

**IN THE BARRISTERS DISCIPLINARY TRIBUNAL**

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**BETWEEN**

**THE BAR COUNCIL**

**Applicant**

**and**

**LIM TIN TIN VALERIE**

**Respondent**

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Before : Jason Pow, SC (Chairman), Alan M.S. Ng Esq., David Ho  
Chi Hoo Esq.  
Date of hearing : 12 March 2013  
Date of decision : 29 April 2014

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**STATEMENT OF FINDINGS**

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Pursuant to section 37A of the Legal Practitioners' Ordinance (Cap.159)

**Background**

1. The Respondent was called to the Hong Kong Bar on 18<sup>th</sup> August 1990. Since then, she had been practicing as a barrister in Hong Kong until she wrote to the Hong Kong Bar Association ("the HKBA") on 8<sup>th</sup> August 2011 informing the HKBA of her intention to cease practice with immediate effect.<sup>1</sup> By the same letter, she returned to the HKBA her practising certificate for the period from 1<sup>st</sup> January 2011 to 31<sup>st</sup> December 2011.<sup>2</sup> Although the Respondent's name no longer appears on the Bar List, her name nevertheless still remains on the Roll of Barristers.
2. At the material time, the Respondent had been practising in Hong Kong for more

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<sup>1</sup> See pp.97-98 of the Bundle of Documents

<sup>2</sup> By letter dated 27<sup>th</sup> February 2012, the Respondent *via* her then solicitors Messrs. Yap & Lam ("Y&L") reaffirmed to the HKBA that she no longer wished to maintain her name on the Bar Roll of the High Court of Hong Kong.

than 17 years.

3. On 17<sup>th</sup> February 2008, Mr. Chan Yue Ming (陳裕銘) (“Mr. Chan”), a unit manager in an insurance company and Mr. Tsui Wai Chung (“Mr. Tsui”), an insurance agent working under the supervision of Mr. Chan, were arrested by the police for allegations of fraud arising out of their insurance work. Later on, Mr. Chan was charged with one count of fraud whilst Mr. Tsui was charged with three counts of fraud. They were brought to appear before the Eastern Magistrates’ Courts under ESCC 954 of 2008 (“the Criminal Case”). Around noon time of 19<sup>th</sup> February 2008, Mr. Chan and Mr. Tsui attended the Respondent’s professional chambers at 2/F., Duke of Wellington House, Nos.14-24 Wellington Street, Central and met with the Respondent (“the Chambers”). Throughout that meeting, there was no solicitor or legal executive or other representative of a solicitors’ firm present. The Respondent in these proceedings faces 2 complaints arising out of her conduct in that meeting. We shall delve into the evidence concerning that meeting later in this Statement of Findings.
4. For the sake of completeness, Mr. Chan and Mr. Tsui were tried before Mrs. Adriana Tse of the Eastern Magistrates’ Courts on 7<sup>th</sup> and 10<sup>th</sup> November 2008. Before the trial, Mr. Tsui pleaded guilty to the three charges of fraud and turned prosecution witness against Mr. Chan. Mr. Tsui gave evidence against Mr. Chan on 7<sup>th</sup> November 2008. On 10<sup>th</sup> November 2008, the single charge of fraud against Mr. Chan was dismissed upon the Prosecution’s offering no further evidence against him.

### **Complaints of Misconduct**

5. The 2 Complaints of Misconduct (“the Complaints”) laid by the Applicant against the Respondent are detailed as follows:-

#### **Complaint 1**

6. The Applicant has alleged that the Respondent was in breach of para.50(a) of the Code of Conduct of the Bar of the Hong Kong Special Administrative Region (“the Bar Code”).
7. The particulars of Complaint 1 are:-

