

**IN THE BARRISTERS DISCIPLINARY TRIBUNAL**

**BETWEEN**

**THE BAR COUNCIL**

**Applicant**

**and**

**WONG HAK-MING, DERRY**

**Respondent**

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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 in 1981. Except for the period between December 1989 and mid-1993 during which he worked as a senior crown counsel with the then Legal Department of the Hong Kong Government, he has been practising as a barrister in Hong Kong.
2. In HCA 7032 of 1999, one of the two plaintiffs, one Mdm. Chau Siu Woon ("Mdm. Chau"), claimed against the defendants for the return of the deposits she paid in respect of the purchase of properties together with damages. The properties purchased are commonly known as "New Territories Small Houses" and Mdm. Chau paid the deposits pending the construction of the houses. Various grounds have been advanced by Mdm. Chau to substantiate her claims including misrepresentation and breach of collateral agreement as to when the building work would be completed. The action was commenced in 1999. Before the Respondent was instructed in 2007, Mdm. Chau had acted in person and represented herself in every interlocutory hearing. The other plaintiff has left the battlefield since 2004 by agreeing to have her claims against all the defendants dismissed.
3. By a summons dated 9 September 2005 ("the Summons"), Mdm. Chau sought a further and better list of documents and specific discovery of documents against the defendants. The Summons was set down for 1.5 hour's hearing before

Master Lung at 9:30 am on 24 March 2006. On 24 March 2006, apart from the hearing of the Summons, Master Lung had been given 2 cases for substantive taxation, one to be heard immediately after the hearing of the Summons and the other to be heard after lunch. At the hearing on that day, Mdm. Chau was assisted by a friend of hers as *Mackenzie friend* and the defendants appeared by Mr. Paul Wu of counsel. Perhaps due to the fact that Mdm. Chau was unrepresented, Master Lung conducted the hearing in Cantonese. The hearing was not completed within time and had to be adjourned part-heard. After the adjournment, Mdm. Chau sought legal advice and at the resumed hearing on 9 November 2006, the Respondent instructed by Messrs. Ha & Ho appeared for Mdm. Chau to apply for Master Lung to recuse himself on the ground of bias shown by Master Lung against Mdm. Chau. Master Lung refused the recusal application. As there was insufficient time left to hear the merits of the Summons, the matter was adjourned again. Mdm. Chau then lodged an appeal against Master Lung's refusal to recuse himself. In January 2007, the matter came before Deputy High Court Judge Carlson. The hearing before Deputy High Court Judge Carlson lasted for three days and Mdm. Chau was again represented by the Respondent. On 17 April 2007, Deputy High Court Judge Carlson gave judgment dismissing the appeal ("the Judgment").

4. By a notice of appeal dated 7 June 2007 and filed by Mdm. Chau in person, the appeal against the Judgment to the Court of Appeal was initiated. The appeal process however went to sleep until August 2009 whereupon the appeal process regained its vigour. The appeal was heard by the Court of Appeal on 24 and 25 March 2010. Again, Mdm. Chau was represented by the Respondent. On 19 April 2010, the Honourable Mr. Justice Cheung gave judgment for the Court of Appeal dismissing the appeal ("the CA Judgment").

#### **Complaints of Misconduct**

5. The Respondent in these proceedings faces 3 complaints arising out of his conduct when he acted for Mdm. Chau on her appeal to Deputy High Court Judge Carlson against Master Lung's refusal to recuse himself. The gravamen of the 3 complaints is principally about the Respondent's allegations against Master Lung and Mr. Paul Wu expressly or implicitly made by him in his written and oral submissions before Deputy High Court Judge Carlson. The Respondent's allegations were directed at the conduct of Master Lung and Mr. Paul Wu in dealing with the Summons on 24 March 2006.

6. The 3 Complaints of Misconduct (“the Complaints”) laid by the Applicant against the Respondent are detailed as follows:-

Complaint 1

7. The Applicant has alleged that the Respondent was in breach of paras.4, 6(b), 6(c), 131 and 133 of the Code of Conduct of the Bar of the Hong Kong Special Administrative Region (“the Code”).

8. The particulars of Complaint 1 are:-

(a) The Respondent did

- (i) by way of written submissions dated 30 December 2006, 3 January 2007 and 30 January 2007; and
- (ii) by way of oral submissions made at the hearings before Deputy High Court Judge Carlson in chambers on or about 4 and 5 January 2007 and 2 February 2007,

in support of an appeal against a refusal by Master Lung to discharge himself from continuing to hear the Summons, allege that Master Lung

- (i) was lazy, indolent and ignorant of the facts and law relating to the said hearing;
- (ii) was actuated by bias, linguistic racism, social and economic belittlement, malignity, hostility, partiality and/or prejudice;
- (iii) showed deference and subservience to, and condoned the prejudice created by Mr Paul Wu, counsel; and
- (iv) therefore acted in an oppressive manner on or about 24 March 2006 and 9 November 2006 to deliberately obstruct and frustrate Mdm. Chau and/or her *McKenzie friend* and/or the Respondent,

without any proper foundation or justification for such allegations and/or which went beyond what was necessary for him to present his case fairly

and properly.

- (b) Such conduct demonstrated a failure to uphold the dignity and high standing of the profession of barrister and his own standing as member of it, and was so serious by virtue of its nature, degree and repetition, so as to be likely to bring the Bar into disrepute.

