***E. The SJ’s Role***

38. In the underlying proceedings HCA 2007/2019, and in pursuing the grant of the Incitement Injunction, the SJ was acting in her role as guardian of the public interest.

39. In bringing these contempt proceedings, the SJ is also acting in her role as guardian of the public interest and the administration of justice. This was a point I addressed in *Secretary for Justice v Chan Oi Yau Rio* [2020] 3 HKLRD 494 at §§51-53. There I noted that, whilst the contempt proceedings are ‘civil’ in their procedural character, the SJ is not seeking to protect the interests of the executive arm of the Government. Nor is she properly to be regarded as advancing any private interests. Rather, the SJ is seeking to uphold the rule of law and to safeguard the administration of justice.

40. I also noted that the role requires the SJ, and Counsel representing her, to endeavour to assist the Court with the sentencing process in a fair and impartial manner. I held that it is consistent with the proper approach to the procedural framework in contempt proceedings, where it is an established norm for the plaintiff (in effect, in a case such as the present, the general public represented by the SJ) to make detailed submissions to assist the Court on the appropriate penalty to be imposed on the contemnor. I recorded that Counsel representing



A the SJ in that case had made suggestions as to a possible sentence he said  
B would be appropriate, but I did not think he had over-stepped any mark.

C 41. In this case, Mr Wong submits that Counsel for the SJ has  
D over-stepped the mark, making written submissions in an emotive tone,  
E which are not limited to presentation of relevant facts, but which contain  
F advocacy and argument about the facts. Mr Wong asks the Court to  
G separate the facts from the arguments, and to base sentencing in this case  
H on those facts pleaded in the Statement of Facts (used to seek leave to  
I apply for committal) and the factual matters deposed to by Mr Shum in  
his affirmations.

J 42. Mr Wong reminds me that it is trite that even a prosecutor  
K has no particular interest in securing a more severe sentence by advocacy,  
L though he plays a part in ensuring that an appropriate sentence is imposed.  
M He points to the parts of the Prosecution Code which state that the  
N prosecutor “should not attempt by advocacy to influence the court in  
relation to the quantum of sentence” – though I do not think that code  
really applies to the case of a civil contempt of court.

O 43. One particular paragraph – §31 of Mr Kwan’s submissions,  
P which has an introductory paragraph followed by 15 sub-paragraphs  
Q making and expanding on five particular points (see below) – which  
R Mr Wong says contains arguments which should be viewed with caution,  
begins as follows (bold and underlining emphasis in original):

S The Plaintiff submits that in a case of incitement with the  
T circumstances present, the starting point of an immediate  
U custodial sentence should **not** be departed from. Despite their  
V similarities, there are various distinguishing factors that **elevate**  
**the seriousness of this case** far above that in **Sung Ho Tak**.

A 44. The reference to *Sung Ho Tak* is to *Secretary for Justice v*  
B *Sung Tak Ho Edward* [2022] HKCFI 227, the only previous case in which  
C the Court has sentenced a contempt for breach of the Incitement  
D Injunction. The following paragraphs of Mr Kwan’s written  
E submissions include:

- E (1) §32, which points to similarities between this case and the  
F *Sung Ho Tak Edward* case “which demonstrate its general  
G seriousness”;  
H (2) §33, which identifies some facts which the SJ “admits can be  
I regarded as mitigating factors” – though there is some force  
J in Mr Wong’s criticism of that paragraph that it reads more  
K like the SJ’s argument in opposition to those factors; and  
L (3) §34, which identifies that the SJ does not dispute that  
M Mr Shum “had, at least to an extent, dutifully performed his  
N duties as a District Councillor during his tenure and in doing  
O so rendered a service to the community”, whilst at the same  
P time submitting that it “should not be considered as relevant  
Q to the Court’s determination of a proper sentence”.

N 45. I accept Mr Wong’s submission that appearances matter.  
O But I also acknowledge that there may not always be a clear line between  
P (a) the mere presentation of facts relevant to sentencing, and (b) argument  
Q on those facts which seems to advocate for a particular sentence or level  
R of harshness.