- “(I) That on 19 February 2008, the Respondent, being a practising barrister, had acted in a professional capacity without the instructions from, or intervention of a solicitor, contrary to the provisions of paragraph 50(a) of the Code of Conduct of the Bar of the Hong Kong Special Administrative Region (“the Bar Code”), in that:
- (a) she had a meeting at her chambers with Mr. Chan Yue Ming (“Mr. Chan”) and Mr. Tsui Wai Chung (“Mr. Tsui”), who were defendants in Eastern Magistracy Criminal Case No.954 of 2008 (“ESCC 954”), without the presence of a solicitor, trainee solicitor, or other qualified representative of a solicitor’s or solicitors’ firm; and
  - (b) at the time of the aforesaid meeting, while she did not have instructions from a solicitor to represent either or both of Mr. Chan and Mr. Tsui in ESCC 954, with a view to representing them in the case, she took instructions from and gave advice to them as follows:
    - (i) She indicated that she was prepared to represent Mr. Chan in Court when he was due to appear for the taking of his plea in ESCC 954, and indicated that Mr. Chan could negotiate legal fees with one Mr. Tang;
    - (ii) She advised Mr. Chan and Mr. Tsui on a possible plea bargain, and indicated that if Mr. Chan decided to engage her, she could attempt a plea bargain with the prosecution for both of himself and Mr. Tsui;
    - (iii) She discussed with and advised Mr. Tsui on his defence;
    - (iv) She advised both Mr. Chan and Mr. Tsui on sentence ...”

### Complaint 2

8. The Applicant has alleged that the Respondent was in breach of paras.6(b) and 6(c) of the Bar Code.
9. The particulars of Complaint 2 are:-

- “(II) That during the aforesaid meeting on 19 February 2008, she engaged in conduct that was unethical, prejudicial to, or tended to prejudice, the administration of justice, contrary to the provisions of paragraphs 6(b) and 6(c) of the Bar Code, when she indicated to Mr. Chan:
- (i) that if Mr. Chan was to engage her as his counsel, she could attempt a plea bargain with the prosecution for both of himself and Mr. Tsui in ESCC 954 in terms that the charge against Mr. Chan be

dropped, on condition that Mr. Tsui would admit to the charges against him; and

- (ii) that for Mr. Tsui to plead guilty, Mr. Chan ought to offer some advantage to Mr. Tsui, thereby suggesting that Mr. Tsui ought to be paid some money or offered some financial advantage for him to plead guilty.”

10. On 4<sup>th</sup> January 2011, the Tribunal was duly constituted to hear and determine the Complaints. By letter dated 17<sup>th</sup> February 2011, the Respondent *via* her then solicitors C.O. Yu & Co. (“COY”) did not admit and indicated that she would dispute the Complaints.<sup>3</sup> However, by letter dated 27<sup>th</sup> February 2012<sup>4</sup>, the Respondent’s stance was changed; the Respondent *via* her then solicitors Y&L expressed her intention not to defend the Complaints and not to attend any hearing(s) of the Complaints.

### **The Tribunal Hearing**

11. Since late May 2012, the Respondent has been unrepresented and the Applicant met with difficulties in effecting service of documents and notice of hearing on the Respondent.<sup>5</sup> The inquiry hearing of the Complaints was adjourned once on 18<sup>th</sup> June 2012 because the Applicant failed to prove to the satisfaction of the Tribunal due service of documents and notice of hearing as required by *Rule 10 of the Barristers Disciplinary Tribunal Proceedings Rules* (“BDTPR”).

12. The inquiry hearing of the Complaints was resumed on 12<sup>th</sup> March 2013. Again, the Respondent did not attend the hearing. This time, the Bar Secretariat received a phone call from a Ms Lau of a solicitors’ firm called Y.K. Lau & Chu (“YKLC”) at around 2:30 pm the same day. Ms Lau informed the Bar Secretariat over the phone that YKLC was representing the Respondent and the Respondent would not attend the inquiry hearing (“the Phone Call”). The Respondent’s position was later on confirmed by a letter from YKLC to the Applicant’s solicitors, Messrs. Kwok, Ng & Chan (“KNC”), which KNC received by fax at around 4 pm the same day (“the YKLC’s Letter”). By the YKLC’s Letter, the Respondent informed KNC that “she will not contest in the [inquiry hearing] and will not attend the [inquiry] hearing today” and that she “is extremely sorry for [the Complaints] and is prepared to accept whatever penalty to be imposed on her and pay a reasonable cost for the proceedings.”

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<sup>3</sup> See p.81 of the Bundle of Documents

<sup>4</sup> See p.163 of the Bundle of Documents

<sup>5</sup> Recently, Messrs. Y.K. Lau & Chu, Solicitors (i.e. YKLC) have filed a Notice to Act for the Respondent herein on 2<sup>nd</sup> April 2013

13. At the inquiry hearing on 12<sup>th</sup> March 2013, the Phone Call and the YKLC's Letter were duly brought to the attention of the Tribunal. In light of the Phone Call, the YKLC's Letter and the Affirmation of Service made by Lee Yiu Sun on 26<sup>th</sup> February 2013, the Tribunal was satisfied that *Rule 10 of BDTPR* had been complied with and therefore exercised its discretion to proceed with the inquiry hearing in the absence of the Respondent. Although the Respondent has ceased practice since 8<sup>th</sup> August 2011, the Tribunal, after having heard the submissions by the Applicant<sup>6</sup>, ruled that the Tribunal retained the necessary jurisdiction to hear the Complaints.