### Complaint 2

9. The Applicant has alleged that the Respondent was in breach of paras.4, 6(b), 6(c) and 131 of the Code.

10. The particulars of Complaint 2 are:-

(a) The Respondent did

- (i) by way of written submissions dated 30 December 2006, 3 January 2007 and 30 January 2007; and
- (ii) by way of oral submissions made at the hearings before Deputy High Court Judge Carlson in chambers on or about 4 and 5 January 2007 and 2 February 2007,

in support of an appeal against a refusal by Master Lung to discharge himself from continuing to hear the Summons, allege that Mr Paul Wu, counsel

- (i) had pressurized and obstructed Mdm. Chau from being assisted by her *McKenzie friend*; and
- (ii) had deliberately created prejudice in Master Lung against Mdm. Chau by disclosing to the Master that a complaint had also been laid against him to the Bar Council,

without any proper foundation or justification for such allegations and/or which went beyond what was necessary for him to present his case fairly and properly.

- (b) Such conduct demonstrated a failure to uphold the dignity and high standing of the profession of barrister and his own standing as member of it, and was so serious by virtue of its nature, degree and repetition, so as to be likely to bring the Bar into disrepute.

### Complaint 3

11. The Applicant has alleged that the Respondent was in breach of paras.4, 6(b), 130 and 131 of the Code.

12. The particulars of Complaint 3 are:-

(a) The Respondent did

(i) by way of written submissions dated 30 December 2006; and

(ii) by way of oral submissions made at the hearings before Deputy High Court Judge Carlson in chambers,

in support of an appeal against a refusal by Master Lung to discharge himself from continuing to hear the Summons, attempt to knowingly or recklessly deceive and/or mislead the court by putting forward an interpretation of the transcript of the hearing before Master Lung on 24 March 2006, which no reasonable and honest barrister would have so interpreted. In that, no reasonable and honest barrister would, or ought to, interpret:

“妳畀個半鐘頭睇一件案嘅話，我有其他案件排喺我個庭度呢，我可能只係得番一個鐘頭去睇妳的文件，我一個鐘頭點睇妳咁多文件呢，你諗下。”

“If you spend [sic] [fix] one and a half hours to look at a case, this court has other cases to deal with. I may only have one hour to read your documents. You have so many documents here. Do you realize that I cannot finish reading them in an hour?” (English translation)

as meaning that Master Lung had only one hour reading time before the hearing, and suggesting that Master Lung was making a dishonest and

untrue representation if indeed there was no such restriction on reading time imposed by the Judiciary.

- (b) Further or in the alternative, the Respondent failed to exercise proper judgment of a competent barrister as to the substance of his statements made.
- (c) Such conduct amounted to a failure to uphold the dignity and high standing of the profession of barrister and his own standing as member of it, and was dishonest or otherwise discreditable to or disreputable of a barrister, so as to be likely to be prejudicial to the administration of justice.

13. Before the Tribunal, the Respondent denied the Complaints.

#### **The Tribunal hearing**

14. The parties have their first appearance before the Tribunal on 25 August 2009. At the request of the Respondent, the Tribunal hearing held on that day and subsequently was open to the public. On the first day of the Tribunal hearing, the Applicant acting in person applied to adjourn the Tribunal hearing until the determination by the Court of Appeal of Mdm. Chau's appeal against the Judgment. After hearing arguments, the Tribunal so adjourned the hearing of the Complaints.

15. After the CA Judgment was handed down on 19 April 2010, the substantive Tribunal hearing of the Complaints resumed on 28 and 29 September 2010. The Respondent continued acting in person. At the resumed hearing on 28 September 2010,

- (a) the Applicant elected not to call any *viva voce* evidence, but rested content to base her case on the documents and her Skeleton Submissions already filed with the Tribunal;
- (b) the Tribunal ruled that there was a case to answer on each of the Complaints; and
- (c) the Respondent elected not to give any oral evidence nor to call any witnesses, but invited the Tribunal to listen to the tape which recorded the

hearing of the Summons before Master Lung on 24 March 2006.

16. On 29 September 2010, the Tribunal played the tape and listened carefully to the exchanges between Master Lung, Mdm. Chau and Mr. Paul Wu made at the hearing of the Summons on 24 March 2006.

**Evidence**

17. Apart from various Written Skeleton Submissions filed, the Applicant has lodged with the Tribunal 2 Hearing Bundles (“AHB”) which contain, *inter alia*, the following:-

- (a) The transcript of the hearing before Master Lung on 24 March 2007;
- (b) The transcript of the hearing before Master Lung on 9 November 2006 where the Respondent appeared for Mdm. Chau to apply for the recusal of Master Lung;
- (c) Written Skeleton Submissions compiled by the Respondent dated 30 December 2006 together with the List of Authorities and other Relevant Materials of even date;
- (d) Written Supplemental Skeleton Submissions compiled by the Respondent dated 3 January 2007;
- (e) The transcript of the hearings before Deputy High Court Judge Carlson on 4 & 5 January 2007;
- (f) Further Written Supplemental Submissions compiled by the Respondent dated 30 January 2007; and
- (g) The transcript of the hearing before Deputy High Court Judge Carlson on 2 February 2007.

18. The Respondent has filed with the Tribunal 4 Respondent’s Bundles and various other documents. The Respondent’s Bundles contain 8 written submissions of the Respondent (whatever labels the Respondent has used) and 1 affirmation (i.e. the Respondent’s 2<sup>nd</sup> Affirmation made on 8 September 2010). In actual fact, the

Respondent has made 2 affirmations for the purpose of the Tribunal hearing. The 1<sup>st</sup> one was made on 2 March 2009 and a copy of which can be found in the Applicant's 1<sup>st</sup> Bundle.

