

IN THE BARRISTERS DISCIPLINARY TRIBUNAL

BETWEEN

The Bar Council

Applicant

and

Vivien Chan Man-wai

Respondent

Tribunal: Mr. Kumar Ramanathan SC, Ms. Jolie Chao and Dr. James Chiu

Dates of Hearing: 5th & 7th December 2022, 19th - 21st June and 2nd August 2023

Representation: Applicant: Mr Marc Corlett (instructed by Messrs Wilkinson & Grist)

Respondent: In Person

Date of Handing Down Decision: 14th March 2024

DECISION

A. INTRODUCTION

1. The Tribunal was appointed by the Tribunal Convenor on 2nd September 2021 to adjudicate on 5 complaints laid by the Applicant against the Respondent dated 26th August 2021.
2. All 5 complaints alleged misconduct on the part of the Respondent involving breaches of the Bar Code. In particular they involved the following:

COMPLAINT 1

Contrary to Bar Code, Paragraph 4.1 (b)(ii)

Between 7 October 2019 and 14 February 2020, the Respondent, Vivien Chan Man-wai breached Bar Code paragraph 4.1(b)(ii) by engaging in conduct (whether in pursuit of her profession or otherwise) that was likely to bring the profession of barrister into disrepute or otherwise diminish public confidence in the profession of barrister.

PARTICULARS

Posting on her Facebook account the following posts:

- 7 October 2019: “要說縱容暴力，香港的法官認第二，全世界都有人敢認第一。真要多謝法官們賜給香港今天的亂局。”

(which translates as “When it comes to condoning violence, if Hong Kong judges claim to be second, no one in the world dare claim to be first. Really have to thank the judges for giving Hong Kong the chaos it is in today.”)

(referred to as “**Post 1**”)

- 16 October 2019: “畜生暴徒！支持牠們的包括大律師公會和不少法官都是人渣垃圾！”

(which translates as “Animal rioters! Those who support them including HKBA and many judges are human scum and trash!”)

(referred to as “**Post 2**”)

- 17 October 2019: “黃屍甲由是香港最低劣的畜牲”

(which translates as “Yellow corpse cockroaches are the lowliest animals in Hong Kong”)

(referred to as “**Post 3**”)

- 21 November 2019: “阿 Sir 越做越好！亂世先出英雄！暴徒越來越样衰！監牢地獄等緊牠们！”

(which translates as “The Police are doing better and better! Rough times make heroes! The rioters are getting uglier! Jail and hell await them!”)

(referred to as “**Post 4**”)

- 2 January 2020: “拉晒坐監！慢慢還啦暴徒！”

(which translates as “Jail them all! Enjoy paying the price rioters!”)

(referred to as “**Post 5**”)

- 2 January 2020: “香港暴徒白痴，有幾多拉幾多，不會手軟！警隊加油！”

(which translates as “Hong Kong rioters are idiots, arrest them all, no mercy! Go Hong Kong Police!”)

(referred to as “**Post 6**”)

- 14 February 2020: “香港搞到咁樣衰，真系多得呢 D 法官唔少！有佢地做法官點止暴制亂呀！”

(which translates as “It really is thanks to these judges that Hong Kong has become so grim! How is one supposed to put an end to the violence and chaos with them as judges!”)

(referred to as “**Post 7**”)

COMPLAINT 2

Contrary to Bar Code, Paragraph 4.1(b)(iii)

Between 7 October 2019 and 14 February 2020, the Respondent, Vivien Chan Man-wai breached Bar Code Paragraph 4.1(b)(iii) by engaging in conduct (whether in the pursuit of her profession or otherwise) which is prejudicial to the administration of justice or otherwise likely to diminish public confidence in the administration of justice.

PARTICULARS

Posting on her Facebook account the following posts:

- 7 October 2019: “要說縱容暴力，香港的法官認第二，全世界都有人敢認第一。真要多謝法官們賜給香港今天的亂局。”

(which translates as “When it comes to condoning violence, if Hong Kong judges claim to be second, no one in the world dare claim to be first. Really have to thank the judges for giving Hong Kong the chaos it is in today.”)

(Post 1)

- 16 October 2019: “畜生暴徒！支持牠們的包括大律師公會和不少法官都是人渣垃圾！”

(which translates as “Animal rioters! Those who support them including HKBA and many judges are human scum and trash!”) (Post 2)

- 14 February 2020: “香港搞到咁樣衰，真系多得呢 D 法官唔少！有佢地做法官點止暴制亂呀！”

(which translates as “It really is thanks to these judges that Hong Kong has become so grim! How is one supposed to put an end to the violence and chaos with them as judges!”) (Post 7)

COMPLAINT 3

Contrary to Bar Code, Paragraph 4.1(c)

Between 7 October 2019 and 14 February 2020, the Respondent, Vivien Chan Man-wai breached Bar Code paragraph 4.1(c) by failing to observe the ethics and etiquette of her profession.

PARTICULARS

Posting on her Facebook account the following posts:

- 7 October 2019: “要說縱容暴力，香港的法官認第二，全世界都有人敢認第一。真要多謝法官們賜給香港今天的亂局。”

(which translates as “When it comes to condoning violence, if Hong Kong judges claim to be second, no one in the world dare claim to be first. Really have to thank the judges for giving Hong Kong the chaos it is in today.”) (Post 1)

- 16 October 2019: “畜生暴徒！支持牠們的包括大律師公會和不少法官都是人渣垃圾！”

(which translates as “Animal rioters! Those who support them including HKBA and many judges are human scum and trash!”) (Post 2)

- 14 February 2020: “香港搞到咁樣衰，真系多得呢 D 法官唔少！有佢地做法官點止暴制亂呀！”

(which translates as “It really is thanks to these judges that Hong Kong has become so grim! How is one supposed to put an end to the violence and chaos with them as judges!”) (Post 7)

COMPLAINT 4

Contrary to Bar Code, Paragraph 4.1(b)(iii)

On a date unknown but on or before 25 June 2020, the Respondent, Vivien Chan Man-wai breached Bar Code Paragraph 4.1(b)(iii) by engaging in conduct (whether in the pursuit of her profession or otherwise) which is prejudicial to the administration of justice or otherwise likely to diminish public confidence in the administration of justice.

PARTICULARS

Posting on her Facebook account the following article: Madam Peck Article dated 2 December 2013, and titled “回帶睇睇香港的司法！極品李國能” (which translates as “Rewinding to take a look at justice in Hong Kong! The insuperable Andrew Li”). (“**Madam Peck article**” and part of “**Post 8**”)

COMPLAINT 5

Contrary to Bar Code, Paragraph 4.1(b)(iii)

On a date unknown but on or before 25 June 2020, the Respondent, Vivien Chan Man-wai breached Bar Code Paragraph 4.1(b)(iii) by engaging in conduct (whether in the pursuit of her profession or otherwise) which is prejudicial to the administration of justice or otherwise likely to diminish public confidence in the administration of justice.

PARTICULARS

Posting on her Facebook account the following comment: “原來如此！怪不得怪不得！” (which translates as “So that’s why! No wonder no wonder!”). (the comments posted in Post 8 together with Madam Peck article in Complaint 4.)

