IN THE BARRISTERS DISCIPLINARY TRIBUNAL
OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

BETWEEN

THE BAR COUNCIL **APPLICANT**

and

CHAN, TANYA **RESPONDENT**

Before : Mr. Raymond Leung SC, Ms. Lisa Remedios and Mr. Keith Yim
Date of Respondent's Submission : 20 January 2023
Date of Applicant's Submission : 3 February 2023
Date of Respondent's Reply Submission : 10 February 2023
Date of Handing Down of Decision : 31 March 2023

DECISION

The Complaint (as amended)

1. The Tribunal was appointed by the Tribunal Convenor on 26 August 2022 upon an original complaint laid by the Applicant against the Respondent (dated 9 August 2022).

2. Pursuant to Rule 4 of the Barristers Disciplinary Tribunal Proceedings Rules (Cap. 159P), a copy of the original complaint and a bundle of documents (including court documents from the related criminal

proceedings) were served on the Respondent under cover of the Applicant's letter dated 30 August 2022.

3. By consent of the parties (as evidenced in the Respondent's letter dated 6 December 2022 and the Applicant's email dated 7 December 2022), directions were given on 9 December 2022 for all proceedings herein to be conducted on paper.

4. Pursuant to further directions of the Tribunal, the parties have lodged the additional documents enumerated hereinafter for the purpose of these proceedings:

(1) An Agreed Facts (dated 6 January 2023);

(2) An Amended Complaint (dated 9 January 2023);

(3) The Respondent's Submission on Mitigation (dated 20 January 2023) accompanied by a letter under the hand of the Respondent confirming her admission of the Amended Complaint;

(4) The Applicant's Submission on Sentencing and Consequential Matters (dated 3 February 2023); and

(5) The Respondent's Submission in Reply (dated 10 February 2023).

5. The Amended Complaint (hereinafter simply referred to as **"the Complaint"** as appropriate) reads:

"The following complaint of misconduct are laid by the Bar Council against Chan, Tanya before the Barristers Disciplinary Tribunal: -

PARTICULARS OF MISCONDUCT

COMPLAINT

Engaging in a course of conduct which ~~(i)~~ may bring the profession of barristers into disrepute, ~~and (ii) is prejudicial to the administration of justice,~~ contrary to paragraph 6(b) of the Code of Conduct of the Bar of the Hong Kong Special Administrative Region adopted on 20 November 1997, effective from May 1998 and updated as at 5 August 2013.

PARTICULARS

1. *Chan, Tanya, on 27 and 28 September 2014, at Tim Mei Avenue, Admiralty, Hong Kong, incited persons present at Tim Mei Avenue to cause a public nuisance by unlawfully obstructing public places and roads at and in the neighbourhood of Tim Mei Avenue, as evidenced by and which resulted in the conviction of Chan, Tanya in DCCC 480 of 2017 of the offence of incitement to commit public nuisance, contrary to common law and punishable under section 101I of the Criminal Procedure Ordinance (Cap. 221).*

2. *Chan, Tanya, on 27 and 28 September 2014, at Tim Mei Avenue, incited persons present at Tim Mei Avenue to incite other persons to cause a public nuisance by unlawfully obstructing public places and roads at and in the neighbourhood of Tim Mei Avenue, as evidenced by and which resulted in the conviction of Chan, Tanya in DCCC 480 of 2017 of the offence of incitement to incite public nuisance, contrary to common law and punishable under section 101I of the Criminal Procedure Ordinance (Cap. 221)."*

Statement of Finding

6. By way of background, the Respondent was convicted after trial together with other defendants for one count of *"Incitement to commit public nuisance"* and one count of *"Incitement to incite public nuisance"* before HH Judge Johnny Chan (as His Lordship then was) whereupon a *"Reason for Verdict"* was handed down on 9 April 2019 (DCCC 480/2019).

7. The Respondent was sentenced on 10 June 2019 to 8 months' imprisonment for each offence, running concurrently but suspended for 2

years due to, amongst other things, her medical condition amounting to exceptional circumstances (see Reasons for Sentence in DCCC 180/2019).

8. The Respondent took the matter on appeal which was eventually dismissed by the Court of Appeal on 30 April 2021 (see Judgment in CACC 128/2019).

9. It is immediately apparent from the Agreed Facts that the Complaint arose from the Respondent's involvement in an event in 2014 generally known as the "Occupy Central", which took the form of a social movement to protest against a decision promulgated by the Standing Committee of National People's Congress of the People's Republic of China on 31 August 2014 pertinent to issues relating to the election of the Chief Executive of the HKSAR.

10. As a precursor to Occupy Central, several public meetings were held in the precinct of Tim Mei Avenue in Admiralty (near the Legislative Council Complex) on 26 and 27 September 2014 in respect of which *"Letters of No Objections"* had been issued by the Hong Kong Police.

11. However, a Letter of Prohibition was issued on 28 September 2014 by the police amidst the developing situation with the turnout of protestors in large number. Therefore, the continued gathering of the protestors at the public meeting at Tim Mei Avenue was rendered unlawful.

12. Notably, it is admitted by way of the Agreed Facts that:

> "9. The Respondent made the statements in paragraphs 7 and 8 above (i) intending the public assembly in progress at Tim Mei Avenue to become a demonstration with mass participation and continuous material supplies from the public; (ii) knowing that there were many supporters going to join the public assembly at

> Tim Mei Avenue; and (iii) intending to increase the cost of the police in any arrest action so that the occupy movement could carry on for an indefinite period of time."

13. At a high level of generalisation, the Respondent, as a speaker at the event, whether solely or jointly with others on various occasions between 27 and 28 September 2014 (as catalogued in the Agreed Facts), sought to encourage more people to participate in the Occupy Central movement by taking to the street and to cause significant obstruction in the major thoroughfares in Admiralty and Central so as to engender public support in an attempt to convince the relevant authority to submit to their demand for electoral reform by way of universal suffrage.

14. The Code of Conduct of the Bar (the **"Bar Code"**) in force at the material time provides that:

> "6. It is the duty of every barrister. . .(b) not to engage in conduct (whether in pursuit of his profession or otherwise) which is dishonest or which may otherwise bring the profession of barrister into dispute. . ."

15. The gravamen of the Respondent's professional misconduct complained of herein is that she, being a barrister, breached the law by inciting other persons to commit the unlawful act of (i) public nuisance or (ii) inciting other persons to commit public nuisance, which may bring the profession of barrister into dispute.

16. Upon the Respondent's admission and on the basis of the Agreed Facts, the Tribunal finds the Complaint proven.

Reasons for Sentence

Plea of mitigation

17. Mr. Robert Pang SC (together with Miss Velda Yau) has lodged before the Tribunal a comprehensive submission for mitigation (dated 20 January 2023) on behalf of the Respondent.