### **Approach of the Tribunal**

19. The Tribunal is mindful that the burden of proof is on the Applicant to establish that the Respondent was in breach of paras.4, 6(b), 6(c), 130, 131, and 133 of the Code in the circumstances as particularized in the Complaints and that the Respondent has no burden or duty to prove otherwise.
20. 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>1</sup>
21. The focus of this case is firstly on whether the Respondent has made the allegations / accusations as particularized in the Complaints in his written and/or oral submissions before Deputy High Court Judge Carlson and secondly whether the conduct of Master Lung and Mr. Paul Wu of counsel on 24 March 2006 and the conduct of Master Lung on 9 November 2006 warrants such allegations / accusations. It is not difficult for the Tribunal to decide whether the Respondent has made such allegations / accusations since if such allegations / accusations have been made, they must have been recorded in the tape and transcript of the proceedings before Deputy High Court Judge Carlson and in the relevant written submissions filed for such proceedings. As to whether the conduct of Master Lung and Mr. Paul Wu calls for such allegations / accusations, the tape which has recorded the hearings before Master Lung on 24 March 2006 and 9 November 2006 is an important piece of evidence for the Tribunal's decision. The Tribunal also notes that it was the Applicant's submission that her case was founded on documentation.
22. The Tribunal also agrees with the Applicant's submission that although the Judgment and the CA Judgment have dealt with some of the issues raised in these proceedings, the Tribunal nevertheless is not bound by them. The Tribunal notes

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<sup>1</sup> *A Solicitor v The Law Society of Hong Kong* [2008] 2 HKLRD 576 at 623, §116



in particular that the issues required to be resolved in these proceedings are not on all four with the issues resolved by Deputy High Court Judge Carlson and the Court of Appeal on the appeal from Master Lung's refusal to recuse himself on 9 November 2006.

### **The relevant codes**

23. The following are the relevant paragraphs of the Code:-

- (a) Every barrister whenever called to the Bar, whether in practice or not, should uphold at all times the standards set out in the Code, the dignity and high standing of the profession of barrister and his own standing as a member of it. [para.4]
- (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) A barrister must not knowingly deceive or mislead the Court. [para.130]
- (f) In all cases it is the duty of a barrister to guard against being made the channel for questions or statements which are only intended to insult or annoy either the witness or any other person or otherwise are an abuse of Counsel's function, and to exercise his own judgment both as to the substance and the form of the questions put or statements made. [para.131]
- (g) A barrister must at all times act with due courtesy to the Court before which he is appearing. He must in every case use his best endeavours to avoid unnecessary expense and waste of the Court's time. He should, when asked, inform the Court of the probable length of his case; and he should also inform the Court of any developments which affect the

information already provided. [para.133]

### **Complaint 1**

24. The Applicant submitted that the allegations against Master Lung as particularized in Complaint 1 were made without any proper foundation or justification and/or went beyond what was necessary for the Respondent to present his case fairly and properly and that such conduct demonstrated a failure to uphold the dignity and high standing of the profession of barrister and his own standing as member of it, and was so serious by virtue of its nature, degree and repetition, so as to be likely to bring the Bar into disrepute.
25. The Applicant has helpfully given the Tribunal the relevant page references in her Written Skeleton Submissions dated 27 September 2010 whereby the Tribunal could locate where in the Applicant's Bundles the evidence of the allegations against Master Lung as particularized in Complaint 1 made. After reading the entirety of the documents mentioned in para.17(c) to (g) hereinabove, the Tribunal finds as facts that by way of his oral and written submissions to Deputy High Court Judge Carlson, the Respondent alleged that Master Lung:-
- (a) was lazy, indolent and ignorant of facts relating to the hearing of the summons before him<sup>2</sup>;
  - (b) was actuated by bias, linguistic racism, social and economic belittlement, malignity, hostility, partiality and/or prejudice<sup>3</sup>;

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<sup>2</sup> Skeleton Submissions paras.5, 9, 11(1), 12, note at page 18 [AHB:339, 343, 344, 347, 353]; Further Supplemental Skeleton Submissions para.6 [AHB:489]; Transcript of 4 January 2007 [AHB:113] line I-M; Transcript of 5 January 2007: [AHB:165] line G to [AHB:166] line Q, [AHB:170] line A-F, [AHB:174] line S-T, [AHB:175] line C, [AHB:175] line P to [AHB:176] line I, [AHB:191] line T to [AHB:192] line B; Transcripts of 2 February 2008: [AHB:260] line K-Q, [AHB:262] line B-C, [AHB:265] line I-K, [AHB:269] line R-U

<sup>3</sup> Skeleton Submissions paras.11(1), 11(2)(ii), 34, 35, 54, Appendix A-C [AHB:344, 345, 356-358, 368, 370-371]; Supplemental Skeleton Submissions paras.3 [AHB:486]; Further Supplemental Skeleton Submissions paras.3, 10 [AHB:488, 490]; Transcript of 4 January 2007: [AHB:127] line P to [AHB:129] line D (in particular [AHB:128] line H-L, [AHB:129] line B-D), [AHB:130] line D to [AHB:131] line M, [AHB:132] line O to [AHB:133] line F, [AHB:140] line O-S; Transcript of 5 January 2007: [AHB:168] line J-Q, [AHB:170] line L to [AHB:171] line G, [AHB:174] line D-K, [AHB:174] line O to [AHB:175] line F, [AHB:179] line A-F, line M-P, [AHB:180] line H-K, line L-M, [AHB:181] line F-G, [AHB:182] line P-U, [AHB:190] line B to [AHB:191] line I, [AHB:192] line L-M, [AHB:194] line U to [AHB:195] line L, [AHB:212] line L-N, [AHB:222] line B-E, [AHB:223] line S to [AHB:224] line O, [AHB:239] line R-T, [AHB:240] line E-K; Transcript of 2 February 2007: [AHB:253] line L-Q, [AHB:261] line B-E, [AHB:263] line M-S, [AHB:269] line L-N, [AHB:300] line D-J.

