

1 Tuesday, 25 April, 2017

2 (10.00 am)

3 MR BERESFORD: Master, in this matter I appear for the  
4 defendant, and Mr Koo appears in person as the  
5 plaintiff.

6 Master, this is my application. The summons is in  
7 bundle A at tab 4, an order that the statement of claim  
8 filed by the plaintiff on 7 October 2016 be struck out  
9 and the action be dismissed on the ground that the  
10 statement of claim discloses no reasonable cause of  
11 action, is frivolous or vexatious, and/or is otherwise  
12 an abuse of process of the court.

13 MASTER LO: Before you go on, I want to clarify with the  
14 parties first.

15 MR BERESFORD: Yes, Master.

16 MASTER LO: I understand the plaintiff is in person.

17 MR BERESFORD: The plaintiff is in person. He has  
18 been --

19 MASTER LO: And he submitted his submission in Chinese.

20 MR BERESFORD: Yes.

21 MASTER LO: I want to confirm whether he is comfortable for  
22 us to use English.

23 Mr Koo, I know you are now in person, but we will  
24 have the court interpreter to assist you. So is it all

1 right for us to conduct the proceedings in English? (經傳譯  
2 員：顧先生，我知道你現在沒有律師代表，親自應訊的，但是我們會有法庭傳譯  
3 員協助你的。如果我們用英文進行聆訊，你會否覺得會舒服一點?)

4 MR KOO: 用中文，廣東話就比較好些。(經傳譯員：It would be better if  
5 Cantonese can be used.)

6 MASTER LO: You have arranged your own shorthand writer, who  
7 is in English, and also the transcript will be in  
8 English; so I think it is more convenient for us to use  
9 English. (經傳譯員：你自己安排了速記員那個紀錄都會是英文的紀錄，那麼  
10 法庭錄音謄本都會是英文的，所以如果用英文就會比較方便一點。)

11 MR KOO: 我尊重法官的意見。(經傳譯員：I respect master's decision.)

12 MASTER LO: Very well. We will use English then.

13 The second thing I want to mention is that even  
14 though you have your own shorthand writer and make your  
15 own transcripts, this will not be the official record of  
16 the proceedings. The official record will still be the  
17 DARTS system. (經傳譯員：我想提醒你，雖然你自己聘用了私人的速記員，同  
18 時有這些紀錄，但是這些不會是正式的法庭紀錄，仍然以法庭錄音作為正式的紀  
19 錄。)

20 MR KOO: 法官大人，是否可以給法庭正式的錄音給我的？(經傳譯員：Master,  
21 could the official recording be given to me later on?)

22 MASTER LO: You can apply for the transcript later on. (經傳譯員：  
23 你遲一點可以申請法庭謄本的。)

1 MR KOO: 即是我可以申請，法庭也會批准給我的？（經傳譯員：I can make an  
2 application and the application will be granted?）

3 MASTER LO: You have to give your reasons for doing so. But  
4 anyway, you have your own transcripts, you have your own  
5 shorthand writer who will assist you in the proceedings.  
6 I just want to make it clear that your own transcripts  
7 will not be the formal record of the proceedings. （經傳譯員：  
8 當然你申請的時候，要提出你申請的原因。但是你自己已聘請了速記員，也有自  
9 己的謄本紀錄，這些也可以協助你進行這個聆訊訴訟的。但是只想你搞清楚一點，  
10 你要知清楚，你自己這些聘用的人員所做出來的那份紀錄，不會是法庭正式的確  
11 認的紀錄。）

12 MR KOO: 即是如果下一次上訴的時候，那就沒有用了，這些？（經傳譯員：So the  
13 record would not be useful at the appeal?）

14 MASTER LO: If you want to appeal, you still need to apply  
15 for the transcript of the court's DARTS system to use  
16 that for your appeal purpose. （經傳譯員：如果你真的想上訴的話，  
17 到時你是需要向法庭申請法庭正式的錄音謄本紀錄的。）

18 MR KOO: 好的，我會講出個理由，同時希望法庭能夠給我謄本，謝謝。（經傳譯員：  
19 Yes, I will state my reasons and would like the application  
20 to be granted.）

21 MASTER LO: I have also mentioned to your solicitors,  
22 previous solicitors that the course of engaging your own

1 shorthand writer will be entirely your own cost. (經傳譯員：  
2 之前跟你的律師提及過，你自己聘用這些速記員所做的紀錄，都會是你自己自費  
3 的。)

4 MR KOO: 明白，法官。(經傳譯員：Yes, understood.)

5 MASTER LO: Let's go on.

6 Submissions by MR BERESFORD

7 MR BERESFORD: Master, if I can just summarise the  
8 application, then perhaps that will shorten the matters.  
9 The first ground for the application is that there is no  
10 reasonable cause of action disclosed in the statement of  
11 claim. The plaintiff alleges no infringement of any  
12 individual right. Whether contractual, tortious,  
13 restitutionary, or propriety, whether statutory or  
14 rooted in the common law, there is no claim for damages  
15 in the statement of claim.

16 Master, if I can just turn to the statement of  
17 claim, it's in bundle A behind tab 1, commencing at  
18 page 2. Perhaps, Master, it would assist if I just  
19 quickly read it through:

20 "1. The plaintiff is a Hong Kong citizen and is  
21 a member of the public.

22 2. The defendant is established under the  
23 Securities and Futures ordinance Chapter 571 of the Laws  
24 of Hong Kong.

25 3. Section 5 of the ordinance provides that:

1                   (1) The functions of the Commission are, so far  
2                   as reasonably practicable:

3                               (a) to take such steps as it considers  
4                   appropriate to maintain and promote the fairness,  
5                   efficiency, competitiveness, transparency and  
6                   orderliness of the securities and futures industry;

7                               (b) to supervise, monitor and regulate-

8                                       (i) the activities carried on by  
9                   recognised exchange companies, recognised clearing  
10                  houses, recognised exchange controllers, or recognised  
11                  investor compensation companies, or by persons carrying  
12                  on activities regulated by the Commission under any of  
13                  the relevant provisions other than registered  
14                  institutions; and.

