

31 October 2019 in HCA 2007/2019. The contempt occurred in November 2019.

2. The application for leave to apply for committal was made by the Secretary for Justice (“SJ”) to me on 6 October 2021, and I granted leave two days later.

3. With the benefit of that grant of leave, the Originating Summons was issued in these proceedings on 21 October 2021. On 8 November 2021 the Defendant filed his acknowledgement of service indicating that he did not intend to contest the proceedings. In fact, the Defendant had admitted the relevant facts constituting the contempt of court upon his original arrest in November 2019.

4. This is the first sentencing case for a contempt of the Incitement Injunction – previous cases having been focused on the element of doxxing.

5. At this hearing, the SJ has been represented by Counsel Mr Martin Ho, and the Defendant has been represented by Counsel Mr Kenny LL Chan. The hearing has been conducted with the advantage of the skeleton submissions filed by Counsel in advance.

B. Agreed Facts

6. A Statement of Admitted Facts has been jointly filed by the SJ and the Defendant, so as to identify the material facts relied on by the SJ that are not disputed by the Defendant. As it was put by Mr Chan,

A the Defendant adopts the delineation of the breach as set out in the
B admitted facts. Those admitted facts can be summarised as follows.

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

G (1) wilfully disseminating, circulating, publishing or
H re-publishing on any internet-based platform or medium any
I material or information that promotes, encourages or incites
J the use or threat of violence, intended or likely to cause
K (i) unlawful bodily injury to any person within Hong Kong
L or (ii) unlawful damage to any property within Hong Kong;

M (2) assisting, causing, counselling, procuring, instigating,
N inciting, aiding, abetting or authorising others to commit any
O of the aforesaid acts or participate in any of the aforesaid
P acts.Q

R 8. On the same date, 31 October 2019, I granted an interim
S injunction order in those terms (“Incitement Injunction”). The grant of
T the Incitement Injunction was widely reported in the mass media,
U including in English and Chinese newspapers with wide circulation in
V 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

A continuing the Incitement Injunction in slightly amended terms (“Return
B Date Order”). My Judgment dated 15 November 2019 and the Return
C Date Order were widely reported in the local media.

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

I 11. The Defendant’s breach of the Incitement Injunction was by
J his posting two messages on his Facebook page, on 11 and
K 12 November 2019 (“Message 1” and “Message 2” respectively).

L 12. Message 1 was posted at 10:16am on 11 November 2019 and
M reads “[殺咗呢條冚家鏟]” which has been translated as “kill the
N hom-ka-chan”, where “hom-ka-chan” is a Cantonese curse word cursing
O the death of the whole family of the subject person. Message 1 also
P incorporated the shared post of another Facebook user, which comprised
Q a photograph of the police officer involved in the open fire incident
R earlier that day in Sai Wan Ho. The status of Message 1, as shown by a
S “Globe” icon under the Defendant’s name, was “public”. The message
T attracted angry comments from other Facebook users, as well as 15 users
U having reacted with an “angry” icon as at shortly before noon on
V 13 November 2019.

13. Message 2 was posted at 10:43pm on 12 November 2019
and reads “[希望今晚會見到有黑警死 一定要見到有黑警死]”, which

A has been translated as “hope to see the corrupt cops die tonight. Must
B see some corrupt cops die [tonight]”. The status of Message 2 was also
C “public”. It also attracted angry comments of various other Facebook
D users, and 41 users reacting with icons such as “like”, “angry” and “sad”
E as at shortly before noon on 13 November 2019. The comments
F included (a) “Best if die right now”, (b) “All black cop’s dead, especially
G the whole family dead”, and (c) “One wish a day, black cops and their
H family die”.

14. On 12 December 2019, it would found that Messages 1 and
2 had been removed.

15. In the meantime, police investigations identified the
Defendant as the user of the Facebook page. The Defendant was
arrested on 14 November 2019. On the same day, in a video-recorded
interview, the Defendant admitted and acknowledged under caution that:

- (1) He was the only user of the relevant Facebook account and the only person who knew its login password.
- (2) He was the sole user of his mobile phone, used to access the Facebook account.
- (3) At 10:16am on 11 November 2019, he was at home and watched some video clips relating to the firing incident in Sai Wan Ho. Out of anger, he used his mobile phone to post Message 1. He did not personally know the police officer depicted in the photo contained in Message 1.
- (4) At 10:43pm on 12 November 2019, while at home, he again out of anger used his mobile phone to post Message 2, as he gathered from various posts that the Police would be

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B entering the Chinese University of Hong Kong that night and
C he disagreed with such course of action on the part of the
D Police.