- (c) showed deference and subservience to Mr. Paul Wu, counsel, and condoned the prejudice created by Mr. Paul Wu<sup>4</sup>; and
- (d) therefore acted in an oppressive manner on or about 24 March 2006 and 9 November 2006 to deliberately obstruct and frustrate Mdm. Chau<sup>5</sup> and her *McKenzie friend*<sup>6</sup> and the Respondent<sup>7</sup>.

26. These are indeed very serious allegations / accusations against Master Lung. The Tribunal has to consider whether the Respondent had any proper foundation for him to make such serious allegations / accusations. The Tribunal has listened to the audio recording of the hearings<sup>8</sup> on 24 March and 9 November 2006 and read the transcripts time and again with utmost care. The following are the Tribunal's observations:-

- (a) The hearing on 24 March 2006 can be divided chronologically into the following parts:-
  - (i) Mdm. Chau requested for the attendance of her friend (one Mdm. Kwok) to assist her at the hearing. Master Lung allowed the request after asking Mr. Paul Wu for his opinion. It was only when Master Lung asked Mr. Paul Wu for his opinion that he drew to Master Lung's attention that Mdm. Kwok was involved in another case.
  - (ii) Master Lung explained to Mdm. Chau the role of her friend and then asked her to introduce her application. While Mdm. Chau was introducing her application, Master Lung read the Amended

<sup>4</sup> Further Supplemental Skeleton Submissions paras.3-5 [AHB:488-489]; Transcript of 2 February 2007: [AHB:264] line G-I, [AHB:264] line T to [AHB:265] line I.

<sup>5</sup> Skeleton Submissions paras.7, 10, 11(3), 38 last sentence, Appendix A & C [AHB:341, 343, 346, 362, 370, 371]; Supplemental Skeleton Submissions para.2 [AHB:486]; Transcript of 4 January 2007: [AHB:125] line G-L, [AHB:126] line C-F, line N-O; Transcript of 5 January 2007: [AHB:167] line H-L, [AHB:168] line T to [169] line D, [AHB:173] line O-P, [AHB:176] line J to [AHB:177] line J, [AHB:196] line E-J, line P-R, [AHB:242] line A-F; Transcript of 2 February 2007: [AHB:261] line S to [AHB:262] line E, [AHB:268] line N-T.

<sup>6</sup> Skeleton Submissions paras.11(2)(ii), 37-42, in particular 38, 39, 42 [AHB:345, 359-364]; Supplemental Skeleton Submissions paras.2(b)-(c) [AHB:486]; Transcript of 4 January 2007: [AHB:126] line J-K, [AHB:133] line R to [AHB:134] line K; Transcript of 5 January 2007: [AHB:208] line P-U, [AHB:226] line O-Q, [AHB:227] line H-N, [AHB:228] line B-C, [AHB:230] line L-O; Transcript of 2 February 2007: [AHB:298] line Q to [AHB:299] line E.

<sup>7</sup> Skeleton Submissions paras.48-49 [AHB:366-367]; Transcript of 4 January 2007: [AHB:138] line N-R, [AHB:140] line A-F; Transcript of 5 January 2007: [AHB:235] line S-T.

<sup>8</sup> The Tribunal is of the view that the tone and manner of the exchanges between the Respondent, Master Lung and Mr. Paul Wu are important.

Statement of Claim, asked Mdm. Chau who drafted the lengthy Amended Statement of Claim and opined that the Amended Statement of Claim was too long and complicated and that 1.5 hours were not enough to hear the application. It was in this context that Master Lung gave the utterance pleaded in Complaint 3.

- (iii) Master Lung asked Mdm. Chau to give him a brief introduction of her case against the defendants. It seems that Master Lung found Mdm. Chau's brief introduction not helpful. He then reminded Mdm. Chau that he only had 1.5 hours to deal with her application, that he had other cases to deal with after her case and that if he could not finish her application within the 1.5 hours, her application had to be adjourned part-heard.
- (iv) Master Lung asked Mr. Paul Wu for assistance and Mr. Paul Wu helpfully gave Master Lung a brief summary of Mdm. Chau's case. Master Lung then asked Mdm. Chau whether she wanted to add anything to Mr. Paul Wu's brief summary. It appears that at that juncture, Mdm. Chau consulted her friend and Mr. Paul Wu gave his observation that Mdm. Chau's friend had continuously "fed" Mdm. Chau and that although it was alright for Mdm. Chau to receive some help from her friend (if she needed help), he might nevertheless have objection if Mdm. Chau was just repeating words of her friend like the playback of a recorder. Mdm. Chau explained that her friend would tell her how to reply, she then filtered what her friend had told her and gave the court her own account of the case. Master Lung then commented that this would take too long and was not a very proper way to handle the matter.
- (v) Mdm. Chau then explained and gave her opinion on the evidential side of her application. Master Lung then explained to Mdm. Chau the law relating to specific discovery.
- (vi) Before moving on to deal with each and every point on the Summons, Master Lung asked Mdm. Chau once again whether she wanted to add anything to Mr. Paul Wu's brief summary, uttered