18. Mr. Pang referred to Respondent's background, in particular, that she was called to the Bar on 12 April 2003 and that she was a Legislative Councillor from 2008 to 2012 and from 2016 to 2020.

19. The Respondent has also performed other public duties, *inter alia*, as a member of the Election Committee representing the legal subsector from 2006 to 2011 and a member of the Central and Western District Council from 2007 to 2011.

20. Mr. Pang then drew attention to the unique features of the Complaint in the following terms:

> "13. **First**, Ms Chan's conduct is distinguishable from morally reprehensible convictions involving dishonesty, greed or negligence. Instead, Ms. Chan's actions were driven by the best of motives.
>
> 14. The context of the criminal Charges leading to the Complaint is of utmost importance. The NPCSC Decision sparked a popular demand for a genuine democratic government as guaranteed under the Basic Law. Given that Hong Kong has an executive-led government, the election of the Chief Executive by universal suffrage is seen by many as the bulwark against any change of policy. As such, the aspirations of universal suffrage is a matter of great importance and concern to the public in Hong Kong generally.
>
> 15. Although the trial judge found that the public nuisance caused public inconvenience, he also accepted that the motivation of Ms Chan was to fight for her aspiration for universal suffrage and to protect arrested students, not one of greed, lust, anger or monetary award **([A/300/95] as applied to Ms. Chan in [B/414/14])**.
>
> 16. It is pertinent to note that the Objects of the Bar Association includes the defence, maintenance, upholding and improvement, in Hong Kong, of inter alia, the Rule of Law, and the Basic Law. The Basic Law sets out the ultimate aim of having the selection of the Chief Executive by universal suffrage. On the other hand, section 1.1 of the Code of Conduct of the Bar emphasizes the

"[r]espect for and upholding the rule of law and for the freedom of the individual citizen[1]".

17. The United Nations High Commissioner for Human Rights has reported that "[d]emocracy, human rights and the rule of law are **interdependent and mutually reinforcing**", and that "the weakening of one **endangers the enjoyment or even the existence of the others**" (Study on common challenges facing States in their efforts to secure democracy and the rule of law from a human rights perspective, Report of the United Nations High Commissioner for Human Rights (A/HRC/22/29, 17 December 2012) at §84, adopted in Resolution RES/28/14, 26 March 2015 by the United Nations Human Rights Council).

18. The attainment of universal suffrage, being an important facet of democracy, is therefore cardinal to respecting and upholding the rule of law (A/HRC/22/29 at §8).

19. While the actions of Ms. Chan may with hindsight and detachment be considered ill-judged, it cannot be gainsaid that they were prompted by the best of intentions and not self-serving.

20. The number of Hong Kong citizens who turned out at the public meetings is a testament to the fact that the issue which Ms. Chan sought to address through protest by way of public assembly was one which attracted the concern of a large proportion of the population.

21. **Second**, the Charge involves Ms. Chan's exercise of the rights of freedom of speech, assembly and demonstration **which must not be disproportionately restricted**.

22. The trial judge accepted that the public nuisance advocated by Ms Chan was a peaceful one and non-violent in nature **([A/300/94] as applied to Ms. Chan in [B/414/14])**.

23. The original public meeting was also a notified one which received the Commissioner of Police's consent initially through a Letter of No Objection.

24. In any event, the protection afforded to these rights is not diminished even if the assembly is unlawful (See Guidelines on Freedom of Peaceful Assembly, 3rd Edition published by European Commission for Democracy though Law and OSCE Office for Democratic Institutions and Human Rights at §§19, 48. Similar sentiments are expressed in the United Nations Human Rights Committee's General Comment No.37 (2020) on the right of peaceful assembly at §16).

25. Imposition of severe disciplinary penalties would amount to a disproportionate restriction on the aforesaid freedoms.

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[1] Mr. Pang is referring to the current version of the Bar Code, which only came into effect on 15 November 2018 but nothing turns on that.

26. **Third**, the complained conduct took place in the arena of Ms Chan's personal life and/or in connection with her work as a politician, not in her professional capacity as a barrister.

27. During her open speeches at the notified public meeting, Ms. Chan never referred to her profession as a barrister. Further, what Ms. Chan tried to achieve in advocating the public nuisance is wholly unrelated to her practice.

28. The maintenance of a distinction is crucial for constitutional and policy reasons as explained by Ezelin v. France (1992) 14 EHRR 362 below."

21. Whilst the Tribunal is prepared to proceed on the basis that the acts committed by the Respondent in the Occupy Central movement were motivated by the genuine intention of promoting *"universal suffrage"* (as perceived by her and her peers of the same creed or persuasion), it does not detract from the fact that the means engaged by them has been held to be unlawful as evidenced by the convictions.

22. At a glance, the foregoing plea of mitigations may give rise to the impression of an invitation to look behind the convictions or re-open the facts as found by the trial judge, which were upheld by the Court of Appeal. On a proper reading and with the benefit of the Reply Submission (see below), it becomes apparent that Mr. Pang is not seeking to put the Tribunal to such a task.

23. In any event, it is trite that the Tribunal would not allow a "collateral attack" on the findings of the criminal court save and except in very exceptional circumstances (such as the availability of compelling fresh evidence to the contrary).

24. In *Sheperd v. The Law Society*, 15 November 1996 (Transcript), on an application for leave to appeal, Hutchinson LJ cited the follow passages

from Lord Taylor of Gosforth (Lord Chief Justice) of the Divisional Court in the same case with approval:

> "Public policy requires that, save in exceptional circumstances, a challenge to a criminal conviction should not be entertained by a Disciplinary Tribunal for the reasons quoted above from the Master of the Rolls' judgment. If this appellant's argument were right, he should have been allowed to challenge his conviction before the Tribunal even if he had appealed unsuccessfully to the Court of Appeal Criminal Division. That could, in theory, have led after a conviction by a jury on the criminal burden of proof, upheld by three Appeal Court Judges, to exoneration by a Disciplinary Tribunal on the civil burden of proof. . . .In the absence of some significant fresh evidence or other exceptional circumstances such an outcome could not be in the public interest. . . .We are in no doubt that the Tribunal were right to refuse an adjournment and to refuse the appellant an opportunity to mount such an operation."

