

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

BETWEEN

THE BAR COUNCIL

APPLICANT

and

CHAN, SIU FUNG JULIAN

RESPONDENT

Before : Mr Ambrose Ho, SC, Mr Lawrence KF Ng and Ms Tam Chi-wah, Angelique

Date of Written Submissions: 9 April 2025 (Applicant's Submissions)
30 April 2025 (Respondent's Submissions)

Date of Decision: 24 June 2025

DECISION ON SANCTION & COSTS

1. On 27 February 2025, this Tribunal issued its Decision on Liability. Mr Chan was found liable of two complaints of misconduct.
2. In relation to Complaint 1, this Tribunal finds Mr Chan liable under §10.29 of the Bar Code for failing to comply with his "*overriding duty to the Court to act with candour in the interests of justice*" in respect of the submission made in §33 of the Written Opening, and in allowing the factual inaccuracy and the misleading impression to remain unrectified in his Oral Opening. Mr Chan is also found liable under §4.1(b)(i) and (iii) of the Bar Code for having engaged in conduct which is "*discreditable to a barrister*" and "*prejudicial to the administration of justice.*"

3. In relation to Complaint 2, this Tribunal finds Mr Chan liable under §10.29 of the Bar Code for failing to comply with his “*overriding duty to the Court to act with candour in the interest of justice*” in respect of the submission made in §§77 and 109 of the Written Closing. He is also found liable under §4.1(b)(i) and (iii) for having engaged in conduct which is “*discreditable to a barrister*” and “*prejudicial to the administration of justice.*”
4. The evidence relating to each of the Complaints and our findings are set out in the Tribunal’s Decision on Liability and will not be repeated here.

Sanction

5. The disciplinary powers of the Tribunal are set out in Section 37 of the Legal Practitioners Ordinance (the “LPO”). The Tribunal bears in mind that the essential nature of the provisions in §§10.29 and 4.1(b)(i) and (iii) of the Bar Code is to require all members of the Bar to conduct themselves with a high standard of professional integrity. Members of the profession are expected to uphold the “*overriding duty*” of acting “*with candour*” to the Court. This Tribunal would respectfully adopt the following observations of the Lord Chief Justice in *Brett v The Solicitors Regulation Authority* [2014] EWHC 2974, at §111, that:

“..... our system for administration of justice relies so heavily upon the integrity of the profession and the full discharge of the profession’s duties and the privilege of conducting litigation or appearing in court is granted on terms that the rules are observed not merely in their letter but in their spirit. Indeed, the reputation of the system of the administration of justice in England and Wales and the standing of the profession depends particularly upon the discharge of the duties owed to the court.”

6. Although these observations were made in the context of solicitors’ professional conduct in England and Wales, they are equally apt as a reminder for practitioners acting as advocates before the Courts and tribunals in Hong Kong.
7. On 9 April 2025, the Bar Council provided this Tribunal with a List of BDT Convictions and Sentences in past cases relating to (1) failure to act with candour in the interest of justice; and (2) engaging in conduct discreditable to a barrister and prejudicial to the administration of justice. This Tribunal notes from the brief summary in the List that the circumstances of misconduct in past cases differ considerably from the present matter and there is little information about

what mitigating circumstances might have been considered by the tribunals in those cases. Accordingly, the assistance that can be derived from past decisions is necessarily limited. This Tribunal also notes that the sanctions imposed in those cases are markedly diverse, ranging from a censure (with or without an additional fine) to a period of suspension of practice.