(5) He posted Messages 1 and 2 out of his own initiative.

(6) He claimed he was not aware of the Incitement Injunction
prior to the video-recorded interview. When the Incitement
Injunction was told to him, he indicated that he was willing
to delete Messages 1 and 2 and not to breach the injunction
any further.

H 16. Analysis of the cookies and log entries unveiled from the
I Defendant's mobile phone show that he browsed two online news media
J on 1 and 2 November 2019.

K 17. During the period when the Defendant made the posts in
L November 2019, the social unrest was unprecedented in terms of the
M number of protesters, number of people being arrested, the massive
vandalism and the level of violence used during the social movement.

N 18. In the premises, the Defendant accepts that (1) by posting
O Messages 1 and 2 on his Facebook account and making such post public,
P he wilfully disseminated, circulated, published or re-published on an
Q internet-based platform or medium material or information that promotes,
R encourages or incites the use or threat of violence, and (2) the actions
S taken by the Defendant constitute a breach of the Incitement Injunction.
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C. Other Relevant Facts

19. Additional relevant facts to those set out in the Statement of Admitted Facts appear to me to include the following.

20. Following the Defendant's arrest, he was kept in custody for around 28½ hours before being released on bail. At some early point following his release, the Defendant took down the posts of Messages 1 and 2. Further, he posted an apology in the form of a public Facebook Post on 21 November 2019, which remains available online today. In English translation, the apology says:

I wish to make it clear to everyone. About a week ago, I created a post on Facebook to vent my feelings towards the behaviour of a certain police officer. I would like to express my sincere apology if the post caused any misunderstanding or antipathy to anyone. I have already deleted the content of concern, and I hope it will not be shared again. Again, I would like to apologise to everyone for my radical expression.

21. After his release, the Defendant was also required to report to the Wan Chai police station for about three months, which he did. But he was unconditionally released in February 2020 and was informed that the criminal case against him had been discontinued.

22. It was upon his being called to the police station again on 26 October 2021 that the Defendant realised that the SJ will pursue the matter in the form of these civil proceedings.

D. Delay

23. This leads to the necessity to comment on the delay.

A 24. The Incitement Injunction was made on the urgent *ex parte*
B application of the SJ. It was made on 31 October 2019, and continued
C until trial or further order on 15 November 2019. As he now admits, the
D Defendant acted in breach of the Incitement Injunction on 11 and
E 12 November 2019. He was arrested on 14 November 2019 and
F released just over a day later. By the time of his release, the Defendant
G had cooperated with the police enquiries, and had admitted the facts
H which constitute the contempt. By 21 November 2019, the Defendant
I had removed the offending posts of Messages 1 and 2, and had posted his
J apology statement.

I 25. By the end of February 2020, the Defendant was
J unconditionally released, and the criminal investigation against him was
K brought to an end. Plainly by that time, a decision was able to have
L been made that no further criminal proceedings in relation to the posting
M of Messages 1 and 2 should and/or would be pursued.

M 26. Nevertheless, it was not until another 19 months later that
N the application was made to me for leave to apply for committal. That
O delay is unexplained in the papers. When, at this hearing, I asked
P Mr Ho for an explanation for the delay, he said on instructions that there
Q was the interplay between potential criminal charges and a potential
R committal application, and time was needed both for investigation of the
S facts and to take advice.

R 27. I recognise that some time might be needed, and that there
S may have been some manpower and resources issues. However, by late
T November 2019, the investigating authorities were in possession of all
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A relevant information identifying the contempt of the Incitement
B Injunction, the very making of which was predicated on the need urgently
C to prevent further or continuing incitement of violence online. Indeed, it
D is the SJ's case at this hearing – which I accept – that there is a correlation
E between the calls for violence and vandalism made online and the
F subsequent acts of violence and vandalism which ensued. Within three
G months or so after the now admitted breach, the investigating authorities
H were able to decide not to pursue the matter further, at least in the
I criminal courts. I am afraid I still do not understand why it would take
J so much longer to decide whether or not to pursue committal proceedings,
K and if so to make the application. Where the breach of the Incitement
L Injunction is rightly said to be a serious matter, it is more than just
M disappointing that the breach was not sought to be brought back to this
N Court until almost 2 years after the date of the breach.

