

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12115-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

KWAN YIU HO (AKA JUNIUS KWAN-YIU HO)

Respondent

Before:

Mrs C Evans (in the chair)

Mr G Sydenham

Mr S Marquez

Date of Hearing: 14 to 18 December 2020

Appearances

Nimi Bruce, counsel, of Capsticks Solicitors LLP, 1 St George's Road, London, SW19 4DR,
for the Applicant

Robin Kingham, counsel, of Gough Square Chambers, 6 to 7 Gough Square Chambers,
London, EC4A 3DE, for the Respondent

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 On or about 17 September 2017, during the course of a public meeting which the Respondent had been a party to organising, and at which the Respondent was a speaker, the Respondent made remarks, directed to all attendees, which supported and reinforced comments made by another person which the Respondent knew:
 - 1.1.1. on a reasonable interpretation, carried a meaning to the effect that political opponents to the issue under discussion should be killed; and/or
 - 1.1.2. were capable of being perceived as inciting violence against opponents; and/or
 - 1.1.3. were capable of causing offence;

and in doing so breached Principle 6 of the SRA Principles 2011 (“the Principles”).
 - 1.2. In the alternative to Allegation 1.1, on or about 17 September 2017 and during the course of a public meeting which the Respondent had been a party to organising, and at which the Respondent was a speaker, the Respondent made remarks, directed to all attendees, which supported and reinforced comments made by another person which the Respondent ought to have known:
 - 1.2.1. on a reasonable interpretation, carried a meaning to the effect that political opponents to the issue under discussion should be killed; and/or
 - 1.2.2. were capable of being perceived as inciting violence against opponents; and/or
 - 1.2.3. were capable of causing offence;

and in doing so breached Principle 6.
 - 1.3. In public Facebook posts made between 17 and 19 September 2017, the Respondent made remarks which supported and reinforced comments made by another person which the Respondent knew:
 - 1.3.1. on a reasonable interpretation, carried a meaning to the effect that political opponents to the issue under discussion should be killed; and/or
 - 1.3.2. were capable of being perceived as inciting violence against opponents; and/or
 - 1.3.3. were capable of causing offence;

and in doing so breached Principle 6.
 - 1.4. In the alternative to Allegation 1.3, in public Facebook posts made between 17 and 19 September 2017, the Respondent made remarks which supported and reinforced comments made by another person which the Respondent ought to have known:

- 1.4.1. on a reasonable interpretation, carried a meaning to the effect that political opponents to the issue under discussion should be killed; and/or
 - 1.4.2. were capable of being perceived as inciting violence against opponents; and/or
 - 1.4.3. were capable of causing offence;
- and in doing so breached Principle 6.

Documents

2. The Tribunal considered all of the documents in the case which included:

Applicant

- Rule 12 Statement dated 14 August 2020 and exhibits
- Expert reports of Winnie Joseph dated 23 November and 7 December 2020 and exhibits
- Schedules of costs dated 14 August and 7 December 2020
- A post issue letter to the Respondent dated 4 September 2020

Respondent

- Answer dated 1 October 2020 and exhibits
- Witness statement of Fu Kin Chi Willy dated 16 November 2020
- Witness statement of Ricky Choi Cheung Fung dated 16 November 2020
- Witness statement of Ho Ding Holden Chow dated 16 November 2020
- Witness statement of Lan Hong Tsung David dated 16 November 2020
- Respondent's witness statement dated 16 November 2020 and exhibits
- Expert reports of Richard Ho dated 16 November and 9 December 2020
- Expert report of Thomas In-Sing Leung dated 21 November 2020
- Schedule of costs dated 10 December 2020

Remote hearing

3. The hearing was held remotely via-video link. The Respondent and the witnesses called by the Respondent participated from Hong Kong.

Factual Background

4. The Respondent was admitted to the Roll in September 1997 and remained on the Roll at the date of the hearing. The Applicant stated that the Respondent did not hold, and had never held, a Practising Certificate entitling him to practise as a solicitor in England and Wales.
5. The Respondent is a solicitor of the Supreme Court of Hong Kong and is admitted as a solicitor in Singapore. At the material time the Respondent was in professional legal practice in Hong Kong.

6. In the Rule 12 Statement the Applicant stated that in addition to his professional practice, the Respondent was an active participant in Hong Kong politics. In 2015 he was elected to a District Council and since 2016 has been an elected member of the Legislative Council of the Hong Kong Special Administrative Region of the Peoples Republic of China.
7. The allegations related to a public meeting held on 17 September 2017 and material made public by the Respondent via Facebook between 17 and 19 September 2017.

Public meeting on 17 September 2017

8. On 17 September 2017, a political meeting was held at Tamar Park, in Hong Kong. The Respondent was a participant in organising the meeting. The meeting was reported by local media as having been attended by thousands of people. The Respondent was on the stage for the duration of the meeting.
9. The purpose of the meeting was to call for the dismissal of an employee of the University of Hong Kong, Benny Tai, who was said to have been involved in the “Occupy” movement which had been active in Hong Kong during 2017.
10. During the course of an address made by one speaker, Tsang Shu-wo, the Respondent interjected following the speaker’s remarks. The parties agreed on the words spoken by the Respondent, but not on the interpretation of the words spoken. This dispute formed the basis of the Applicant’s allegations and the Respondent’s response to it.
11. The Respondent subsequently posted a video recording of the meeting on Facebook, unedited and including the words used by Tsang Shu-wo and the Respondent’s interjection. Allegations 1.1 and 1.2 related to the Respondent’s remarks made at this public meeting.

Subsequent remarks

12. Also on 17 September 2017, following the meeting mentioned above, the Respondent was interviewed by members of the media and shortly afterwards posted a recording of the interview on his Facebook page. The Respondent was questioned about the language used during the meeting, and specifically the words used by Tsang Shu-wo.
13. Later on the same day the Respondent posted a video message on his Facebook page in which he specifically addressed the words used.
14. Following the meeting, on 18 September 2017, Hong Kong media carried reports of public criticism of the Respondent by other members of the Legislative Council. On the following day, 19 September, the Respondent posted a written statement on his Facebook page.
15. Later the same day, 19 September 2017, the Respondent posted a further video message on his Facebook page.

16. Again, in all of these subsequent cases, the words used were not in dispute between the parties by the date of the hearing. The dispute and further allegations 1.3 and 1.4 arose from the interpretation to be placed upon the words used in these Facebook posts made after the public meeting.

Witnesses

17. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

- Winnie Joseph, linguistics expert instructed by the Applicant
- Lan Hong Tsung David, retired civil servant and attendee at the public meeting
- Ho Ding Holden Chow, member of the Legislative Council and attendee at the public meeting
- The Respondent
- Richard Ho, Chinese language and literature expert instructed by the Respondent
- Thomas In-Sing Leung, Chinese philosophy expert instructed by the Respondent
- Ricky Choi Cheung Fung, character witness

A written statement was submitted from Fu Kin Chi Willy, a further character witness.

The translations relied upon by both parties and the Tribunal

18. As the comments with which the allegations were concerned were made in Cantonese the Tribunal was dependent upon the translations provided by the parties and the expert evidence adduced to aid interpretation of those translations.
19. The parties' representatives stated at the outset of the hearing that there was an agreed translation which had been prepared by Mrs Joseph. The report to which Mrs Joseph's agreed translation was appended post-dated the Rule 12 Statement in which the allegations against the Respondent were set out. The Applicant had not sought to amend the Rule 12 Statement to reflect the agreed translation. The Applicant's position was that whilst the later agreed translation was "slightly more nuanced", in the words of Ms Bruce, the case as pleaded by the Applicant based on the original translation was supported by the evidence and "mapped" sufficiently to the later agreed translation and so would also be relied upon. The Respondent had prepared his Answer to the allegations on the basis of the original translation used in the Rule 12 Statement and had accepted that most of the key words included in the original translation were used; the main focus of his response was context and meaning rather than the actual words used.
20. Mrs Joseph, who gave oral evidence during the hearing, explained how she translated the Cantonese words used. She had transcribed the Cantonese words or expressions using the Jyutping system which she explained was the Cantonese Romanisation

Scheme of the Linguistics Society of Hong Kong. The few Cantonese words used in this judgment are accordingly from this scheme.

21. The findings of fact and law below inevitably refer to both the original translation, as this was the basis for the allegations brought by the Applicant, and the later agreed translation as both parties made submissions on the differences between the two.

Findings of Fact and Law

22. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations “to the standard applicable in civil proceedings”. In other words, the Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent’s rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
23. All four allegations were that the Respondent had breached Principle 6. Principle 6 applies to all solicitors and states:

“You must behave in a way that maintains the trust the public places in you and in the provision of legal services.”

24. **Allegation 1.1: On or about 17 September 2017, during the course of a public meeting which the Respondent had been a party to organising, and at which the Respondent was a speaker, the Respondent made remarks, directed to all attendees, which supported and reinforced comments made by another person which the Respondent knew:**

1.1.1. on a reasonable interpretation, carried a meaning to the effect that political opponents to the issue under discussion should be killed; and/or

1.1.2. were capable of being perceived as inciting violence against opponents; and/or

1.1.3. were capable of causing offence;

and in doing so breached Principle 6.