8. The Bar Council submits that the circumstances of the case in *Brett* (*supra*) may be regarded as analogous. *Brett* is a case where an in-house solicitor of a newspaper was found to have misled the Court by failing to disclose material facts. The solicitor had been told by a reporter-colleague that the information concerning the identity of an author of a blog was obtained by illegitimate email hacking. Yet, in resisting the author's application for an injunction against the newspaper, the solicitor had caused his colleague's witness statement to be filed which misleadingly suggested that the information could be obtained by piecing together information in the public domain. On appeal against the decision of the Solicitors' Disciplinary Tribunal, the Divisional Court set aside the finding that solicitor had been dishonest but instead found him guilty of recklessly allowing the Court to be misled. The solicitor did not appeal the sanction of 6 months' suspension which he had already served in full.
9. This Tribunal agrees with Mr Chan that little assistance can be derived from referring to the sanction in the *Brett* case. The Divisional Court in *Brett* was not called upon to review the appropriateness of the sanction imposed by the Solicitors' Disciplinary Tribunal, which was based on findings that had been reversed on appeal.
10. In approaching the question of sanction, this Tribunal is mindful that any sanction to be imposed has to be fair and proportional to the gravity of the misconduct in relation to each of the Complaints for which Mr Chan has been found liable.
11. This Tribunal takes note that Mr Chan has a clear disciplinary record.
12. This Tribunal also bears in mind that no dishonesty is alleged against Mr Chan in the two Complaints.
13. On the other hand, in relation to both Complaints, this Tribunal considers that the reckless disregard of his duty of candour to the Lands Tribunal is serious. The misleading statements and impression resulting from §33 of the Written Opening and in the Oral Opening (in relation to Complaint 1), and §§77 and 109

of the Written Closing (in relation to Complaint 2) were not simply due to oversight or negligence on Mr Chan's part.

14. This Tribunal does not find it necessary or fruitful to second-guess how the Lands Tribunal might have ruled on "reasonable steps issue" had the Lands Tribunal been aware of the matters revealed in R3's Statement. The harm of the breach of duty of candour is not caused only when the courts or tribunals are actually misled. The ill and damage for such breach lies in its impact on the administration of justice, the erosion of confidence that the courts and the public has placed on the practitioners' integrity, and the damage to the profession's reputation as a whole.
15. In mitigation, Mr Chan asked this Tribunal to have regard to the fact that in §66 of the Written Closing, he did mention the dispute regarding whether R3(LT) had accepted the offer in time. Mr Chan also asked this Tribunal to have regard to the Explanation Letter and the Rule 5 Letter where he had accepted that the failure to rectify §33 of the Written Opening was "a mistake". However, this Tribunal cannot overlook the fact that even at the Inquiry, Mr Chan had maintained that the statement in §33 of the Written Opening is merely "vague" but not inaccurate. The persistent denial of inaccuracy has caused disquiet among members of this Tribunal about whether Mr Chan has indeed a full appreciation of what the duty of candour requires of him as an advocate.
16. In contrast, this Tribunal notes that in relation to Complaint 2, Mr Chan has accepted at the Inquiry that §§77 and 109 of the Written Closing were inaccurate or misleading. However, he maintained (which was rejected by this Tribunal) that they were just "poorly worded" and a "bad idea".
17. All matters being considered, this Tribunal takes the view that a period of suspension is the appropriate sanction for each of the Complaints. Both the aspects of the misconduct are equally serious and there is no good reason to distinguish the seriousness of one complaint from the other. For Complaint 1, this Tribunal considers that the appropriate sanction is 3 months' suspension from practice. For Complaint 2, this Tribunal considers that the appropriate sanction is likewise 3 months' suspension from practice. This Tribunal considers it appropriate to order both periods of suspension to run concurrently, having regarded to the totality of the sanction and being of the view that the two Complaints can be regarded as relating to different but continuous aspects of the same breach of duty on Mr Chan's part.