his understanding of her case against the defendants<sup>9</sup> and asked her whether she disagreed with his understanding of her case. It was in this context that Mdm. Chau staged her objection and seemingly did not understand her own case very well. Master Lung then asked her if she disagreed, what her case was about and told her that it would have been different if her case had been that somebody had beaten her up and pointed a gun at her. Master Lung explained his understanding of her case to her again in more detail and this time, Mdm. Chau understood and agreed with Master Lung's understanding of her case as expressed. Master Lung then expressed his concern about Mdm. Chau's ability to handle her complicated case.

(vii) Master Lung moved on to deal with the Summons item by item. On the item 1 sought, Master Lung seemingly formed the view that Mdm. Chau's application for specific discovery was misconceived and that she did not understand the contents of her affirmation in support of the Summons because it was in English<sup>10</sup>. Mdm. Chau agreed that she did not quite understand the English written in her affirmation. Master Lung therefore suggested that she could make her affirmation in Chinese and emphasized the importance of her having a full understanding of the contents of the affirmation before she signed it. Mdm. Chau answered back by saying "This I understand, Sir." It seems that this caused Master Lung to ask Mdm. Chau to explain paragraph 9 of her affirmation to him. Master Lung then explained to her that it was not possible for the court to read all the material itself and to draw whatever inference it liked as to whether the documents sought were in the possession of the other side. This according to Master Lung was unfair to the other side and Mdm. Chau should have informed the court and the other side of the basis on which such inference could be drawn.

(viii) Master Lung went on with Mdm. Chau's application and during consideration, explained to Mdm. Chau the law relating to specific

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<sup>9</sup> The Tribunal has read the pleadings of HCA 7032 of 1999 and is of the view that Mr. Paul Wu's brief summary of Mdm. Chau's case is a correct brief summary and equally Master Lung's understanding of Mdm. Chau's case as expressed is a correct understanding.

<sup>10</sup> Master Lung formed such view when Mdm. Chau asked him to look at para.9 at p.5 of her affirmation.

discovery.

- (ix) Master Lung then went through each item sought and tried to comprehend the position of Mdm. Chau on each item sought and ascertain from Mr. Paul Wu the answer of the defendants.
- (x) It became apparent that item 2 sought had already been discovered.
- (xi) Master Lung considered and seemingly refused discovery of item 3 sought.
- (xii) When Master Lung reached his consideration of item 4 sought, he enquired from Mr. Paul Wu his ground(s) of objection and asked Mdm. Chau for her reply thereto. Mdm. Chau was not able to give a reply and caused the court to wait for a minute or so without a reply. Master Lung remarked how could he hear her case if he could not get an answer from her after asking a question a minute or so ago. After hearing Master Lung's remark and repetition of the other side's ground of objection, Mdm. Chau told Master Lung that it was very noisy next door. It seems that Mdm. Chau tried to give Master Lung an excuse for not being able to give a reply. Master Lung (clearly an outburst of temper) then told her to go out to tell him/her to keep quiet and that nothing could be done regarding the noise outside.
- (xiii) Master Lung repeated the other side's ground of objection and asked for her reply and Mdm. Chau said that she needed time to look at it. It was in this context that Master Lung expressed his impression that Mdm. Chau already encountered great difficulty at the early stage of the action and gave her a piece of advice concerning the trial of the action: To be well prepared, to translate all her pleadings and affirmations into Chinese, to understand each and every paragraph of her pleadings and affirmations translated and to prepare the future documents in Chinese so that the other side will reply in Chinese.
- (xiv) After consideration, Master Lung seemed to have refused discovery of item 4 sought. Master Lung carried on considering item 5

sought and seemingly refused discovery of such item as well. In the course of considering item 6 sought, Master Lung adjourned the hearing part-heard and gave a direction that all the documents to be filed into court were to be written in Chinese or if they were in English, they had to be accompanied with Chinese translations.

(xv) The hearing ended at 11:19 am that day. Master Lung had heard the Summons for more than 1.5 hours provided for.

(b) At the hearing on 9 November 2006, Master Lung manifested exemplary patience and self restraint in hearing and adjudicating on Mdm. Chau's recusal application advanced by the Respondent. At the same hearing, Master Lung confirmed with the parties that he had already disposed of the first 5 items sought in the Summons.

27. After careful consideration, the Tribunal reaches the following findings:-

(a) Master Lung did not have a light case-load on 24 March 2006; he was not only required to hear the Summons, but also required to deal with 2 substantial taxation hearings thereafter. Although it can be said that Master Lung had not been able to adequately read into the case and therefore lacked adequate preparation for the case, there was no proper foundation or justification whatsoever for the Respondent to criticize Master Lung as lazy and indolent. As the transcript shows, Master Lung moved on with the Summons, did his best to grasp the background of the case so as to enable him to adjudicate on the Summons, explained the relevant law to Mdm. Chau, dealt with and determined the discoverability of the first 5 items in the Summons, suggested and gave a direction in the interest of Mdm. Chau that future documents were to be compiled in Chinese or accompanied by Chinese translations. Master Lung could not possibly be criticized as lazy and indolent.