15                                      (ii) such of the activities carried  
16                  on by registered institutions as required to be  
17                  regulated by the Commission under any of the relevant  
18                  provisions;

19                               (c) to promote and develop an appropriate  
20                  degree of self-regulation in the securities and futures  
21                  industry;

22                               (d) to promote, encourage, and promote the  
23                  proper conduct, competence and integrity of persons  
24                  carrying on activities regulated by the Commission in  
25                  any of the relevant provisions in the conduct of such  
26                  activities;

1 (e) to encourage the provision of sound,  
2 balanced and informed advice regarding transactions or  
3 activities related to financial products;

4 (f) to take such steps as it considers  
5 appropriate to ensure that the relevant provisions are  
6 complied with;

7 (g) to maintain and promote confidence in  
8 the securities and futures industry in such manner as it  
9 considers appropriate, including by the exercise of its  
10 discretion to disclose to the public any matter relating  
11 to incidental to the performance of any of its  
12 functions;

13 (h) to co-operate with and provide  
14 assistance to regulatory authorities or organisations,  
15 whether formed or established in Hong Kong or elsewhere;

16 (i) to enhance the understanding and  
17 knowledge of members of the public of financial services  
18 including-

19 (i) the operation and functioning of  
20 the securities and futures industry; and.

21 (ii) the benefits, risks and  
22 liabilities associated with purchasing financial  
23 services including investing in financial products;

24 (j) to encourage the public to appreciate  
25 the relative benefits of purchasing different types of  
26 financial services including investing in financial

1 products through persons carrying on activities  
2 regulated by the Commission under any of the relevant  
3 provisions;

4 (k) to promote understanding by the public  
5 of the importance of-

6 (i) making informed decisions  
7 regarding the purchasing of financial services and  
8 transactions and activities related to financial  
9 products; and.

10 (ii) taking responsibility for those  
11 decisions;

12 (l) to secure an appropriate degree of --

13 MASTER LO: Mr Beresford, I don't think it's necessary to  
14 read out the whole section.

15 MR BERESFORD: I'm grateful, Master. I'll pick it up at  
16 paragraph 4.

17 MASTER LO: Pausing there, I want to ask the plaintiff  
18 something first.

19 MR BERESFORD: Yes, Master.

20 MASTER LO: Mr Koo, in your written submission you mentioned  
21 that you might want to apply for amendment of the  
22 statement of claim. Is that right? (經傳譯員：在你書面陳詞中，  
23 你提過就是你想申請修改你的申索陳述書，是不是?)

24 MR KOO: 是。(經傳譯員：Yes.)

1 MASTER LO: There's no formal application as such? (經傳譯員:但  
2 是沒有見到有正式的申請?)

3 MR KOO: 有的。因為他申請了、停了、stay了,就是證監那裏,被告人。所以就沒  
4 有辦法可以呈請這個修改。(經傳譯員:Yes, there is. Because the  
5 defendant has applied for a stay of the rest of the proceedings,  
6 so there was no way for me to lodge my application for  
7 amendments.)

8 MASTER LO: Stay of which proceedings? Are you talking  
9 about the present proceedings or some other proceedings? (經  
10 傳譯員:你講的是擱置現在的法律程序,還是其他的法律程序?)

11 MR KOO: 我們申請修改狀書的那個申請。(經傳譯員:Well, I'm talking about  
12 the application for the amendment of pleadings.

13 MR BERESFORD: Master, it's page 22 of the bundle behind  
14 tab 5. There's an order for directions, and at  
15 paragraph 4, further "proceedings in this action be  
16 stayed". I believe that is what Mr Koo is referring to.

17 MASTER LO: But the application to amend is related to the  
18 present proceedings, right, because you want to amend  
19 before we proceed with the striking out application? Is  
20 that what you're saying? (經傳譯員:但是現在修訂的申請是關於本訴  
21 訟的,因為你認為要先申請修訂,他們才可以再處理他們方面剔除的申請,是不  
22 是?)

23 MR KOO: 是的。(經傳譯員:Yes.)

24 MASTER LO: But in what way do you want to amend the

1 statement of claim? (經傳譯員：但是你想怎樣修訂你的申訴陳述書?)

2 MR KOO: 在裏面我提出有新的證據證明，這件案裏面其中的關鍵人物陳之望先生，  
3 他的博士學位是虛假和非法製造、非法使用。同時拿到法庭使用，就是瞞騙法庭，  
4 妨礙司法公正的嚴重罪行，這是很重要的一個point。所以我申請修改狀書，就  
5 將這些證據擺在裏面，這是很重要的一個證據，同時將這個關鍵人物陳之望先生  
6 列為第二被告人。(經傳譯員：I've raised new evidence to show that  
7 Mr Chan Chi Mong's doctor degree is a false one, is a false  
8 degree, and he has been illegally managing and illegally using  
9 such a degree to deceive the court, which is very serious crime  
10 involving perverting the course of justice. That's why I would  
11 like to apply for amendment of the pleadings to include all  
12 these very important evidence, and to list this very important  
13 person Chan Chi Mong as the 2nd defendant.)

14 MASTER LO: I don't see how that is related to the present  
15 proceedings, because, first of all, we are not talking  
16 about evidence here, we are talking about whether you  
17 have a cause of action. Secondly, we cannot assume what  
18 you say is correct at this stage, because I don't think  
19 the defendant is saying that you can prove that Mr Chan  
20 has no qualification. I think at this stage he has to  
21 assume your case is correct first. At this stage, the  
22 defendant would have to assume that your case is correct  
23 first. But even so, they are saying that you still  
24 don't have a cause of action against the defendant, so  
25 it doesn't really matter whether you have the evidence

1 now or not. And also when you mentioned that you want  
2 to add Mr Chan as the 2nd defendant, that will be a case  
3 against Mr Chan, but we are not concerned with that at  
4 this late stage. We are concerning only your claim  
5 against the present defendant, not Mr Chan.