3. The Respondent pleaded not guilty to all the 5 charges she faced. She initially had instructed solicitors, Messrs. Chui & Lau ("Messrs. C&L"), to represent her when correspondence was exchanged with the Applicant. However by an email dated 15th November 2022, the Respondent informed the Tribunal that she would be representing herself at the hearing and requested for the proceedings to be conducted in Chinese. Accordingly arrangements were made for an Interpreter to attend the hearing scheduled to commence on 5th December 2022.

B. FACTUAL BACKGROUND

4. Complaints 1-3 relate to complaints purportedly made to the Applicant on its Complaint Form signed by one Ramon Yuen Ho Man dated 8th April 2020 {HB/28-73}. This triggered an Investigation by the Standing Committee on

Discipline ("SCD") of the Applicant (the Bar Council ("BC")) in consequence of which a letter dated 23rd April 2020 was issued to the Respondent {HB/84-5}.

5. The said letter stated, *inter alia*, that complaints had been received that the Respondent had posted on social media via her personal Facebook page open to public viewing inappropriate and degrading complaints and remarks relating to Judges and the Judiciary and regarding the protesters involved in the social unrest events that transpired in 2019.
6. Annexed to the letter were copies of the comments (i.e. Posts 1 to 7) complained of, which the Respondent was informed were extracted from "your Facebook pages." The Respondent was invited to provide any relevant explanation or representation in respect of those comments and remarks in relation to the Judges, the Judiciary as well about the protesters within 21 days, together with copies of any documents that she may wish to refer to in support of her response.
7. By a letter dated 6th May 2020 {HB/92}, the Respondent's then solicitors Messrs. C&L replied that their client had prosecuted on fiat one AU Nok Hin accused of assaulting police officers. Upon his conviction on 6th April 2020, their client had received various emails and messages from unknown persons claiming they had provided a lot of information to the Hong Kong Bar Association ("HKBA") in order to put "our client to an end." The letter went on to claim that before the Respondent "is in a position to consider" the matters raised by HKBA, they wanted disclosure of all complaints made against their client in any format, all information and documentation received by the HKBA as well as the identities of all complainants.
8. By a letter dated 13th May 2020 {HB/95-6} HKBA replied indicating that the summary of the complaints against the Respondent had been set out in the letter of 23rd April 2020. Further, the comments and remarks complained of were allegedly posted by the Respondent herself on her personal Facebook page which was open

to viewing by the public. The letter elaborated that the comments complained of were extracted from the Respondent's Facebook pages. The letter went on to point out that sufficient information and evidence had been disclosed to enable the Respondent to make meaningful and focused representations in response to the subject complaints. The letter concluded by reminding the Respondent that she was duty bound pursuant to paragraph 4.7 of the Hong Kong Bar's Code of Conduct ("**the Bar Code**") to respond to HKBA's letter. She was given a deadline of 27th May 2020 to respond to the same.

9. By a letter dated 27th June 2020 (a month after the deadline) {HB/98-101} Messrs. C&L responded providing details of various actions allegedly orchestrated by AU Nok Hin ("**Au**") and/or his political supporters directed towards the Respondent and her family. It also made reference to a forged letter to the Judiciary purportedly signed by the Respondent complaining about the judicial conduct of a District Judge. The letter went on to reiterate the request for further information and documents from HKBA. It asserted that Au had lodged an appeal against his conviction and the prosecution had lodged an application for review of his sentence. In the circumstances it claimed that until the Au case was concluded, it would be "inappropriate for our client to provide any further response" to the matters raised by the HKBA. It concluded that their client would respond when the Au case was completed
10. By a letter dated 8th July 2020 {HB/102-103} HKBA replied pointing out, *inter alia*, that the extracts of the posts, copies of which had been provided to the Respondent, were allegedly posted between 7th October 2019 and 14th February 2020, at least 7 weeks before the verdict in the Au case was delivered. Further, that any explanation that the Respondent wished to provide was within the Respondent's knowledge and that the progress and result of the Au case had no relevance or bearing to the matters raised by the HKBA by its letter of 23rd April 2020. A deadline of 22nd July 2020 was given for the Respondent to respond. She

was reminded again of the applicability and operation of paragraph 4.7 of the Bar Code, and that if there was no substantive response from her, the matter would continue to be investigated.

11. On 8th July 2020 {HB/104-106}, the HKBA also wrote to Messrs. C&L raising queries, *inter alia*, about a new Facebook post on 25th June 2020 published on the Respondent's Facebook account open for viewing by the public and enclosing a copy of the post. The post referred to and shared an article dated 2nd December 2013 written by one Madam Pamela Peck making accusations against the former Chief Justice. The post contained a comment allegedly posted by the Respondent “原來如此！怪不得怪不得！” (“So that's why! No wonder! No wonder!” – being the translation of the comment) (Post 8). The Respondent was asked to provide any relevant explanation and/or representation in respect of the post and the re-publishing of the article on 25th June 2020 containing adverse remarks and comments on the former Chief Justice. She was asked to respond on or before 29th July 2020.
12. By a letter dated 28th July 2020 {HB/113}, Messrs. C&L wrote to the HKBA seeking a 6 week extension to respond due to a medical condition of the Respondent. By their letter of 31st July 2020 {HB/115}, the HKBA granted the extension sought and directing her to provide her “substantive response” by 9th September 2020.
13. On 9th September 2020 {HB/116-1&116-2}, Messrs. C&L replied to the HKBA in respect of the query regarding the Facebook Post of 25th June 2020 (Post 8) with the cryptic response: “*The said post in the Facebook was not made by our client.*” No further details were provided.
14. On 15th September 2020 {HB/117} the HKBA asked the Respondent to provide particulars of her contention that Post 8 was not made by her. It specifically asked

for particulars of the time and circumstances under which the Respondent first noticed the post on her Facebook page which was open to be seen by the public. She was further asked to elaborate on the measures/enquiries, if any, taken by her to find out how the post was posted on her Facebook page and the steps taken by her to have the post removed and the time when the above measures/enquiries and steps were taken. She was asked to respond by 6th October 2020.

15. By letter dated 6th October 2020 {HB/119} Messrs. C&L replied claiming that before replying to HKBA, they wanted confirmation that the HKBA had received complaints about the Facebook post, and if so, to provide all details and documents received by HKBA. They further sought confirmation whether it was the HKBA's position that the post should be removed, and if so, the reasons for the same.
16. On 9th October 2020 {HB/123}, HKBA replied stating that the SCD had received complaints about the Facebook post on 25th June 2020 and that sufficient details and particulars had already been provided to the Respondent to enable her to make any reply or representations. The Respondent was informed that the HKBA took no stance as to whether the post should be removed by her. The Respondent was asked to reply on or before 16th October 2020.
17. By their reply letter dated 16th October 2020 {HB/125}, Messrs. C&L expressed regret at the refusal of HKBA to provide full details of the formal complaints. They went to assert, *inter alia*, that the Respondent "*could not recall the date and time when she first noticed the said post*" and confirmed that she had not removed the post. It went on to assert that the article was written by Madam Peck in 2013 and that it had been published and circulated in various media and available for public view and comments since then. No direct response was given as to who posted the article on her Facebook account, given her solicitors' previous response in paragraph 13 above.