### Evidence

14. To prove the Complaints, the Applicant relies on the following evidence:-

- (a) The answers given by the Respondent *via* her then solicitors N.K. Tsang & Co. ("NKT") in the letter to the HKBA dated 1<sup>st</sup> September 2010<sup>7</sup> in reply to the letter of enquiry sent by the HKBA to the Respondent dated 7<sup>th</sup> August 2010<sup>8</sup>.
- (b) The answers given by the Respondent *via* her then solicitors COY in the letter to Messrs. T.S. Tong ("TST") (the Applicant's then solicitors) dated 5<sup>th</sup> January 2011<sup>9</sup> in reply to the letter of enquiry sent by TST to NKT dated 26<sup>th</sup> November 2010<sup>10</sup>.
- (c) The *viva voce* evidence of Mr. Chan who made a witness statement on 10<sup>th</sup> April 2012<sup>11</sup> with 4 Annexures<sup>12</sup> attached thereto ("Mr. Chan's Witness Statement").
- (d) The audio record of the meeting between Mr. Chan, Mr. Tsui and the Respondent at the Chambers around noon time of 19<sup>th</sup> February 2008<sup>13</sup> ("the Meeting") and the transcripts of the aforesaid audio record together

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<sup>6</sup> See paras.36-38 of the Applicant's Case dated 8<sup>th</sup> March 2013

<sup>7</sup> See pp. 44-45 of the Bundle of Documents

<sup>8</sup> See pp. 39-41 of the Bundle of Documents

<sup>9</sup> See p. 63 of the Bundle of Documents

<sup>10</sup> See pp. 52-53 of the Bundle of Documents

<sup>11</sup> See pp. 177-184 of the Bundle of Documents

<sup>12</sup> See pp. 185-276 of the Bundle of Documents

<sup>13</sup> See Annexure 2 to Mr. Chan's Witness Statement at p.197 of the Bundle of Documents; in para.6 of Mr. Chan's Witness Statement at p.179 of the Bundle of Documents, Mr. Chan said that he secretly made an audio record of practically the entire meeting with his mobile phone in MP3 format.

with the English translation of the same<sup>14</sup>.

15. At the inquiry hearing, the Applicant called Mr. Chan to affirm his witness statement made on 10<sup>th</sup> April 2012. In para.15 of Mr. Chan's Witness Statement, Mr. Chan confirmed that the transcripts of the audio record of the Meeting accorded with the audio record of the same. Apart from Mr. Chan, the Applicant called no further witness.

### **Standard and Burden of Proof**

16. The Tribunal is mindful that the burden of proof is on the Applicant to establish that the Respondent was in breach of paras.50(a), 6(b) and 6(c) of the Bar Code in the circumstances as particularized in the Complaints and that the Respondent has no burden or duty to prove otherwise.<sup>15</sup>

17. The standard of proof for the Tribunal hearing which is of a disciplinary nature is no difference from other civil proceedings, to wit, balance of probability. However, the Tribunal bears in mind the common sense view that the more serious the act alleged, the more inherently improbable must it be regarded and the more compelling will be the evidence needed to prove it on a preponderance of probability.<sup>16</sup>

### **The Relevant Paragraphs of the Bar Code**

18. The following are the relevant paragraphs of the Bar Code:-

- (a) Subject to such exceptions as may be authorized by custom or the Bar Council as set out in Annex 20, a barrister may not act in a professional capacity except upon the instructions of a solicitor or the Director of Legal Aid or the Government. Notwithstanding that he does so for no fee, a barrister who appears in or drafts a formal document for the purpose of a contentious matter is acting in a professional capacity. There is, however, no objection to a barrister giving advice free on legal matters to a friend or relative or on a charitable basis. [para.50(a)]

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<sup>14</sup> See Annexure 4 to Mr. Chan's Witness Statement at pp. 226-276 of the Bundle of Documents, and also para.15 of Mr. Chan's Witness Statement at pp. 181-182; in the transcript, Female, Male 1 and Male 2 stand for the Respondent, Mr. Chan and Mr. Tsui respectively