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

29. Further, I think the Court is entitled to expect actions which
are said to be clear breaches of Court orders to be brought to the attention
of the Court within a fairly short time, if the matter is to be pursued at all.
Court orders are not advisory; they mandate what must be done or not
done. In a case such as the present, the Court itself is unlikely to be

A aware of any specific details of breaches of the Court’s order. The Court
B relies on one of the parties to the proceedings – here the SJ, who sought
C and obtained the injunction – to bring the matter to the attention of the
D Court timeously, so that the Court is in a position to enforce its order
E through contempt proceedings and orders for committal if necessary.

F 30. Significant delay is almost bound to frustrate the Court’s
G ability properly to police its own orders. The value of late steps may
H well be less than the value of steps taken timeously. Enforcement steps
I which are considered to be necessary, appropriate and proportionate if
J taken within weeks or months of the breach of the order may no longer be
K considered either necessary or appropriate or proportionate if only
L pursued years later.

K ***E. Relevance of the Defendant’s Knowledge of the Incitement
L Injunction***

L 31. The SJ does not accept the Defendant’s assertion that he was
M unaware of the Incitement Injunction at the time of his contempt. I can
N deal later with whether or not I think he was aware of it. But it is
O necessary first to consider the relevance of his knowledge or lack of
P knowledge.

P 32. Though helpfully explained at some greater length in the
Q skeleton submissions filed by Mr Ho for the SJ, it is actually common
R ground between Mr Ho and Mr Chan that notice of the injunction order is
S only a procedural (as opposed to substantive) requirement under RHC
T Order 45 rule 7. The requirement for service or notice before
U enforcement by way of committal can proceed is procedural in nature,
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A rather than being an inherent and constituent element for civil contempt
B of court.

C 33. The *mens rea* for civil contempt of court is satisfied once it
D is proven that the defendant's act was intentional (as opposed to
E accidental) and he knew of all the facts which made it a breach of the
F order. In other words, the Court's civil contempt jurisdiction is engaged
G if the plaintiff proves to the criminal standard that the order in question
H was served, and that the defendant performed at least one deliberate act
I that, as a matter of fact, was non-compliant with the order. It is not
necessary to show that the defendant appreciated that his conduct did
constitute the breach of any injunction order.

J 34. In this case, there is no dispute that the substituted service
K directions given by me were validly complied with by the SJ on
L 1 November 2019. There was also wide reporting in the mass media.
M The procedural requirement has been satisfied. In this case, the
N Defendant's claimed lack of prior knowledge of the Incitement Injunction
O at the time Messages 1 and 2 were posted might, therefore, only go
P towards the appropriate penalty to be imposed. But, if it is to be
regarded as a mitigating factor, it would fall to the Defendant to prove on
the balance of probabilities that the factor is made out.

Q ***F. Applicable Principles on Sentencing***

R 35. Whilst this is the first sentencing case for contempt of the
S Incitement Injunction, I agree with what is common ground between
T Mr Ho and Mr Chan that the sentencing guidance as explained by me for
U contempt of the Doxxing Injunction can be adopted as applicable. That
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A guidance can be found in *Secretary for Justice v Chan Oi Yau Riyo* [2020]
B 3 HKLRD 494 at §§54-63, *Secretary for Justice v Cheng Lai King* [2020]
C 5 HKLRD 356 at §§64-72, and *Secretary for Justice v Chan Kin Chung*
D [2021] 1 HKLRD 563 at §§38-45.

E 36. Mr Chan submits, however, that the lack of a doxxing
F element in an incitement case may warrant more lenient sentencing
G options, such as a bind over or fine due to lesser culpability in cases with
H otherwise similar facts. I disagree. It seems to me the appropriate
I starting point for breach of the injunction order in an incitement case, as
in many other cases, is one of an immediate custodial sentence, and one
perhaps measured in months.

J 37. Indeed, I tend to agree with Mr Ho's submission that the
K conduct of inciting violence online can be said to be more serious than
L that of doxxing. Whilst both inciting violence online and doxxing are
M serious matters, the threat posed by inciting violence is more direct,
explicit and immediate.