R 46. In this case, I think that some of the language used by  
S Mr Kwan in his submissions (see, for example, his §31, quoted above)  
T was perhaps infelicitous, as it might well give the impression that he is  
U advocating beyond his proper role. But, on balance, I do not think that  
V

A was Mr Kwan's intention. Rather, I think Mr Kwan's intention was to  
B identify those facts and matters which might be taken into account and  
C weighed by the Court, including matters which show similarities with or  
D differences from the facts of the only previous case in which the Court  
E has sentenced a contemnor for breach of the Incitement Injunction. I do  
F not think it over-steps the mark to identify features of this case which  
G might make it seem a more or less serious breach than occurred in the  
H previous case, or to identify factors which might be weighed as  
I potentially aggravating as well as those potentially mitigating.

H 47. In any event, there is obviously no dispute that the Court  
I should focus, and is well able to focus, on all relevant circumstances and  
J to weigh them in the balance as the Court thinks fit.

K ***F. Applicable Principles for Sentencing***

L 48. In *Secretary for Justice v Sung Tak Ho Edward* [2022]  
M HKCFI 227, I set out the principles applicable to sentencing for contempt  
N of the Incitement Injunction, by stating that the sentencing guidance as  
O explained by me for contempt of the Doxxing Injunction can be adopted  
P as applicable. That guidance can be found in *Secretary for Justice*  
Q *Chan Oi Yau Riyo* [2020] 3 HKLRD 494 at §§54-63, *Secretary for Justice*  
R *v Cheng Lai King* [2020] 5 HKLRD 356 at §§64-72, and *Secretary for*  
S *Justice v Chan Kin Chung* [2021] 1 HKLRD 563 at §§38-45.

R 49. I also made plain that the lack of a doxxing element in an  
S incitement case does not warrant more lenient sentencing options. The  
T appropriate starting point for breach of the injunction order in an  
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A incitement case is one of an immediate custodial sentence, and one  
B perhaps measured in months.

C 50. Indeed, I expressed agreement with a submission that the  
D conduct of inciting violence online can be said to be more serious than  
E that of doxxing. Whilst both inciting violence online and doxxing are  
F serious matters, the threat posed by inciting violence is more direct,  
G explicit and immediate.

H 51. I also stated that any attempt to distinguish circumstances  
I between those where a contemnor appears enthusiastic for the result of  
J his incitement, and those where the contemnor is simply “venting” in the  
K heat of the moment without intention for inciting others to act on his  
L words, should not be taken too far. A person who has given no thought  
M to the logical likely or potential consequence of his words remains  
N culpable, and I would not wish it to be thought that a person can be  
O treated leniently merely because he has failed to form the actual intention  
P which is nevertheless the logical consequence of the acts performed.  
Q The Court is not concerned only with the subjective intention of the  
R contemnor, but with the objective potential or likely effect of the words  
S used. Of course, in any given case where it is shown that the contemnor  
T firmly intended his incitement to result in violence, that can be taken into  
U account.

V 52. Beside the degree of culpability, the Court may take into  
account various other circumstances to the extent appropriate to the case  
such as, (a) the contemnor’s personal circumstances, (b) the effect of the  
contempt on the administration of justice, (c) the need to deter future or  
repeated contempt, (d) the absence or presence of prior conviction for

A contempt, (e) the contemnor's financial means, (f) whether the contemnor  
B has exhibited genuine contrition and made a full and ample apology, and  
C (g) whether the conduct is sufficiently serious to warrant the imposition  
D of a term of imprisonment (sometimes considered as the penalty of 'last  
E resort').

F 53. The ultimate question for the Court when sentencing for  
G contempt of a Court order is the determination of a sufficient and  
H proportionate sentence (or sanction, if that word is preferred) for the  
I particular case. Just as the punishment should fit the crime, so the  
J sanction should fit the contempt.

K 54. I do not think it necessary to fog the clarity of that point with  
L any discussion, as invited by Mr Wong (albeit, to be fair, rather  
M tentatively), as to any potential difference between (a) proportionality on  
N a prior restraint against publication and (b) proportionality on  
O consideration of the sanction for breach of a restraint against publication.  
P Quite simply, the appropriate sanction is one which is both sufficient and  
Q proportionate in addressing the contempt.