Allegation 1.2 was pleaded in the alternative to allegation 1.1, and was identical other than it was alleged the Respondent ought to have known that the remarks he made carried the meaning set out above on a reasonable interpretation and/or were capable of being perceived and/or causing offence as set out above in breach of Principle 6.

The Applicant's Case

- 24.1 During the course of the address made by one speaker, Tsang Shu-wo, during the public political meeting held on 17 September 2017, it was alleged that the Respondent interjected to respond to or endorse the speaker's remarks. The translation relied upon in the Rule 12 Statement recorded the following words being used (emphasis added in the Rule 12 Statement):

Tsang Shu-wo: "The college students demand Hong Kong independence. I want to ask them, what do you have to say to this? With nothing in hand to bargain and only a small group of people, they want Hong Kong independence. Those people were influenced by the previous words from Benny Tai, and they are out of their minds."

Respondent: "Correct!"

Tsang Shu-wo: "And those 'clever and smart' professors have caused students to support the opinion. Again, what do you have to do that? What is Hong Kong Independence? Just ask them one question, are they Chinese? If they are not, then it's outsiders that would want to create this issue, and we need to 'kill them'!"

Respondent: "Mercilessly!"

Tsang Shu-wo: "If they are not Chinese and they want to create issues in Hong Kong, then we need to 'kill them'!"

Respondent: "Mercilessly!"

- 24.2 The Applicant's case was that the words of Tsang Shu-wo:
- carried the meaning, on a reasonable interpretation, that the political opponents being referred to should be killed; and/or
 - were capable of being perceived as an incitement to violence.
- 24.3 The later, agreed, translation used "kill" or "halt" as alternatives for the Cantonese word used by Tsang Shu-wo. Ms Bruce stated that the Applicant put its case on the basis of the word "kill" and not "halt". It was the Applicant's case that even if "kill" was not the only meaning which could be ascribed to the words used, the Respondent knew or ought to have known at the time that those words were capable of bearing this meaning.
- 24.4 The Applicant alleged that the Respondent's spoken reaction to both such statements, recorded above, amounted, individually and together, to expressions of support for the words used by Tsang Shu-wo, and that this was the only interpretation which can reasonably be attached to the words used by the Respondent. It was the Applicant's case that the Respondent knew (allegation 1.1) or ought to have known (allegation 1.2) of this at the time when he made the statements and thereafter.

24.5 The Applicant also alleged that the Respondent's positive action in posting a video recording of the meeting on Facebook, unedited and including the words recited above, amounted to a further endorsement of the words used.

24.6 Following the public meeting described above, the Respondent was interviewed by members of the media and shortly afterwards posted a recording of the interview on his Facebook page. The translation relied upon in the Rule 12 Statement recorded the following words being used (emphasis added in the Rule 12 Statement):

Reporter 4: "We heard from Mr. Tsang Shu-wo just now. He mentioned on stage that, we need to 'kill them', the ones who want Hong Kong Independence. Is it considered a threat?"

Respondent: "It depends on what you kill. If it is about 'kill the pigs and kill the dogs' (pigs and dogs here were referred as the ones who have no humanity), then it would be not big a deal, I guess? This question is meaningless; please don't conclude its meaning by simply cutting a phrase out from the context. Another question, please?"

Reporter 5: "Then what is the meaning of the word 'killing'"

Respondent: "It's from a devotion to righteousness that inspires reverence. If the ones who support Hong Kong Independence are looking to subvert the entire country, and cause the 1.3 billion people in Hong Kong and China to pay the price for them, they should be 'killed'; there is no use to leave them out, right? 'Kill mercilessly' the guest mentioned was about the spirit of abomination. Please don't conclude its meaning with just one phrase used. Please think about it. Thank you."

24.7 Ms Bruce referred the Tribunal to the agreed translation of this exchange and submitted that the words in the Rule 12 Statement from the original translation "mapped" to the newer and agreed translation.

24.8 The Applicant's case was that the questions asked by reporters, and the words used by the Respondent in this interview demonstrated his knowledge, immediately after the meeting, that the words used by Tsang Shu-wo were intended to refer to "killing" (as distinct from "halting" or otherwise impeding or diminishing) opponents. The Respondent did not seek to argue, in response to the questions asked, that the words used by Tsang Shu-wo were understood or intended to bear a meaning other than "kill".

24.9 Also on 17 September 2017, the Respondent posted a video message on his Facebook page. In the recording the Respondent specifically addressed the words used by Tsang Shu-wo. The translation relied upon in the Rule 12 Statement recorded the following words being used (emphasis added in the Rule 12 Statement):

“It’s like what happened today, where Tsang Shu-wo said that we should ‘kill them’ and I continued with ‘mercilessly’; ‘we should kill those supporters of Hong Kong independence mercilessly!’ This is a phrase to help to describe the meaning of the words deeper and clearer, that we don’t agree on the subject; that we disapprove of it.”

“There was this reporter, he asked: ‘so your meaning of ‘kill them’ is?’ It was nonsense and ridiculous. ‘Is it considered criminal intimidation with the word ‘kill’?’ You are out of your mind. I need not repeat it as everyone can see it.

The words ‘kill them’ is to strongly condemn their actions. It was a way to express, or you think that I will have a knife in my hand and kill them?”

“But put this to an extent of war. With you supporting Hong Kong Independence; while they have no right to say that they need to gain independence for Hong Kong; you are putting over 1 billion of the citizens of Hong Kong and China at the edge of declaring war. If you are in a war on the battlefield, ‘kill mercilessly’ is what will happen. It is as easy as that. How do they even work as a reporter when they don’t even have this understanding skill? We might just flush all these newspapers from those media sources into the toilet, right? Their opinions are all biased.”

- 24.10 Ms Bruce submitted that the agreed translation of these comments was consistent with the wording of the Rule 12 Statement in its use of the imagery of war. The Respondent had not sought to argue in this message that the words used were intended to have another meaning (such as “halt” or otherwise).
- 24.11 The Applicant’s case was this was a clear demonstration of the Respondent’s understanding of the potential meaning and effect of the words used. The Applicant also alleged that even if, on the Respondent’s case, the words used would not be interpreted as a literal incitement to kill, the effect and meaning of the words was to say that the opponents referred to should be killed.
- 24.12 Following the meeting, on 18 September 2017, some media in Hong Kong carried reports of public criticism of the Respondent by other members of the Legislative Council. On the following day, 19 September, the Respondent posted a further, written statement on his Facebook page. The translation relied upon in the Rule 12 Statement recorded the following words being used (emphasis added in the Rule 12 Statement):

“At the rally, when arguing against independence, a guest on the panel used the phrase ‘Kill [them]’ directed at the pro-independence supporters, meaning that their illegal pro-independence ideology must be stopped - a message cannot be more clearly put across! Nevertheless, this has provoked 22 Legco members to sign a letter, alleging that such a speech is against the law and that it is me who is responsible for this speech; they have given numerous interpretations of what the speech means, criticising me of giving hate speech and even reporting me to the police. This is absolutely incredulous.”

“It is these same 22 Legco members who condoned and deafened their ears to the pro-independence ideology spread, the foul language used and the insults hurled by the university graduates at the Chinese (which actually include their own parents and ancestors) by calling them Shina- nese and calling for their return to mainland China. But they pounced on us as soon as they heard just the word ‘kill [them]’, showing how irrational they are, incapable of distinguishing right from wrong - behaving like possessed evil spirits, bolting out to bite us!”

“Let me, for now, stop short of mentioning whether they are devoid of all humanity or scruples in the way they conduct themselves, I didn’t even know their Chinese language comprehension skill was so poor!”

“Let me remind them of how the Chinese word ‘kill’ collocates with other words: ‘kill a school’ (close a school), ‘kill the plot’ (finish it off), ‘kill all’ (win it all), ‘kill the deposit’ (confiscate), ‘kill and break cover out of a bloody path’ (become famous), ‘kill when the enemies are unprepared’ (successful ambush), ‘kill so you die and I live’ (violent struggle), ‘kill without seeing blood’ (highly skilful approach), ‘chick-killing’ superintendent’ (anti-prostitution specialist), ‘killer of Mills & Boon followers’ (charismatic charmer) and so on - these usages are by no means incitement to committing crimes, but peculiar colloquial Cantonese usage specific to Hong Kong.”

“The phrase ‘kill mercilessly’ originates from A Rebuttal of Memorial on Revenge by LIU Zongyuan of the Tang Dynasty, referring not to ‘killing someone’ but to ‘those who kill must not go scot-free’.”

“There you go! As soon as someone shouts ‘Let’s kill!’, these 22 presumptuous politicians lash out, attacking and falsely accusing us! This has clearly indicated that we hit their Achilles heels and they are in their death throes. As long as we are united, undeterred and persevere in our battle Against Hong Kong independence, Against Cruelty, Against Pseudo-Scholarship, Restore Order from Chaos and entice the enemy to go deep into our territory, we will be able to exterminate them all in one go! Hahaha! (Report me, by all means, to the police for blackmailing, you idiots!)”

24.13 It was the Applicant’s case that the text, and in particular the wording underlined referring to war and the battlefield, amounted to an acknowledgement by the Respondent that:

- the words used by Tsang Shu-wo were capable of bearing a literal meaning that the political opponents referred to should be killed;
- that this was the Respondent’s understanding of the intended meaning of the words used by Tsang Shu-wo;
- that the Respondent used words meaning “mercilessly” or “without mercy”;

- in doing so, the Respondent endorsed the words used by Tsang Shu-wo in the knowledge that they were capable of carrying a literal meaning that the political opponents referred to should be killed.