<sup>15</sup> *Rule 7 of BDTPR*

<sup>16</sup> *A Solicitor v The Law Society of Hong Kong* [2008] 2 HKLRD 576 at 623, para.116

- (b) It is the duty of every barrister to comply with the provisions of this Code. [para.6(a)]
- (c) It is the duty of every barrister 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 disrepute, or which is prejudicial to the administration of justice. [para.6(b)]
- (d) It is the duty of every barrister to observe the ethics and etiquette of his profession. [para.6(c)]
- (e) Serious failure to comply with the duties set out in para.6 shall be professional misconduct. [para.7]

### **Complaint 1**

19. On Complaint 1, there are 2 important issues which the Tribunal is required to resolve:-

- (a) Whether the Respondent was acting without the instructions and intervention of a solicitor at the material time; and
- (b) Whether the Respondent was acting in a professional capacity at the Meeting.<sup>17</sup>

### **Was the Respondent instructed by a solicitor?**

20. By the reply letter from NKT to the HKBA dated 1<sup>st</sup> September 2010 [Answer (3) at p.44 of the Bundle of Documents], the Respondent *via* NKT accepted that at the Meeting, she had not been instructed by any solicitor to represent Mr. Chan. By the same reply letter [Answers (4) & (7) at p.44 of the Bundle of Documents], she also accepted that she did not have a brief to act for Mr. Tsui in the Criminal Case and that there was no solicitor or representative of a solicitors' firm present at the Meeting. Throughout the Meeting, as the Respondent accepted, only Mr. Chan,

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<sup>17</sup> By the reply letter from NKT to the HKBA dated 1<sup>st</sup> September 2010 [Answer (6) at p.44 of the Bundle of Documents], the Respondent has expressly put this in issue; the Respondent *via* NKT stated that Mr. Tsui was her good friend, that he asked her to give some legal advice as a friend, and not on a client/lawyer basis, that this she did as an act of friendship and that this was not the first time she had seen these parties in respect of this matter.

Mr. Tsui and the Respondent herself were present.<sup>18</sup>

21. On this aspect, Mr. Chan's testimony which the Tribunal accepts is as follows. On 18<sup>th</sup> February 2008's evening, Mr. Tsui telephoned him and asked him to attend a meeting with him and the Respondent the next day. Mr. Chan asked Mr. Tsui if it was proper for him to do so as the Respondent was not his lawyer. Mr. Tsui then told him that if he did not feel comfortable about it, he need not attend. On 19<sup>th</sup> February 2008, at around noon time, Mr. Tsui telephoned Mr. Chan again and asked him to go to the Respondent's office to discuss the case with them. Mr. Tsui told Mr. Chan that this was requested by the Respondent. In the course of giving *viva voce* evidence, Mr. Chan said that on the morning of 19<sup>th</sup> February 2008, Mr. Tsui called him by telephone and told him that the Respondent wanted to have an appointment with him in an office in Central. At around 12:52 pm the same day, Mr. Chan attended the Chambers and met with Mr. Tsui and the Respondent in the absence of a solicitor or a representative of a solicitors' firm. Since Mr. Chan had some misgivings about the intention of the Respondent and Mr. Tsui and fearing that they might be thinking of ways to take advantage of him, he surreptitiously made an audio recording of the Meeting.
22. What transpired between Mr. Chan, Mr. Tsui and the Respondent at the Meeting has been recorded and the transcript of the aforesaid audio recording together with its the English translation has been produced as evidence.<sup>19</sup> The Respondent has been given every opportunity of listening to the said audio recording. By the reply letter from NKT to the HKBA dated 1<sup>st</sup> September 2010 [Answer (2) at p.44 of the Bundle of Documents], the Respondent stated that she believed that the audio recording was accurate, but she did not believe that it was a complete record of all the conversations. She did not however indicate what conversations had been missed out and if so whether their omission would have any material impact. The Tribunal accepts that the audio recording was secretly made by Mr. Chan during the Meeting. Although from time to time inaudible parts appeared, they mainly resulted from two persons talking at the same time. Despite so, the Tribunal encountered no problem in understanding the context and the messages conveyed through the conversations. The Tribunal finds no sign of editing or tampering. The Tribunal finds that this audio recording has accurately recorded the material conversations that took place between Mr. Chan, Mr. Tsui and the

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<sup>18</sup> Answer (7) of the reply letter from NKT to the HKBA dated 1<sup>st</sup> September 2010 at p.44 of the Bundle of Documents

<sup>19</sup> See Annexure 4 to Mr. Chan's Witness Statement at pp. 226-276 of the Bundle of Documents, and also para.15 of Mr. Chan's Witness Statement at pp. 181-182



Respondent during the Meeting. The Tribunal will accord appropriate weight to the audio recording and the transcript thereof in arriving at this Statement of Findings.