The Tribunal's Approach – proportionality of sentence

25. The industry of counsel for both the Applicant and Respondent did not result in the discovery of more definitive precedents on the approach towards sentencing in comparable scenarios. In the circumstances, Mr. Pang placed considerable reliance on the case of *Ezelin v. France* and submitted that:

> "29. The closest case is Ezelin v. France, where the European Commission of Human Rights considered that a reprimand was a disproportionate sanction against a lawyer who took part in a demonstration where graffiti insulting the judiciary and threats of death against police officers were made. The Court stressed the **need for a just balance to avoid discouraging lawyers from making clear their beliefs for fear of disciplinary sanctions**, and that the freedom to take part in a peaceful assembly is of such importance that it cannot be restricted in any way so long as the person concerned **does not himself commit any reprehensible act [B/564/52-53]**." (underlining added)

26. With due respect, the Tribunal is of the view that the case of *Ezelin v. France* is distinguishable and hence of limited relevance and assistance. First and foremost, it concerned a disciplinary proceeding initiated by the

Bar Council without any related criminal conviction. Further, it does not shed any light on the proportionality between the much cherished freedom of peaceful assembly and the legal liability for public nuisance, by way of significant obstruction of highways or other public places which may constitute a reprehensible act, as a justified restriction on such freedom.

27. In essence, Mr. *Ezelin* was disciplined pursuant the Decree of 9 June 1972 for (i) participating in the demonstration; or (ii) failing to disassociate himself from the demonstration, which cast imputation on members of the judiciary. Remarkably, Article 106 of the Decree resembles para. 6(b) of the Bar Code and it reads:

Article 106

"Any contravention of statutes or regulations, infringement of professional rules or breach of integrity, honour or discretion, even relating to non-professional matters, shall render the avocat responsible liable to the disciplinary sanctions listed in Article 107 [such as warning or reprimand, suspension, etc.]"

28. The European Court of Human Right (by a 6:3 majority) held that the sanction (by reprimand) constituted an interference of Mr. Ezelin's right of peaceful assembly enshrined in Article 11 of European Convention of Human Right (ECHR). Further, it was held that although the restriction created by Article 106 was prescribed by law which served a legitimate purpose, the sanction could not be justified since it was *"not necessary in a democratic society"*.

29. The net result is that Mr. Ezelin was exonerated and sanction was quashed altogether. Hence, the decision does not (and does not purport to) serve as a precedent as to the appropriate (or proportionate) sentence in a case where an *avocat* (the equivalent of a barrister) is found guilty of a

disciplinary offence under Article 106 (the equivalent of paragraph 6(b) of the Bar Code) arising from his participation in a public assembly.

30. In the Reply Submission, Mr. Pang placed emphasis on the following:

> "4. The UK Supreme Court in Director of Public Prosecutions v Ziegler [2022] AC408 at §57 affirmed that consideration of proportionality applies even at the sanctions (sentencing) stage:
>
> > "Arrest, prosecution, conviction, and **sentence** are all "restrictions" within both articles [10 and 11 of the ECHR]. Different considerations may apply to the proportionality of each of those restrictions." (emphasis added)
>
> 5. This protection applies equally to disciplinary procedures, as demonstrated in Ezelin."

31. It is true that in the joint judgment of Lord Hamblen and Lord Stephens, JJSC in *DPP v. Ziegler*, reference was made to the application of the proportionality principle to sentencing (as one form of restriction on the freedom of peaceful assembly under Article 11 of the ECHR).

32. Further, it is noteworthy that *DPP v. Ziegler (supra)* concerned a demonstration staged outside Excel Centre in East London against the holding of Defence and Security International arms fair at the venue. The action taken by the appellants consisted of lying down in the middle of one side of the dual carriageway of an approach road leading to the Excel Centre (the side for traffic heading to it). The appellants attached themselves to two lock boxes and it took the police some 90 minutes to remove them.

33. The Appellant were charged with an offence under the Highways Act 1980, which provides:

> *"137 Penalty for wilful obstruction*

"(1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale." (underlining added)

34. In *Nagy v Weston* [1965] 1 WLR 280 (cited in DPP v. Ziegler at para. 9) it was held by the Divisional Court that *"lawful excuse"* encompasses *"reasonableness"*. Lord Parker CJ said (at p 284) that these are "really the same ground" and that:

"there must be proof that the use in question was an unreasonable use. Whether or not the user amounting to an obstruction is or is not an unreasonable use of the highway is a question of fact. It depends upon all the circumstances, including the length of time the obstruction continues, the place where it occurs, the purpose for which it is done, and of course whether it does in fact cause an actual obstruction as opposed to a potential obstruction." (underlining added)

35. This was adopted by Lord Hamblen and Lord Stephens in *DPP v. Ziegler* in that:

"73 In Nagy v Weston . . .one of the factors identified was "the place where [the obstruction] occurs". It is apparent, as in this case, that an obstruction can have different impacts depending on the commercial or residential nature of the location of the highway."

36. The appellants were first acquitted after trial before District Judge Hamilton sitting in the Stratford Magistrates' Court but upon an appeal by by way of case stated to the Divisional Court, the case was remitted back to the trial judge with a direction for conviction whereupon the appellants were sentenced to conditional discharges of 12 months.

37. The Divisional Court dismissed the application for permission to appeal to the Supreme Court. However, upon two questions of general public importance certified by the Divisional Court, permission to appeal was granted by the Supreme Court.

38. In essence, the majority of the Supreme Court held that Divisional Court applied the wrong test as to the criteria for the appellate court to interfere with the decision of the District Judge (i.e. the first certified question).

39. As to the second certified question, it was explained in the joint judgment of Lord Hamblen and Lord Stephens (at 430C) that:

> *"57 The second certified question relates to both the right to freedom of expression in article 10 and the right to freedom of assembly in article 11. Both rights are qualified in the manner set out respectively in articles 10(2) and 11(2) : see paras 14–15 above. Article 11(2) states that "No restrictions shall be placed" except "such as are prescribed by law and are necessary in a democratic society". In* Kudrevičius v *Lithuania (2015) 62 EHRR 34, para 100 the European Court of Human Rights ("ECtHR") stated that "The term 'restrictions' in article 11(2) must be interpreted as including both measures taken before or during a gathering and those, such as punitive measures, taken afterwards" so that it accepted at para 101 "that the applicants' conviction for their participation in the demonstrations at issue amounted to an interference with their right to freedom of peaceful assembly". Arrest, prosecution, conviction, and sentence are all "restrictions" within both articles. Different considerations may apply to the proportionality of each of those restrictions. The proportionality of arrest, which is typically the police action on the ground, depends on, amongst other matters, the constable's reasonable suspicion. The proportionality assessment at trial before an independent impartial tribunal depends on the relevant factors being proved beyond reasonable doubt and the court being sure that the interference with the rights under articles 10 and 11 was necessary. . .The district judge is a public authority, and it is his assessment of proportionality of the interference that is relevant. . .In that respect we . . .agree with Lady Arden JSC [at para 94] that "the more appropriate question is whether the convictions of the appellants for offences under section 137(1) of the Highways Act 1980 were justified* restrictions *on the right to freedom of assembly under article 11 or not" (emphasis added).*
>
> *58 As the Divisional Court identified [at para 63] the issues that arise under articles 10 and 11 require consideration of five questions: see para 16 above. In relation to those questions it is common ground that (i) what the appellants did was in the exercise of one of the rights in articles 10 and 11 ; (ii) the prosecution and conviction of the appellants was an interference with those rights; (iii) the interference was prescribed by law; and (iv) the interference was in pursuit of a legitimate aim*

which was the prevention of disorder and the protection of the rights of others to use the highway. That leaves the fifth question as to whether the interference with either right was "necessary in a democratic society" so that a fair balance was struck between the legitimate aims of the prevention of disorder and protection of the rights and freedoms of others and the requirements of freedom of expression and freedom of assembly." (underlining added)

40. It is immediately apparent that the Supreme Court in *DPP v. Ziegler* was grappling with the issue of whether the "conviction" *(as opposed to the sentence)* was a justified restriction on the right of peaceful assembly.