18. By a letter dated 21st January 2021{**HB/126-127**}, HKBA informed the Respondent that the BC had resolved at its meeting on 7th January 2021 to refer the complaints to the Convenor of the BDT pursuant to section 35 of the Legal Practitioners Ordinance (Cap 159). The Respondent was also informed, *inter alia*, that even if she did not intend to admit any of the charges, "*any constructive suggestion on the admission of facts or otherwise by you to reduce or limit the scope of the dispute and of the inquiry to be conducted by the BDT would be appreciated.*" (emphasis provided)
19. Formal complaints were drawn up by the Applicant on 26th August 2021. Pursuant to Rule 4 of the Barristers Disciplinary Proceedings Rules (Cap 159), a copy of the original complaint and a bundle of documents were served on the Respondent in early September 2021.
20. By emails dated 21st September and 6th October 2021, the Tribunal attempted to communicate with the Respondent. Unfortunately the Respondent did not receive the two emails in question due to an error in the email address they were sent to. On 18th October 2021, the Tribunal issued directions for the further progress of the BDT proceedings.
21. By a letter dated 20th October 2021, the Respondent wrote to the Tribunal pointing out the email address error in the earlier communications from the Tribunal. Due to work commitments she requested an extension of 8 weeks in order to seek legal advice before making a decision on her plea. The Tribunal granted the time extension requested. It asked the Respondent to indicate her plea on or before 15th December 2021.
22. On 15th December 2021, Messrs. C&L faxed a letter to the Tribunal at 6 pm claiming they were "recently instructed" to act on behalf of the Respondent. The letter stated that before the Respondent could be "fully and properly advised" they again sought disclosure of various documents, information and correspondence.

They went on to seek confirmation from HKBA that all proceedings in relation to Au case had concluded, to be informed of the conclusion date of those proceedings and requesting all "unused information and materials". They also sought an extension of 4 weeks after the provision of all the matters stated in the letter before the Respondent would respond to the complaints alleged against her.

23. By letter dated 17th December 2021, Solicitors for the Applicant, Messrs Wilkinson & Grist ("WG"), indicated their objection to the time extension sought pointing out that more than 3 months had elapsed since the relevant documents had been served on the Respondent. Further, pursuant to Rule 5 of the BDT Rules (Cap 159), the Respondent was required to respond with her plea within 14 days of the despatch of the documents.
24. There followed an exchange of emails and correspondence between the Tribunal and the parties. It eventually culminated in a direction by the Tribunal on 4th January 2022 requiring the Respondent to indicate her plea within 7 days. On 11th January 2022, Messrs. C&L indicated, "under protest" that the Respondent "does not admit any of the Complaints." Messrs. CL repeated their earlier requests for further discovery from the Applicant.
25. On 14th January 2022 the Tribunal issued directions requiring (i) the service of the Hearing Bundle by 25th January 2022 (ii) for the Respondent, if she wished to pursue any discovery application, to so indicate and serve written submissions in support on or before 10th February (iii) if the Applicant opposed the application to so indicate within 7 days thereafter with their written submissions and (iv) the Tribunal will then decide whether to rule on the matter on paper or otherwise.
26. Pursuant to those directions, the Respondent filed her submissions seeking discovery on 17th February, the Applicant filed theirs on 24th February and the Respondent filed her Reply submissions on 7th March 2022. Due to the then

COVID-19 conditions and after confirming with the parties that they did not require an oral hearing, the Tribunal decided to rule on the matter on the papers.

27. By its decision of 12th May 2022, the Tribunal ruled that no further discovery was necessary and that the absence of further discovery would not hamper the Respondent in answering all the Complaints alleged against her or mounting any defence thereto, reserving its ruling on the costs of the application.
28. Eventually hearing dates were fixed for 5th to 8th December 2022. The Applicant served their Opening Submissions on 21st November 2022. The Respondent chose not to file any Opening Submissions despite the Tribunal's directions of 12th October 2022. By an email dated 15th November 2022, the Respondent informed the Tribunal that at the forthcoming hearing she will be representing herself and that she elected to have the proceedings conducted in Chinese.

C. THE HEARING

29. The Tribunal hearing commenced on 5th December 2022 with transcription and interpretation services put in place. Mr. Marc Corlett appeared for the Applicant with the Respondent representing herself. The Respondent maintained her plea of not guilty to all the Complaints she faced.
30. The Respondent raised, apparently for the first time, an issue as to the authenticity of the posts allegedly from her Facebook page asserting that the Applicant had the burden of proof. In the light of this surprising turn of events, Mr. Corlett indicated that the Applicant would be able to call a witness from the Bar Secretariat who was apparently responsible for obtaining and downloading copies of the Facebook posts, the subject matter of the Complaints.
31. The Respondent opposed the calling of any witnesses asserting that the Applicant had as far back as 19th May 2022 indicated they would not be calling any witness.

She claimed that it was on that basis that she had prepared for the hearing. She complained of being "*ambushed*" by the Applicant's sudden change of stance.

32. After hearing arguments, the Tribunal granted provisional leave to the Applicant to provide a witness statement and hear any representations that the Respondent may have to make after sight of the statement, before making a ruling on the calling of the witness. The hearing was adjourned early to enable WG sufficient time to prepare and serve the witness statement to all parties.
33. The hearing resumed in the afternoon of the same day, by which time a witness statement of one Tsang Wing dated the same date had been prepared and served on all parties. The Respondent persevered with her objection to the calling of any witness by the Applicant. She claimed that she would not be able to continue with the hearing as she would need to seek legal advice, consider what witnesses she may in turn need to call and when some of whom may, or may not be, immediately available in Hong Kong. She claimed that she may have to consider seeking legal representation in the light of the changed circumstances, and/or have to change her line of defence.
34. In response, Mr. Corlett pointed out that until the 1st day of hearing, the Respondent had never clearly articulated her position on the Facebook posts. She had not given any forewarning of her challenge as to the authenticity of the posts. Further, she had not filed any Opening Submissions to clearly state her position and had never taken any issue or raised in correspondence with the HKBA that these alleged posts were fabricated and not from her Facebook page.
35. Having heard arguments on the matter, the Tribunal granted leave to the Applicant to furnish a witness statement giving the Respondent the opportunity to consider the matter. She could also make any further representations after reviewing the statement before the Tribunal would make its final ruling on the matter. The

hearing was adjourned in the early afternoon to 7th December to enable the Respondent to seek legal advice and/or review her position.

36. At the resumed hearing on 7th December 2022, the Respondent maintained her objection to the Applicant calling a witness asserting that she had been ambushed. She claimed she required more time to seek legal advice and/or to consider her line of defence. She indicated that she needed an adjournment to further consider her position and in light of the changed circumstances, consider getting legal representation. She complained that during the short adjournment period she was unable to obtain full and proper legal advice.
37. After careful consideration of the arguments of the parties, the Tribunal decided to grant the Respondent further time to consider the implications of the witness statement. The hearing was adjourned to a date to be fixed. The Respondent then applied for costs of and incidental to the adjournment, which was opposed by the Applicant. Having heard arguments of the parties, the Tribunal reserved the issue of costs to the end of the hearing and would make its ruling based on the issues that may arise at the end of the hearing.

D. THE EVIDENCE

38. On 5th May 2023, the Applicant served a supplemental witness statement of their witness Mr. Tsang Wing. It was claimed that this was to "clarify and correct" certain matters raised in his 1st witness statement of 5th December 2022.
39. The Tribunal resumed hearing on 19th June 2023. The Respondent confirmed that she will continue to represent herself at the hearing, which she wanted to be conducted in Puntì. The Applicant called Mr. Tsang Wing (AW1). He adopted his two witness statements as his evidence-in-chief confirming their truth and correctness. He stated that he was the Administrative Secretary of the Bar Secretariat and had taken up this post since September 2016.