6 So the intention to add a 2nd defendant is neither  
7 here nor there for the present purpose. Do you  
8 understand? (經傳譯員：但是看不到這樣東西與本聆訊有任何的關係。首先，  
9 因為我們現在不是講證供和證據，現在是講你的訴因；第二，我們在這個時候，  
10 首先是要假定你講的是正確的，但是這樣東西根本因為對方，被告方都說沒有證  
11 據顯示陳先生那個。

12 在這個階段，其實被告方首先需要假設你講的是正確的先，但是即使假設你  
13 講的是正確，他們仍然個說法就是說你是沒有一個合理的訴因，所以究竟現在你  
14 是否掌握了證據的，都不是很重要的。

15 第二，你就說想加入陳先生作為第二被告，這一方面就是你針對陳先生的指  
16 控，在現階段這個訴訟是沒有關係的，因為現階段所處理的是你針對在本訴訟裏  
17 面的被告人，就是證監會。所以如果你想增加第二被告在這個訴訟裏面，在目前  
18 來說是無關重要的。明白嗎？

19 MR KOO: 明白，法官。但是說回來，我本人為什麼要提出本次的訴訟，針對這個被  
20 告人，就是因為我們發覺到在被告人他的職責範圍內，他完全是失職，所以因為  
21 這樣讓我有所損失，我的論據中提到我是有損失的，不是沒有損失的。(經傳譯  
22 員：Yes, understood. Talking back about the reason why I brought  
23 the action against the present defendant, it is said they

1 committed serious neglect of duties, and as such, I suffered  
2 loss in the course.)

3 MASTER LO: That is something you can address me later on,  
4 but your proposed amendment would not affect the present  
5 proceedings, so I'm not prepared to allow you to have  
6 the amendments first. (經傳譯員：這個可以遲一點陳詞時再講，但是關  
7 於你提出的修訂，那和現階段處理的這些事情是無關的，所以首先不會讓你修訂  
8 的。)

9 MR KOO: 在我的論點和綱要中會詳細的解釋，或者可以讓法官大人更加明白，但是  
10 怎樣都好，我都會聽法官講的。(經傳譯員：I would give a detailed  
11 explanation in my skeleton submissions, but anyway, of course  
12 I would defer to master's decision.)

13 MASTER LO: Very well.

14 Mr Beresford, you can continue.

15 MR BERESFORD: Thank you, Master. Picking up the statement  
16 of claim at paragraph 4:

17 "4. A Chan Chi Mong Hopkins ('Mr Chan') has been  
18 appointed by the board of directors of Pacific Online  
19 Limited. The 1st set of positions are non-executive  
20 independent director, member of audit committee and  
21 remuneration committee. Pacific Online Limited is a  
22 company listed on the Hong Kong Stock Exchange with  
23 Stock Code 543.

24 5. Mr Chan has been appointed by the board of  
25 directors of Talent Property Group Limited to take up

1 several positions ('the 2nd set of positions') in Talent  
2 Property Group Limited. The 2nd set of positions are  
3 independent non-executive director, chairman of  
4 remuneration committee, member of audit committee and  
5 member of nomination committee. Talent Property Group  
6 Limited is a company listed on the Hong Kong Stock  
7 Exchange with stock code 760.

8 6. Mr Chan has on some time prior to 30th October  
9 2011 furnished information and/or declaration and/or  
10 statement to the Hong Kong Christian Council and/or  
11 members of the public who have been baptised or  
12 Christians who have become congregation members of the  
13 church as a candidate for electors for Christian  
14 (Protestant) sub-sector of election committee of HKSAR  
15 for the year 2011 pursuant to Chief Executive Election  
16 Ordinance (Cap 569) ... In the Candidate Form, Mr Chan  
17 represented to the Hong Kong Christian Council under the  
18 "Education" column that he has 'PhD, MBA, BSc'.

19 7. Mr Chan has claimed on a number of occasions  
20 that his PhD was obtained in 2007 from a university  
21 called European University of Ireland.

22 8. In an article dated 25th February 2000 with the  
23 title 'European University Investigation', the Times  
24 Higher Education reported that:

25 'Ireland's education ministry is investigating an  
26 operation calling itself the European University of

1 Ireland that is operating from a Dublin accommodation  
2 address without official sanction. The EUI has  
3 advertised for post-graduate students both in the United  
4 Kingdom and internationally but has never applied for  
5 the Irish ministerial approval required by any  
6 institution describing itself as a 'university'.

7 The link of the article is at ..."

8 And then a web address is given.

9 "In another news article of Apple Daily dated 26 Feb  
10 2004 published in Hong Kong, further evidence was  
11 revealed casting serious doubt on the status of European  
12 University of Ireland and its ability to grant academic  
13 degrees.

14 10. Another article published by the Irish  
15 Independent on 14th November 2005 bearing the title  
16 'Exposed: scandal of the bogus degrees' stated that:

17 Three bogus Irish 'universities' are selling  
18 worthless degrees and are seriously damaging the image  
19 of our education system, the Irish Independent can  
20 reveal.

21 The degrees are not recognized by either the Irish  
22 or British governments.

23 Every year students in Malaysia, India, China, Sri  
24 Lanka, Africa and elsewhere are paying substantial fees  
25 for 'Mickey Mouse' courses and degrees which are not  
26 worth the paper they are written on.

1           And they are doing enormous damage to Ireland's  
2           educational reputation.

3           The damage being done to the system was confirmed by  
4           Education International. This is the body charged with  
5           promoting Irish education abroad ...

6           The three bogus universities, which are registered  
7           as businesses in this country, are:

8           Dublin Metropolitan University.

9           Irish International Universities of Europa.

10          The European University of Ireland ...

11          The address for the third bogus institution, the  
12          European University of Ireland is 41 Lower Dominick  
13          Street, Dublin.

14          Its directors are Dr Sivale Arul Vale, 253 Mourn  
15          Road Dublin and Nageshwary Devi Rajartnam from 161  
16          Worple Road, Wimbledon, London ...

17          The department has asked them to drop the name  
18          university.

19          The link of the article is at ..."

20          And then a web address is given.

21          "11. Another report bearing the title 'Concern over  
22          unlicensed Dublin "university"' published by the Irish  
23          Times on 4th September 2011 stated that:

24          The Higher Education Authority has expressed concern  
25          about the operation of an unlicensed 'university' with  
26          an address in Dublin city centre.

1           The European University of Ireland claims to operate  
2           from Dominick Street, Dublin 1, but has no office at the  
3           premises, which is occupied by a legitimate private  
4           college.

5           The Department of Education has also attempted to  
6           prevent its operation, but has so far been unsuccessful  
7           ...

8           It is not accredited by any recognized body in  
9           Ireland, but this is marketed as a money-saving  
10          advantage for prospective students ...

11          The company operated a post office box office box  
12          address until 2009 from Dominick Street, but the service  
13          ceased when it failed to pay its bills. Past students  
14          still try to make contact through the PO box in search  
15          of promised accreditations and references ...