41. That said, the decision in *DPP v. Ziegler* is instructive as to the approach towards assessing *"proportionality"* in a case involving an offence of obstructing the highway, where the existence or otherwise of a *"lawful excuse"* is called into question (see paras 34 and 35 hereinabove).

42. In the Reason for Verdict, HH Judge Johnny Chan (as he then was) restated the elements of the offence of *"public nuisance"* as follows:

"62. A public nuisance is a common law offence. In R v Rimmington [2006] 1 AC 459, the House of Lords held that the offence has the following actus reus:-

(a) Doing an act not warranted by law, or omitting to discharge a legal duty, and

(b) The effect of such act or omission was to endanger the life, health, property or comfort of the public, or to obstruct the public in the exercise of rights common to everyone." (underlining added)

43. Pausing there, it is observed that the Respondent was convicted of *"Incitement of public nuisance"* and *"Incitement to incite public nuisance"*. The learned judge accepted the prosecution's submission (at para. 304) that the offence:

"do[es] not depend on the circumstances of any subsequent obstruction actually caused by the incitee". (underlining added)

44. The learned judge devoted a specific part of the Reason for Verdict (paras. 308 to 317) to deal with *"proportionality"* by adopting the *"reasonableness"* test laid down by Court of Final Appeal in *HKSAR v. Chow Nok Hang* (2013) 16 HKCFAR 837 and *HKSAR v. Yeung May May* (2004) 3 HKLRD 797 to arrive at the conclusion that the 2 incitement offences with which the Respondent was charged *"satisfy the proportionality requirement of the fundamental right to freedom of speech and freedom of peaceful assembly"*.

45. Notably, the *"reasonableness"* test adopted by the trial judge is analogous to the approach in *Nagy v Weston (supra)* for a similar offence under s.137 of the Highways Act 1980, which was approved by the Supreme Court in *DPP v. Ziegler (supra)*.

46. Most importantly, the decision of the learned judge was upheld by the Court of Appeal (see Macrae VP (at 140-148) dealing with the fifth main issue in the appeal).

47. In so far as the finding of facts in the criminal trial may be relevant to the *"proportionality"* of the restriction (in the form of a sentence to be passed in the related disciplinary proceedings herein) on the Respondent's freedom of speech and freedom of peaceful assembly, it is noteworthy that the trial judge found:

"534. It is clear from the video evidence that D4 [the Respondent] was aware that the public meeting in progress at Tim Mei Avenue. In fact, shortly past midnight on 28th September 2014, she warned the people present that the public meeting at Tim Mei Avenue was an unauthorized one. It should also be noted that in Exhibit P11, D4

asked everyone to participate in civil disobedience, which denoted the law would be violated. As said, the "warranted by law" element required for the offence of public nuisance cannot be proved by the absence of proper notification.

535. More importantly, the incitement made by D4 in Exhibit P20 concerns the plea to occupy Admiralty and Central, not just Tim Mei Avenue. Given the use of the word "over-cram' and the plea to occupy Admiralty and Central, I am sure D4 knew there was no notifications given to the Police for a public gathering to occupy Admiralty and Central on 27th and 28th September 2014.

. . .

537. I have taken onto consideration all the circumstances leading to the making of the incitement by D4 in Exhibit P20. In my judgement, the scale of the occupation that D4 incited was extensive; both Admiralty and Central were important commercial districts and the roads in the district were important thoroughfares, as they always have been. The intended occupation was for an indefinite period. On the other hand, I am aware that the occupation advocated was a peaceful one and the purpose of the occupy movement was to strive for universal suffrage. In my judgment, what D4 incited the people at Tim Mei Avenue in Exhibit P20 to do was not a reasonable use of the roads in the neighbourhood of Tim Mei Square. The obstruction to the traffic and inconvenience caused to the public would be so serious that would exceed the bounds of reasonableness and the protection given by the Basic Law to the right to peaceful demonstration. I find that the obstruction that would be caused was not warranted by law.

538. From the computer certificates, I am satisfied that the over-cramming of the public places and roads in the neighbourhood of Tim Mei Road would result in the suffering of common injury by common member of the public.

539. From the evidence, I am sure that when D4 made the incitement in Exhibit P20, she intended that the incitees, i.e. the people at Tim Mei Avenue would do the act incited by her, i.e. obstructing public places and roads in the neighbourhood of Tim Mei Avenue, with the mens rea of public nuisance, i.e. the incitees knew, or ought to have known (because of the means of knowledge were available to him) the consequence of what they did. In this case the incitees were the people participating in the public assembly at Tim Mei Avenue and hence, they must be aware of what was going on at the time of the incitement and what the effect of an indefinite obstruction of the roads in the neighbourhood of Tim Mei Avenue would be if they acted as incited.

540. In my judgment, on the basis of what D4 said in Exhibit P20, i.e.:

> *"Hey, let's go to occupy **Admiralty** now. Thank you, Benny. '**Chung**' (transliteration), now it is the '**Chung**' (transliteration) of '**Kam Chung**' (transliteration) (the name of **Admiralty** in Chinese). Later, it will be the '**Chung**" (transliteration) of '**Chung Wan**' (the name of **Central** in Chinese)....." and "We hope to over-cramming Tim Mei Avenue, right? Over-cram Tim Mei Avenue! Over-cram Tim Mei Avenue! Over-cram Tim Mei Avenue! Over-cram **Admiralty**! Over-*

*cram **Admiralty**! Over-cram **Admiralty**! Good! ....*" (Emphasis added)[2]

D4 had unlawfully incited persons at Tim Mei Avenue, Admiralty to cause a nuisance to the public by unlawfully obstructing public places and roads in the neighbourhood of Tim Mei Avenue without need to resort to the doctrine of joint enterprise as a basis for liability." (underlining added)

48. As said, there is no basis to re-visit the finding of facts made by the trial judge, which have been upheld on appeal. Hence, the *"proportionality"* of the sentence herein has to be approached in light of such finding of facts.