40. Under cross-examination by the Respondent, AW1 explained that the Honorary Secretary was the point of contact between the HKBA and the Applicant's legal team. His role in this inquiry was to assist the Honorary Secretary to collate documents relevant to the inquiry and provide them to the legal team. He confirmed that it was only in the morning of the first day of hearing on 5th December 2022 he became aware that he may be required to be a witness in these proceedings.
41. Surprisingly the Respondent made an unwarranted attack on AW1 by suggesting that he knew well before 5th December 2022 that he was going to be called as a witness, knew what he was going to be asked and what he was expected to answer. Given the background as set out in paragraphs 30-37 above as to the circumstances under which AW1 came to furnish his witness statement, the basis for the Respondent's attack was unclear and unexplained.
42. AW1 explained that his two statements were drafted by him with the aid of the documentary record. He stated that all the relevant documents had been produced to all the relevant parties, including the Tribunal.
43. He was asked if he had recorded all the facts in the first statement, why there was a need in May 2023 to make a supplemental statement. He explained that the first statement was prepared in a rush. After the hearing was adjourned that afternoon, he had occasion to review his statement again. He discovered that there were parts of the statement that were not accurate when he cross-checked back with other documents. He therefore felt it was necessary to make clarifications to his statement in order to provide the parties and the Tribunal with the correct and accurate information.
44. AW1 explained the main difference between his two statements was that in the first statement he confirmed that he had personal knowledge of all the relevant posts. However upon rechecking thoroughly with the documents, he conceded that

he had not had the opportunity to view all the relevant posts from the Respondent's Facebook account. This was what he claimed he was trying to clarify and explain in his supplemental statement.

45. He went on to clarify that he had personally viewed the post in June 2020 (the Pamela Peck Article and that he had seen the posts in the Stand News article posted in October 2019 (Posts 2 & 3 {**HB/129-130**}) and also another one posted in February 2020 (Post 7 {**HB/134**}). He explained that he did not verify all the posts published in the Stand News article, but he did do so in respect of the one published in February 2020.
46. He went on to explain that on 14th April 2020 he received instructions from the SCD that there were apparently other posts allegedly from the Respondent's Facebook account that should be enquired into, including posts that had not been published in the Stand News article. When the Applicant gave the green light, then all the relevant 7 posts were sent to the Respondent by the letter of 23rd April 2020.
47. He apologised for giving an incorrect impression to the Tribunal and the parties suggesting that he had personally viewed all the posts before the letter was sent to the Respondent. He explained that in early April 2020 he had given his first report to the SCD stating that he could find the February 2020 article. He however candidly admitted that he did not negatively state that he had not found the other posts. This was because he had not done at that point in time the necessary verification work to that extent. He elaborated that he gave his report to the Chairman of the SCD, Mr. Erik Shum ("**Mr. Shum**").
48. AW1 confirmed that he all along communicated with the Chairman of SCD on this matter. After his first report to Mr. Shum on 13th April 2020, he received directions from Mr. Shum that the investigation should be in respect of at least seven posts (Posts 1 to 7), and those seven posts were given to him by Mr. Shum. He went on to elaborate that when he was asked to prepare the letter of 23rd April

2020 to the Respondent, he was given some sheets of paper containing the seven posts by Mr. Shum. He claimed that he did not know from where Mr. Shum got those papers; neither was he informed as to who had collated those papers together.

49. He admitted that he had made a "*very great mistake*" when he had claimed in paragraph 10 of his first statement that he had personally verified the 4 posts referred to as Annexes 1 and 2 to the letter of 23rd April 2020. In fact he had not personally done so. He explained that because he realised the errors in his first statement, his intention was to correct them by his supplemental statement.
50. At this stage of AW1's evidence an issue arose as to what exactly was the Respondent's case, as it appeared to cast imputations on Mr. Shum's integrity by her line of cross-examination. Mr. Corlett for the Applicant interjected to ascertain whether it was the Respondent's case that the annexures to the letter of 23rd April 2020 were forgeries and whether the representation that these extracts were from her Facebook page was false. If so, this raised serious matters which Mr. Shum should be responding to, and not AW1.
51. The Respondent responded that from the start she had apparently made it clear what she was disputing: first whether these posts were genuine and second whether there was proper handling of the case in the form of the present hearing and also whether there was proper handling of the whole matter by the SCD.
52. A direct question was posed by the Tribunal as to whether it was her case that these posts were never put on her Facebook page, or that somebody had put them there but that she was not aware of it. The Respondent did not appear to give a clear and direct answer to this. Instead she gave what can only be described as an elliptical answer as follows: "*I dispute the authenticity of those posts, including questions as to whether they actually appeared on the alleged Facebook or any one but me put them there. Well it is for you to prove that.*"

53. AW1 then attempted to co-relate the various posts referred to in the letter of 23rd of April 2020 with the Hearing Bundle. He stated that Post 2 was at **HB/129**, Post 3 at **HB/130** and Post 7 at **HB/134**. He confirmed that on 8th April 2020 he recollected using his mobile phone and checking the Respondent's Facebook account. Although he could not remember whether there were any posts on that particular date, he did remember there were many posts in that account. He confirmed that he was however unable to verify all the posts on that Facebook account, as there were a large amount of public posts on it.
54. He explained that he was at the material time in particular looking for the post that was reproduced in the Stand News article. When he saw the post he apparently stopped his search there. He admitted that he did have some memory mixup during the course of the investigation causing him to make mistakes in his witness statements. He confirmed that prior to 8th April 2020, he had never read any of the posts on the Respondent's Facebook page; further, neither was he a Facebook friend of the Respondent. He agreed that in such circumstances he would not receive any notification on his Facebook account of any new posts that were posted on the Respondent's Facebook page.
55. He confirmed that on 8th April 2020 the HKBA received complaints against the Respondent, apparently triggered by the Stand News article. He stated that he may have read other media reports, but that he only referenced the Stand News article in his report to SCD.
56. In response to questions from the Tribunal, he explained that in respect of paragraph 18(b) of his supplemental statement, only Posts 2 and 3, but not Post 6 were included in the Stand News article. Further, that in respect of Posts 1, 4, 5 and 6, he had not personally reviewed them. Instead these were Posts that were given to him by Mr. Shum.

57. As regards Post 7, on either 8th or 9th April 2020 he scrolled down the Facebook account of the Respondent and he found the post. He used that as a reference to verify the contents of the Stand News article. In respect of Post 8, after receiving complaints about that post, he used his mobile phone to check and confirm the post. He then took a screenshot of the post and included it in his report to SCD. He conceded that he should have, but did not take a screenshot of the post in February 2020.
58. The **Respondent** elected to give evidence. She commenced her evidence by accusing this Disciplinary Hearing of being part of the "colour revolution" during which the black protesters turned violent and that the "[HKBA] participated in this process." She complained that none of the so-called complainants who had allegedly seen the posts had come forward to give evidence. She asserted that the BC could not produce any proof that there were in fact such complaints and that she has had to endure constant "doxxing, assault and oppression by the black violent protestors."
59. She explained that she had a Facebook account in the name of "Vivian Chan." However she claimed that this was not a personal account but a shared account with all her family members, including her younger brother, elder sister, her parents, her boyfriend and her daughter as well. She claimed this was a private account such that posts put up will not be open for viewing by the public unless the person has been added as friend. (*We would observe that this was clearly not correct, as AW1 was able to see 2 of the posts, when he was not a Facebook friend of the Respondent*).
60. She then went on to vent out against various political and legal personalities. She claimed that she has been framed up and attacked and how the HKBA has been apparently biased in its stance against her. She however did not elaborate in what way the HKBA had been biased towards her.