16          The link of the article is at ..."

17          And then a web address is given.

18          "12. By an email dated 30th August 2016 from the  
19          Minister of Education and Skill of the Government of  
20          Ireland, it was confirmed that European University of  
21          Ireland 'was not recognised by the Irish Government, had  
22          no degree awarding authority under Irish law and its  
23          awards are not on the Irish National Framework of  
24          Qualifications'.

25          13. Mr Chan has therefore made a false declaration  
26          of his academic qualification to the public.

1           14. In the circumstances, Mr Chan cannot be a fit  
2           and proper person to be appointed to take up the 1st set  
3           of positions and the 2st set of positions. The  
4           defendant is empowered under the Securities and Futures  
5           Ordinance to conduct investigation into the appointment  
6           of Mr Chan to the 1st set of positions and the 2nd set  
7           of positions.

8           15. By an email dated 9th December 2015, the  
9           plaintiff sent an email to the defendant to bring to its  
10          notice of the background of Mr Chan but the defendant  
11          has declined to take any action.

12          16. And the plaintiff claims against the defendant  
13          for:

14               (a) an investigation be conducted into the  
15               appointment of Mr Chan as non-executive independent  
16               director as well as the member of the audit committee  
17               and remuneration committee of Pacific Online Limited;

18               (b) an investigation be conducted into the  
19               appointment of Mr Chan as independent non-executive  
20               director, chairman of remuneration committee, member of  
21               audit committee and member of nomination committee of  
22               Talent Property Group Limited;

23               (c) the defendant do carry out its duties and  
24               responsibilities under the said ordinance to conduct the  
25               necessary investigation to ascertain that the said Chan  
26               Chi Mong does not hold a valid or authentic doctoral

1 degree and he in fact made a false declaration of his  
2 academic qualifications to the public; and

3 (d) costs.

4 Dated this 7th day of October 2016."

5 Signed by Mr Koo, plaintiff acting in person.

6 So, Master, in summary, we say that that statement  
7 of claim discloses no reasonable cause of action in  
8 terms of an infringement of any individual right, and  
9 there's no claim for damages in the statement of claim.  
10 We say that it's frivolous or vexatious partly because  
11 it discloses no sufficient interest on the part of the  
12 plaintiff to sue, and partly because of the immunity  
13 confirmed by section 380 of the Securities and Futures  
14 Ordinance, and most importantly we say that this claim  
15 breaches the exclusivity principle whereby public law  
16 claim must be brought by way of application for judicial  
17 review.

18 Primarily, we say that the main claim in this  
19 statement of claim is in the nature of a claim for  
20 mandamus, but even if it can somehow be construed as  
21 some other kind of claim which is not mandamus, it is  
22 nevertheless -- and is within section 21K(2) of the High  
23 Court Ordinance, it's nevertheless an abuse of the  
24 process of the court to bring this application by way of  
25 ordinary writ action and not by way of application for  
26 judicial review, and for that we rely upon the series of

1 decisions beginning with O'Reilly v Mackman and the  
2 other decisions that I set out in my skeleton.

3 Had the plaintiff applied by way of judicial review  
4 in October 2016, he would have faced an immediate  
5 problem with the question of delay because he would have  
6 been out of time. An application for judicial review,  
7 as you know, Master, must be brought within three  
8 months, and his writ was issued 291 days, or nine months  
9 and 16 days, after the decision complained of.

10 We say that the plaintiff should not be able to  
11 avoid the delay rule by the simple expedient of  
12 commencing an action by way of writ, and it's for that  
13 reason that the writ action is an abuse of the process  
14 of the court. He should not be allowed to circumvent  
15 any safeguards in order 53.

16 Master, I've filed a skeleton argument. Have you  
17 had an opportunity --

18 MASTER LO: Yes, I have.

19 MR BERESFORD: I'm grateful, Master. Paragraphs 1 to 4 are  
20 introductory in nature. In paragraph 5 I have  
21 summarised the allegations made in the statement of  
22 claim. I don't believe that that is contentious. As  
23 you, Master, observed earlier, it must be assumed for  
24 the purposes of this application that the plaintiff will  
25 be able to substantiate the factual allegations made in  
26 the statement of claim. I fully accept that.

1           There have been two affirmations filed. In support  
2           of the application to strike out, there's an affirmation  
3           of Mr Lee of the SFC. Of course no evidence is  
4           admissible on the application insofar such as it is made  
5           under rule 19(1)(a), disclosing no reasonable cause of  
6           action, but evidence is admissible under the other  
7           provisions, frivolous and vexatious and abuse of the  
8           process. And Mr Lee's affirmation merely places  
9           background facts before the court. He explains how the  
10          email referred to in paragraph 15 of the statement of  
11          claim was -- was received and addressed, and in short  
12          the defendant's external relations department took the  
13          view that the email related to Mr Chan's role as  
14          a school supervisor, and so was not within the remit of  
15          the defendant.

16          Perhaps it would be helpful just to turn to the  
17          exhibits to that affirmation, which are contained in  
18          bundle B. And behind tab 1 we have the original email  
19          which is partly in Chinese, running from pages 1 to 10,  
20          and from 11 to 28 there's the English translation.

21          First of all, there's an email at page 2 of the  
22          bundle, translation at page 11, dated 9 December 2015.  
23          The destination appears to be two SFC addresses plus  
24          a number of cc addresses, and the author appears to be  
25          one Joyce Wong, for and on behalf of Mr MK Koo, legal  
26          assistant, Nam Tai Holdings. And as for the content of

1 the email, the subject is "Query on false academic  
2 qualification", but the text simply says:

3 "Dear all,  
4 Please see email below and the attachments.  
5 Kind regards ..."

6 The next email starting on the same page is dated  
7 7 December 2015, two days earlier, and its destination  
8 is Chan Chi Mong Hopkins, the school supervisor with cc  
9 addresses, which are mostly Pui Ching addresses, and  
10 also, Master, you can see a cc list, a distribution list  
11 at the end of the email, which includes the Securities  
12 and Futures Commission and the Stock Exchange at item 7,  
13 but not any of the companies mentioned in the statement  
14 of claim.

15 And the author in the "From" field of the email is  
16 Joyce again, but the signature appears to be the  
17 plaintiff. Page 15 of the translation, which would be  
18 page 4 in the Chinese.