49. In the Applicant's Submission, Ms Eva Sit SC (together with Mr. Ernest Ng) drew attention to the public dimension of the matters complained of herein in that:

"5. In Hong Kong, there is a considerable degree of public trust and confidence in barristers and it is one of the most respected professions in Hong Kong society: **Re Youh Alan Chuen Po** [2013] 2 HKLRD 485 at §9; **Re Edward Christopher Harris**, HCMP 1676/1991 (unrep., 2 October 1991) at p.7.

6. Unless the court and members of public can have confidence that those practicing at the Bar are fit and proper persons, the administration of justice under the Hong Kong system will be severely hampered and the rule of law will be tarnished. A barrister has to be a person who can be trusted to perform her duty to uphold the law as a barrister and conduct herself in a manner which will serve the proper and fair administration of justice: **Re Youh Alan** at §10.

7. Further, any sanction imposed by a disciplinary body must be appropriate and proportionate having regard to all relevant circumstances: Foster et al., Disciplinary and Regulatory Proceedings (10th ed., 2019) at §§10.25-10.27."

50. In reply, Mr. Pang submitted that:

"7. While the Respondent agrees that there was a public dimension in her acts leading to her conviction, the Applicant's submissions under this heading needs to be examined with care. In particular, the submission that "[g]iven her dual roles were well known, the audience (or at least some part of them) would clearly have relied on, or be influenced by, her advice as that given by a barrister" is problematic on different levels (§11 of Applicant's submissions).

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2 This is recited in para 7.6 of the Agreed Facts

8. First, it is unsubstantiated speculation with no evidential basis. There is no evidence on which the Tribunal can find that her instruction to the people at Tim Mei Avenue "how they should respond to Police arrest" was in any way a provision of legal advice.

9. Second, it stands contrary to the established sentencing approach where a distinction should be drawn between professional misconduct and misconduct outside the profession, the latter being generally a less serious matter: **Re H (A Barrister)** [1981] 1 WKL 1257 at 1259.

10. Third, the proposition that statements made by a barrister may be taken as advice given by a barrister committed would lead to a chilling effect and discourage lawyers from making clear their beliefs for fear of disciplinary sanctions – which is the very vice that Ezelin warned against (as explained in the Respondent's mitigation submission) **[B/564/52-53]**.

11. Fourth, while the geographical scale of the public nuisance was substantial (to occupy public places and roads in and around Tim Mei Avenue), the temporal scale was for an indefinite period which could be long or short. While it is not disputed that roads and public places around Admiralty were occupied for a significant period of time, it is important to remember that the Respondent's acts were confined only to 27 and 28 September 2014.

12. Finally, although the Respondent may have been calling on people to commit civil disobedience involving a breach of the law, this does not take the matter out of consideration of the rights of freedom of expression or demonstration (§15). In Kudrevicius v Lithuania (2016) 62 EHRR 34 at §150, the ECHR stressed :

> "An unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an interference with a person's right to freedom of assembly" also see Ziegler at §§69-70."

51. Just to get rid of a short point, it is patently clear that the Respondent was not convicted by the mere fact that the "public nuisance" incited was carried out without *"prior authorisation"*. As illustrated in the finding of facts recited above, the trial judge was acutely aware that the absence of notification is by no means determinative of the element of *"not warranted by law"*.

52. That said, the jurisprudence discernible from the judgment of the European Court of Human Rights in *Kudrevicius v Lithuania* (2016) 62 EHRR 34 is

instructive on the approach towards assessment of proportionality in a case involving obstruction of the highways by demonstrators.

53. In that case, dairy farmers protested against the delay in the implementation of government policy to subsidize dairy products produced in Lithuania. In an act of spontaneity, some farmers drove their tractors onto the highways thereby causing undue obstructions and inconvenience to other road users especially truck drivers. The European Court of Human Rights made reference to *Ezelin v. France* and explained:

> *"149. . .At the same time, the freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion [citing Ezelin v. France]. This is true also when the demonstration results in damage or other disorder [citing Taranenko (19554/05) 15 May 2014 at 88]."* (underlining added)

54. That said, the European Court of Human Rights went on to elaborate :

> *"173. As can be seen from the above case-law, the intentional serious disruption, by demonstrators, to ordinary life and to the activities lawfully carried out by others, to a more significant extent than that caused by the normal exercise of the right of peaceful assembly in a public place, might be considered a "reprehensible act" within the meaning of the Court's case-law. Such behaviour might therefore justified the imposition of penalties, even of a criminal nature."* (underlining added)

55. Applying the foregoing principles to the set of facts as found by the trial judge, the only reasonable conclusion is that the Respondent did incite the commission of a *"reprehensible act"* by way of *"public nuisance"*. It follows that the convictions were justified "restriction" to her freedom of speech and freedom of peaceful assembly.

56. In the premises, the Tribunal takes the view that any sentence to be passed in the disciplinary proceedings herein shall be commensurate with the

gravamen of the matter as reflected in the convictions and the findings of facts in the criminal trial.

The Sentence

57. Ms Sit helpfully drew the attention of the Tribunal to the case of *Bolton v. Law Society* [1994] 1 WLR 512 in which Sir Thomas Bingham (as Lord Bingham then was) said (at 518A to H) that :

> *"It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. That requirement applies as much to barristers as it does to solicitors. . .*
>
> *There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. . . The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission.. . .Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."* (underlining added)

58. In this respect, no issue is taken by Mr. Pang. As indeed, he supplemented in the Reply Submission that :

> "6. Thus, the Tribunal in applying the proportionality analysis would identify the legitimate aim, which in this case is neither punitive (the Respondent having been sentenced in the criminal courts) nor to ensure that the Respondent does not have the opportunity to repeat the offence. The legitimate aim would in this case be to maintain the reputation of the profession of barristers and to sustain public confidence in

barristers. The Tribunal would have to consider whether any sanction is no more than necessary to accomplish the aim of maintaining the reputation of the profession and sustaining public confidence in barristers."

59. In passing sentence, the Tribunal takes the view that the two offences for which the Respondents were convicted should not be taken lightly. It involved the Respondent inciting members of the public to commit and to incite others to commit the *"reprehensible act"* of causing major obstruction and disruption to the normal activities of other members of the public in Admiralty and Central areas.

60. However noble might be the intention, the *"reprehensible act"* incited by the Respondent constituted *"public nuisance"* with entailing criminal liability. It is not difficult to imagine that at least some of the people being incited might be unwary (or not fully aware) of the serious legal consequences.