R **G. *SJ's Submissions***

S 55. Mr Kwan submits that the present case should be approached  
T with several additional observations made in the *Chan Oi Yau Rio* case  
U kept in mind, being:

- V (1) The era of the internet and social media gives rise to the very  
easy practical way by which an individual can breach an  
order of the court and widely disseminate information. The

facility to broadcast and publish material widely makes breaches worse rather than less serious.

(2) In considering whether the contemnor has exhibited genuine contrition and made a full and ample apology, whether the contemnor has purged his contempt and the circumstances of doing so are relevant.

(3) It is a mitigating factor if the contempt was a one-off event, so that prior records of contempt would indicate the opposite.

(4) It is also a mitigating factor where the contemnor indicates quickly that he or she will admit liability for contempt.

56. With those matters in mind, Mr Kwan then submits that the Court should take into account the following factors:

(1) The publication of the Article was intentional and measured, with publication on more than one online platform across two days. The expression of views on a then topical social matter, which sought to promote and encourage his audience to cause bodily harm against officers of the Police, cannot be regarded as “venting”. There is also reason to believe Mr Shum was possibly aware of being in contempt of court when publishing the Article, and so may have calculated it as “worth the risk”. This, says Mr Kwan, is akin to open defiance of court and an aggravating factor.

(2) The violence promoted, encouraged and condoned in the Article was both severe and specific. Encouraging “revenge” for the alleged “murder” opened up lethal levels of violence to be employed against the Police. Reference to the use of “guns and bombs” was a concrete example of the

violence which could be employed in effecting the “revenge”.

(3) Mr Shum was a public figure of considerable influence, having been a social activist of some repute since 2014 and a District Councillor from January 2020, and the “ripple effect” caused by his words online would have been far greater than that of the average person. He was highly vocal and well-followed on Facebook, in the period leading up to the contempt. The Article was available for around two weeks on Inmediahk and well over a year on Facebook.

(4) While Mr Shum now professes to be remorseful of his actions, his conduct after receiving the Police’s letter and the DOJ Letter was, for a very long period, inconsistent with remorse. The Article on Facebook was removed from public sight only after the present proceedings commenced. The late admission of remorse should, says Mr Kwan, be significantly discounted or accorded little weight.

(5) The incident cannot be regarded as a one-off event, because Mr Shum has a prior record for a criminal contempt in 2014, for which he was fined and given a suspended sentence. The promotion of violence in the Article reflects a much more radical stance than previously. Hence, Mr Kwan submits, a suspended sentence would not be appropriate in this case.

57. As to the similarities with the *Sung Ho Tak* case, which are said to demonstrate the general seriousness of the present case, Mr Kwan submits that:

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(1) Mr Shum was the original author of the Article. He posted the offending material on his own initiative, and did not merely re-post material authored by others.

(2) There is a clear correlation between online calls for violence and their actual implementation in the real world. While the general level of violence in Hong Kong had subsided to an extent by May 2020, it was not far removed from the period of violent unrest in 2019.

(3) Vigilantism has no place in Hong Kong irrespective of one's political stance. There is no reason why one's views, however strong, cannot be expressed in a proper, legitimate, and non-violent manner through proper channels – including through the Complaints Against Police Office.

58. I think these points are relevant to the weighing exercise and I shall keep in mind.

59. The overall submission is that the present case is more serious than the *Sung Ho Tak Edward* case, and Mr Kwan submits that the sufficient, appropriate and proportionate sentence is one of an immediate custodial sentence (though he does not go so far as to suggest any particular period of custody to be imposed).

***H. Mr Shum's Evidence and the Mitigation Advanced***

60. I record the fact that, at the call-over hearing on 21 January 2022, Mr Shum accepted liability for contempt of court on account of the publication of the Article. Through his Counsel, Mr Wong, he expressed respect for the Court, apologised deeply, and



A disavowed any public statements that may be seen to have encouraged or  
B promoted violence.

C 61. Further, in his first affirmation, Mr Shum identified the  
D purpose of the affirmation was to express his clearest intention sincerely  
E to apologise to the Court and to declare that he does not wish to  
F undermine, defy, or affront the authority of the Court. He further  
G repeated his apologies, and his clear disavowal of public statements  
seeming to encourage or promote violence.