19 And the plaintiff signs it in his capacity as Life  
20 Honorary Chairman of Pui Ching Alumni Association,  
21 Former Honorary Manager of Pui Ching Middle School and  
22 Pui Ching Primary School. And the content refers to  
23 a newspaper report of a Baptist convention statement to  
24 the effect that Mr Chan had given proof of his doctoral  
25 degree without giving any particulars, and it says  
26 Mr Chan should have explained the detail to various

1 classes of people. It complains about the disruption of  
2 distribution of leaflets that had been printed by the  
3 plaintiff that occurred outside Pui Ching Primary  
4 School, and asked if Mr Chan is willing to better the  
5 plaintiff's reward of \$1 million for information leading  
6 to the conviction of what he describes as the "rioters".

7 And the closing paragraph requests information about  
8 the doctoral degree to enable the plaintiff to check it  
9 so that Mr Chan can continue to be the school supervisor  
10 of the two Pui Ching schools specified.

11 Then there's a press release, the translation of  
12 which begins at page 16, and the Chinese of which  
13 I think is at page 5. It's dated 2 December 2015. The  
14 author appears to be the plaintiff, described as  
15 "Alumnus of Pui Ching", and it has two parts. The first  
16 part is headed "Against violent robbing and throttling  
17 of freedom of speech" and the second part is headed  
18 "Against gaining public confidence fraudulently with  
19 false doctoral degree".

20 Then at page 7 in the Chinese and 20 to 22 in the  
21 English translation, there's what appears to be the  
22 flyer or leaflet that had been referred to in the  
23 previous documents. And this is an undated document.  
24 If this is the leaflet referred to in the press release,  
25 the author would appear to be the plaintiff. And it's  
26 headed "School Supervisor of Pui Ching. Pillar of

1 Society. Doubts about the falsified doctoral degree".  
2 It lists what appear to be Mr Chan's roles in various  
3 sectors, including for the first time in the commercial  
4 sector, independent non-executive director of  
5 Pacific Online Ltd, and independent non-executive  
6 director of Talent Property Group Ltd, plus director of  
7 two other companies. So that's the first hint we get of  
8 any reference to those companies, Master.

9 Then at pages 23 to 24 in the translation, the next  
10 document in the Chinese, we have an article from Sing  
11 Tao newspaper which reports on these events, and also  
12 discloses that the plaintiff had donated \$20 million to  
13 Pui Ching Primary School for the construction of a new  
14 building, being dissatisfied with -- this is at  
15 page 24 -- he's initiated court proceedings to recover  
16 the donations.

17 And then there are two further newspaper articles  
18 from Hong Kong Commercial Daily and Ta Kung Pao.  
19 Perhaps they don't add anything to what we've seen  
20 already.

21 Master, the defendant's response is behind the next  
22 tab, and the translation into English commences at the  
23 bottom of page 32:

24 "(Dear) Ms Wong,

25 I refer to your email enquiry on 9 December 2015.

26 The Securities and Futures Commission is a regulator

1 responsible for regulating the securities, futures and  
2 non-bank leveraged foreign exchange markets in  
3 Hong Kong.

4 The matter mentioned in your email is not within the  
5 SFC's remit, and we are unable to provide any  
6 information and advice."

7 So that is the decision that the plaintiff is  
8 complaining of, and I pause to note that it is not  
9 a decision of Commission not to investigate. There's no  
10 question of an investigation under section 179 of the  
11 Securities and Futures Ordinance, for example. Or  
12 Mr Koo mentioned section 214 in his skeleton argument.  
13 There's no suggestion of a decision there. It's simply  
14 a decision that the matter complained of -- it wasn't  
15 even really a complaint, but the matter raised in the  
16 email is not within the remit of the Securities and  
17 Futures Commission.

18 The plaintiff also filed an affirmation, but  
19 paragraphs 3 to 15 of the plaintiff's affirmation  
20 substantially repeat paragraphs 1 to 4 and 4 to 14 of  
21 the statement of claim, and simply produced copies of  
22 the documents referred to as exhibits. He produces the  
23 candidate form referred to, the article from the  
24 newspapers referred to, the email from the minister in  
25 Ireland, and another copy of the email from the  
26 plaintiff to the defendant, which we've just seen.

1           In short, the plaintiff disagrees with the  
2           defendant's view taken, that is that the complaint, as  
3           he terms it, is not within the remit of the defendant.

4           Master, the plaintiff has issued a number of other  
5           writs seeking to raise the issue of Mr Chan's  
6           educational qualifications, and there are copies at  
7           LCL-3. It's perhaps unnecessary to look at those in any  
8           detail. It's at tab 3 of bundle B if you're interested.  
9           Master, you'll see in particular the first one is  
10          against Pacific Online Ltd, and we have a judgment in  
11          that case. At page 44 there's a writ against Eddie Ng  
12          Hak Kim, who is the Secretary of Education.

13          At page 52 there's a writ against the company Talent  
14          Property Group Ltd. At page 60 there's a writ against  
15          the chief executive, or the chief executive elect as she  
16          was at that time. Page 68, there's a writ against the  
17          Reverend Mr Mok Kong Ting, president of the Hong Kong  
18          Baptist Convention. And they all raise the issue of  
19          Mr Chan's qualification.

20          The first of these has already been struck out for  
21          failure to disclose a reasonable cause of action, and  
22          the judgment can be found in my bundle of authorities at  
23          tab 1 in the case of Koo Ming Kown v Pacific Online Ltd.  
24          I should mention, Master, there's an appeal pending  
25          against this decision which is due to be heard on the  
26          27th of this month. We don't know anything about this,

1           that's just the information that's available from the  
2           public record of the judiciary.

3           Master, the learned registrar sets out at  
4           paragraph 9 in summary the relevant legal principles for  
5           striking out, and they are succinct. He quotes more or  
6           less the same quote that I had taken in my skeleton from  
7           Ha Francesca v Tsai Kut Kan in paragraph 9(a). He  
8           refers to a decision of Mr Justice of Appeal Fok in  
9           New China Hong Kong Group, confirming that those  
10          principles continue to apply even after the  
11          implementation of the civil justice reform.

12          And in (c) he refers to a case of Patriarch Partners  
13          v Wong Siu Wa Sammy for the principle that if  
14          a defective statement of claim is to be amended to  
15          salvage a deficiency, then the amended statement of  
16          claim should not be struck out and the claim dismissed,  
17          but the plaintiff should produce a draft or proposed  
18          reamendment of the statement of claim to the judge at  
19          the time of the hearing. And in that case there was no  
20          draft amendment statement of claim from the plaintiff  
21          for the court's consideration.