61. Although the Respondent did not make reference to her status as a barrister or hold herself out as rendering legal advice when she addressed the crowd gathering at Tim Mei Avenue at the material times in the run-up to the Occupy Central movement, it is well known that she was a key player in a pro-democracy political party and she had also represented the legal subsector.

62. In the premises, the Respondent knew (or might reasonably be expected to anticipate) that the audience might well be influenced or persuaded to participate in the Occupy Central movement by her speech, which was reinforced by her status as a former legislator and a barrister.

63. In this connection, it is remarkable that the Respondent did nothing, whether by words or conduct, to warn her audience of the legal consequence or liabilities of the incited act, which was intended to create paralysing effects on the roads and other public places in Admiralty and Central areas.

64. In all circumstances, the Tribunal is of the view that the Respondent shall be censured in the exercise of its power under s.37(a) of the Legal Practitioners Ordinance (Cap. 159). In so deciding, the Tribunal has taken into account the following factual matters and mitigating circumstances :

(1) The acts of the Respondent complained of herein did not involve any element of dishonesty and were not committed in the course of the Respondent's practice as a barrister.

(2) The Tribunal would proceed on the basis that the Respondent participated in the Occupy Central movement with the genuine intention to bring about electoral reform by way of universal suffrage (as perceived by her and her political peers).

(3) The Respondent did not commit the relevant acts for monetary gain or reward.

(4) The Respondent did not intend the participants to engage in any violence and she believed that the demonstration would be a peaceful one.

(5) The Respondent has already suffered the penalty entailing her convictions before the criminal court.

(6) The Respondent has been co-operative with the Bar and has indicated her admission to the Amended Complaint at the earliest opportunity.

(7) The Respondent readily acknowledges that her acts *"may with hindsight and detachment be considered ill-judged"* and hence the risk of re-offending is very remote.

Consequential Matters

Publication

65. The Tribunal takes the view that related criminal trial and the appeal have already engendered much publicity and is well known to members of the profession. There is no pressing need to educate members of the profession of the morals to be learnt in these proceedings by publication.

66. However, in keeping with our view on the public dimension of this matter, we order that the Amended Complaint, the Agreed Facts and the Decision herein be published in the following manner upon expiry of time as provided in paragraph 73 hereinbelow:

(1) By way of a Bar Circular;

(2) By displaying on the Bar website in the part which is accessible by public generally for a period of 3 months and thereafter be removed therefrom;

(3) By sending a copy of the Decision to the complainant, the Registrar of the High Court and the District Court, the Chief Judge of the High Court, the Chief District Judge, the Chief Magistrate,

all members of the Barristers Disciplinary Tribunal Panel, the Department of Justice (the Secretary for Justice, the Civil Litigation Unit and the Director of Public Prosecution), the President of the Law Society, the Director of Legal Aid, the Administrator of the Duty Lawyer Service, and the Official Receiver's Office;

(4) Without prejudice to sub-paragraph (2) hereinabove, a copy of the Amended Complaint, the Agree Facts and the Decision be kept in the Bar Secretariat and copies of the same be made available to the public upon request and upon payment of reasonable copying charges to be decided by the Bar Council.

Costs

67. The Tribunal accepts Mr. Pang's submission that costs is in the discretion of the Tribunal. In the exercise of the discretion, the normal principles in civil litigation for awarding costs and imposing an indemnity costs order should apply (see Woo VP in *Solicitor (302/2) v. Law Society of Hong Kong* [2006] 2 HKC 40 at para. 146).

68. The Tribunal also accepts Mr. Pang's submission that the Respondent has conducted the proceedings in a reasonable and responsible manner.

69. The total amount on the bill presented by the Applicant came to HK$152,958.33. Remarkably, only HK$40,000 was charged by senior and junior counsel (i.e. HK$20,000 each) for the considerable work done in this matter, which is of great assistance to the Tribunal.

70. In all circumstances, the HK$40,000 referrable to counsel fees is allowed in full. The profit costs and disbursement of the Applicant's solicitors totally HK$112,958.33 is hereby assessed and rounded down to HK$100,000.

71. Accordingly, the Respondent shall pay the Applicant's costs in the total sum of HK$140,000 within 28 days upon expiry of the time as provided in paragraph 73 hereinbelow.

The Order

72. The Applicant is hereby directed to draw up the order in accordance with the Decision herein within 7 days from the day hereof.

73. It shall be a term thereof that all orders made pursuant to the Decision herein be stayed pending the expiration of the period for lodging of an appeal to the Court of Appeal prescribed in section 37B(1) of the Legal Practitioners Ordinance (Cap. 159), and if an appeal were lodged within the prescribed period, such stay be extended pending the disposal of the appeal.

74. It remains for the Tribunal to thank both legal teams for their diligence in the conduct of these proceedings so as to bring this matter to an early conclusion. In particular, it is evident that counsel have spared no effort and left no stone unturned in their legal research.

Raymond Leung SC Chairman	Lisa Remedios Member	Keith Yim Member

Miss Eva Sit SC (leading Mr. Ernest Ng) instructed by Messrs. Kwok Ng & Chan for the Applicant

Mr. Robert Pang SC (leading Miss Velda Yau) instructed by Messrs. Ho Tse Wai & Partners for the Respondent

IN THE BARRISTERS DISCIPLINARY TRIBUNAL

BETWEEN

THE BAR COUNCIL Applicant

and

CHAN, TANYA Respondent

AMENDED COMPLAINT

The following complaint of misconduct are laid by the Bar Council against Chan, Tanya before the Barristers Disciplinary Tribunal: -

PARTICULARS OF MISCONDUCT

COMPLAINT

Engaging in a course of conduct which ~~(i)~~ may bring the profession of barrister into disrepute, ~~and (ii) is prejudicial to the administration of justice,~~ contrary to paragraph 6(b) of the Code of Conduct of the Bar of the Hong Kong Special Administrative Region adopted on 20 November 1997, effective from May 1998 and updated as at 5 August 2013.

PARTICULARS

1. Chan, Tanya, on 27 and 28 September 2014, at Tim Mei Avenue, Admiralty, Hong Kong, incited persons present at Tim Mei Avenue to cause a public nuisance by unlawfully obstructing public places and

roads at and in the neighbourhood of Tim Mei Avenue, as evidenced by and which resulted in the conviction of Chan, Tanya in DCCC 480 of 2017 of the offence of incitement to commit public nuisance, contrary to common law and punishable under section 101I of the Criminal Procedure Ordinance (Cap. 221).

2. Chan, Tanya, on 27 and 28 September 2014, at Tim Mei Avenue, incited persons present at Tim Mei Avenue to incite other persons to cause a public nuisance by unlawfully obstructing public places and roads at and in the neighbourhood of Tim Mei Avenue, as evidenced by and which resulted in the conviction of Chan, Tanya in DCCC 480 of 2017 of the offence of incitement to incite public nuisance, contrary to common law and punishable under section 101I of the Criminal Procedure Ordinance (Cap. 221).