H 62. As to the Article, Mr Shum points to the fact that a number  
I of issues were discussed and the expressions promoting violence were not  
J the sole or dominant reasons for publishing the Article. He says that his  
K political views of discontent are well-known and primarily directed at the  
L executive authorities, not the Court, so that he had no intention to  
M challenge or undermine the authority or integrity of this Court. But,  
Mr Shum says, he now appreciates and understands the recklessness and  
detriment of publishing the Article.

N 63. Mr Shum expresses that he deeply regrets any action that  
O might have further inflamed an already volatile situation. He wishes to  
P draw a clear line across any statement that might have encouraged or  
Q promoted violence. He also hopes that by accepting liability (and  
R avoiding a further trial focusing on the period of the fraught social  
situation), he can minimise “unhelpfully raking over the embers” – a  
reference to what I said in the *Sung Ho Tak Edward* case at §28.

S 64. As to his personal circumstances, Mr Shum is now 28 years  
T old, and was 26 at the time of publishing the Article. He married in  
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A January 2021. He has a degree from the Department of Government and  
B Public Administration of the Chinese University of Hong Kong. Having  
C previously worked as a policy research assistant to a Legislative  
D Councillor from 2016, Mr Shum was himself elected as a member of the  
E Tsuen Wan District Council representing the Hoi Bun constituency in  
2019.

F 65. In his affirmation he has set out some of what he achieved  
G during his tenure from 1 January 2020 to 20 May 2021. Exhibited to the  
H affirmation are various complimentary letters written by residents of the  
I constituency, being a selection of a far higher number of letters received  
J by Mr Shum and friends after the commencement of these proceedings.  
K I think it fair to say by way of summary that the letters speak with one  
voice to Mr Shum's care and effort to serve, and to his proactivity,  
L diligence and wide contributions towards his constituents.

M 66. As already stated, Mr Shum was disqualified and had ceased  
N to be a District Councillor as of 21 May 2021.

O 67. Mr Shum has been remanded in custody since  
P 28 February 2021 for a case in relation to the 2020 'primary election' for  
Q what was the ultimately postponed Legislative Council Election, on a  
R charge of "conspiracy to commit subversion". It is unclear when the  
S matter might proceed to trial. He also served a 6-month sentence  
T following his conviction in May 2021. Since being on remand from late  
U February 2021, Mr Shum has not been able to work to sustain himself and  
V his family.

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68. I think it can also be noted that this period has coincided with the various restrictions imposed in light of the pandemic and public health concerns, which can only have exacerbated the difficulties in communications between Mr Shum and his wife as they face their respective difficulties.

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69. In his submissions, without shying away from the accepted seriousness of the breach, Mr Wong emphasises Mr Shum’s sincere apology to the Court, Mr Shum’s remorse and his statement to disavow any encouragement of violence, as well as his eagerness to draw a line under the events so that society can move on in greater harmony.

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70. Mr Wong submits that Mr Shum’s evidence shows a willingness to confront head-on the reasons for his admitted culpability, including the admission that he knew the facts constituting the basic intent required for the breach of the Incitement Injunction. As to the time taken before Mr Shum admitted liability for the breach (by letter to the DoJ dated 17 January 2022, and in written submissions to the Court dated 19 January 2022), Mr Wong points to Mr Shum’s right to take legal advice – and the fact that Mr Shum took a significantly shorter time to take and act on advice than the SJ took to bring these proceedings.

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71. Mr Wong submits that the various points made by Mr Kwan add little, if anything, to Mr Shum’s expression of remorse for exactly the reasons on which Mr Kwan places reliance. As evidenced by the letters from his constituents, Mr Shum is not just a “social media ranter”, but someone who actually puts in the hard graft to serve the community. His acceptance of liability of course recognises the deliberateness of the breach, and recognises that the Article stepped outside the realm of

A lawfully protected speech. For Mr Kwan to repeat these points is simply  
B to repeat the matters for which Mr Shum has accepted liability.  
C Mr Shum has also acknowledged, and expressed remorse for, the social  
D media “ripple effect”. Put simply, says Mr Wong, Mr Shum has shown  
E an understanding for what he did wrong, and if he ever foolishly believed  
F he could justify such expressions as were used in the Article, he now  
knows he cannot.