24.14 Ms Bruce submitted that these were not the words of nuance, or seeking to mitigate the words which had been spoken by Tsang Shu-wo by reference to an ancient text as the Respondent contended. It was alleged that the post continued to use language suggestive of violent resolutions to conflict. She submitted again that the original translation “mapped” on to the new agreed translation.

24.15 Later on 19 September 2017 the Respondent posted a further video message on his Facebook page. The translation relied upon in the Rule 12 Statement recorded the following words being used (emphasis added in the Rule 12 Statement):

“First of all, I would like to clarify that we don’t like language violence and we don’t encourage language violence. The word ‘killing’ on the last Sunday, as from what I can understand, was not advocating that ‘I want to kill people’. But I feel regret if there is anyone that thinks so...”

“I don’t think that Mr. Tsang Shu-wo was wrong. As you know he feels even more than me, he shows his emotions and he doesn’t cover his feelings. In that 2-hour discussion, what we said was 99.999% right, but maybe for the 0.001%, the way we expressed or the words we used were not considered ideal for some parties.”

“So, the phrases I used at that time like ‘kill the pigs and kill the dogs’ (pigs and dogs were being referred as the democracy activists who were soulless), taking a step back, we would have no food if we don’t kill pigs. As for dogs, it’s not that I want to kill dogs, I love dogs. But as long as it follows the laws and regulations, it is not wrong. But if the dog (referred as the democracy activist) commits treason and causes internal war in the country, like the American Civil War between the North and the South, in this process there will be opposing sides. Killing the enemies or kill someone who supports the opinion that most defenders are opposed to, is there anything wrong? The press conference discussed another topic, and as you swayed so much from the main topic, then I also expressed what I think. It was not exaggerating, but a discussion on the pros and cons of the opinion of Hong Kong Independence. We discuss what would possibly happen from it, and the situation of ‘killing’ is what is possible to happen.”

24.16 Ms Bruce stated that by this point the Respondent’s narrative was changing and this was the first occasion on which he stated that he did not want opponents to be killed. He did, however, still include the language of violence in his video message. Ms Bruce submitted that the media reaction in Hong Kong indicated that a body of thought interpreted the words used as a threat to kill. She asked the Tribunal to consider whether it was credible that all those present at the meeting would understand the innocent explanation urged on the Tribunal by the Respondent. Ms Bruce submitted that the changes to the above text reflected in the agreed translation were minor and did not affect the submissions made in the Rule 12 Statement.

24.17 The Applicant's case was that the wording used in this further video message of 19 September 2019 amounted to a further acknowledgement by the Respondent that:

- the words used by Tsang Shu-wo were capable of carrying a literal meaning that the political opponents referred to should be killed;
- that this was the Respondent's understanding of the intended meaning of the words used by Zhen Shu-wo; and
- the words used by Tsang Shu-wo may have caused offence.

24.18 It was alleged that the wording above further represented a continued assertion by the Respondent that, notwithstanding that his acknowledgment that Tsang Shu-wo's words were capable of bearing the meaning set out above, they were justified, by reference to the purported legitimacy of killing in the context of a war. In the Rule 12 Statement it was stated that it was not the Applicant's case that the Respondent was seeking to justify or advocate the killing of opponents in this statement, but that he made reference to the purported legitimacy of killing in war, as a means to justify the words used by Tsang Shu-wo (and, by implication, his endorsement of those words).

24.19 The video recording of the section of the political meeting with which the allegations were concerned was played during the hearing. Ms Bruce invited the Tribunal to consider how the words were spoken, both by Tsang Shu-wo (who made a clear hand gesture as he used the word kill/halt) and also by the Respondent's manner when he spoke to reporters after the meeting. Ms Bruce invited the Tribunal to be sceptical of any suggestion that the fact the comments were made in Cantonese meant that they could not properly understand them. She submitted there was nothing which inherently flowed from the words being spoken in Cantonese as the Tribunal had been provided with an agreed translation and the original translation used in the Rule 12 Statement had been largely accepted by the Respondent. She asked the Tribunal to focus on what the words used meant on that stage on that day.

Allegation 1.1

24.20 The Applicant's case was that the words used by Tsang Shu-wo at the meeting were capable, on a reasonable interpretation, of bearing a meaning to the effect that political opponents should be "killed". It was alleged that the words used by the Respondent (to the effect of "mercilessly", "without mercy" or "without leniency") were made by direct reference to, and by way of an endorsement of, the words used by Tsang Shu-wo. It was alleged that the meaning of Tsang Shu-wo's words was readily apparent to the Respondent when they were spoken and the Respondent therefore knew, at the time when he responded, that those words amounted to an endorsement of a statement to the effect that political opponents should be killed.

24.21 It was submitted to be clear from the Respondent's subsequent remarks, and the questions put to him by reporters, in the hours and days after the meeting, that he was well aware that the words used by Tsang Shu-wo were capable of bearing a meaning that political opponents should be killed, and that the words used had been interpreted in that way by others.

24.22 It was also said to be clear to the Respondent that the words used were capable of causing offence. It was submitted this could be inferred given the nature of the words used, and the inherent risk of causing offence in calling for, or endorsing a call for, political opponents to be killed. It was further submitted that in any event the Respondent acknowledged the potential meaning and impact on third parties when he recognised that the words were “not considered ideal” by a small number of people, and in expressing regret if the words were interpreted (incorrectly, on his account) as advocating killing political opponents.

Breach of Principle 6

24.23 It was alleged that the Respondent acted in a manner likely to undermine public trust in himself and the profession. The Respondent was publicly described as a solicitor, both in his professional practice and in his political role. The biography of the Respondent on the website of the Legislative Council described him as “Admitted as a Solicitor in England and Wales in 1997”. The Respondent’s biography on his firm’s website also describes him as “Admitted as a Solicitor in England and Wales in 1997”. The biography on the Respondent’s personal website records that he “obtained the qualifications of lawyers in Singapore and the United Kingdom and Wales (sic) in 1995 and 1997, respectively.”

24.24 The Applicant submitted that threats to kill, and the endorsement of them, exceeded the freedom of expression which solicitors, and indeed all individuals, may reasonably expect. It was the endorsement of such threats to kill which it was submitted brought the comments made outside England and Wales and outside legal practice within the ambit of the Applicant as regulator of the profession in England and Wales. The Applicant relied on the Respondent’s comments that his words were “not considered ideal” as a qualified admission that they had not met the standard required of a solicitor. It was submitted that the political context did not prevent Principle 6 applying any more than did the fact the comments were made in Hong Kong.

24.25 Ms Bruce described the need for a solicitor to refrain from endorsing threats to kill as a basic first principle. She referred the Tribunal to a warning notice published by the Applicant on 24 August 2017, shortly before the matters giving rise to these proceedings. The notice concerning offensive communication reminded solicitors that “you must at all times be aware of the content you are posting and the need for you to maintain professionalism” and that Principle 6 “continue[s] to apply to you (as the context admits) outside your practice, whether in some other business capacity or in your personal life.”

24.26 It was submitted that public trust in the profession required solicitors to act in a manner consistent with upholding the rule of law and public order. By endorsing an inflammatory statement, made at a public meeting and which was subsequently publicised and republished by the Respondent himself, to the effect that political opponents should be killed, it was alleged that the Respondent acted in a manner likely to undermine confidence including the confidence of others present or who later saw or heard the words used, all of whom knew or could readily discover that he was a solicitor. It was submitted that the Respondent thereby breached Principle 6.

Allegation 1.2

24.27 This second allegation was based on exactly the same matters as allegation 1.1. The difference was that it was alleged, in the alternative, that the Respondent ought to have known rather than did know (as was alleged in allegation 1.1) that the remarks he made carried the alleged meaning, and/or were capable of being perceived, and/or were capable of causing offence as alleged in the previous allegation.

Breach of Principle 6

24.28 It was submitted that in using words which were readily capable of being interpreted as an endorsement of the words used by Tsang Shu-wo, which were capable of bearing the meaning that political opponents should be killed, in circumstances when the Respondent ought to have recognised the words as such, the Respondent failed to behave in a way which maintained the trust placed by the public in him and in the provision of legal services. For the reasons set out in relation to allegation 1.1, such behaviour was submitted to amount to a breach of Principle 6.

The Respondent's Case

24.29 Both allegations 1.1 and 1.2 were denied. It was stressed that the Cantonese word ("saat", literally meaning "kill") was not used by the Respondent himself at the meeting. The Respondent used the Cantonese words "mou se", literally meaning "mercilessly" or "without pardon".

The political meeting

24.30 The Respondent's case was that the original comments he made on 17 September 2017 during the political meeting were capable of a number of interpretations. The Respondent was speaking in his capacity as a politician in Hong Kong and not as a non-practising solicitor of England and Wales. The interpretation advanced by the Applicant, that the Respondent endorsed the use of violence against his political opponents, was submitted not to be the most reasonable interpretation.