N 38. Mr Chan submits that, in the case of the Incitement
O Injunction, it is important to distinguish circumstances between those
P where a contemnor is enthusiastic for the result of his incitement, and
Q those where the contemnor is simply "venting in the heat of the moment"
R (Mr Chan's phrase) without intention for inciting others to act on his
S words. He submits that the former situation would carry heavier
T culpability.
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A 39. Whilst I see some force in that submission, I do not think it
B can be taken too far. A person who has given no thought to the logical
C likely or potential consequence of his words remains culpable, and I
D would not wish it to be thought that a person can be treated leniently
E merely because he has failed to form the actual intention which is
F nevertheless the logical consequence of the acts performed. The Court
G is not concerned only with the subject of intention of the contemnor, but
H with the objective potential or likely effect of the words used.

I 40. I accept Mr Chan's submission to the effect that the ultimate
J question for the Court when sentencing for contempt of a Court order is
K the determination of a sufficient and proportionate sentence for the
L particular case. Beside the degree of culpability, the Court may take into
M account various other circumstances to the extent appropriate to the case
N such as, (a) the contemnor's personal circumstances, (b) the effect of the
O contempt on the administration of justice, (c) the need to deter future or
P repeated contempt, (d) the absence or presence of prior conviction for
Q contempt, (e) the contemnor's financial means, (f) whether the contemnor
R has exhibited genuine contrition and made a full and ample apology, and
S (g) whether the conduct is sufficiently serious to warrant the imposition
T of a term of imprisonment (sometimes considered as the penalty of 'last
U resort').

V ***G. This Case***

41. In this case, in addition to the submission that incitement can
be said to be more serious than doxxing, Mr Ho relies on the following

A factors as pointing to the imposition of an immediate custodial sentence
B that is not suspended. C

C 42. First, Mr Ho says that the contents of Messages 1 and 2
D (including a photograph of the police officer in question) show that the
E Defendant was intent on causing bodily harm to that officer. The
F Messages 1 and 2 were issued more than one day apart, pointing to an
G intentional act rather than simply the ventilation of feelings out of
H impulse. As the Defendant himself acknowledged, he made the threat
because he felt angry with the actions taken by the Police.

I 43. Secondly, the inclusion of the photograph of the police
J officer in question with the caption “kill the hom-ka-chan” made a
K specific threat against a particular individual, and his family. Even if the
L officer was not physically harmed, it should be obvious to foresee the
M immense psychological harm to the officer once he knows he is being
N specifically targeted online by a group of persons, including the
Defendant. The conduct is particularly serious as it incited physical
O violence against a police officer, when the police are essential in law
P enforcement and safeguarding the proper administration of justice.

Q 44. Thirdly, vigilantism has no place in Hong Kong.
R Irrespective of one’s political stance – or lack of any political stance, as
S the Defendant in this case says applies to him – one should never resort to
T physical violence against other members of society, including the
U incitement of others to inflict harm. There are proper channels to
V express one’s views, however strongly, in a legitimate and proper manner.

A 45. Fourthly, the Defendant was the original author of the threats
B made, and posted them on his own initiative. He did not merely re-post
C information found online.

D 46. Fifthly, the facility to broadcast and publish material widely
E on the internet makes breaches of this nature worse rather than less
F serious. As has been previously stated by me, it is easy to post
G something on social media or the internet with just a few clicks or
H keystrokes, but the effects can be, and sometimes will be, far wider and
I last for far longer. The ‘ripple effect’ caused by wider and more
J extensive dissemination of offending material is obvious.

K 47. Sixthly, on a point I have already accepted, there is a clear
L correlation between online calls for violence and their actual
M implementation in the real world, as was particularly seen in the context
N of the period of violent unrest in November 2019.

O 48. Further, the Court should send a clear message to the public
P that such conduct is not to be tolerated in a civilised society. The
Q sentence imposed should have a deterrent effect on would-be defendants
R or contemnors.

S 49. I accept the general force in all of those submissions.

T ***H. The Mitigation Advanced***

U 50. As Mr Ho accepts on behalf of the SJ, various mitigating
V factors may be advanced on behalf of the Defendant. They include that:
(1) the Defendant removed both Messages 1 and 2 from his Facebook

A account at least by 12 December 2019 – and it seems to me that they were
B likely removed before the posting of the apology on 21 November 2019;
C (2) the Defendant posted his apology after his release from police custody;
D (3) the Defendant cooperated with the police enquiries at the time, and
E indicated his intention to admit liability at an early stage of these
proceedings.