23. It is clear from the evidence and the Respondent's admission that the Respondent had not been instructed by any solicitor to advise Mr. Chan and Mr. Tsui at the Meeting and that the Meeting took place in the absence of and without the instructions and intervention of a solicitor. It was the Respondent who took the initiative of asking (*via* Mr. Tsui) Mr. Chan to attend the Meeting. The Tribunal finds that at the material time, the Respondent had not been instructed by any solicitor to advise Mr. Chan and Mr. Tsui on the Criminal Case and that the Meeting took place in the absence of and without the instructions and intervention of a solicitor.

Was the Respondent acting in a professional capacity at the Meeting?

24. Para.50(a) of the Bar Code provides that there is no objection to a barrister giving advice free on legal matters to a friend or relative or on a charitable basis. This is the case portrayed by the Respondent. She purported to explain that Mr. Tsui was her good friend who asked her to give some legal advice as a friend and the holding of the Meeting and the proffering of legal advice thereat were simply acts of friendship.<sup>20</sup> After careful consideration of all the evidence, the Tribunal rejects the Respondent's case on the following grounds:-

- (a) It is beyond peradventure that Mr. Chan was not the Respondent's friend and that it was the Respondent who asked Mr. Chan to attend her professional chambers to advise him in the hope that the Meeting would bring her instructions to act for Mr. Chan and/or Mr. Tsui in the Criminal Case.<sup>21</sup> For instance, in the transcripts,

[At pp. 231 – 233 of the Bundle of Documents]		
49.	Female <sup>22</sup>	[inaudible] (We) can discuss after the charge has been laid.
50.	Male 1 <sup>23</sup>	Right, (we) can discuss after the charge has been laid.
51.	Female	Uh, (we) can discuss even before the charge has been laid, we just need to know which direction we are ... are heading to.

<sup>20</sup> See Answer (6) of the reply letter from NKT to the HKBA dated 1<sup>st</sup> September 2010 at p.44 of the Bundle of Documents

<sup>21</sup> Items 49-79, 1-9, 59-74, 103-179 and 261-295 of the Transcripts at pp.231-233, 238, 243-244, 248-256 and 271-275 of the Bundle of Documents

<sup>22</sup> The Respondent

<sup>23</sup> Mr. Chan

52.	Male 1	Hm, hm, hm.
53.	Female	Uh, so, er ... in fact there is (Male 1: Hm) something, as Mr. Tang is working in a solicitors' firm, it is better for him to say.
54.	Male 1	Orr, Orr.
55.	Female	Because they are I mean professional to ... er ... handle (it), then we carry out the work.
56.	Male 1	Hm, hm, hm.
57.	Female	Because I ... I do not deal with the <i>handling part</i> .
58.	Male 1	Hm.
59.	Female	I just ... deal with the execution <i>part</i> , (Male 1: Hm). Do (you) understand?
60.	Male 1	Understood.
61.	Female	So er ... er ... our ... our view is ... well ehm ... you can consider, that is (if) it is done this way, which means you er ... can er ... hire the same lawyer.
62.	Male 1	Hm.
63.	Female	Or maybe you said you don't want to retain, er ... I mean that solicitors' firm, in order to avoid any conflict. We can transfer the whole <i>case</i> to another independent solicitors' firm.
64.	Male 1	Hm.
65.	Female	So it means you won't retain (that firm), he won't retain that firm either, then nobody would complain, orr.
66.	Male 1	Right.
67.	Female	Yup.
68.	Male 1	You people are such good <i>friend(s)</i> .
69.	Female	Right, right, right, that means (people) would not say so.
70.	Male 1	Uh.
71.	Female	That means (you) would be transferred to one, another one ... hm ... whatever name the solicitors' firm is called.
72.	Male 1	Hm hm.
73.	Female	So neither of you ... neither of you would hire that firm.
74.	Male 1	Hm hm.
75.	Female 00:02:36	So they would not ... not complain, would not complain that we (have something) under ... er complain ... meaning something.
76.	Male 1	Hm.
77.	Female	Just hire one er ... not, (I mean) a solicitors firm which name has not been used before.
78.	Male 1	Hm.
79.	Female	So it will also be, (we) will also consolidate together to work.
80.	Male 1	Hm.