24.31 It was the Respondent's case that the Applicant interpreted his choice of words based on each individual Chinese character's literal meaning, rather than on a nuanced understanding of idiomatic Chinese. It was said to be clear that the statements were: figurative; not intended to be taken literally; and premised on an idiomatic use of Chinese that would have been familiar to the Respondent's audience. The Chinese idiom meant "a murderer's crimes cannot be forgiven". In the Respondent's Answer it was acknowledged that the idiom may seem odd when translated, and it was suggested that English equivalents might include "crying blue murder" or "getting away with murder".

24.32 In the Respondent's Facebook post of 19 September 2020 he explained that the word "saat" (literally meaning "kill"), when said in different contexts, may have dramatically different meanings. He stated:

“Let me remind them of how the Chinese word “kill” collocates with other words: ‘kill a school’ (close a school), “kill the plot’ (finish it off), ‘kill all’ (win it all), kill the deposit’ (confiscate), ‘kill and break cover out of a bloody path’ (become famous), kill when the enemies are unprepared’ (successful ambush), kill so you die and I live’ (violent struggle), “kill without seeing blood” (highly skilful approach), “chick-killing’ superintendent’ (anti-prostitution specialist), killer of Mills & Boon followers’ (charismatic charmer) and so on - these usages are by no means incitement to committing crimes, but peculiar colloquial Cantonese usage specific to Hong Kong.

The phrase “kill mercilessly’ originates from A Rebuttal of Memorial on Revenge by LIU Zongyuan of the Tang Dynasty, referring not to ‘killing someone’ but to ‘those who kill must not go scot-free’.”

- 24.33 Mr Kingham submitted that to evaluate the Respondents’ explanation, the Tribunal would need to come to a view about what the modifying phrase “mou se” means in Cantonese. Professor Ho gave expert evidence that in modern usage the phrase “saat mou se” (the words used by Mr. Tsang Shu-wo as modified by the Respondent’s interjection) is often used on a jocular manner. The modifier added by the Respondent meant that the phrase referred to justice being carried out. Professor Ho’s opinion was that the words would literally mean “kill without pardon” but in the cultural context they would be understood in a figurative, jocular sense. Mr Kingham submitted that Professor Ho was well placed to offer such comments in light of his qualifications and experience.
- 24.34 Dr Leung similarly gave the expert opinion that the words spoken in a public speech in contemporary Hong Kong would be understood “in a dramatic way just like in the Cantonese classical opera”. He summarised the modern meaning of the words as “If somebody does something wrong and commits a certain crime, they will face the judgement according to their wrong doing or evil behaviour.” Whilst Dr Leung acknowledged during cross-examination that he had discussed the issue with others before completing his statement, it was submitted that the opinion expressed was his own and that it corroborated that of Professor Ho.
- 24.35 Dr Lan, a retired civil servant who had attended the meeting, gave evidence that his perception was that the Respondent was trying to quell any perceived violent meaning in Mr Tsang Shu-wo’s words by making reference to the Chinese idiom meaning “a murderer’s crimes cannot be forgiven”. Mr Chow, an elected member of the Legislative Council who also attended the meeting, also gave evidence about the origin of the phrase in Chinese literature and stated “it by no means related to killing others, or related to inciting any violence.” Mr Fu gave character evidence primarily, but Mr Kingham submitted that his opinion, as a native speaker who had attended the meeting, that the modified phrase used “can be defined as “a murderer’s crimes cannot be forgiven”, which is far removed from inciting hatred or violence” should not be considered to be devoid of any evidential weight.
- 24.36 Mr Kingham referred to a newspaper article relied on by the Applicant as evidence that some people in Hong Kong had interpreted the words as endorsing violent sentiments. He submitted that if the Applicant was entitled to rely on the article to show that various members of the legislature had written to the Respondent in protest

he should be able to rely on the part of the same article which said, of Senior counsel and Executive Council member Ronny Tong Ka-wah:

“Tong believed [the Respondent] did not mean his words as “sometimes the Chinese words are not that accurate.” Calling someone a thief does not always mean one is accusing the other of thieving; it could be a comment on the person’s poor character, he said. Similarly, talking about “killing someone” could mean “banning” or voiding one’s status in society, he said.”

- 24.37 One of the core purposes of the public meeting was to call for the dismissal of Mr. Tai. This purpose – along with the events leading up to the meeting – were submitted to be important in understanding the sensitive and emotive context in which the impugned statements were made. At the relevant time, Mr. Tai was a law lecturer of the University of Hong Kong and was described as a political activist. On the Respondent’s case, his actions and advocacy were said to be contrary to the constitution and the Basic Law of Hong Kong.
- 24.38 Roughly ten days before the public meeting, it was said there had been a significant public outcry against the supporters of Mr. Tai who “congratulated” a local official on the suicide of her eldest son. The Respondent invited various other professors and legal scholars to voice their disapproval of Mr Tai and his followers’ actions. This was done for three reasons: (1) to assure the public that this activism was not representative of the legal profession of Hong Kong, (2) to voice support for the rule of law in Hong Kong, and (3) to reverse the reputational damage done by Mr. Tai to the legal profession. The motto of the meeting was to advocate for the solidarity of Hong Kong and the Mainland, anti-cruelty and anti-pseudo scholarship, in opposition to Mr. Tai’s political movement.
- 24.39 The Respondent’s comments made at the political meeting were not premeditated or scripted (and none of the speeches delivered were rehearsed or scripted). The meeting lasted more than 140 minutes. The entirety of the meeting was described as peaceful. Mr Kingham stated that out of over two hours of the meeting, the Applicant took issue with two syllables (“mou se”). Mr Kingham submitted it was highly relevant that the meeting kept coming back to what was the overall objective: the dismissal of Mr Tai. This was one of the slogans used repeatedly by various speakers and the audience. The Respondent had himself used this slogan calling for the dismissal of Mr Tai twelve times. The objective, and the slogan used, was expulsion from a teaching position; there was no message of violence.
- 24.40 The Respondent’s evidence was that when he heard Mr. Tsang Shu-wo use the word literally meaning “kill”, the Respondent recognised that this was open to a number of interpretations and by interjecting the words “mercilessly” or “without pardon” immediately afterwards, he intended to temper what was acknowledged to be an emotive political speech. The evidence of Dr Lan, as mentioned above a retired civil servant, was that the speaker Mr. Tsang Shu-wo was someone who spoke in a straightforward rather than a refined manner and that he had been surprised when he heard the “coarse” word “saat” used. The Respondent said in oral evidence that he was also surprised by the comment. The Respondent was the host of the event and he had a matter of seconds from hearing the unscripted words in which to react. It was submitted to be unrealistic for the Respondent to walk off stage, as had been

suggested by the Applicant. It was submitted that saying nothing may have implied tacit support. The Respondent's evidence was that he did what he thought was best, by interjecting to put a subtle 'gloss' on the word spoken in order, in Mr Kingham's words, 'to keep the show on the road'.

- 24.41 The Respondent was cross-examined about other remarks he had made during the meeting, including that the meeting had been brought to "boiling point" by the comments of Mr. Tsang Shu-wo. The Respondent's evidence was that as host of the event he was seeking to energise the crowd with these words. Mr Kingham stated that the Respondent had used this phrase before the words of Mr. Tsang Shu-wo which indicated the "boiling point" remarks were not made in reference to any violent sentiment.

Subsequent remarks

- 24.42 Since making the original comments, the Respondent was said to have repeatedly clarified that they were figurative and should not be taken out of context or as a literal endorsement of violence directed at political opponents. Even if (which was denied) the interpretation advanced by the Applicant was accepted, it was submitted that the Respondent subsequently ensured that no reasonable objective observer could conclude that the Respondent encouraged the use of violence. As such, there was no realistic risk that the public's trust in the Respondent as a solicitor could be undermined.
- 24.43 By way of context for the Facebook posts relied on by the Applicant, the Respondent stated that his Facebook Post "Junius' Action" is a regular "vlog" he posted as a politician to discuss public affairs and political issues. It was stated in his Answer that the Respondent may from time to time use colloquial phrases during the live stream of these Facebook posts.
- 24.44 It was submitted that with regard to the interview with reporters directly after the meeting, the Applicant placed emphasis on the wrong parts of the Respondent's response to questions posed. The entire exchange, set out above under the Applicant's case, is not repeated but the Respondent highlighted his comments:

"please don't conclude its [i.e. the phrase's] meaning by simply cutting a phrase out from the context"; and

"'Kill mercilessly' the guest mentioned was about the spirit of abomination. Please don't conclude its meaning with just one phrase used."

This was said to have been an attempt by the Respondent to explain that the impugned language had been taken out of context by the press, and that the phrase "kill mercilessly" was about the "spirit of abomination" [i.e. a philosophical rejection of the ideas advanced] rather than about the literal killing of any person. In addition, the exchange as set out in the Rule 12 Statement included words which the Applicant accepted the Respondent had not in fact spoken. The Respondent had not said the words "pigs and dogs here were referred as the ones who have no humanity" which were included within words he did speak in parenthesis. These were the words and interpretation of the initial translator. The Applicant's one witness, the expert linguist

Mrs Joseph, had described the initial translation as “poor” and “not fit for purpose”. The Respondent’s evidence was that he had already provided an explanation of the comments made during the rally to reporters when he was asked again as he was walking away. He acknowledged he had felt frustrated and that this came across in his answers.