Costs

18. There is no dispute that costs should follow the event. The Bar Council invites this Tribunal to summarily assess its costs on an indemnity basis (pursuant to the power conferred on this Tribunal under s.37(f) of the LPO.
19. There is no dispute that an order for indemnity costs should not be regarded as the “usual order”, and that normal principles for imposing an indemnity costs order in civil litigation should apply, save that heed must be taken not to impede right of access to the disciplinary tribunal as a fundamental right and consideration can be made of the gravity of the complaints: *A Solicitor v Law Society of Hong Kong* [2006] 2 HKC 40, at §146.
20. The Bar Council invites this Tribunal to have regard to the way Mr Chan has contested the Complaints. The Bar Council’s position is that Mr Chan has unreasonably contested the present proceedings, relying on this Tribunal’s rejection of the defences advanced by him.
21. In response, Mr Chan refers this Tribunal to the decision of H. Au-Yeung J in *Holinail HK Ltd v Matthias Pou* [2025] HKCFI 1157 regarding the imposition of indemnity costs. In particular, Mr Chan draws attention to the principle that if the tribunal were to have regard to the litigation conduct of a party, such conduct must be “unreasonable to a high degree” to warrant indemnity costs to be visited upon the party.
22. While this Tribunal has rejected the defences put forward by Mr Chan in respect of the Complaints for which he has been found liable, Mr Chan is at least entitled to defend himself against the more serious charges of having knowingly deceived or misled the Lands Tribunal in breach of §10.30 of the Bar Code. This Tribunal also considers that even though some of Mr Chan’s defences were unmeritorious (as discussed in the Decision on Liability), there are no features in the conduct of his defence that is so egregious or unusual that should be castigated as being “unreasonable to a high degree”.
23. This Tribunal does not consider appropriate to order costs against Mr Chan on an indemnity basis.
24. Both the Bar Council and Mr Chan agree that the amount payable as a reasonable contribution towards the costs should be summarily assessed by this Tribunal. The Bar Council has submitted a Bill of Costs, listing in detail the items of the solicitors’ profits costs, sundry expenses, counsel fees and disbursements.

25. This Tribunal accepts Mr Chan's submission that the costs incurred in preparing the statement of costs are generally not granted in a summary assessment: *Olena Ponomarova v Northcroft Hong Kong Ltd* [2024] HKCA 148, at §18. This Tribunal also accepts that some of the solicitors' correspondence mainly deals with administrative matters, and there is scope for reducing the time and professional costs charged.
26. Taking a broad-brush approach, this Tribunal agrees that the solicitors' profits costs should be assessed at \$150,000. Mr Chan does not object to the costs for sundry expenses, counsel fees and disbursements in the sum of \$48,320.
27. Mr Chan has made no submission as to his means of paying those costs.

Publication

28. This Tribunal is of the view that the Decision on Liability as well as this Decision on Sanctions and Costs should be published, and that members of the Bar should be informed of the same.
29. A copy of the Order should be filed with the Registrar of the High Court in accordance with Section 37A(2) of the LPO.

Order

30. This Tribunal thus makes the following Orders:
 - (1) (i) For Complaint 1, the Respondent be suspended from practising as a barrister for a period of 3 months;
 - (ii) For Complaint 2, the Respondent be suspended from practising as a barrister for a period of 3 months;
 - (iii) The periods of suspension in (i) and (ii) above to run concurrently;
- (2) The Respondent do pay the costs of and incidental to these proceedings in the sum of \$198,320;

(3) This Order be published in the following manner:

- (i) By the Registrar of the High Court entering a Note of this Order on the Roll of Barristers against the name of the Respondent;
- (ii) By publishing a copy of the formal Order in the Gazette;
- (iii) By the Hong Kong Bar Association publishing the Decision on Liability and the Decision on Sanction and Costs by way of Bar Circular and display on the Bar website for a period of not less than 12 months;
- (iv) A copy of the Decision on Liability and the Decision on Sanction and Costs be sent to the Chief Judge and the Registrar of the High Court, and the Lands Tribunal, and any other person(s) as the Bar Council considers appropriate;

(4) There be liberty to apply as to the form of Order on written notice within 14 days of the date of this Order.

(5) Paragraphs (1) to (3) of this Order be stayed pending the expiration of the period for lodging an appeal prescribed in Section 37B of the LPO, and if an appeal is lodged within the prescribed period, such stay shall be extended pending the disposal of the appeal.

So ORDERED and signed on the date set out herein by:

(Signed)

Mr Ambrose Ho, SC

Chairman of the
Barristers Disciplinary
Tribunal

(Signed)

Mr Lawrence KF Ng

Member of the
Barristers Disciplinary
Tribunal

(Signed)

Ms Tam Chi-wah, Angelique

Member of the
Barristers Disciplinary
Tribunal

Representation:

Mr Jason Yu, instructed by Messrs. Kwok, Ng & Chan, for the Applicant

The Respondent appears in person