22          In paragraph 16 he says:

23                 "As [the plaintiff] has not put forth any draft  
24                 amended statement of claim, I have nothing consider.  
25                 But I simply cannot see any possibility of improving the  
26                 existing statement of claim to save the existing one."

1           So he struck it out.

2           Master, I'm instructed that the judiciary records  
3           indicate that all of the other actions I mentioned in  
4           LCL-3 are also the subject of pending applications to  
5           strike them out. In the Pacific Online case, you will  
6           see that the plaintiff sought an order that the company  
7           terminate the appointment of Mr Chan as an independent  
8           non-executive director and member of the audit and  
9           remuneration committee, but the plaintiff held no shares  
10          in that company, had no business dealings with it, had  
11          no relationship with the defendant, even in tort, and  
12          had suffered no damage as a result of the facts alleged.  
13          The only claim that the plaintiff made was a similar one  
14          to the one made in the present case, that he was  
15          a prospective investor.

16          Master, returning to the present action, and  
17          paragraph 9 of my skeleton argument, I've noted that on  
18          1 February the plaintiff issued a summons for non-party  
19          discovery from Mr Chan, not notwithstanding the stay of  
20          these proceedings that I referred you to earlier, and  
21          notwithstanding it appears that the discovery had  
22          already been given to the plaintiff.

23          Then on 24 March 2017, the plaintiff's solicitors,  
24          he was represented at that time, informed the defendant  
25          of the plaintiff's intention to act in person, and of  
26          an application to engage a realtime transcription

1 service company at the plaintiff's own cost, and  
2 asserted under threat of an application for costs that  
3 the defendant had not instruct(?) counsel.

4 Master, the law I've already touched upon in the  
5 Pacific Online case, and I have set out the quote from  
6 Ha Francesca v Tsai Kut Kan in my skeleton argument at  
7 paragraph 12.

8 In paragraph 13 of my skeleton I've noted that no  
9 evidence is admissible on the application to strike out  
10 on the ground that the statement of claim discloses no  
11 reasonable cause of action.

12 At 14, a reasonable cause of action means a cause of  
13 action with some chance of success when only the  
14 allegations in the statement of claim are considered.

15 At 15, cases which on the evidence are clearly  
16 unsustainable fall within the category of frivolous and  
17 vexatious, and that a writ action exclusively asserting  
18 a public law claim is contrary to the public policy,  
19 underlying order 53 since its introduction in 1979.

20 Master, the Ordinance is particularly clear in  
21 relation to applications for prerogative relief. If  
22 I can just refer you, Master, to section 21K, which is  
23 at tab 16 of my authorities, which provides:

24 "(1) An application to the Court of First Instance  
25 for one or more of the following forms of relief-

26 (a), an order of mandamus ..."

1 Which is the relevant form in the present case.

2 "... shall be made in accordance with rules of court  
3 by a procedure to be known as an application for  
4 judicial review."

5 And then he goes on in (2) to say:

6 "An application for a declaration or an injunction  
7 (not being an injunction in subsection (1)) may be made  
8 in accordance with rules of court by way of an  
9 application for judicial review, and on such  
10 an application the Court of First Instance may grant the  
11 declaration or injunction claimed if it considers that,  
12 having regard to-

13 (a) the nature of the matters in respect of which  
14 relief may be granted by order of mandamus, prohibition  
15 certiorari;

16 (b) the nature of the persons and bodies against  
17 whom relief may be granted by such orders; and

18 (c) all the circumstances of the case, it would be  
19 just and convenient for the declaration to be made or  
20 the injunction to be granted, as the case may be."

21 So you see, Master, we have in subsections (1) and  
22 (2) two classes of claim, the first being the claims for  
23 prerogative relief, including an order for mandamus,  
24 together with injunctions restraining people from acting  
25 in an office to which that section applies, and the  
26 other being applications for a declaration for an

1 injunction, not being an injunction mentioned in  
2 subsection (1).

3 It's my case that the plaintiff's application for  
4 an order that the defendant carry out an investigation  
5 is in effect an application for mandamus. It's  
6 a mandatory order against a public body in a case where  
7 no equitable principles justifying an application for  
8 injunction are relied upon. And so it falls fairly and  
9 squarely within subsection (1), which makes it plain  
10 that the proceedings must be brought exclusively for  
11 an application for judicial review.

12 But even if I'm wrong about that, Master, even if  
13 you can somehow construe the plaintiff's application as  
14 an application within subsection (2), then nevertheless  
15 it is still an abuse of the process of the court on the  
16 authority of O'Reilly v Mackman to bring the application  
17 by anything other than an application for judicial  
18 review where the application is solely concerned with  
19 public law matters, as in the present case.

20 Master, I've set out the authorities that support  
21 those propositions in my skeleton argument.  
22 Section 21K(1) is, in my submission, clear that --  
23 perhaps it would help if I referred you, Master, to the  
24 authorities set out in paragraph 32 of my skeleton, the  
25 first being an extract from Wade on Administrative Law  
26 at tab 11 where he describes the mandatory order as it

1 is now known in England:

2 "The prerogative remedy of a mandatory order has  
3 long provided the normal means of enforcing  
4 the performance of public duties by public authorities  
5 of all kinds ... (reading to the words)... The  
6 prerogative remedies thus together cover the field of  
7 governmental powers and duties."

8 And if I can pass over the next paragraph which  
9 deals with the history, deals with historical matters:

10 "The essence of a mandatory order is that it is  
11 a royal command, issued in the name of the Crown from  
12 the Court of King's Bench (now the Queen's Bench  
13 Division of the High Court) ... (reading to the  
14 words) ... A mandatory order is a common law remedy,  
15 based on royal authority, which is used only in public  
16 law."

17 Turning to the next authority on the list at tab 12,  
18 the case of *Glossop v Heston and Isleworth Local Board*.  
19 Just reading from the headnote:

20 "A local board, under the Public Health Act, 1875,  
21 causing a nuisance by any act which, independently of  
22 the statute ... (reading to the words) ... the 25th  
23 section of the Judicature Act, 1873, ought not to be  
24 exercised except by the Queen's Bench Division."