~~Dated this 9th day of August 2022.~~
Dated this 9th day of January 2023.

~~Eva Sit, S.C.~~
~~Ernest Ng~~
~~Counsel for the Applicant~~

~~(signed)~~
~~Kwok, Ng & Chan~~
~~Solicitors for the Applicant~~

Eva Sit, S.C.
Ernest Ng
Counsel for the Applicant

Kwok, Ng & Chan
Solicitors for the Applicant

IN THE BARRISTERS DISCIPLINARY TRIBUNAL

BETWEEN

THE BAR COUNCIL Applicant

and

CHAN, TANYA Respondent

****

AMENDED COMPLAINT

****

~~Dated this 9th day of August 2022.~~
Dated this 9th day of January 2023.

KWOK, NG & CHAN
SOLICITORS FOR THE APPLICANT
9/F, DAH SING LIFE BUILDING
99 DES VOEUX ROAD CENTRAL
HONG KONG
(TEL: 2851 1168)
(FAX: 2815 1262)
REF: YY/19000/22(G)[BL]

IN THE BARRISTERS DISCIPLINARY TRIBUNAL

BETWEEN

THE BAR COUNCIL Applicant

and

CHAN, TANYA Respondent

AGREED FACTS

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1. The Respondent was admitted as a Barrister of the High Court of Hong Kong Special Administrative Region on 12 April 2003. She was a Legislative Councillor from 2008 to 2012 and from 2016 to 2020.

2. On 31 August 2014, the Standing Committee of the National People's Congress promulgated its decision on issues relating to the election of the Chief Executive of the HKSAR by universal suffrage in 2017 ("**831 Decision**").

3. Following the 831 Decision, certain protestors held a number of protests against it.

4. On 26 and 27 September 2014:-

    4.1. A total of three notified public meetings were held at Tim Mei Avenue, Admiralty (two on 26 September 2014 and one on 27 September 2014), for which the Police had issued Letters of No Objections ("**LONO**").

4.2. In the course of the meetings on 26 September 2014, certain students charged into the East Wing Forecourt of Central Government Office. Some of them were arrested while others occupied the area and refused to leave.

4.3. By 27 September 2014, a large number of people gathered at Tim Mei Avenue, and traffic on both sides of Tim Mei Avenue was suspended. There were speakers on the stage ("**Main Stage**") asking people present to stay and call upon more people to come to Tim Mei Avenue to support the students.

5. On 28 September 2014, the aforesaid notified public meeting continued, even though the Police had issued a Letter of Prohibition with respect to it. At such meeting on 28 September 2014, Mr. Tai Yiu Ting (戴耀廷) ("**Tai**"), Mr. Chan Kin Man (陳健民) and Mr. Chu Yiu Ming (朱耀明) appeared on the stage at Tim Mei Avenue and announced the launch of "Occupy Central" and the human and material resources of the "Occupy Central with Love and Peace" would "come in completely".

6. At the aforesaid meetings on 27 and 28 September 2014, on divers occasions while on the Main Stage the Respondent addressed persons present to (i) incite persons present at Tim Mei Avenue to cause a public nuisance by unlawfully obstructing public places and roads at and in the neighbourhood of Tim Mei Avenue, and (ii) incite persons present at Tim Mei Avenue to incite other persons to cause a public nuisance by unlawfully obstructing public places and roads at and in the neighbourhood of Tim Mei Avenue.

7. The statements made by the Respondent on 27 September 2014 were:-

7.1. In the morning, when the Respondent addressed the people at Tim Mei Avenue, she called for more people to join the movement at Tim Mei Avenue and more material supplies for the support of the movement at Tim Mei Avenue.

7.2. At around noon, when the Respondent addressed the people at Tim Mei Avenue on the Main Stage, (i) she asked for more people to join the movement at Tim Mei Avenue; (ii) she asked for specific items in support of the movement (iii) she appealed to the people at Tim Mei Avenue to hold on to the defence lines; (iv) she stated that "*All in all, as long as the police did not retreat we will insist on staying here*"; (v) she said the people at the main stage had been trying to collect information from all parties all along; (vi) she instructed the people at Tim Mei Avenue how they should respond to Police arrest; (vii) amongst the demands made by her was a demand for genuine universal suffrage and rejection of bad proposal.

7.3. In the afternoon, when the Respondent addressed the people at Tim Mei Avenue on the Main Stage, (i) she told the crowd how they should guard the defence lines against the police officers; (ii) she asked the protestors to pay attention to the side of Admiralty Centre and CITIC Pacific; (iii) she asked the people at other defence lines to monitor the movement of the police and report to the Main Stage through the picket leaders; (iv) she continued to ask for more people to join the movement at Tim Mei Avenue and bring with them appropriate supplies; (v) she instructed the people at Tim Mei Avenue how they should respond to Police arrest; (vi) she told the crowd that: "*(we) heard that more and more citizens are coming for reinforcement, coming to support us*"; (vii) she told the crowd that it was possible that the police officers were going to carry the student protestors out from the Civic Square; (viii) she warned the crowd that the police officers on the side of the entrance to Tim Mei Avenue might be ready to take action any time; (ix) she asked the people at the front of Tim Mei Avenue to open umbrellas or put up their hands and to cover their eyes with cling wrap; (x) she continued to ask for more supporters to come to Tim Mei Avenue with material supplies she specifically asked; (xi) when she asked the crowd to leave a passage for an ambulance so that it could attend to someone fallen sick, she

said, among other things: "*Disobedience – is not about one or two days, or one or two minutes...*".

7.4. Later in the afternoon, when the Respondent addressed the people at Tim Mei Avenue on the Main Stage, (i) she asked everyone to participate in civil disobedience; (ii) she asked everyone to ask more people to come to Tim Mei Avenue; (iii) she asked the people at Admiralty Centre and on the bridge to guard the post as the police might need the access at Admiralty Centre after the people in the Civic Square had been carried up there; (iv) she asked the protestors to continue to guard various defence lines against the police; (v) she asked the people in the Civic Square to stay arm in arm and shout out their names upon arrest; (vi) she said: "*...according to our understanding now, civic square has already been cleared. Friends in the civic square have been carried away. But, never mind, we will go on staying here. Also, there is a piece of news, ...As said just now, Wong Chi Fung has been rejected bail and is charged with three offences, three offences, therefore .....We – but we have to stay here. We have to uphold our strong will to show our determination. Shall we continue to stay here. Let's us applause for ourselves, cheer ourselves up, okay?*".