G 72. As to the SJ’s suggestion that Mr Shum “abused his position  
H as a public figure and (then) District Councillor disseminating the  
I Article”, Mr Wong submits that it is extraordinary that the SJ should try  
J to undermine the work of Mr Shum, powerfully described in the letters  
K from residents in the community, by this unfounded allegation.  
L Mr Wong says that Mr Shum is not an anarchist; he studied Government  
M and Public Administration; he worked for an elected member of the  
N Legislative Council; he was then himself elected as a District Councillor;  
O and he believes in the important public duty of respecting his popular  
mandate by serving those who elected him. This is a contrast from the  
person who merely rants online irresponsibly, encourages violence, but  
makes no other constructive effort to help others or the public as a whole.

P 73. I also acknowledge Mr Wong’s submission that insofar as  
Q rules of admissibility of evidence are relaxed for the purpose of  
R sentencing proceedings, that is only where the relaxation is for the benefit  
S of the person being sentenced. Further, generally speaking, matters of  
T fact within the bounds of reasonable possibility which are favourable to  
U the defendant are to be relied upon.  
V

***I. Decision on Sentence***

74. I start from the position that the Article, and the particular highlighted passages (see above) read in context, clearly incited hatred against the Police and promoted, encouraged or condoned the use of violence, guns and bombs against the Police. As Mr Kwan submits, the violence promoted, encouraged and condoned in the Article was both severe and specific. That was a clear breach of the Incitement Injunction, and Mr Shum now accepts that to be so. I do not think it is a strong mitigating factor to point to other parts of the Article and to suggest that the promotion of violence was not the main purpose of it. It was obviously correct for Mr Wong to abandon at the call-over hearing the previously made suggestion that one might approach the Article somewhat like the proverbial ‘curate’s egg’.

75. I also bear in mind that the offending Article was not removed by Mr Shum from his Facebook Page until after the commencement of these proceedings, so that there was no early recognition of the wrong or attempt to lessen its effect. Indeed, on initial approach from the Police and the DoJ, Mr Shum seemed to demonstrate some defiance.

76. On the other hand, I accept that Mr Shum is now – at last – genuinely remorseful for his actions in relation to the Article. I also accept that Mr Shum makes a genuine apology to this Court for breaching the Incitement Injunction, now backed up by a clear express disavowal of any encouragement of violence. I acknowledge his intention to draw a line under the events so that society can move on in greater harmony. I

A accept that Mr Shum has now demonstrated an understanding for what he  
B did wrong, and has learnt a valuable lesson.

C 77. As to the timing of his admission of liability, it might indeed  
D have come earlier, but I accept he was entitled to take legal advice. I  
E also agree that it is somewhat unfair for the SJ to criticise Mr Shum for  
F taking a couple of months after first instructing solicitors before  
G conceding liability, when the SJ (a lawyer at the head of a large legal  
H department) took far more than a year to decide to bring these  
I proceedings even after apparently forming the view that there had been a  
J clear contempt of court.

K 78. As to Mr Shum's being a District Councillor at the time of  
L publication of the Article, I do not accept the suggestion that was an  
M "abuse" of that public position, if it was intended to suggest something  
N akin to misconduct of public office. But, the fact that Mr Shum was a  
O District Councillor does mean that he was in a public position of  
P responsibility and some influence, who might be taken as an example and  
Q an opinion leader, and so he should have paid much closer scrutiny to the  
R qualities and consequences of his actions. Indeed, he should have done  
S so irrespective of whether those actions might or might not breach a court  
T order. A person holding public office, with a reasonably large social  
U media following, ought not to have allowed his own views or his  
V enthusiasm for them to have boiled over into the wholly unacceptable  
promotion of or condoning violence.

79. But, it is also clear from the evidence that Mr Shum did not  
become a District Councillor just for his own aggrandisement or to  
provide him a soapbox. Rather, he intended to and did genuinely serve

A the community and his constituents by engaging in the kind of activities  
B which that position properly entails. That is relevant to his character.

C 80. I take into account that this is not the first occasion of  
D contempt of court, admitted by Mr Shum. Whilst he was sentenced for  
E the previous contempt on the basis that he was not an advocate of  
F violence, this contempt was committed by the express advocating of  
G violence. But I am not sure that a previous occasion of contempt  
H renders this contempt not a one-off event. The previous contempt was  
I for a different matter, of a different nature, and many years ago. The  
current contempt is based upon the content of the one Article (albeit  
posted on more than one online platform).