- 24.45 Again, with regard to the video message posted by the Respondent on his Facebook page on 17 September 2017, the Respondent submitted that the Applicant had failed to draw attention to the most important passage reproduced in the Rule 12 Statement. Without repeating the entire text, which is set out under the Applicant’s case above, the Respondent drew attention to the following in his Answer:

“This is a phrase to help to describe the meaning of the words deeper and clearer, that we don’t agree on the subject; that we disapprove of it.”

“There was this reporter, he asked: “so your meaning of ‘kill them’ is?” It was nonsense and ridiculous.”

“The words ‘kill them’ is to strongly condemn their actions. It was a way to express, or you think that I will have a knife in my hand and kill them?”

The Respondent stressed that he stated clearly that the reference to “killing them” was intended to convey “that we don’t agree on the subject; that we disapprove of it” and that the words “kill them” was to strongly condemn their actions. The Respondent explicitly rejected any other more literal interpretation as “nonsense and ridiculous”.

- 24.46 With regard to the written statement posted by the Respondent on his Facebook page on 19 September 2017 (following media reports of public criticism), the interpretation put forward by the Applicant was again denied on the same basis. The English word “exterminate” was used in the translation and it was submitted that the connotation and meaning of the Respondent’s language carries different meanings depending on which English words are used in translation. As above, the Respondent’s case was that any reasonably objective observer fluent in Chinese or Hong Kong Cantonese would have understood that the Respondent was referring to the ejection of these politicians from the Legislative Council, rather than a literal extermination.

- 24.47 With regard to the further video message posted by the Respondent on his Facebook page on 19 September 2017, the Respondent stressed that the passage cited in the Rule 12 Statement (and set out above) began (with his emphasis added):

“First of all, I would like to clarify that we don’t like language violence and we don’t encourage language violence. The word ‘killing’ on the last Sunday, as from what I can understand, was not advocating that ‘I want to kill people’. But I feel regret if there is anyone that thinks so...”

It was submitted that the Respondent stated clearly that the language used was not in any way to be understood as encouraging violence, that the use of the word “killing” was not to be literally interpreted as advocating the killing of any people, and whilst he did not accept that the language was intended to be understood literally, he regretted that it appeared to have been later construed by others in that way. Again, the Applicant accepted that the Rule 12 Statement included words the Respondent had

not spoken. The Respondent had not said the words “pigs and dogs were being referred as the democracy activists who were soulless”. These were again the words and the interpretation of the initial translator. The Respondent’s case was that he had not at any stage linked the comments about killing pigs and dogs to any humans and was clear that violence was not advocated or supported.

Breach of Principle 6 (allegations 1.1 and 1.2)

- 24.48 Both allegation 1.1 and 1.2 were denied on the same basis. The Applicant’s contentions that the Respondent either knew (allegation 1.1) or ought to have known (allegation 1.2) the matters contended by the Applicant were rejected on the basis set out above. The Respondent denied that he has endorsed or made any inflammatory statements. Rather, his words had been taken out of context and subjected to an overly-literal translation that did an injustice to the true meaning and sentiment intended to be conveyed. Mr Kingham invited the Tribunal to consider that the Respondent had been speaking in the moment with seconds to react.
- 24.49 The Respondent was submitted to be of good character with no disciplinary or criminal complaints since his admission to the Roll. He was a former president of the Hong Kong Law Society. One of his character witnesses, Mr Fung, a former Secretary General of the Legislative Council of Hong Kong, had said that during the Respondent’s presidency of the Law Society of Hong Kong the Respondent “made invaluable contributions to enhance the dignity and respect of the legal profession”. The second character witness, Mr Fu, spoke of the Respondent’s honesty and competency.
- 24.50 All of the comments impugned by the Applicant were made by an elected member of the Hong Kong Legislative Council on a subject of considerable public importance. It was submitted that the Tribunal should be cognisant of the sensitive political nature of the matters involved, whilst also recognising that none of the matters alleged by the Applicant relate to the Respondent’s practise of law in any jurisdiction. Further and in any event, it was submitted that no reasonable connection could be drawn between political statements made by the Respondent in Hong Kong and with his position as a solicitor in England and Wales. In reality, there was submitted to be no real risk that public trust in the profession or in the Respondent (specifically, as a non-practising solicitor in England and Wales) could be undermined.
- 24.51 It was specifically denied that the risk of “causing offence to political opponents” was a matter with which the Applicant should properly be concerned (i.e. as opposed to the endorsement of violence, which it was accepted was a matter properly concerning the Applicant). Beyond the ambiguity inherent in the “risk” of causing offence, the Respondent was submitted to have a legitimate public interest in speaking openly about his political opponents without concern as to whether “offence” was thereby caused.
- 24.52 It was accepted that personal matters outside legal practice can fall within the scope of the Principles, but it was submitted that extending that principle to an elected official who had never has a practising certificate in England and Wales, speaking at a political event, outside the UK, was so remote that there would be no linking in the minds of the public between the Respondent’s actions and the provision of legal

services in England and Wales. Mr Kingham referred the Tribunal to the decision of Beckwith v SRA [2020] EWHC 3231 and submitted that the guidance provided on Principle 6 in that case was relevant. It was necessary for the Tribunal to find that the Respondent's conduct affected his own reputation as a provider of legal services or the reputation of the profession. The Beckwith judgment stated there must be a fair balance between the public interest in the regulation of the profession and, in that case, the right to respect for private life. Mr Kingham submitted that this was analogous to respect for freedom of expression in the Respondent's case. It was submitted there was no nexus between the Respondent's actions and the profession in England and Wales.

The Tribunal's Decision

24.53 All four allegations were all put on the basis that the Respondent, through his interjection and later through his Facebook posts, "supported and reinforced" the comments made by Mr Tsang Shu-wo. All four allegations were put on the basis that those comments carried a meaning (on a reasonable interpretation) that political opponents to the issue under discussion should be killed, and/or were capable of being perceived as inciting violence against opponents; and/or were capable of causing offence.

24.54 The Tribunal was assisted by the parties' confirmation that by the date of the hearing there were agreed translations of the public meeting and the subsequent Facebook posts. However, the presence of two different translations of the same text inevitably lengthened the evidence and complicated the deliberations. The Tribunal reviewed these, and the video footage of the public meeting, in detail.

The words used by Mr Tsang Shu-wo at the public meeting

24.55 Mrs Joseph translated the word "saat" used by Mr Tsang Shu-wo as "kill" or "halt". This was not in dispute between the parties. The Tribunal accepted, having viewed the video footage and seen first-hand, that Mr Tsang Shu-wo had made a sweeping hand gesture as he spoke the word. The Tribunal had no direct evidence, beyond the footage and the words themselves, of what Mr Tsang Shu-wo meant when he said the word. He used the word twice.

24.56 The Respondent's evidence was that he was surprised by what was said. The Tribunal accepted that it was plain from the Respondent's subsequent answers to reporters and Facebook posts that he understood that one possible, literal, interpretation of Mr Tsang Shu-wo's comments was that political opponents should be killed.

The words used by the Respondent at the public meeting

24.57 The contentious words spoken by the Respondent after Mr Tsang Shu-wo's words, "mou se", were translated by Mrs Joseph as "without mercy". This translation was agreed by both parties.

The meaning of the phrase “saat mou se”

- 24.58 The Respondent’s evidence was that he sought to temper the word “saat” by modifying it with a phrase which would be known and understood by the audience present to relate to justice.
- 24.59 Mrs Joseph’s evidence was that a Cantonese audience would understand the three words, “saat mou se”, to mean “kill without mercy”. Her evidence was that the modifier “mou se” would make it plain that “saat” in this context meant “kill” rather than “halt”.
- 24.60 Mrs Joseph’s evidence was that the three words “kill without mercy” by themselves would be insufficient to evoke the literary phrase or idiom which she translated as “those who kill must not go scot-free” as the Respondent contended. The three words spoken were only part of a complete sentence which in her opinion had the effect that most modern day Cantonese speakers would not appreciate any literary meaning or provenance and would understand the words literally as “kill without mercy”. Her view was this would be understood “without ambiguity”. The Tribunal found Mrs Joseph a helpful and clear witness who was evidently well qualified in linguistics and Cantonese to English translation.
- 24.61 Professor Ho, another well qualified and experienced expert witness, gave a different view. Professor Ho was instructed by the Respondent but was not known to him. The Tribunal found him to be straightforward, independent and authoritative. His evidence was that Mrs Joseph’s translation was entirely correct, but that a literal reading of the words themselves was insufficient to assess how they would be understood by a modern Cantonese audience. His opinion was that the phrase “saat mou se” was:

“often used in a jocular manner and means no more than not letting the unrighteous get off scot-free, or, in gambling, the winner taking all, thereby showing no mercy to the losers.”

He agreed that “saat” alone carried a meaning of having others killed but his opinion was that as modified by “mou se” the phrase suggested “justice being carried out”. In his oral evidence Professor Ho described the phrase as harmless and a cliché which was used for dramatic effect.

- 24.62 The third expert witness, Dr Leung, although also evidently qualified was not a linguist. He also acknowledged that he had discussed with others what they would understand by the phrase “kill without mercy” before completing his report. The Tribunal gave less weight to his report and evidence than that of Mrs Joseph and Professor Ho. Dr Leung’s opinion was that the three-word phrase was “used in a dramatic way just like in the Cantonese classical opera” and that a modern understanding of the phrase would be:

“If somebody does something wrong and commits a certain crime, they will face the judgement according to their wrong doing or evil behaviour.”