61. She stated that on 3rd April 2020 she was notified that the verdict in the Au case was to be delivered on 6th April 2020. She claimed that in the course of the next two days she began getting nuisance emails and messages on the internet. Au was convicted on 6th April 2020.
62. The Respondent claimed that after Au's conviction, and particularly from 8th April 2020 onwards, complaints against her apparently began flooding into the HKBA. She asserted that all these alleged posts were all "*fake posts*." She insisted that Posts 1-7 never appeared on her Facebook account. On the other hand in respect of Post 8, she claimed that she had previously admitted that it had appeared on her account. She stated that this was why AW1 was able to take a screenshot only of this post, but not any of the others. She then produced as **Exhibit R1** her report to the DOJ upon the conclusion of the Au case, wherein she had recommended that his sentence of a Community Service Order be reviewed.
63. The Respondent was reminded by the Tribunal that her ventilation of her grievances about peripheral matters had nothing to do with the charges she was facing or the task at hand for the Tribunal. She chose to ignore the Tribunal's reminder. She claimed that when HKBA first made inquiry of her in April 2020 about the 7 Posts she apparently had to await until the Au case was over before she could answer the enquiry. She went so far as to assert that because the case was not closed, "*the DOJ would not allow me to make any comments.*"
64. She asserted her belief that all the complaints against her were related to the Au case. She claimed that she "*consulted with the DOJ and we came to the consensus that, before the Au case was closed, it was not appropriate for me to make any comment or response to the enquiry.*" She complained that for the HKBA to require her to respond before the conclusion of Au's case was "*out of line.*" She stated that the Au case was only concluded on 21st March 2021, but that the BC had already decided to proceed with their inquiry on 7th January 2021.

65. She claimed she did not know from where the BC got the several pages allegedly containing the 7 posts (Posts 1-7). She observed that the easiest way for BC to investigate the matter would have been to look up her Facebook account in order to see whether the 7 posts were there, but they failed to do so.
66. She complained that from 7th April 2021 onwards she and her family were under siege with threatening and nuisance calls, doxxing with personal details posted online. She felt greatly harassed and unsafe. She claimed that she even had to hire a bodyguard to escort her daughter to and back from examination centres when she was sitting for her DSE exams in 2021.
67. She complained that a false complaint in her name was registered with the Judiciary against a District Judge. She produced a letter (**Ex R5**) which purported to be the false complaint. She stated that she received a letter dated 21st May 2021 from the Judiciary informing her that they will investigate her “complaint” only after the completion of the Court proceedings the subject matter of the complaint. She claimed that she immediately telephoned the Judiciary and informed them that the complaint letter was a fake.
68. She said that she had lodged a formal complaint to the Police that somebody had fabricated some posts claiming them to be from her Facebook. She claimed she was all along hoping that someone would take the witness stand and admit to the fabrication of the Posts. She complained that from the outset **{HB92/3}** she had been seeking from the HKBA discovery of various classes of documents, but such requests were repeatedly refused.
69. She then produced as **Ex R7** a newspaper article from Apple Daily of 8th April 2021. She claimed that when she received the letter from HKBA dated 23rd April she was “*shocked and really worried.*” She insisted that she had not posted any of the Posts 1-7 on her Facebook account.

70. She stated that upon receipt of the letter from HKBA, she apparently immediately went into her Facebook account and scrolled through it. She claimed that she could not find any of the Posts 1-7 on her account. She then clarified with her family members and her boyfriend if any of them had done so. They all apparently denied doing so, and further indicated that they had no impression of seeing the said Posts on the account either.
71. She claimed that Post 8 was put up by her younger brother. She claimed she had indicated earlier to HKBA that Post 8 was on her Facebook account in her response to their query, saying it was not posted by her. She claimed that her younger brother simply copied and pasted it onto the family Facebook account without adding any comment thereon. She queried why the posting of this article by Madam Peck would be the basis of two charges by the BC. She appeared to insinuate that the BC and HKBA had a hidden agenda behind this investigation.
72. She appeared to remonstrate that the HKBA's duty was to protect barristers in discharging their duties, but instead they appear to her to be helping the black protesters to bully and commit doxxing. She complained that the main thrust of her defence was that the HKBA, and particularly the BC, have not been fair and impartial in their stance in respect of this hearing. She sought to draw a comparison between the way the BC had dealt with two other barristers against whom complaints had been lodged in contrast to the manner in which she claimed she was being treated.
73. She complained that the Chairman of the SCD had a conflict of interest and should not have been handling her case and should have avoided being involved in it. She claimed that the way he had produced the so-called proofs as evidence and handled the matter was inequitable and unfair all along, depriving her of a fair hearing.

74. Under cross-examination it was suggested to her that if she had searched her Facebook page account and could find none of those posts, that would suggest they were fabricated. Her answer was "*If it is not fabrication, what is it?*" She maintained her stance that there was simply no evidence that anyone had ever seen such posts on her Facebook account.
75. She agreed that when she received the letter from the HKBA of 23rd April 2021 she was very worried. She was asked why on 6th May 2021, despite being very worried about the HKBA letter and notwithstanding the fact that she had a complete answer to the inquiry as the posts were all fabrications, she chose not to tell the HKBA that she had a complete answer to their queries. Her response was that she had no choice in the matter and that without DOJ's approval she could not disclose any matters relating to the Au case.
76. She claimed that she had reached a consensus with the DOJ, and that they continuously reminded her that all matters relating to the Au case could only be discussed after the case had been formally closed. She then gave what would appear to be a contradictory answer to the consensus she claimed had been reached with DOJ – she admitted that she did not actually urge the DOJ to let her respond to HKBA because everyone knew that it was the normal and proper way to await for the case to be closed first before discussing any related matters.
77. She claimed she did not see the need to tell the DOJ that she was going to do something that was proper and right. How this amounted to some sort of consensus being arrived at with the DOJ was neither explained nor elaborated upon by the Respondent.
78. She was asked whether the DOJ ever told her that she could not write back to the BC and tell them that the Facebook posts that they had sent were fabricated. Her response was: "*The DOJ of course would not tell me to do so.*" Yet the Respondent

persisted with her stance that her manner of dealing with the BC complaints was with the "consensus" of the DOJ.