(b) At the outset, Master Lung might have little understanding of the issues and facts of the case before him. But the transcript shows that as the case moved on, Master Lung had enhanced his understanding of the case and issues and became able to determine the merits of the Summons. There was no proper foundation or justification whatsoever for the Respondent to criticize Master Lung as ignorant of the facts relating to the hearing of the

Summons before him.

- (c) It might be said that Master Lung had some blunt exchanges with Mdm. Chau when he expressed his concern about the sufficiency of 1.5 hours for the hearing of the Summons and his concern about Mdm. Chau's understanding of her own case because the documents were prepared in the clumsiest form of English and the case was complicated. It might also have been shown that Master Lung was impatient and authoritarian. There was however no proper foundation or justification for the Respondent to criticize that Master Lung was actuated by bias, linguistic racism, social and economic belittlement, malignity, hostility, partiality and/or prejudice. Master Lung's conduct at the hearing on 24 March 2006 comes nowhere near to any of aforesaid grave misconducts as alleged.
- (d) The transcript shows that Master Lung had asked Mr. Paul Wu for assistance during the hearing on 24 March 2006. There is nothing objectionable for the court to ask counsel for assistance. Such assistance is all the more important when one of the parties is unrepresented and is not able to express his/her case well. In this case, there are also circumstances where Mr. Paul Wu gave his observations during the hearing. However, any criticism against Master Lung as showing deference and subservience to Mr. Paul Wu and condoning the prejudice created by Mr. Paul Wu is utterly wild and uncalled for. There was no proper foundation or justification whatsoever for the Respondent to level such criticisms against Master Lung.
- (e) Mr. Paul Wu gave his observation that Mdm. Chau's friend had continuously "fed" Mdm. Chau and that although it was alright for Mdm. Chau to receive some help from her friend (if she needed help), he might nevertheless have objection if Mdm. Chau was just repeating words of her friend. Mdm. Chau then explained that her friend would tell her how to reply, she then filtered what her friend had told her and presented her own account of the case to the court. Master Lung commented that this would take too long and was not a very proper way to handle the matter. Both the observation of Mr. Paul Wu and the comment of Master Lung were correct and proper.<sup>11</sup> It is inconceivable for the Respondent of his

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<sup>11</sup> If necessary, the Tribunal is of the view that a *McKenzie friend* may take notes, may help out with



experience to elevate this into a criticism against Master Lung for acting in an oppressive manner on or about 24 March 2006 to deliberately obstruct and frustrate Mdm. Chau and her *McKenzie friend*. On the contrary, Master Lung had assisted Mdm. Chau in her pursuit of the Summons. It is shocking to the Tribunal in the extreme when the Respondent alleged that Master Lung had acted in an oppressive manner on or about 9 November 2006 to deliberately obstruct and frustrate him. This was particularly so when the transcript shows that Master Lung had manifested exemplary patience and self restraint in hearing the Respondent's submissions to disqualify him from hearing the Summons. Again, there was no proper foundation or justification whatsoever for the Respondent to level such criticisms against Master Lung.

- (f) The Respondent's allegations / accusations against Master Lung found in para.25 hereinabove went beyond what was necessary for the Respondent to present his case fairly and properly.
- (g) Such conduct demonstrated a failure to uphold the dignity and high standing of the profession of barrister and his own standing as member of it.
- (h) Such conduct was so serious by virtue of its nature, degree and repetition, so as to be likely to bring the Bar into disrepute.

28. In the premises, the Tribunal having considered all the evidence finds that the Applicant has proven Complaint 1 to the requisite standard, and accordingly we find the Respondent guilty of Complaint 1.

### **Complaint 2**

29. The Applicant submitted that the allegations against Mr. Paul Wu as particularized in Complaint 2 were made without any proper foundation or justification and/or went beyond what was necessary for the Respondent to present his case fairly and properly and that such conduct demonstrated a failure to uphold the dignity and high standing of the profession of barrister and his own standing as member of it, and was so serious by virtue of its nature, degree and repetition, so as to be likely

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documents and may quietly make suggestions and give advice to the party he/she assists. The function of a *McKenzie friend* however is not such as to take up the role of the litigant in person and use the litigant in person as his/her mouthpiece.

to bring the Bar into disrepute.

30. The Applicant has helpfully given the Tribunal the relevant page references in the Applicant's Written Skeleton Submissions dated 27 September 2010 whereby the Tribunal could locate where in the Applicant's Bundles the evidence of the allegations against Mr. Paul Wu of counsel particularized in Complaint 2 made. After reading the entirety of the documents mentioned in para.17(c) to (g) hereinabove, the Tribunal finds as facts the following:-

- (a) by way of his written submissions to Deputy High Court Judge Carlson, the Respondent alleged that Mr. Paul Wu of counsel had pressurized and obstructed Mdm. Chau from being assisted by her *McKenzie friend*<sup>12</sup>; and
- (b) by way of his oral and written submissions to Deputy High Court Judge Carlson, the Respondent alleged that Mr. Paul Wu of counsel had deliberately created prejudice in Master Lung against Mdm. Chau by disclosing to the Master that a complaint had also been laid against him to the Bar Council<sup>13</sup>.