- 24.63 The Tribunal accepted the expert evidence of Mrs Joseph as to the literal meaning of the words used. Her opinion on this was not disputed by the Respondent. The Tribunal accepted the expert evidence of Professor Ho on what would be understood by a modern Cantonese audience. Whilst there was a direct contradiction on this point between Mrs Joseph and Professor Ho, the Tribunal considered that there was a body of corroborating evidence which was consistent with the view expressed by Professor Ho. As mentioned directly above, although not a linguist and whilst the Tribunal gave his evidence less weight, Dr Leung's opinion was similar to Professor Ho's.
- 24.64 In addition, the three witnesses who had been present at the public meeting, Mr Chow, Mr Lan and Mr Fu, provided some limited corroboration. As lay witnesses of fact they were clearly unable to give expert evidence as to what the audience in general understood or an authoritative opinion about what the phrase meant. However, they were present at the public meeting and as native Cantonese speakers the Tribunal accepted the submission of Mr Kingsley that their evidence about what they understood and what they perceived could be given some, albeit very limited, weight. The evidence of Mr Fu was that the three word phrase completed by the Respondent meant "a murderer's crimes cannot be forgiven" and that he understood the Respondent to be attempting to neutralise the word "kill". Mr Chow's evidence was that he understood the phrase to be a metaphor describing the need to stop the protests and being in no way related to killing others or inciting violence. Mr Lan's evidence was that his perception was that the Respondent was trying to tone down the word "kill" and was making reference to a well-known idiom.
- 24.65 The Tribunal did not consider that it had an adequate reason to reject this body of opinion and in particular the expert opinion of Professor Ho.

Drawing inferences from the Respondent's subsequent remarks

- 24.66 Allegations 1.1 and 1.2 related solely to the remarks made by the Respondent whilst on stage during the public meeting on 17 September 2017. The subsequent remarks, to reporters and in the various Facebook posts, were included within the Applicant's case on allegations 1.1 and 1.2 as it was submitted that the Respondent's later remarks showed that he knew that on a reasonable interpretation the words used could carry a meaning to the effect that political opponents should be killed and/or were capable of being perceived as inciting violence against opponents and/or were capable of causing offence.
- 24.67 The Tribunal reviewed each post relied upon by the Applicant carefully and made the findings set out below.

Exchange with reporters directly after the public meeting (17 September 2017)

- 24.68 The Tribunal considered that this was an instance in which the difference between the text used in the Rule 12 Statement and the later text from the agreed translation was significant. The emphasised text in the Rule 12 Statement had reported the Respondent as responding to a question by saying:

“It depends on what you kill. If it is about ‘kill the pigs and kill the dogs’ (pigs and dogs here were referred as the ones who have no humanity), then it would be not big a deal, I guess?”

In the later agreed translation the same answer was reported as:

“It depends on what you saat. If it is about ‘saat [killing/halting(?)] the pigs or dogs’, then it would be no big deal, I guess?”

Contrary to the indication in the Rule 12 Statement, the Respondent had made no comment about anyone’s lack of humanity or linking the pigs and dogs mentioned in his answer to political opponents. He did not say the words in parenthesis.

- 24.69 The Tribunal did not consider that this answer, or any of the rest of the text reproduced in the Rule 12 Statement, amounted to supporting or reinforcing comments inciting violence. The Respondents’ evidence was that he was exasperated with these questions posed as he was leaving the meeting, on issues he considered he had already dealt with in response to questions from other journalists. The Respondent had accepted that with hindsight he could have responded better. The impression formed by the Tribunal was that the Respondent was irritated by the line of questioning from journalists and his answer was somewhat combative. However, the Tribunal did not consider that evidence of his comments supporting or reinforcing comments with the meaning contended by the Applicant had been adduced. In the agreed translation, the Respondent went on to say “saat mou se” meant “to hate wrongdoers as if you would your enemy”.
- 24.70 The Tribunal did not consider this exchange with the journalists indicated that he knew that on a reasonable interpretation the Respondent’s words supported and reinforced comments inciting violence or calling for political opponents to be killed. As stated above, his answers indicated that he understood that one possible, literal, interpretation of Mr Tsang Shu-wo’s comments was that political opponents should be killed. However, the fact that it was possible for journalists or political opponents to construe the phrase in this way, and the Respondent was aware of this, did not mean that the interpretation was reasonable or that the Respondent considered it as such.
- 24.71 The Tribunal accepted that the comments made may be capable of causing offence. The Tribunal’s findings relating to the causing of offence are set out below.

Video message posted on the day of the public meeting (17 September 2017)

- 24.72 The Tribunal considered that the Respondent’s comments in this video message were clear. The Rule 12 Statement recorded him as saying:

“The words ‘kill them’ is to strongly condemn their actions.”

The Tribunal noted that the later, agreed, translation had removed the word “them” from this sentence which the Tribunal considered further removed his comments from any support or reinforcement for violence against political opponents.

24.73 The emphasised words in the Rule 12 Statement from this video post were:

“If you are in a war on the battlefield, ‘kill mercilessly’ is what will happen. It is as easy as that.”

The agreed translation for this extract of the post was:

“If you are in a war on the battlefield, kill mercilessly is what will inevitably happen. It is as simple as that.”

The Tribunal did not consider this could sensibly be construed as calling or supporting calls for opponents to be killed or inciting violence. It followed very clear words in which the Respondent had explained that the phrase was meant to strongly condemn the actions of political opponents. The Tribunal considered it was clear that the Respondent had moved on in the post to discuss the potential consequences of the current political disagreements and was making a political point. For reasons summarised below, in the absence of clear evidence the Tribunal was reluctant to read violent intent or sympathies into admittedly colourful comments made in a political context by an active politician on issues of considerable controversy.

24.74 The Respondent’s words indicated he had an appreciation that some people had interpreted his words in the way described by the Applicant, but not that he considered this to be a reasonable understanding. On the contrary, he commented that the suggestion of a threat from the words was “nonsense and ridiculous” and that he had replied to the journalist “you are out of your mind”. The Tribunal did not accept the Applicant’s submission that the Facebook post indicated the Respondent accepted that the phrase used could reasonably be understood to amount to a reference to killing the opponents referred to or that they should be killed.

24.75 Again, the Tribunal accepted that the comments made may be capable of causing offence and the Tribunal’s findings on this issue are set out below.

Written statement posted on 19 September 2017

24.76 One section of the extract from the Respondent’s written statement which was emphasised in the Rule 12 Statement was:

“...entice the enemy to go deep into our territory, we will be able to exterminate them all in one go! Hahaha!”

The context of this comment was accusations made by twenty two political opponents against the Respondent based on the words spoken at the public meeting. The Tribunal accepted the submissions made by Mr Kingham that the words above should not be given a literal interpretation. The Tribunal accepted that the Respondent was not proposing or supporting the killing of opponents or violence against them by using these words any more than he considered that the twenty two politicians were in fact “in their death throes” as he had stated in the preceding section of the statement. Given the findings above on the meaning of “saat mou se”, the Tribunal did not consider any other conclusion about the use of the words above was warranted.

- 24.77 The extract relied upon by the Applicant read in the way the Respondent had described in his Answer and his oral evidence: as political condemnation of his opponents. The Tribunal considered that the comments made in this written statement posted on Facebook two days after the public meeting were an exercise in political manoeuvring with little to do with the substance of the events and words spoken on stage at the public meeting. The Tribunal accordingly rejected the Applicant's contention that the Facebook post indicated the Respondent acknowledged that the wording used during the meeting could reasonably be understood to amount to a reference to killing the opponents referred to or that they should be killed or as an incitement to violence against political opponents.
- 24.78 As above, the Tribunal accepted that the comments made may be capable of causing offence and findings relating to the causing of offence generally are set out below.

Video message posted on 19 September 2017

- 24.79 The Applicant had also relied on comments made by the Respondent in this video message as evidence that the Respondent acknowledged the words used by Mr Tsang Shu-wo were capable of carrying a literal meaning that the political opponents referred to should be killed, that this was the Respondent's understanding of the intended meaning of the words used and that the words used may have caused offence. The comments emphasised in the Rule 12 Statement were:

"The word 'killing' on the last Sunday, as from what I can understand, was not advocating that 'I want to kill people'. But I feel regret if there is anyone that thinks so..."; and

"maybe for the 0.001%, the way we expressed or the words we used were not considered ideal for some parties."

- 24.80 The first section of the video message quoted in the Rule 12 Statement read:

"First of all, I would like to clarify that we don't like language violence and we don't encourage language violence."

The Tribunal accepted the submission of Mr Kingham that taken together the Respondent's comments amounted to an unambiguous disavowal of violence. The Tribunal did not accept that this apology and explanation amounted to a recognition that on a reasonable interpretation the words used on the stage at the public meeting were capable of bearing the meaning described by the Applicant. That the Respondent acknowledged it was possible to construe the words used in the way described by the Applicant did not mean that he accepted that was a reasonable interpretation or was one genuinely held by those who had criticised the Respondent.