25 There's a bit of history involved here because of  
26 course in England this was a prerogative writ so it

1           could only be issued by the Queen's Bench Division, but  
2           it's analogous, in my submission, to the present  
3           situation in Hong Kong where an order of mandamus can  
4           only be made in judicial review proceedings. And what  
5           this case shows, Master, is that the court will not  
6           order a mandatory injunction where what in truth is  
7           claimed is an order of mandamus.

8           If I can just pick up the judgment at page 109 in  
9           the judgment of Lord Justice James where he says in the  
10          second sentence:

11          "It is quite manifest, from the form of the claim  
12          and the evidence, that the action was not based upon any  
13          act whatever done by the Defendants. It is based  
14          entirely upon their alleged neglect to perform the  
15          parliamentary duty cast upon them as the sanitary  
16          authority of a particular district."

17          So it was a case of omission rather than an act that  
18          was complained of.

19          And let's pick up again at the bottom of page 114:

20          "Therefore, it appears to me that they were not  
21          guilty of neglect; but if they had been guilty of any  
22          refusal ... (reading to the words) ... the court might  
23          grant it if it could see that something the public body  
24          ought to do was neglected to be done."

25          So they refused to grant an injunction. Perhaps  
26          it's unnecessary for me to go on to the other judgments

1 in that case.

2 Master, the next case at tab 13, Attorney General v  
3 Clerckenwell Vestry, was a similar case where an  
4 injunction was sought compelling the performance of  
5 public duties. And it can be seen from the headnote at  
6 (d) on page 528 that:

7 "On the authority of Glossop [the case we've just  
8 looked at] ... that it was not ground for an injunction  
9 that the C Vestry were not exercising or performing  
10 their other statutory duties or powers ..."

11 There's a more modern instance at tab 14 in the case  
12 of Davy v Spelthorne Borough Council. This case went to  
13 the House of Lords. I've given you the reference in my  
14 skeleton argument, but that was on different points.  
15 The point which I rely on in this case was not the  
16 subject of appeal. At paragraphs 13 and 14, perhaps  
17 I can go straight to it:

18 "The claims for relief must be considered  
19 separately. Claim 3 simply seeks an order setting aside  
20 the enforcement notice. This is an order which is  
21 clearly within the ambit of order 53 rule 1(a) ...  
22 (reading to the words) ... is entitled to claim the  
23 protection provisions available to it upon an  
24 application for judicial review."

25 And then he goes on to deal with a claim for damages  
26 for negligence which is not applicable in the present

1 case.

2 So, Master, I rely upon those authorities for the  
3 proposition that you look at the substance of the case  
4 rather than the (unclear) application for mandamus. And  
5 as such, an ordinary action is prohibited by section 21K  
6 of the High Court Ordinance.

7 Master, in the alternative, I say that even if,  
8 contrary to the defendant's primary contention, the  
9 present case can somehow be construed as  
10 a section 21K(2) case, in other words, treat the claim  
11 for relief as a claim for a declaration or  
12 an injunction, nevertheless, it is -- there's no  
13 question of overlap, it's a purely public law claim.  
14 There's no question of overlap with private law claim.  
15 And so this case does not fall within any exception to  
16 the general rule in O'Reilly v Mackman.

17 The case of O'Reilly v Mackman is at tab 3 of my  
18 list of authorities. In this case, four prisoners  
19 sought declarations that the prison visitors'  
20 adjudications against them were void, and they commenced  
21 proceedings by way of ordinary action. The defendants  
22 applied to strike out the statement of claim for  
23 originating summons in one case on the ground that to  
24 bring these proceedings by a writ or (unclear) summons  
25 instead of applying under order 53 for judicial review,  
26 was an abuse of process. And you can see from the

1 holding at page 238 that in the House of Lords:

2 "... dismissing the appeals [from the striking out]  
3 that since all the remedies for the infringement of  
4 rights protected by public law could be obtained on an  
5 application for judicial review ... (reading to the  
6 words) ... it would be an abuse of the process of the  
7 court to allow the actions to proceed and thereby avoid  
8 the protection afforded to statutory tribunals."

9 The speech of Lord Diplock, with which all the other  
10 members of the House agreed, commences at page 273. And  
11 as he points out at the bottom of 274 H:

12 "All that is at issue in the instant appeal is the  
13 procedure by which such relief ought to be sought. ...  
14 (reading to the words) ... instead of using the  
15 procedure laid down by order 53 for an application for  
16 judicial review."

17 On page 275, just below D in the last sentence of  
18 that paragraph he points out:

19 "None of the appellants had any remedy in private  
20 law."

21 Then at pages 281 to 282, Lord Diplock explained how  
22 prior to the reforms of 1977 in England, that would be  
23 1979 for Hong Kong, the courts had permitted plaintiffs  
24 to avoid the safeguards imposed under order 53 in order  
25 to avoid certain disadvantages associated with the old  
26 procedure. Before 1977, you couldn't get discovery and

1           there was a general refusal to order cross-examination.  
2           Lord Diplock points out that all those disadvantages had  
3           been removed by the new order 53 that had been  
4           introduced in 1977, which I insert parenthetically, was  
5           followed in Hong Kong in 1979.

6           And that's also apparent from the judgment at  
7           page 284, letters C to E:

8           "My lords, at the outset of this speech I drew  
9           attention to the fact that the remedy by way of  
10          declaration of nullity of the decisions of the board was  
11          discretionary ... (reading to the words) ... but, it was  
12          contended, this he may only do at the conclusion of the  
13          trial."

14          And this is important, the next sentence, Master:

15          "So to delay the judge's decision as to how to  
16          exercise his discretion would defeat the public policy  
17          that underlies the grant of those protections. ...  
18          (reading to the words) ... the whole purpose of the  
19          public policy to which the change in order 53 was  
20          directed would be defeated."

21          And he goes on:

22          "My Lords, order 53 does not expressly provide that  
23          procedure by application for judicial review shall be  
24          the exclusive procedure available ... (reading to the  
25          words) ... nor does section 31 of the Supreme Court Act  
26          1981."

1           Master, parenthetically I pause to note that our  
2           equivalent is article section 21K, which we have already  
3           looked at.

4           "There is great variation between individual cases  
5           that fall within order 53 in the rules committee  
6           and subsequently the legislature ... (reading to the  
7           words) ... originating summons a remedy against  
8           infringement of rights of the individual that are  
9           entitled to protection in public law."