J 81. I also accept Mr Wong's submission that by reference to  
K late 2019 or early 2020, we now live in different times and – in light of  
L his acceptance of liability, expression of understanding as to his own  
M wrongdoing, and his clear disavowal of violence – Mr Shum is a different  
person.

N 82. I have thought carefully about the effect of the delay in  
O bringing these proceedings. As already noted, significant delay can  
P frustrate the Court's ability properly to police its own orders, and the  
Q value of late steps may well be less than the value of steps taken  
R timeously. Enforcement steps which are considered to be necessary,  
S appropriate and proportionate if taken within weeks or months of the  
T breach of the order may no longer be considered either necessary or  
U appropriate or proportionate if only pursued much later. In or soon after  
V May 2020 when the Article was published, the Court would have been  
very keen not to allow it to fan the flames of an already calming situation,

A and the need for a strong message to others as well as Mr Shum would  
B have been obvious. But, in this particular case, and balanced against the  
C need to mark the real gravity of the breach, I think the delay can be  
D reflected not in the nature of the sanction imposed, but in its length.

E 83. In summary, in the circumstances, I see no reason to depart  
F from the starting position that this contempt should be sanctioned with an  
G immediate custodial sentence. Indeed, Mr Wong accepts that the  
H realistic sanction is indeed a custodial sentence, perhaps in months and  
I without suspension. Such a sanction as I shall impose seems to me to be  
J sufficient, appropriate and proportionate to the contempt.

K 84. The period of the immediate custodial sentence I impose is  
L the period of six weeks.

M ***J. Costs***

N 85. There can be no dispute that the issue of costs lies in the  
O Court's discretion, and that it is settled that the usual order in a successful  
P committal procedure is for costs to follow the event, also usually ordered  
Q to be paid on the indemnity basis. That is the order sought by Mr Kwan  
R on behalf of the SJ, who also seeks a summary assessment of costs  
S totalling \$290,842.

T 86. But, it has also been accepted by me in previous cases – see,  
U for example, the *Chan Oi Yau Riyo* case at §90 – that in some cases it  
V may be appropriate to approach costs by requiring payment of a  
contribution only, rather than costs on a full indemnity basis, so as to  
reflect the appropriate degree of proportionality when the penalty and



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

C 87. Mr Wong also submits that, this being an application which  
D arises from the SJ seeking injunctive relief in aid of the criminal law –  
E which, as I held when granting the Incitement Injunction, is a course  
F invoked and exercised “exceptionally and with great caution” – there  
G should also be caution exercised on the question of costs in order not to  
H incentivise this type of proceeding as an alternative to the usual criminal  
I law with, as Mr Wong puts it, the “potential for a ransom effect” via  
J indemnity costs. But, I think that submission misses the point. These  
K contempt proceedings have been brought because, as he now admits,  
L Mr Shum acted in breach of my order, and the sanction imposed and the  
M incidence of costs arises from his breach of that order.

N 88. Nevertheless, I accept the financial position identified by  
O Mr Shum in his evidence. Since his disqualification in May 2021, and  
P whilst held on remand, Mr Shum has been unable to receive any income.  
Q His prior income as an assistant to a Legislative Council member and  
R later (for about a year and a half) as a District Councillor do not suggest  
S an ability to have saved any significant funds. There is no reason to  
T doubt Mr Shum's evidence that his wife has become the sole breadwinner  
U of the family, and that she is now bearing all expenses of the family  
V including any contributions that may be required of Mr Shum by the  
Director of Legal Aid.

89. In the circumstances overall, including that I consider the  
sum sought by the SJ to be rather on the high side, I think this is a case  
where a contribution towards costs is the appropriate costs order. The

A contribution will be in the sum of \$25,000. Mr Shum's own costs will  
B be taxed in accordance with the Legal Aid Regulations.  
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E (Russell Coleman)  
F Judge of the Court of First Instance  
G High Court

H Mr Jonathan Kwan and Mr Ivan Suen, instructed by Department of  
Justice, for the plaintiff

I Mr Albert N B Wong, instructed by Kenneth Lam, Solicitors, for the  
defendant  
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