The context of the words spoken during the public meeting

- 24.81 The Tribunal had carefully reviewed the video of the public meeting which lasted over two hours. The Tribunal read the full agreed translations which had been provided. The comments with which allegations 1.1 and 1.2 were concerned were made around 42 minutes into the public meeting. There had been no indication of any

support for or incitement to violence before the comments on which the allegations focused. The event continued for more than hour after the comments were made without any reported or alleged reference to violence.

- 24.82 The Tribunal accepted the Respondent's evidence that his comments about the meeting being brought to "boiling point" were those of a host keeping an event moving along and trying to energise the large crowd. The Tribunal considered the most likely interpretation was as a reference to the crowd being receptive to and energised by the themes of the event, not any kind of reference to violence or support for it. The Tribunal found the available evidence indicated the public meeting was a peaceful political rally with four clear themes which were repeated throughout: anti-independence, against cruelty, against pseudo-scholarship and calling for the dismissal of Mr Tai from his post.
- 24.83 The Tribunal found the Respondent to be a reasonable and credible witness. His evidence was that he sought to temper the sentiments of Mr Tsang Shu-wo. His stated intention in modifying the word "saat" ("kill") so as to soften its impact was one which the balance of the evidence available at the hearing indicated he had achieved successfully. The Tribunal did not find that the Respondent made remarks which supported or reinforced the comments of Mr Tsang Shu-wo which included the word "kill". On the contrary, the Respondent sought to temper the coarse and combative unscripted language which had been used. The Tribunal accepted that the Respondent added the words "mou se" ("without mercy") intending to allude to the literary or idiomatic meaning of the phrase which involved dramatic overstatement.
- 24.84 The burden of proof was on the Applicant. The Tribunal found that allegations 1.1 and 1.2 were not proved to the requisite standard. The Tribunal did not find proved that the phrase "saat mou se" ("kill without mercy") carried a meaning on a reasonable interpretation to the effect that political opponents should be killed and/or were capable of inciting violence. As stated above, the Tribunal accepted that the words could be interpreted that way if interpreted literally, but accepted the balance of the available evidence which indicated that when considered in context that interpretation was not reasonable. Accordingly, the Tribunal found it not proved that the Respondent knew or should have known this was a reasonable interpretation or that the words were capable of being perceived as inciting violence against opponents. The Tribunal did not consider that incitement of violence against opponents was capable of being genuinely perceived if it relied upon an unreasonable, overly literal, interpretation of the actual words spoken.

"Were capable of causing offence"

- 24.85 Both allegations 1.1.3 and 1.2.3 alleged that the remarks made by the Respondent were capable of causing offence. The Tribunal considered that they may well have been capable of causing offence. However, both of the subsections of the allegations relating to the capacity for offence rested on the Respondent having made remarks which "supported and reinforced" the comments made by Mr Tsang Shu-wo. As stated above, the Tribunal had found that this had not been proved and that the Respondent had sought to temper the comments which had been made. A necessary element of the allegation had failed and accordingly the Tribunal found the elements

of allegations 1.1 and 1.2 relating to the capacity to cause offence were also not proved.

24.86 In any event, even if the Tribunal was wrong on this point of construction, the Tribunal did not consider that any breach of Principle 6 would be made out given the earlier findings. The Respondent was not “supporting and reinforcing” the words which had included “kill”. As host of the event he had had seconds to react to a speaker’s use of the word. The Tribunal accepted the submissions of Mr Kingham that it was not realistic to suggest that in those circumstances he should or could have left the stage or simply ignored the comment. If the Respondent’s reaction was imperfect and caused offence in those circumstances, the Tribunal did not consider that in light of the other findings this would amount to a failure to uphold the trust placed in him or in the provision of legal services as required by Principle 6.

24.87 The Tribunal accepted Principle 6 could potentially be engaged notwithstanding the Respondent never having practised in England and Wales, the meeting taking place in Hong Kong and it being a political event attended by an active politician. This was acknowledged on the Respondent’s behalf by Mr Kingham. Those circumstances were relevant, but if the Tribunal had found that a solicitor on the Roll had made public remarks supporting the incitement of violence against political opponents then the Tribunal considered that Principles would be engaged and the most serious sanctions available were likely to be appropriate notwithstanding the remoteness of the conduct. However, in the particular circumstances of this case, on the balance of the evidence presented, the Respondent’s comments did not begin to approach this.

25. **Allegation 1.3: In public Facebook posts made between 17 and 19 September 2017, the Respondent made remarks which supported and reinforced comments made by another person which the Respondent knew:**

1.3.1. on a reasonable interpretation, carried a meaning to the effect that political opponents to the issue under discussion should be killed; and/or

1.3.2. were capable of being perceived as inciting violence against opponents; and/or

1.3.3. were capable of causing offence;

and in doing so breached Principle 6.

Allegation 1.4 was pleaded in the alternative to Allegation 1.3, and was identical other than it was alleged the Respondent ought to have known that the remarks he made in public Facebook posts carried the meaning and/or were capable of being perceived and/or causing offence as set out directly above in breach of Principle 6.

The Applicant's Case

Allegation 1.3

- 25.1 This allegation was based on the Facebook posts described above under allegations 1.1 and 1.2. The posts in question were of an unedited video recording of the political meeting, the posting of a recording of the press interview shortly after the political meeting, the posting of a video message on 17 September 2017, the posting of a written statement on 19 September 2017 and the posting of a further video message also on 19 September 2017. This allegation was also based on the Respondent's alleged knowledge of the meaning Tsang Shu-wo's words were capable of bearing as also described above under allegations 1.1 and 1.2.
- 25.2 It was alleged that notwithstanding such knowledge the Respondent repeatedly sought, in his Facebook posts, to re-state his support for those words, and sought repeatedly to justify Tsang Shu-wo's words at the meeting, and his own expression of support for them at the meeting.
- 25.3 The Applicant's case was that even if, which was not accept accepted, the Respondent was not aware of the possible meaning of the words used at the time, he must have been so aware immediately after the meeting when questioned by members of the media on the meaning of those words.

Breach of Principle 6

- 25.4 It was alleged that by making the various Facebook posts the Respondent acted in a manner likely to undermine public trust in himself and the profession. By repeatedly endorsing an inflammatory statement, and maintaining his support of that statement, the Respondent was alleged to have acted in a manner likely to undermine confidence including the confidence of anyone reading or viewing the posts. It was submitted that the Respondent thereby breached Principle 6.

Allegation 1.4

- 25.5 In the alternative, the Applicant alleged that the Respondent ought to have known the meaning which Tsang Shu-wo's words were capable of bearing, both at the time when they were made and during the following days when, in the face of challenges to the use of such words, he continued to support and seek to justify them in his Facebook posts. Again, even if the Respondent was not aware of the possible meaning of the words at the time when they were spoken, it was alleged that he must have been so aware by the time of making the Facebook posts, having been questioned about the meaning of such words immediately after the meeting.

Breach of Principle 6

- 25.6 It was alleged that in continuing to express support and endorsement of the words used by Tsang Shu-wo, which were capable of bearing the meaning that political opponents should be killed, in circumstances when the Respondent ought to have recognised such capacity, the Respondent failed to behave in a way which maintained the trust placed by the public in him and in the provision of legal services.

The Respondent's Case

- 25.7 Allegations 1.3 and 1.4 were denied on the same basis as allegations 1.1 and 1.2. The Respondent advanced the same explanations and case regarding the Facebook posts made between 17 and 19 September 2017 as already set out above in relation to allegations 1.1 and 1.2.
- 25.8 In his closing submissions on allegations 1.3 and 1.4, Mr Kingham highlighted that in the written Facebook post of 19 September 2017 the Respondent had reminded the reader, at some length, the way that “kill” collocates with other words and has a variety of colloquial meanings. He referred to the stress from that document that the Applicant had placed on the word “exterminate” and submitted that, again, this approach was too literal. Immediately before that comment the Respondent had described a grouping of twenty two political opponents as “in their death throes”. Mr Kingham submitted that this was also not best understood literally but was a turn of phrase. All of the points raised in response to allegations 1.1 and 1.2 were also relied upon in response to allegations 1.3 and 1.4.

The Tribunal's Decision

- 25.9 Both allegations 1.3 and 1.4 were predicated on the Respondent having made remarks (the completion of the phrase “kill without mercy”) which “supported and reinforced” the comments made by Mr Tsang Shu-wo and were capable of carrying the meaning alleged by the Applicant.
- 25.10 As set out under allegations 1.1 and 1.2, the Tribunal had found both that the Respondent had not “supported and reinforced” the words of Mr Tsang Shu-wo and also that the meaning of the phrase competed by Respondent did not carry the meaning alleged by the Applicant on a reasonable interpretation and was not capable of being reasonably perceived as inciting violence. To the extent that it was possible to interpret it literally and unreasonably in that way, or to take offence from it, the Tribunal did not consider that a breach of Principle 6 would follow for the reasons set out in relation to allegations 1.1 and 1.2.
- 25.11 The Tribunal had also found that the five Facebook posts themselves (an unedited video recording of the political meeting on 17 September 2017, the Respondent's answers to reporters on 17 September 2017, his video message of 17 September 2017, his written statement of 19 September 2017 and his further video message of 19 September 2017) did not on a reasonable interpretation carry a meaning to the effect that political opponents to the issue under discussion should be killed. The Tribunal had found that the comments made by the Respondent in the post could not sensibly be perceived as inciting violence against opponents.
- 25.12 The Tribunal considered that the posts may have caused offence, but for the reasons that the elements of allegations 1.1 and 1.2 relating to capacity to cause offence were found not proved, the Tribunal found the allegations 1.3.3 and 1.4.3 relating to the capacity to cause offence were not proved.
- 25.13 Both allegations 1.3 and 1.4 were found not proved in their entirety.