7.5. Later in the afternoon, when the Respondent and Mr. Shiu Ka Chun (邵家臻) ("**Shiu**") addressed the people at Tim Mei Avenue on the Main Stage, (i) she told the crowd that yellow flags had been held up but everyone should get prepared and guard his/her post at various defence lines, e.g. the ones at CITIC Tower, Lung Wui Road near the roundabout; (ii) she told the crowd how supporters could go to the venue via Tamar Park and the footbridge at CITIC Tower; (iii) she said they were not alone as many supporters were going to the venue to support them; (iv) she said, because of live TV broadcast, a lot of citizens were going to the venue with material supplies to support the movement; (v) she specifically asked the supporters going to the venue should equip themselves with umbrellas, bottled water, hats, sunglasses or goggles; (vi) she asked the

crowd to sit in a way that a male protestor should sit next to a female protestors and they should link their arms for the purpose of increasing the cost of the police carrying them away; (v) she said she believed the era of disobedience battle had already begun.

7.6. Later in the afternoon, the Respondent addressed the people at Tim Mei Avenue as follows:-

(a) First, she said: "*Hey, let's go to occupy Admiralty now. Thank you, Benny. 'Chung' (transliteration), now it is the 'Chung' (transliteration) of 'Kam Chung' (transliteration) (the name of Admiralty in Chinese). Later, it will be the 'Chung' (transliteration) of 'Chung Wan' (the name of Central in Chinese)...*" & "*We hope to over-cramming Tim Mei Avenue, right? Over-cram Tim Mei Avenue! Over-cram Tim Mei Avenue! Over-cram Tim Mei Avenue! Over-cram Admiralty! Over-cram Admiralty! Over-cram Admiralty! Good! ...*".

(b) She also asked the people at Tim Mei Avenue to continue to ask more friends to go to the venue at Tim Mei Avenue, and said "... *Sometimes it is necessary (for us) to be divided into batches. The policemen will work in shifts, well, it also applies to us. Not everyone has to sleep here for two, three, four, five, six (or) seven days, right?... Well, if everyone (wants) to keep staying (here), well, (you) certainly can. Well, if you intend to go, er, prepare better supplies, (you) are also very welcome (to do so).*"

7.7. In the evening, when the Respondent was on the Main Stage, she told the people at Tim Mei Avenue that at that moment, there were about thousands of people gathering on the footbridge of Admiralty Centre. She said supporters could enter the venue of Tim Mei Avenue via Tamar Park or the Academy for Performing Arts and the people at Tim Mei Avenue should tell their friends so if they were asking their friends to go to the

venue. She also called for material support of items needed at the venue. She also called for release of the arrested persons and over-cramming of Civic Square.

7.8. Later in the evening, when the Respondent was on the Main Stage, she told the people at Tim Mei Avenue who did not have a post to go to defend the footbridge of Admiralty Centre. She also asked the people who wanted to join the assembly at Tim Mei Avenue to bring with them enough food and water.

7.9. Later in the evening, when the Respondent was on the Main Stage, she told the people at Tim Mei Avenue to support the defence lines at the footbridges at Tim Mei Avenue and Admiralty Centre. She also asked the people at Tim Mei Avenue to swap the shifts with protestors who had been guarding at various defence lines for a long time.

7.10. Later in the evening, when the Respondent was on the Main Stage with others (including Shiu), she addressed the people at Tim Mei Avenue by echoing Shiu's statement that Tim Mei Avenue was already filled with seated people over at the Legislative Council.

7.11. Later in the evening, when the Respondent was on the Main Stage with others, she addressed the people at Tim Mei Avenue by stressing the importance of the Main Stage and asked the crowd to protect the Main Stage from the police.

8. The statements made by the Respondent on 28 September 2014 were:-

8.1. Shortly after midnight on 28 September 2014, the Respondent was on the Main Stage and told the people at Tim Mei Avenue that the police had refused to issue a LONO for the public meeting at Tim Mei Avenue on 28 September 2014, hence the assembly in progress was an unauthorized assembly.

8.2. Shortly thereafter and before 1 am, the Respondent was on the Main Stage and asked the people at Tim Mei Avenue who did

not have any post to go to reinforce the defence lines on the footbridge of United Centre, Lung Wo Road and where Tim Mei Avenue connected with Gloucester Road. She also called for more people to go to provide reinforcement as "*a relatively meaningful number of citizens present here, the Police will not take any action precipitately.*"

8.3. Shortly after 2 am, the Respondent addressed the people at Tim Mei Avenue from the Main Stage and spoke of the importance of the Main Stage: "... *it is our long-term need that there are friends sitting right in front of the main stage*".

9. The Respondent made the statements in paragraphs 7 and 8 above (i) intending the public assembly in progress at Tim Mei Avenue to become a demonstration with mass participation and continuous material supplies from the public; (ii) knowing that there were many supporters going to join the public assembly at Tim Mei Avenue; and (iii) intending to increase the cost of the police in any arrest action so that the occupy movement could carry on for an indefinite period of time.

10. Further, the Respondent was present on the Main Stage on the following occasions on 27 September 2014 when statements were made by others to persons present:-

10.1. The Respondent was present on the Main Stage when Tai said to persons present "... *Let's over-cram Admiralty first. Where shall (we) over-cram next? Central? We must be able to see the arrival of genuine universal suffrage in Hong Kong!*".

10.2. The Respondent was also present on the Main Stage when Mr. Cheung Sau Yin (張秀賢) said to persons present "... *Well, we, now on the bridge outside Admiralty, it is still full of people all over the footbridge (there). They are in the direction of our side, coming towards us here, right. Our (activity) today, should be the largest Civil Disobedience (activity) over the years, certainly, the number of people, we have not yet got the*

largest of people, but (we) hope that the members of the public would not remain at our current achievements (attained), let us keep asking more people to come, over-cramming Admiralty.", and "Well! As what we have seen, actually, there are huge crowds of people everywhere. Well! Wem, starting from Harcourt Road to the entire Tim Mei Avenue, all were (packed with) people, the open space of the Legislative Council is also full of people, so everybody keeps asking people to come!".

11. On 9 April 2019, the Respondent was convicted of the offences of (i) incitement to commit public nuisance and (ii) incitement to incite public nuisance, both contrary to common law and punishable under section 101I of the Criminal Procedure Ordinance (Cap. 221) in DCCC No. 480 of 2017.

12. On 10 June 2019, the Respondent was sentenced to eight months' imprisonment for each offence, running concurrently but suspended for two years due to, amongst other things, her medical condition amounting to exceptional circumstances.

13. On 30 April 2021, the Respondent's appeal against conviction was dismissed by the Court of Appeal in CACC No. 128 of 2019.

Dated this 6th day of January 2023.

Kwok, Ng & Chan	Ho Tse Wai & Partners
Solicitors for the Applicant	Solicitors for the Respondent