[At p.243 of the Bundle of Documents]

61.	Female	You consider then, (Male 1: Ya). If you say you are ok, then ask Mr. Tang to give you a quotation of fees.
62.	Male 1	Hm, hm.
63.	Female	You write down your phone number (Male 1: Ok) here please, uh.
64.	Male 1	Is the Mr. Tang the Mr. Tang (I met) last time
65.	Female	Right right, right.
66.	Male 1	Tang what, I forgot. Tang ...
67.	Female	Tang Hung Kwong (transliteration).
68.	Male 1	Seems like I had his name card before.
69.	Female	Right, that's the one.
70.	Male 1	Sorry indeed, it was two years ago.

[At p. 253 of the Bundle of Documents]		
157.	Female	Have to inform the judge, we have to ask for time to negotiate, (Male 1: right) ... I have ... have to, that is ... have to inform him in (court), (Male 1: right, ya.) It is not just, trifling (in court) and then plead not guilty, not like this. (Male 1: Right, (I) understand.) Uh, right, um, uh.
158.	Male 1	So in that case (I) have to instruct you to attend (court) ...
159.	Female	It's necessary, absolutely necessary, necessary, necessary, necessary.

- (b) At the Meeting, Mr. Chan specifically enquired the Respondent about the fees for engaging her in the Criminal Case and the Respondent indicated that one Mr. Tang would give him a quotation of her fees if he decided to engage her.<sup>24</sup>

[At p.243 of the Bundle of Documents]		
61.	Female	You consider then, (Male 1: Ya). If you say you are ok, then ask Mr. Tang to give you a quotation of fees.
62.	Male 1	Hm, hm.
63.	Female	You write down your phone number (Male 1: Ok) here please, uh.
64.	Male 1	Is the Mr. Tang the Mr. Tang (I met) last time
65.	Female	Right right, right.
66.	Male 1	Tang what, I forgot. Tang ...
67.	Female	Tang Hung Kwong (transliteration).
68.	Male 1	Seems like I had his name card before.
69.	Female	Right, that's the one.
70.	Male 1	Sorry indeed, it was two years ago.

- (c) The Respondent advised Mr. Chan and Mr. Tsui on various matters respecting the Criminal Case: (i) Plea bargain<sup>25</sup>, (b) the likely sentence<sup>26</sup>, and (c) the likely defence of Mr. Tsui<sup>27</sup>.
- (d) When the Tribunal considered the entire contents and context of the transcript and coupled with the evidence of Mr. Chan, the Tribunal forms a clear impression that the Respondent was acting in a professional capacity when she held the Meeting with a view to seeking out instructions/business. The Respondent had gone far beyond simply proffering free advice to Mr. Chan and Mr. Tsui on a friendly basis even assuming they were friends.

25. In the premises, the Tribunal finds the following:-

<sup>24</sup> Items 8-10, 61 and 272 of the Transcripts at pp. 238, 243 and 273 of the Bundle of Documents

<sup>25</sup> Items 81-111, 3, 83-101, 133-179 and 243-245 of the Transcripts at pp.233-236, 238, 245-247, 250-256 and 269-270 of the Bundle of Documents

<sup>26</sup> Items 236-272 of the Transcripts at pp. 269-273 of the Bundle of Documents

<sup>27</sup> Items 180-235 of the Transcripts at pp. 256-269 of the Bundle of Documents

- (a) that at the material time, the Respondent acted in a professional capacity without the instructions and intervention of a solicitor;
- (b) that at the material time, the Respondent was not simply giving free legal advice to a friend / friends or relative or on a charitable basis;
- (c) that there was no exception authorized by custom or the Bar Council as set out in Annex 20 in operation at the material time; and
- (d) that the Applicant has proven Complaint 1 to the requisite standard.