31. The fact that the aforesaid allegations / accusations were leveled against a fellow counsel rather than a judicial officer does not *per se* render such allegations / accusations immune from the scrutiny of and adjudication by the Tribunal. The Applicant has submitted that as a matter of ethics and etiquette of the Bar, counsel must avoid rude and discourteous remarks to fellow counsel and that where the accusations against fellow counsel are obviously unsupported by facts, counsel would be guilty of making statements that are knowingly false. The Tribunal agrees.

32. Again, the Tribunal has to consider whether the Respondent had any proper foundation for him to make such serious allegations / accusations against Mr. Paul Wu. On this aspect, the Tribunal has listened to the audio recording of the hearing on 24 March 2006 and read the transcripts time and again with utmost care.

33. The transcript clearly shows that Master Lung had asked Mr. Paul Wu for

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<sup>12</sup> Skeleton Submissions paras.38 (in particular, last sentence) [AHB:361-362]

<sup>13</sup> Skeleton Submission paras.41-42 [AHB:363-364]; Further Supplemental Submissions paras.12-13 [AHB:490-492]; Transcript of 4 January 2007: [AHB:135] line K to [AHB:136] line G; Transcript of 5 January 2007: [AHB:231] line R to [AHB:232] line A, [AHB:232] line T to [AHB:234] line A; Transcript of 2 February 2007: [AHB:267] line H-N.

assistance during the hearing on 24 March 2006 and that there are also circumstances where Mr. Paul Wu gave his observations during the hearing. At the beginning of the hearing on 24 March 2006, Mr. Paul Wu mentioned that Mdm. Kwok (Mdm. Chau's *McKenzie friend*) was involved in another case and later helpfully gave Master Lung a brief summary of Mdm. Chau's case. When Master Lung asked Mdm. Chau whether she wanted to add anything to Mr. Paul Wu's brief summary, Mdm. Chau consulted her friend and Mr. Paul Wu gave his observation that Mdm. Chau's friend had continuously "fed" Mdm. Chau. Mr. Paul Wu further submitted that although it was alright for Mdm. Chau to receive some help from her friend (if she needed help), he might nevertheless have objection if Mdm. Chau was just repeating words of her friend. It is patent that Mr. Paul Wu was merely voicing out legitimate concerns of the *McKenzie friend* overstepping her role. Mdm. Chau then explained to Master Lung that her friend would tell her how to reply, she then filtered what her friend had told her and presented her own account of the case to the court. Master Lung commented that this would take too long and was not a very proper way to handle the matter. As the Tribunal has held, both the observation of Mr. Paul Wu and the comment of Master Lung were correct and proper. It is unfortunate that the Respondent of his experience elevated this into a criticism against Mr. Paul Wu that he had pressurized and obstructed Mdm. Chau from being assisted by her *McKenzie friend*. Such allegation / accusation is utterly wild and uncalled for. There was no proper foundation or justification for the Respondent to level such criticism against Mr. Paul Wu.

34. The transcript of the hearing on 9 November 2006 clearly shows that Mr. Paul Wu as a disclosure of interest informed Master Lung that he also received a letter from the Bar Council asking him to explain a complaint lodged against him also by the plaintiff. Again, it is unfortunate that the Respondent of his experience escalated this into a criticism against Mr. Wu that his disclosure of interest was nothing but an excuse to prejudice Master Lung who went along with it, thereby condoning it. Such allegation / accusation is deplorable and has transgressed beyond the proper boundaries and limits for the Respondent to present his case to Deputy High Court Judge Carlson. There was no proper foundation or justification for the Respondent to level such criticism against Mr. Paul Wu.

35. The Tribunal therefore finds as follows:-

(a) The Respondent's allegations / accusations against Mr. Paul Wu found in

para.30 hereinabove went beyond what was necessary for the Respondent to present his case fairly and properly.

- (b) Such conduct demonstrated a failure to uphold the dignity and high standing of the profession of barrister and his own standing as member of it.
- (c) Such conduct was so serious by virtue of its nature, degree and repetition, so as to be likely to bring the Bar into disrepute.

36. In the premises, the Tribunal having considered all the evidence finds that the Applicant has proven Complaint 2 to the requisite standard, and accordingly we find the Respondent guilty of Complaint 2.

### **Complaint 3**

37. The Applicant submitted that the Respondent by his written and oral submissions to Deputy High Court Judge Carlson attempted to knowingly or recklessly deceive and/or mislead the court by putting forward an interpretation of the transcript of the hearing on 24 March 2006 which no reasonable and honest barrister would have interpreted, and suggesting that Master Lung was making a dishonest and untrue representation. The relevant excerpt of the transcript and the relevant interpretation put forward by the Respondent has been particularized in the body of Complaint 3<sup>14</sup>.

38. The Applicant submitted that further or alternatively, the Respondent failed to exercise proper judgment of a competent barrister as to the substance of his statement made.

39. The Applicant further submitted that such conduct demonstrated a failure to uphold the dignity and high standing of the profession of barrister and his own standing as member of it, and was dishonest or otherwise discreditable to or disreputable of a barrister, so as to be likely to be prejudicial to the administration of justice.