Costs

26. Ms Bruce applied for costs on behalf of the Applicant. She submitted that the proceedings were properly brought and had been certified by the Tribunal as showing a case to answer. There had been no application after the Applicant's case had closed that no case to answer had been demonstrated. The Respondent had accepted in his evidence that with hindsight the words used were inappropriate. Ms Bruce submitted that if the Tribunal found some culpability on the Respondent's behalf in being before his regulator in this matter then the Applicant should be awarded its legal costs as the Respondent had to that extent brought the proceedings on himself. The costs claimed by the Applicant were £64,928.88. Ms Bruce submitted that applying Broomhead v SRA [2014] EWHC 2772 (Admin) the Applicant should be awarded its cost unless there was a reason to depart from this position.
27. With regards to a potential award of costs against the Applicant, Ms Bruce submitted, relying on Baxendale-Walker v The Law Society [2007] EWCA Civ 233, that costs should not be awarded against the Applicant unless the case was improperly brought. She submitted that the more recent case of CMA v Flynn Pharma [2020] EWCA Civ 617 did not dilute this principle. She submitted that in regulatory proceedings a simple lack of success in proceedings was not a good enough reason for costs to be awarded against the regulator. She submitted that the case against the Respondent was well put together and proportionate. The Rule 12 Statement was well argued and the case was conducted appropriately. Costs should not be awarded against the Applicant in those circumstances. She further submitted that in any event the costs claimed by the Respondent were preposterous and that a rate of £600 per hour for work involved was disproportionate. The Respondent had instructed his own firm for the legal work involved and Ms Bruce submitted there should be close scrutiny of the sums claimed. Ms Bruce also stated that the Applicant had found it difficult to instruct an expert in this case and was grateful to Mrs Joseph for accepting the instructions.
28. In reply, Mr Kingham submitted that there was no starting point that the Applicant should receive its own costs. He submitted that this would be remarkable in circumstances where the Applicant had been wholly unsuccessful in its allegations. He referred to the public interest in ensuring there was no 'chilling effect' on regulators bringing proceedings, but submitted that this protection did not extend to the contended 'starting point'. Mr Kingham accepted that Broomhead was authority for costs potentially being awarded to the Applicant notwithstanding an unsuccessful prosecution. He submitted this would not be warranted in the Respondent's case. He noted that the Tribunal's Guidance Note on Sanctions did not have a section dealing expressly with costs against the Respondent in circumstances in which all allegations had been not proved and he invited the Tribunal to reach its own view of the Applicant being awarded its costs in light of the outcome of the case.
29. With regards to the Respondent's own costs, Mr Kingham applied for these in the sum of £130,725.73. He accepted that the Respondent's own firm had been instructed but stated that the Respondent had instructed English solicitors and briefed him as counsel and the burden of these costs would fall upon him. Mr Kingham accepted that the starting point was that the Respondent would not receive his own costs. He also accepted that the case was not a "shambles" as envisaged in the case of

Baxendale-Walker such that costs should be awarded on that basis. However, he submitted that the case was improperly brought on the following bases:

- 29.1 If the Tribunal had found the allegations not proved due to insufficient nexus between the allegations and the solicitors' profession, as in the case of Beckwith, then he submitted the entire case would have been brought on the wrong basis.
- 29.2 The allegations were based on a translation which the Applicant's own expert had stated was not fit for purpose. Mr Kingham submitted that the substandard translation made its way prejudicially into the Rule 12 Statement. This included some stark errors such as the suggestion that the Respondent had made remarks about people "lacking humanity" when he had not. Mr Kingham submitted that this must have played a role in the decision to proceed with the allegations and the certification of them by the Tribunal. There was no indication that the Applicant had engaged an expert at the outset which was particularly important in this case which turned on the cultural and linguistic context. The Applicant was far outside its usual scope and should have exercised particular care. Mr Kingham submitted that the Applicant did not do enough to obtain a reliable translation. He also submitted that the Applicant should have commissioned an expert's report on the meaning of the phrase, particularly given the Respondent's Answer, and that had this happened the proceedings may never have been brought.
- 29.3 The Respondent had suffered adverse publicity as a result of the proceedings which was exacerbated by the three year delay in bringing the proceedings. It was particularly damaging to the Respondent to have to deal with these issues again once again after they had been investigated and resolved in Hong Kong. Mr Kingham submitted that it had been a trying experience for the Respondent to a greater extent than was usual for a solicitor facing disciplinary allegations.
30. In conclusion, Mr Kingham submitted that it would not be appropriate for the Respondent to pay the Applicant's costs and he submitted that he should receive some of his own costs.
31. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal had regard to its Guidance Note on Sanctions.
32. The Tribunal first considered the Applicant's application for its own costs. The Tribunal accepted that the proceedings were properly brought and had been conducted reasonably. The Tribunal was content that there was sufficient nexus between the alleged language used and the Principles. Plausible allegations that an admitted solicitor may have supported and reinforced comments calling for opponents to be killed or incited violence were unambiguously capable of engaging the Principles notwithstanding the remoteness of the context in this case. The Applicant's costs had been properly incurred. However, the Respondent had successfully defended all allegations and no findings against him had been made. He had succeeded on the basis set out in his Answer. The Tribunal recognised that it had the power to award costs against the Respondent even though no findings of misconduct had been made,

but did not consider it appropriate in all of the circumstances to do so. The Tribunal had regard to paragraph [42] of Broomhead:

“However, while the propriety of bringing charges is a good reason why the SRA should not have to pay the solicitor’s costs, it does not follow that the solicitor who has successfully defended himself against those charges should have to pay the SRA’s costs. Of course there may be something about the way the solicitor has conducted the proceedings or behaved in other ways which would justify a different conclusion. Even if the charges were properly brought it seems to me that in the normal case the SRA should have to shoulder its own costs where it has not been able to persuade the Tribunal that its case is made out. I do not see that this would constitute an unreasonable disincentive to take appropriate regulatory action.”

There was nothing in the Respondent’s conduct of the litigation which warranted this approach. The Tribunal did not consider there was any reason to depart from the approach set out in this paragraph. The Respondent had successfully defended all allegations, and had conducted the proceedings reasonably. The Applicant had failed to obtain a translation which was fit for purpose on which to base its Rule 12 Statement. The Tribunal considered that in the circumstances of this case the Applicant should bear its own costs.

33. Turning to the Respondent’s application for his own costs, the Tribunal’s had regard to the principles set out in Flynn Pharma. Paragraph [79] of that case states:

“The applicable legal principles to be derived from these cases are, in my judgment, as follows:

- i) Where a power to make an order about costs does not include an express general rule or default position, an important factor in the exercise of discretion is the fact that one of the parties is a regulator exercising functions in the public interest.*
- ii) That leads to the conclusion that in such cases the starting point or default position is that no order for costs should be made against a regulator who has brought or defended proceedings in the CAT acting purely in its regulatory capacity.*
- iii) The default position may be departed from for good reason.*
- iv) The mere fact that the regulator has been unsuccessful is not, without more, a good reason. I do not consider that it is necessary to find “exceptional circumstances” as opposed to a good reason.*
- v) A good reason will include unreasonable conduct on the part of the regulator, or substantial financial hardship likely to be suffered by the successful party if a costs order is not made.*
- vi) There may be additional factors, specific to a particular case, which might also permit a departure from the starting point.”*

34. The Tribunal's starting point was there would be no order for the Applicant to pay the Respondent's costs without some good reason. The Respondent had successfully defended all allegations against him. The translation relied upon by the Applicant in its Rule 12 Statement was substandard. Despite instructing his own firm there were significant costs which the Respondent would have to bear. The Tribunal accepted that the publicity from the case would have been difficult. However, the Tribunal did not consider that these factors together amounted a good reason to depart from the default approach in the circumstances on the Respondent's case. The Tribunal considered that the case was properly brought. It had been certified by another Division of the Tribunal as showing a case to answer. The original translation had been defective, but the Applicant had obtained what was to become an agreed translation from a suitably qualified expert linguist dated 13 November 2020. The Tribunal had found that there were some significant differences between the text relied upon in the Rule 12 Statement and the text of the agreed translation in various places. However, the Tribunal also accepted the submission Ms Bruce had made that the original text "mapped" sufficiently on to the later agreed translation such that it was reasonable to proceed with the allegations on that basis. The Respondent had accepted most of the key words from the original translation had been spoken. The Applicant had conducted the proceedings reasonably. As stated above, the Tribunal was content that there was sufficient nexus between the alleged language used and the Principles. The Tribunal considered that in the circumstances of this case the default position as set out in Flynn Pharma should be applied and made no order that the Applicant should meet some or all of the Respondent's costs.

Statement of Full Order

35. The Tribunal ORDERED that the allegations against KWAN YIU HO (AKA JUNIUS KWAN-YIU HO), solicitor, be DISMISSED.

The Tribunal further ORDERED that there be no Order as to costs.

Dated this 17th day of February 2021
On behalf of the Tribunal



C Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
17 FEB 2021