26. Accordingly, we find the Respondent guilty of Complaint 1.

**Complaint 2**

27. The Applicant submitted that during the Meeting, the Respondent made a suggestion that if Mr. Chan was to engage her as his counsel, she could attempt a plea bargain with the prosecution for both of them in terms that the charge against Mr. Chan be dropped on condition that Mr. Tsui would plead guilty to the 3 charges against him and that for Mr. Tsui to plead guilty, Mr. Chan ought to, as the Respondent suggested, offer some advantage to Mr. Tsui. The Applicant further submitted that the Respondent’s suggestion carried a clear message that Mr. Chan ought to give some financial advantage to Mr. Tsui for him to plead guilty.<sup>28</sup>

28. By the reply letter from NKT to the HKBA dated 1<sup>st</sup> September 2010 [Answer (9) at p.45 of the Bundle of Documents], the Respondent *via* NKT advanced her case on Complaint 2. She explained that “[s]he was not suggesting that [Mr.] Tsui should be paid to plead guilty if [Mr.] Chan was let off” and that “[s]he was trying to convey that if ... [Mr.] Tsui pleaded guilty he would lose everything and [Mr.] Chan, as his direct superior, had an obligation to look after him and his family.”

29. Again, the Tribunal relies on the transcript in rejecting the Respondent’s purported explanation. It is worth referring to some salient parts of the transcripts.

[At p.233 – 236 of the Bundle of Documents]		
81.	Female	So how do (we) do it then? That is er ... er ... would consider that

<sup>28</sup> See paras. 23 & 24 of the Applicant’s Case dated 8<sup>th</sup> March 2013

		since he has been charged with three counts of (offence), and you have been charged with one count.
82.	Male 1	Right, right.
83.	Female	Then (we) will see if er ... it is possible to negotiate?
84.	Male 1	Hm hm.
85.	Female	So (we ask him to admit all (the charges), and let you go.
86.	Male 1	Hm.
87.	Female	So it means this is the proposal (we talk about), (Male 1: Hm, hm, hm). So if er ... they accept then this would be, I mean, for you, I mean ... of course, we all are er ... speaking honestly. <i>[inaudible]</i>
88.	Male 1	Hm, hm, hm.
89.	Female	Certainly it is favourable to you.
90.	Male 1	Right, right.
91.	Female	Is that right?
92.	Male 1	Right.
93.	Female	Well, (Male 1: Sure) your <i>[inaudible]</i> ... his last one ... he ... (we) would say these again, (Male 1: Hm, hm). You don't need to worry about this, uh.
94.	Male 1	(I) know.
95.	Female	It is also not within your scope of consideration.
96.	Male 1	Hm.
97.	Female	But have to ... er ... have to ... er ... have to be like this.
98.	Male 1	Hm, hm, hm.
99.	Female	That is, that is it would be done like this.
100.	Male 1	Hm.
101.	Female	Right, right.
102.	Male 1	(I) understand, I understand what you mean, (Female: Uh, so ...) that means it is in fact negotiable? the ... at the final step (we) can ...
103.	Female	Yes yes, but I mean ... for Mr. Tsui, so if (Male 1: Right) (we) require him to do this, then (Male 1: Hm) you must give him a little bit of advantage. <i>[inaudible]</i>
104.	Male 1	Yes, yes, yes, I understand, I understand, I understand, I understand.
105.	Female	I mean on the table. <i>[inaudible]</i>
106.	Male 1	I know, I know, I know, I know what you mean.
107.	Female	You, he ... he ... he ... He, right. <i>[inaudible]</i>
108.	Male 1	I know, I know, I know, I know, understand, understand, uh, understand, understand, I know what you mean.
109.	Female	S you ... you can proceed with ...
110.	Male 1	I understand he has something, right.
111.	Female	So of course, you two can negotiate on this matter. ... he can contribute a smaller part and you contribute a larger part ...

<b>[At p.244 – 245 of the Bundle of Documents]</b>		
75.	Female	So you can consider, (Male 1: Right) you can consider doing it this way, (Male 1: Ok, I understand.) so if you say ... er ... still er ... it is acceptable, I mean ... I mean ... I mean, of course, we will try our best, (Male 1: Right.) so concerning the ... the money, you will have to discuss it among yourselves.
76.	Male 1	Um.
77.	Female 00:02:51	How much (you) pay, or how much he is willing to bear, or if he says, orr, if you need me to protect you wholly, of course you would have to pay it all, (Male 1: Um) so this is a question between you two, (Male 1: Um, um) um, (Male 1: Um) we shall not be involved in these matters.
78.	Male 1	Ya ... I understand.
79.	Female	Maybe probably he becomes rich now, has won Mark Six. He

		[inaudible]
80.	Male 1	(If so) can just write it off, right ... ya, I will give you an extra 500 thousand (dollars), Eric, let's say.
81.	Female	That's right, uh, that is ... that is, do you understand? (Male 1: Yes) these are not our (Male 1: Um) <i>consideration</i> , that means ... if you come together, together ... together with that (firm), I would not favour either party, (Male 1: Um.) to help ... is to do (the case), which means (Male1: Um.) just hoping you could be acquitted. That's it.
82.	Male 1	Um, um, um.
83.	Female	So this is er ... on the face of it, which means if he agrees to plead guilty to three (charges), and let you go, the opportunity ... still exists.