79. More specifically, she was asked whether the DOJ ever directed her that she could not reply to the BC informing them that the evidence they were relying upon was a fabrication. Her answer was, to say the least, confusing, if not evasive: *"Well no because I have asked DOJ whether I could reply to the Bar Council before the Au Nok Hin case was closed, and since I never asked them, of course they would not have given such a direction."* She relied on the letter by Messrs C&L (her then Solicitors) dated 26th June 2020 that it would be inappropriate for the Respondent to provide any further response to the BC before the conclusion of the Au case, and once the Au case was concluded, *"our client will respond further to the Subject Matter."* {HB/100}
80. She maintained her answer that the reason why she did not tell the BC that the evidence they were relying on was fabricated was because the Au case had not concluded until 23rd March 2021. It was pointed out to her that all Posts 1-7 predated the Au case and that none of the 7 posts made any mention of Au at all. Her response was that nevertheless all these complaints against her were only triggered by her handling of the Au case.
81. It was put to her that her evidence that when she received the letter from BC on 23rd April 2020 with copies of the 7 Posts she checked her Facebook account and that the Posts were not there was simply untrue. She denied the suggestion. It was further suggested to her that the reason why she did not promptly tell the BC that they have made a mistake and that they are relying on fabricated documents was because she was making up her story of having checked her Facebook account and that these posts were not there. She again rejected the suggestion.
82. It was put to the Respondent that the reason why she did not at the outset inform the BC that these so-called posts were fabricated was because her evidence before

the Tribunal about checking her Facebook account was an afterthought and after having heard the Applicant's evidence.

83. The Respondent was questioned as to where in correspondence with the BC did she ever tell them that these Facebook posts were all fabrications as she had looked it up and they were simply not there. Her response was that "*Of course I would not put it that way, but I have explained very clearly the meaning of it.*" (The Tribunal would observe that it was, and is not clear, what exactly she meant by that answer). It was put to the Respondent that the reason why she never informed the BC that these so-called posts were fabrications was because they in fact were on her Facebook account when BC first wrote to her, but that she had subsequently deleted them. She however disagreed with the suggestion.
84. The Respondent denied that her evidence before the Tribunal that Post 8 was put up by her younger brother was a recent invention to avoid responsibility for her actions. She was then taken through the correspondence between Messrs. C&L and the BC about Post 8 and how forthcoming, candid or otherwise she had been with the BC:
- (a) letter of 16th October 2020{**HB/125**} : she agreed she did not inform the BC that the Facebook account in question was a family account and not her personal account;
- (b) further that she did not inform the BC at any earlier time the identity of the person who put up Post 8 on her Facebook account.
85. She claimed that she did not see it as "*her responsibility*" to clearly and directly inform the BC that Posts 1-7 were fabricated and had never appeared on her Facebook account page. She complained that she was then "*under oppression*" and that it was "*so unreasonable to put the burden of proof on me to ask me to do something so unreasonable.*"

86. The Respondent never explained what exactly was so unreasonable for her to alert the BC that they were barking up the wrong tree. By simply telling them upfront and early that the investigation was progressing along false premises she could arguably have brought an early end to the whole investigation, assuming that her version of events as unraveled to the Tribunal was the truth. Furthermore, this does not sit well with her obligation under paragraph 4.7 of the Bar Code to assist the Council!
87. It was pointed out to the Respondent that the charges the subject matter of these complaints were only laid against her on 26th August 2021. She was asked whether at anytime after 23rd April 2021, when the Au case concluded, until the charges were laid in August 2021, she provided any further information or evidence to the HKBA. She admitted she had not.
88. In her re-examination, she sought to explain why she did not at that stage say anything to the HKBA/BC. She claimed she was still waiting for the Au case to be concluded before she provided any further information to the HKBA/BC. She asserted that she could not understand why the BC "*bullied*" her and was after her in such a manner. Only the BC could be so unreasonable. She stated that it had come to a stage when she felt the BC had no evidence at all but they would still push on like that. She wanted to know what their agenda was and further that she had to "*take caution not to be framed by them.*"
89. She claimed that she found the BC "*really out of line.*" According to her, since it was BC's responsibility to prove that she was in the wrong, it was their obligation not to waste anyone's time without proper proof. This was why, according to her, it was not necessary for her to say anything else at that stage.
90. The Respondent called her younger brother Chan Kwok Tai as her only witness (RW2). He stated that after graduating from high school in Hong Kong he went

for further studies in USA. After graduating from college he continued to live and work there. He was presently running a funeral home in the USA.

91. He explained that he used a Facebook account in the name of Vivian Chan. He considered that Facebook account to be that of "*their family*". He claimed that about 10 years earlier the family had gathered for dinner at the Respondent's home. Facebook was getting popular then, but none of the family members had an account. He claimed that he suggested that the family open an account and he opened the account in the name of the Respondent, but furnishing his personal details for opening the account.
92. He claimed that the account was used by him, the Respondent, his other elder sister as well as the Respondent's then boyfriend. He described the account as a "*shared account by all members of the family*," who would post things of interest including photographs and messages.
93. He claimed that he had flown back from the USA to give evidence before the Tribunal. He explained that the Respondent had asked him about certain posts about 2 years ago. He apparently told her that he did not put up any of those posts and neither had he seen those posts on the Facebook account page.
94. He explained that the Respondent had asked him about a post by one Pak Wan Kam (*transliteration*) and he admitted he was the one who put up that Post. He elaborated that it was a message circulated either by WeChat or WhatsApp by one of his classmates. He explained that he had left Hong Kong 20-30 years earlier and was not familiar with the names of political figures or top officials. But even during his time living in Hong Kong, for him Pak Wan Kam was a celebrity.
95. So when he received the Madam Peck article, his curiosity was apparently aroused. According to him, without even reading the contents of the article, he apparently simply cut and pasted the article onto the family Facebook page. At that time he

was living in Texas. There was a 13-14 hours' time difference with Hong Kong time. He was adamant that he did not add any other comments/captions to the article itself. When he later had the opportunity to read the said post he claimed that he was disappointed with its contents, as it did not appear to have anything to do with the love affairs of Pak Wan Kam.

96. Under cross-examination he stated that when he initially set up the Facebook account, the profile photo was a family photo. He claimed that a few years later, he saw a picture of the Respondent wearing a jacket stating "*I am Chinese*". He was unsure whether it was he who put up that photo as the profile photo for the family Facebook page or whether he asked the Respondent to do so.
97. He claimed that he was unsure whether the 2nd sentence on the post "Let's go back and look at Justice in Hong Kong" was in the original post he received, given the passage of time.
98. He stated that he had had two conversations with the Respondent about the posts. The second conversation was about the Pak Wan Kam post and the first one was about 1-2 months prior to that.
99. He was taken through a number of posts on the Respondent's Facebook account as reflected in {HB/128-134} and he confirmed that he was not the one who posted any of the posts onto the "family" Facebook account.
100. Under re-examination he claimed that when he received the article it was in the evening of 24th June 2020 at 21:47 Texas time; when he cut and pasted it onto the Facebook page it was 12:47 Hong Kong time, given the time difference.
101. The parties then respectively filed and exchanged full written submissions, albeit the Respondent chose to file her submissions in Chinese, which were helpfully translated by the Applicant's solicitors for the benefit of their Counsel and the Tribunal.