F 51. In his own evidence, the Defendant has explained his family
G background and the particular circumstances surrounding the posting of
H Messages 1 and 2. After changing his habits in around 2012, and
I starting to engage in body fitness workouts, the Defendant became a
J fitness trainer and opened a fitness centre in about 2013. A second
K fitness centre was opened in 2018. However, due to the social unrest in
2019 and later the Covid-19 pandemic, both businesses have suffered
financial deterioration since July 2019.

L 52. The Defendant married his wife in June 2019. Sadly, his
M wife suffered a miscarriage in September 2019. To alleviate their stress
N and depression, they went to Japan for a trip between 19 and
O 25 October 2019. The Defendant says that he was preoccupied with
P financial stress and the family misfortune and was unaware of the making
of the injunction orders until after arrest by the police in November 2019.

Q 53. On 11 November 2019, reading about the shooting incident,
R the Defendant “immediately boiled with anger” (his words) and in the
S heat of the moment posted Message 1 to vent his anger and disapproval
of police handling the situation. The Defendant admits to being an

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impulsive person, but never a violent one. Hence, the use of the word “kill” was an emotional reflex response.

54. The following day, hearing news about the stand-off between police and protesters near the Chinese University, the Defendant related the two incidents and while still upset from the previous day wrote and posted Message 2. The defendant says he had no intention to hurt and to incite anybody to hurt anyone via posting the two Messages 1 and 2.

55. After his arrest, he fully co-operated with the police during the investigation, and he found the remanding police custody for approaching 30 hours to be a horrific experience. After his release, he took down the offending messages and posted his apology. The Defendant says he learned a vital lesson in the hard way. He has become more conscious with what he publishes on social media and has switched his Facebook account to private mode. He pledges to be a law-abiding citizen. Whilst not seeking to undermine the Court’s observation that the ease and speed of disseminating information on the internet makes breaches worse rather than less serious, the Defendant points out that he is not a political figure or opinion leader on the internet.

56. In his own letter of apology written to the Court, exhibited to his affirmation, the Defendant stresses that he has been trying to become a better self by ridding himself of bad habits and focusing his energy on the development of his career as a personal trainer and fitness centre business owner. In his own words he says, “I have no political stance, I just want to work hard to earn money in order to support my family”.

A He also explains that he and his wife have happily become parents to a
B daughter born in August 2021.

C 57. The Defendant has provided nine other mitigation letters
D from relatives, friends and former teachers. They speak of the
E Defendant in similar terms, as a generally frank and honest person who
F cares for people. They speak of his real regret and remorse. Those
G who saw him immediately after his release from arrest witnessed his
H breaking down in tears in front of them, and his greater caution since.
I Two former secondary school teachers of the Defendant speak to his
J willingness to help others and demonstrate leadership.

K 58. By way of summary, Mr Chan identifies that the Defendant
L is relying on the following points of mitigation:

- M (1) Messages 1 and 2 were purged, once the Defendant was
N aware of the contravention of the Incitement Injunction
O shortly after his release from police custody, and a sincere
P apology letter has been posted in their stead.
- Q (2) The Defendant has posted his sincere apology to the Court in
R his affirmations and mitigation letter.
- S (3) The Defendant's admission of liability at the earliest stage,
T and his earlier cooperation with law enforcement.
- U (4) The offending acts were done on impulse without knowledge
V of the Incitement Injunction, suggesting the breach was not
contumacious or an intentional flouting of the order.
- (5) The Defendant demonstrated genuine remorse, and feels
sorry and guilty for causing his family members to worry.

As regards personal deterrence, it is highly unlikely he would act in contempt of Court again.

(6) As regards general deterrence, the acknowledgement of his liability, his remedial acts and willingness to accept the sanction of the Court go far to encourage observance by others towards the Court's order.

(7) The Defendant was acting under emotional and financial pressure, due to a recent family tragedy and the ongoing business downturn.

(8) There was no attempt by the Defendant to conceal his identity, and he takes full responsibility for the breach.

(9) The degree of culpability, in particular Message 2, is mild. Is more like cursing, rather than a message strong enough to incite any violence.

(10) The Defendant is not a public figure and has little influential power on other social media users.

(11) He is of good character.

(12) He has suffered from stress about this incident since his arrest on 14 November 2019.