40. The Applicant has helpfully given the Tribunal the relevant page references in her Written Skeleton Submissions dated 27 September 2010 whereby the Tribunal

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<sup>14</sup> See para.12(a) hereinabove for details

could locate where in the Applicant's Bundles the evidence of such interpretation put forward by the Respondent and such suggestion against Master Lung as particularized in Complaint 3 made. After reading the entirety of the documents mentioned in para.17(c) to (g) hereinabove, the Tribunal finds as facts that by way of his oral and written submissions to Deputy High Court Judge Carlson, the Respondent put forward the interpretation of the relevant excerpt of the transcript as meaning that Master Lung had only one hour reading time before the hearing, and suggested that Master Lung was making a dishonest and untrue representation if indeed there was no such restriction on reading time imposed by the Judiciary.<sup>15</sup>

41. This was indeed the gravest allegation / accusation made by the Respondent against Master Lung. One cannot simply look at the relevant excerpt of the transcript in isolation and put an interpretation to it. One must look at the background leading to the hearing on 24 March 2006 and listen to the audio recording of the entire hearing on 24 March 2006 with the assistance of the transcript which the Tribunal has done.

42. As observed by the Tribunal, Master Lung explained to Mdm. Chau the role of her friend and then asked her to introduce her application. While Mdm. Chau was introducing her application, Master Lung read the Amended Statement of Claim, asked Mdm. Chau who drafted the lengthy Amended Statement of Claim and opined that the Amended Statement of Claim was too long and complicated and that 1.5 hours were not enough to hear the application. It was in this context that Master Lung uttered:-

“妳畀個半鐘頭睇一件案嘅話，我有其他案件排喺我個庭度呢，我可能只係得番一個鐘頭去睇妳的文件，我一個鐘頭點睇妳咁多文件呢，你諗下。”

“If you spend [sic] [fix] one and a half hours to look at a case, this court has other cases to deal with. I may only have one hour to

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<sup>15</sup> Skeleton Submissions paras.3, 5, 7, 46 [AHB:338, 340-341, 365]; Further Supplemental Skeleton Submissions para.9 [AHB:490]; Transcript of 4 January 2007: [AHB:111] line T to [AHB:114] line A, in particular [AHB:112] line J-M, [AHB:112] line T to [AHB:113] line A (per Judge), [AHB:113] line M-P, [AHB:124] line S to [AHB:125] line E, [AHB:143] line F to [AHB:144] line R, in particular [AHB:143] line M-O; Transcript of 5 January 2007: [AHB:167] line T to [AHB:168] line I, [AHB:173] line M-N, [AHB:234] line G-H, [AHB:234] line R to [AHB:235] line C; Transcript of 2 February 2007: [AHB:262] line S to [AHB:263] line B, [AHB:263] line I, [AHB:279] line I-M.

read your documents. You have so many documents here. Do you realize that I cannot finish reading them in an hour?" (English translation)

43. Master Lung's concern was that the time that the case was going to take was more than the allotted time. If he could not finish the case within the allotted time, the case had to be adjourned part-heard.

44. After careful consideration, the Tribunal forms the view that no reasonable and honest barrister would have ascribed to that excerpt of the transcript a meaning that Master Lung had only one hour reading time before the hearing and blown it up forensically to suggest that Master Lung was making a dishonest and untrue representation. The Tribunal is of the view that the Respondent's deep commitment to the cause of non-discrimination and his determination to do his best for his client coloured his proper judgment and led him into error. The Respondent has not stood far back enough to let his objectivity dictate his judgment. The Tribunal does not think that the Respondent has knowingly or recklessly deceived or misled the court.

45. The Tribunal further finds the following:-

- (a) By ascribing to that excerpt of the transcript such a meaning, the Respondent failed to exercise proper judgment of a competent barrister as to the substance of his statements made.
- (b) Such conduct demonstrated a failure to uphold the dignity and high standing of the profession of barrister and his own standing as member of it, and was discreditable to or disreputable of a barrister, so as to be likely to be prejudicial to the administration of justice.

46. In the premises, the Tribunal having considered all the evidence finds that the Applicant has proven Complaint 3 to the requisite standard, and accordingly we find the Respondent guilty of Complaint 3. For the sake of clarity, the Tribunal only finds that the Respondent was in breach of paras.4, 6(b) and 131 of the Code.

### **Conclusion & Postscript**

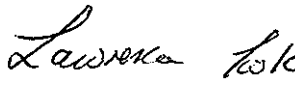
47. To conclude, the Tribunal has found that the Applicant has proven each of the

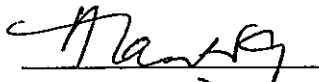
Complaints against the Respondent to the requisite standard. The Tribunal unanimously finds the Respondent guilty of all the three Complaints.

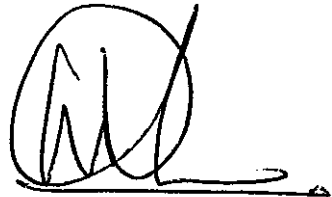
48. It is sad for the Tribunal to reach the aforesaid findings against the Respondent who is a senior member of the Bar. True it is that an independent Bar must be able to fearlessly perform its duty on behalf of its clients and to say unpopular and controversial things to the court with impunity. One must remember that this is a powerful right and privilege but it is one that brings with it great responsibility and that there is a limit on the exercise of this powerful right and privilege. There is a reason for such a limit to be in place and the present case has illuminated this reason and sounded a reminder to every member of the Bar.

49. We will now hear mitigation in respect of all the three Complaints.

Dated this <sup>27</sup> ~~28~~ day of <sup>June</sup> ~~May~~, 2011.

  
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Mr. Lawrence Lok S.C.  
Chairman of the Tribunal

  
\_\_\_\_\_  
Mr. Ng Man Sang, Alan  
Member of the Tribunal

  
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Mr. Chan Kim-on  
Member of the Tribunal