OVERVIEW OF THE SUBMISSIONS

102. The central platform of attack of the Applicant's submissions was focused on the credibility of the Respondent's defence, and the evidence adduced on her behalf at this late stage. It was highlighted that if the Respondent's version of events was true, then her stunning discovery that when checking her Facebook account the posts complained of and enclosed in the Applicant's letter of 23rd April 2020 were *not* on her Facebook page, it would have dawned on her that she had a complete defence to the allegations.
103. It was emphasised that in none of her correspondence through her solicitors with the HKBA was there any mention or even hint of this so-called complete defence {**HB/98,113,116-1,119 and 125**}. It was argued that the Respondent's explanation of being unable to inform the BC of this due to the **Au case** being ongoing at the time was nonsensical. It was contended that the 7 posts complained of all pre-dated Au's trial; furthermore, none of the posts had any connection whatsoever with the **Au case**.
104. It was pointed out that **Au's case** was concluded on 23rd April 2021. The formal complaints against the Respondent were only drawn up on 26th August 2021, more than four months later. Yet in that interim period the Respondent never advised the BC that the posts complained of were fabricated, which, if true, would arguably have halted the investigations and stopped the complaints from being further proceeded with.
105. It was argued that even after the complaints were drawn up, at no point prior to giving evidence, did the Respondent inform the Applicant of this alleged fabrication of the posts. It was argued that if the Respondent's assertions were true, this would most likely have resulted in the complaints being withdrawn.

106. It was submitted that the Respondent's defence was a classic example of a recent fabrication tailored to meet the evidence of AW1 Tsang Wing. The evidence of the Respondent's brother Chan Kwok Tai (RW2) was said to be highly contrived and artificial, if not overly convenient, but unconvincing in the end.
107. It was pointed out that given the length of the Madam Peck article running over four A4 pages (Post 8), it could not have been sent to him in a single message such that he was able to simply cut and paste it onto the Respondent's Facebook page without adding any comments of his own. It was emphasised that RW2's evidence was essentially "constructed" evidence in an attempt to give the Respondent a belated defence to the indefensible.
108. In her closing submissions the Respondent made what can only be described as a rambling attack on this Tribunal, the BC and the HKBA. She sought to ventilate her personal and political perspectives on what she called the "Yellow Movement." She claimed that AW1 was a completely unreliable witness. His evidence was fundamentally flawed and accordingly should be rejected by the Tribunal.
109. She tried to portray herself as a victim of what she described as "intimidation, fabrication and defamation" apparently ever since she decided to accept the brief to prosecute the **Au case**. She argued that when the "*thugs*" of the Yellow Movement started to doxx her and her family members, making hundreds of nuisance and intimidating calls to her former Chambers, such that she was forced to relocate to another set of Chambers.
110. She contended that these "*thugs*" went so far as to lodge a false complaint to the Judiciary in her name against a sitting District Judge. She claimed she had to write to the Judiciary to inform them that the letter of complaint was a forgery and that she intended to report the matter to the Police. She relied on the correspondence produced as **Exhibit R5** in this regard. She claimed she gave a statement to the

Police on 2nd June 2020 complaining about the bullying and slander and about someone fabricating her Facebook with posts to defame and complain about her - **Exhibit R6.** (*We would however observe that a careful reading of her Police statement however makes no mention of any complaint about any fabricated Facebook posts!*)

111. The Respondent submitted that she had not posted any of the 8 posts complained of on her Facebook account. Upon enquiry from BC on 23rd April 2020 {HB/84} she claimed that she had scrolled through the account but could not see any of the 7 Posts complained of. Checking with her family members who used the family account also confirmed that they had not posted them nor had they seen any of those posts on the account page. She therefore believed that those reports and complaints were all fabricated.
112. She argued, perhaps naively, that she had been trying to find out who made those copies of the posts and who would turn up to give evidence! She contended that unsurprisingly the fabricators did not have the guts to show up. She complained that not a single real complainant had turned up to give evidence before the Tribunal. (*The Tribunal would observe that if the Respondent was convinced that these posts were fabrications, the one way to find out who the fabricators were was to inform the BC of this fact, who would then have taken up the task of finding out if the posts were genuine and/or identifying those who may have fabricated it. She however chose not to address this issue*).
113. She then went on a tirade against the BC, SCD and in particular, its then Chairman. She accused him of having a conflict of interest such that he should have recused himself from dealing with any complaints relating to the Respondent. She argued that this was by reason of his political affiliation and his representation of persons charged with rioting during the 2019 disturbances.

114. It is unfortunate that the Respondent saw fit to make these sweeping and unsubstantiated attacks against her own professional body and the Chairman of one of its Special Committees, when these were not matters she addressed or raised when she was giving evidence. This surprising and unflagged attack took the Tribunal and the Applicant by surprise.
115. We suspect that if these had been flagged earlier by the Respondent, Mr. Corlett for the Applicant may have considered calling the Chairman of the SCD, as at one time indeed he was contemplating at the conclusion of the evidence of AW1. But at that time there were no personal attacks on the Chairman of the SCD accusing him of behaving in an unjust and dishonest manner and attacking his integrity.

DECISION OF THE TRIBUNAL

116. We have carefully reviewed both the oral and documentary evidence adduced and placed before us. We have also taken into account the submissions of the parties.
117. We are cognisant of the fact that the Applicant bears the burden of proof and fully aware that the standard of proof in disciplinary proceedings is on the balance of probabilities. We also accept that the more serious the act alleged, the more inherently improbable it would be regarded and demanding more compelling evidence to prove the allegation to the requisite standard: *A Solicitor v The Law Society of Hong Kong* (2008) 11 HKCFAR 117.
118. We found AW1 to be a frank, forthright and truthful witness. We found that he was trying his best to recollect what he did after HKBA started receiving complaints about the Respondent on or about 8th April 2020. These were events which had transpired more than 3 years earlier.
119. AW1's conscientiousness and dedication to be accurate and truthful was reflected by the fact after the Tribunal adjourned the hearing on 7th December 2022, he sought to reconstruct his actions on and after 8th April 2020. Upon realising that

there were errors in his first witness statement, which we note was prepared urgently and in a hurry on 5th December 2022, he properly, and in accordance with principles of fairness and accuracy, sought to provide a supplemental witness statement dated 5th May 2023.

120. The supplemental statement purported to correct the factual inaccuracies contained in the first statement. These corrections in effect went to the heart of the case before the Tribunal – namely as to whether the 7 posts complained of were put up on and extracted from the Respondent's Facebook account. The clarifications made by AW1 afforded the Respondent to run, (what we would observe can only charitably be described as a belated defence), that the 7 posts were fabricated and had never been posted on her Facebook account page.
121. AW1 candidly admitted that he had actually only seen Posts 2 and 3 of the Stand News article on the Respondent's Facebook account and not any of the other posts. He had also seen Post 8 at a later point in time. It is common ground between the parties that Post 8 was found on the Respondent's Facebook account, although there is disagreement as to who actually had put up the post.
122. In contrast, we found neither the Respondent nor her witness RW2 impressive or convincing. Their evidence carried all the hallmarks of being highly contrived and simply lacking any ring of truth. We found the Respondent's explanation that because of the **Au case** being ongoing at the time she received the letter of 23rd April 2020 from the BC she could not inform them that the 7 posts complained of were fabricated simply incredible and lacking in candour and truth.
123. We find it highly unlikely and improbable that when a professional person receives a complaint from her professional body, which she knew was fabricated, she would choose to let the matter proceed to a full hearing rather than alert her professional body that they were proceeding on an erroneous basis. If what she

claimed is true, it would be highly unlikely the Applicant would have pressed on with these complaints.