(13) The breach occurred more than seven months before the decision in the *Chan Oi Yau Riyo* case, with its warning to those persons who might continue to breach the Court's order after that judgment that future offenders may not be so fortunate as to avoid an immediate custodial sentence.

59. As to that last point, it is worth pointing out that I did not mean to suggest that any case relating to a breach before my decision in that case would not result in an immediate custodial sentence. Further,

A as Mr Ho points out, incitement to violence is itself contrary to the
B criminal law whether the Incitement Injunction exists or not.

C 60. In any event, following his summary, Mr Chan suggests that
D the appropriate starting point for sentence would be a bind over or fine as
E sufficient and proportionate. But I have already rejected that submission.
F It seems to me that the appropriate starting point is a custodial sentence.
G The relevant conduct in this case was serious, and must be recognised as
H such.

H 61. Further, on the evidence including that of the Defendant's
I own internet usage, I do not accept that the Defendant was completely
J unaware of the grant of the Incitement Injunction, even if it may be the
K case that the Defendant had not focused on it or what that might mean.
L In any event, I also do not accept the suggestion that had the Defendant
M been aware of the Incitement Injunction he would not have posted
N Messages 1 and 2. It is his own case that he posted Messages 1 and 2
O out of anger, in the heat of the moment, and he also accepts that he is of
P that temperament from time to time. It seems to me that Messages 1 and
Q 2 were posted without any proper consideration as to whether or not they
R should be posted or what might be the obvious likely consequences.

P 62. Indeed, that is precisely the mischief that I have previously
Q identified in other cases. To my mind, acting out of anger is not an
R impressive piece of mitigation. Whilst I take into account that the
S character of the Messages, particularly Message 2, might be thought to be
T akin to cursing, they were certainly capable of being taken as an
U incitement to violence in the then prevailing febrile social atmosphere.
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63. On the other hand, I accept that the posting of Messages 1 and 2 occurred at a time when the Defendant was under financial and emotional stress, and that the acts were out of character. I accept the Defendant's statement of remorse as genuine. I accept his statement that he has learned a vital lesson the hard way. The period in custody appears to have been an experience which quickly brought the Defendant to the position where he removed the offending Messages and posted the apology, including its exhortation that his previous messages should not be further shared. In other words, once brought to task by the police, the Defendant took active steps to undo his breach, and to seek to prevent further dissemination.

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64. I also take into account the significant delay since the events in question. It is understandable that the Defendant might have thought that a line had been drawn under the incident when he was unconditionally released in February 2020, and when nothing happened thereafter for many months. I accept that the renewed focus on these matters over a year and a half later must have caused further stress to the Defendant and his wife, at a time when they no doubt hoped to put this matter behind them and move on with their family life following the birth of their daughter. There is no suggestion in the evidence that in the intervening period the Defendant has acted in any other inappropriate way.

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65. In the particular circumstances of this case, it seems to me that the sufficient, appropriate and proportionate sentence is now one of a custodial sentence of 21 days, but suspended for 12 months.

I. Costs

66. There is no dispute between Mr Ho and Mr Chan that the issue of costs lies in the Court’s discretion. However, it is settled that the usual order in a successful committal procedure is for costs to follow the event, usually ordered to be paid on the indemnity basis. But, in previous cases, it has been accepted that certain circumstances may justify requiring payment of a contribution only, rather than the full amount of costs on the full indemnity.

67. However, in this case, taking note of the financial position of the Defendant as shown in the evidence – the details of which do not need to be publicly aired – I do not think this is a case where it is appropriate for there to be a payment of costs contribution only. The Defendant is the sole owner of the property with significant equity of around \$4 million, and there are funds standing in accounts. Even if those accounts might be viewed as holding funds which are not the defendant’s alone, or which have been potentially earmarked for future expenses such as the daughter’s education, the amounts are not insignificant. I have not forgotten the point that the combined effect of sentence and costs can be regarded as composite elements of the proceedings’ impact on a defendant. But the combined effect of the sentence I have imposed and the costs order I have in mind seems to me, in the exercise of my discretion, to be appropriate.

68. The SJ seeks summary assessment of costs (to include the costs of the consent summons dated 4 January 2022) in the sum of around \$288,000. As I have said, the costs are sought on the indemnity basis.

However, in the circumstances, I order the Defendant to pay costs in the sum of \$180,000.

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

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

Mr Kenny L.L. Chan, instructed by David Y.Y. Fung & Co., for the defendant