30. The Tribunal agrees with the Applicant that the Respondent's explanation was far divorced from the words she uttered at the Meeting.<sup>29</sup> Those parts of the transcripts referred to above corroborated Mr. Chan's evidence<sup>30</sup> (which is accepted by the Tribunal) that in the course of the Meeting, the Respondent suggested to Mr. Chan that in order for Mr. Tsui to plead guilty, Mr. Chan ought to offer some advantage (the Respondent used the Chinese words “着數”) to Mr. Tsui and his understanding of this suggestion was that Mr. Tsui ought to be paid some money or offered some kind of financial advantage for him to plead guilty. In fact, one can see from the transcript that the Respondent expressly referred to “*advantage*” and “*money*” when she prompted the idea.
31. The Tribunal finds that at the Meeting, the Respondent had suggested to Mr. Chan that he ought to give some financial advantage to Mr. Tsui for him to plead guilty so as to achieve a plea bargain in his favour and that such conduct was unethical and tended to prejudice the administration of justice. The Tribunal agrees with the Applicant<sup>31</sup> that it is unethical and prejudicial to the administration of justice to contaminate our criminal justice system by weaving in an unwarranted commercial element and that the Respondent's conduct was a very serious breach of barrister's duties.
32. In the premises, the Tribunal having considered all the evidence is driven to conclude that the Applicant has proven Complaint 2 to the requisite standard, and accordingly we find the Respondent guilty of Complaint 2.

## **Conclusion**

<sup>29</sup> See paras.25 and 26 of the Applicant's Case dated 8<sup>th</sup> March 2013

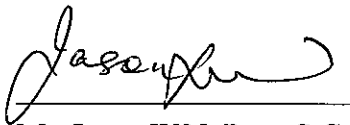
<sup>30</sup> See para.8 of Mr. Chan's Witness Statement at pp.179-180 of the Bundle of Documents

<sup>31</sup> See paras.28 and 33 of the Applicant's Case dated 8<sup>th</sup> March 2013

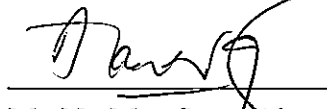
33. To conclude, the Tribunal has found that the Applicant has proven each of the Complaints against the Respondent to the requisite standard. The Tribunal unanimously finds the Respondent guilty of the Complaints.

34. We will now hear mitigation in respect of the Complaints. At the end of the inquiry hearing on 12<sup>th</sup> March 2013, we adjourned the inquiry hearing to a date to be fixed when the Statement of Findings was ready. Now, the Statement of Findings is ready and we hereby direct that (a) the inquiry hearing be resumed on a date to be fixed in consultation with the diaries of the Tribunal members and counsel for the Applicant, that (b) this Statement of Findings and notice of the resumed hearing be served (i) on Messrs. Y.K. Lau & Chu, Solicitors (i.e. YKLC) who have filed a Notice to Act for the Respondent herein on 2<sup>nd</sup> April 2013, and (ii) by ordinary post at the address of Sun International Resources Limited at Unit 2412-2418, 24<sup>th</sup> Floor, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong, that (c) an affirmation of service be filed with the Tribunal, in any event 7 days prior to the date of the resumed hearing.

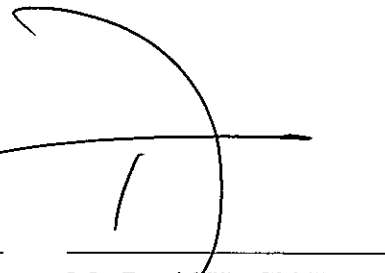
Dated this 29<sup>th</sup> day of April 2014.



Mr. Jason W.N. Pow, S.C.  
Chairman of the Tribunal



Mr. Ng Man Sang, Alan  
Member of the Tribunal



Mr. David Ho Chi Hoo  
Member of the Tribunal