124. Her complete inaction in respect of the Applicant's complaint stands in stark contrast to her actions in immediately informing the Judiciary that an alleged complaint by her against a District Judge was a forgery by her letter of 1st June 2020 {**Ex R5**}.
125. Furthermore, the Respondent claimed she complained to the Police that there were fabricated posts allegedly from her Facebook account. We fail to understand why if she could tell the Police that these 7 posts were fabricated she was somehow prevented from informing her own professional body of the same and thereby bring their investigation into serious complaints against her to a screeching halt!
126. Another aspect of the Respondent's defence which casts considerable doubt on its truthfulness is the assertion that Post 8 {**HB/135-138**} was put up by her brother RW2 living in the USA at that time. By their letter of 8th July 2020 {**HB/105**} HKBA queried her about a post on 23rd June 2020 on the Respondent's Facebook account asking her to explain the reposting of Post 8 of 2nd December 2013.
127. It was the Respondent's case that she did not put up the post but that her brother RW2 did and she was aware that he had done so after making inquiries with him. Yet when the Respondent condescended to respond on 9th September 2020, almost 2 months after the HKBA's query, the Respondent through her solicitors cryptically replied "*The said post in the Facebook was not made by our client.*" {**HB/116-2**}
128. For reasons best known to her, the Respondent did not inform the HKBA that Post 8 had in fact been put up by her brother RW2, if that was the truth. This could hardly be said to be in conformity with the Respondent's obligations under paragraph 4.7 of the Bar Code.

129. We find RW2's evidence that he simply did a cut and paste job on Post 8 without even reading its contents just because it was written by Pak Wan Kam is simply incredulous and defies belief. The title of the article "Rewinding to take a look at justice in Hong Kong! [The insuperable Andrew Li]" clearly is not something that would have piqued the interest or curiosity of RW2 to take the trouble to post it up on the Respondent's Facebook account.
130. The Respondent appears to us to have adopted a belligerent and antagonistic attitude and approach towards the complaints lodged against her, despite the fact and to her knowledge, if her evidence is true, she had a complete defence to the complaints. This was exemplified in her answer to the question whether after **Au's appeal** had been disposed of on 23rd April 2021, she wrote to the BC thereafter to explain and point out that the 7 Posts complained about were fabricated.
131. Her explanation was that the HKBA so unreasonable and unjust because by 20th January 2021 they had decided to proceed to a BDT hearing in respect of the complaints against her {HB/126}. According to her *"there is no more need to tell them further. So that is why...we just look at the evidence and the facts right here at the hearing to see how you actually handle the matters."*
132. The Tribunal queried the Respondent as to whether in her 2nd submission dated 7th March 2022 when seeking further discovery from the Applicant, whether she categorically stated that the 7 posts complained of were never on her Facebook page. The Respondent's answer was both revealing and reflective of her mindset towards these complaints – *"Its not my responsibility to do that because I was wholly under oppression and you are so unreasonable to put the burden of proof on me to ask me to do something so unreasonable."*
133. At the end of the day, however incredible or far-fetched may be the evidence adduced on behalf of the Respondent, the crucial question at the end of the day for this Tribunal is as to whether the Applicant has established whether any, and if so

which, of the 7 posts the subject matter of Complaints 1-3 were *seen on* and *extracted from* the Facebook page of the Respondent.

134. This was essentially an issue of the chain of evidence that the Respondent was apparently requiring of the Applicant. We note that this did not become obvious and was not made clear until after AW1 gave evidence and when the Respondent herself gave evidence.
135. Understandably, the Applicant was probably expecting AW1 to provide the necessary links to the chain of evidence – namely that he had seen the respective 7 posts (Posts 1-7) on the Respondent's Facebook page and that he was the one who downloaded/extracted the same from that account. However, AW1 did not come up to their expectations in this regard.
136. As set out in paragraphs 56 and 57 above, AW1 had personally only checked and seen Posts 7 and 8 from the Respondent's Facebook account. The other posts were extracts given to him by the Chairman of SCD. There therefore appears to be a lacuna in the Applicant's case in terms of the links in the chain of evidence.
137. There is no evidence before the Tribunal that anyone had seen the other 6 posts on the Respondent's Facebook account page. Even if there is a high index of suspicion that the other 6 posts complained of were more likely than not posted on and extracted from her Facebook account, this would not assist the Applicant in proving its case. The Respondent having put the chain of evidence and the authenticity of these posts in issue, the onus remains on the Applicant to discharge that burden.
138. Given this lacuna in the chain of evidence, we are not satisfied that the complaints in respect of Posts 1-6 have been proved to the necessary standard to have been posted on and extracted from the Respondent's Facebook page. Accordingly, we would dismiss those complaints against the Respondent.

139. We are satisfied to the requisite standard that the Respondent was the person who put up Post 7 on her Facebook account on 14th February 2020. The post in effect denigrates the Judiciary in Hong Kong generally and implicitly holds the judges responsible for the ongoing violence and chaos.
140. We are of the view that such comments about the Judiciary and the judges in a forum accessible to the public would be perceived by any right-thinking person as being prejudicial to the administration of justice or likely to diminish the confidence of the public in the administration of justice. We would observe that there is nothing in Post 7 that denotes the Respondent was/is a barrister and we therefore are not satisfied that Complaint 1 is engaged in the circumstances.
141. Accordingly, we find the Applicant has proved Complaint 2 against the Respondent in respect of Post 7 to the requisite standard and find her guilty of the same. As the Applicant confirmed that Complaints 1 and 2 were in the alternative, we will dismiss Complaint 1.
142. Post 8 and the comment thereon is the subject matter of Complaints 4 and 5. We have earlier indicated we do not accept the evidence of the Respondent or her witness RW2 as truthful or credible. We are satisfied that it was more likely than not that it was the Respondent who reposted the Madam Peck article (Post 8) on 25th June 2020. We are also satisfied that she was the one, more likely than not in the circumstances, who added the words "*So that's why! No wonder no wonder!*"
143. We believe that given the Respondent's attitude towards some of the Hong Kong Judiciary as reflected in Post 7, this comment would appear to fit in with that attitude of casting aspersions and insinuations against the Judiciary generally.
144. We take the view that by reposting an article more than 6.5 years old then at a difficult and turbulent time in Hong Kong society at that time, the Respondent's intention could have been nothing other than to create prejudice against the

administration of justice or to otherwise diminish public confidence in the administration of justice.

145. We are firmly of the view that the belated and beleaguered attempt by RW2 to claim that he was the one who put up Post 8 simply defies logic and common sense. We see it as nothing more than a desperate attempt to provide a lifeline for the Respondent to attempt to defend the indefensible. We have rejected that evidence.
146. We are satisfied that the Applicant has proved its case in respect of Complaints 4 and 5 against the Respondent to the requisite standard. We accordingly find the Respondent guilty of Complaints 4 and 5.
147. We will hear the parties in mitigation before considering and passing sentence in this matter.

Dated this 14th day of March 2024.

Kumar Ramanathan SC

Chairman

Ms Jolie Chao

Member

Dr James Chiu

Member

IN THE BARRISTERS DISCIPLINARY TRIBUNAL

BETWEEN

The Bar Council	Applicant
and	
Vivien Chan Man-wai	Respondent

Tribunal:

**Mr. Kumar Ramanathan SC, Ms. Jolie Chao and
Dr. James Chiu**

Dates of Hearing:

5th & 7th Dec 2022,

19th, 20th and 21st June 2023 and 2nd August 2023

**Date of Handing Down Decision: 14th March
2024**

DECISION

Dated this 14th day of March 2024.