10          Then perhaps I can pass over the next paragraph and  
11          take it up at D where he sets out the general rule,  
12          Master:

13          "Now that those disadvantages to applicants have  
14          been removed and all remedies for infringement of rights  
15          protected by public law can be obtained ... (reading to  
16          the words) ... in my view at this stage, in the  
17          development of procedural public law, be left to be  
18          decided on a case-by-case basis."

19          Master, that's the rule in O'Reilly v Mackman. It  
20          proved to be quite controversial. There were a number  
21          of cases in which the exceptions alluded to by Lord  
22          Diplock were explored, and perhaps one of the most  
23          notable cases is the next one in my list of authorities  
24          at tab 4, Roy v Kensington and Chelsea and Westminster  
25          Family Practitioner Committee. In broad outline, the  
26          courts established that where private law rights were

1 engaged, then the absolute prohibition in O'Reilly v  
2 Mackman would not apply. So if you have a claim in  
3 damages, for example, or for restitution but there's  
4 some public law question involved, then you can start  
5 that by writ and you won't be barred by the principle in  
6 O'Reilly v Mackman.

7 But where you only have a public law claim, then the  
8 principle in -- the general rule in O'Reilly v Mackman  
9 applies with full vigor. That is apparent from the  
10 speech of Lord Bridge in Roy at page 628 where he says  
11 just above letter G:

12 "The decisions of this house in O'Reilly v  
13 Mackman and Cocks v Thanet District Council ... (reading  
14 to the words) ... any more than it can prevent him from  
15 setting up his private law right in proceedings brought  
16 against him."

17 Master, I just mention that out of fairness because  
18 I say that none of those exceptions apply.

19 The next case at tab 5, Lau Wong Fat v Attorney  
20 General, a decision of the Hong Kong Court of Appeal in  
21 which O'Reilly v Mackman was applied, I should say,  
22 obiter, and you can see in the judgment of Mr Justice of  
23 Appeal Godfrey at page 536, just above B, last sentence:

24 "As it seems to me, the argument that this instance  
25 of discrimination against women must be perpetuated in  
26 order to maintain the fundamental human rights and

1 freedoms which the BORO is designed to protect is wholly  
2 untenable."

3 That was the main ground of the decision, but he  
4 says:

5 "Since the plaintiff's case is untenable, it follows  
6 that we must affirm the judge's decision to strike out  
7 the writ and statement of claim in this action ...  
8 (reading to the words) ... proceed by way of a judicial  
9 review and not by way of an ordinary action, whether for  
10 a declaration or an injunction or otherwise."

11 And then he goes on to refer to O'Reilly v Mackman.  
12 While we're here, I should also refer to the judgment of  
13 the vice president Mr Justice Litton at page 537, letter  
14 H, where he says:

15 "In whatever way the plaintiff's grievance is  
16 dressed up in the statement of claim, there is no  
17 averment of violation of a private right for which  
18 relief might be claimed ... (reading to the words) ...  
19 I agree with the reasons in Mr Justice Godfrey's  
20 judgment."

21 So just pausing there, I cite this case therefore  
22 for two propositions, one being that reflected in the  
23 judgment of Mr Justice Godfrey, the obiter following of  
24 O'Reilly v Mackman in Hong Kong; but secondly, in  
25 relation to the no reasonable cause of action point, the  
26 judgment of Mr Justice Litton, citing Gouriet, which

1 perhaps put some flesh on the bones of what is meant by  
2 "no reasonable cause of action".

3 Master, to bring matters up to date, the case of  
4 Trim v North Dorset District Council at tab 6 confirms  
5 its English Court of Appeal authority that:

6 "Purely public acts should be challenged exclusively  
7 by judicial review, it being in the public interest ...  
8 (reading to the words) ... the legality of the formal  
9 acts of a public authority should be established without  
10 delay."

11 And that comes from paragraph 23 of the judgment of  
12 Lord Justice Carnwath.

13 Then finally on this point of O'Reilly v Mackman,  
14 the line of authorities, is the case of Wong Fuk Tim v  
15 HKSAR at tab 7, the hearing of Mr Justice Lam. In this  
16 case a plaintiff made public law challenges to  
17 proceedings begun by writ. At paragraphs 7 to 10 --  
18 perhaps I can start at 6:

19 "The matters relied upon by the plaintiff in his  
20 statement of claim are patently public law  
21 challenges ... (reading to the words) ... If a challenge  
22 is advanced later than three months from the date of the  
23 decision ...

24 And there's a missing line, it appears.

25 "... an application needs to be made and  
26 an applicant needs to seek an extension of time. ...

1 (reading to the words) ... Nor should third parties  
2 affected by their decisions face such uncertainty'."

3 And then he cites Chief Judge of the High Court Ma  
4 as he was in paragraph 8 to the same effect.

5 Paragraph 9:

6 "Though there are exceptions as recognised by his  
7 Lordship ... the general rule was stated as follows ...

8 'As a general rule, where the subject matter of an  
9 action involves public law, judicial review proceedings  
10 should be the norm.'"

11 Then he cites O'Reilly v Mackman.

12 Paragraph 11:

13 "The present case does not fall within any  
14 established category of exceptions to this general rule  
15 (and the plaintiff did not argue that it does)."

16 And then in paragraph 12 he notes a shift in  
17 approach in England since the implementation of the CPR,  
18 but explains that it doesn't apply in Hong Kong, because  
19 in England, part of the CPR was that they would allow  
20 the court, either on its own motion or on the  
21 application of either party, to seek summary judgment  
22 for the dismissal for the claim. But although that was  
23 considered by the working party on civil justice reform  
24 here, it was finally decided we shouldn't adopt it. So  
25 therefore, the learned judge concludes:

26 "... the filtering process for public law litigation

1 date mandated by order 53 continues to serve as an  
2 important safeguard in furtherance of the public  
3 interest in good public administration ... (reading to  
4 the words) ... The delay factor has some importance in  
5 the present case."

6 As indeed, Master, it has in the present case.

7 In summary, Master, on the abuse of process point,  
8 I submit that the plaintiff's claim is in substance in  
9 the nature of a claim for mandamus to compel the  
10 exercise of an alleged power to investigate, and as  
11 such, an ordinary action is barred by section 21K(1),  
12 but even if I'm wrong about that and it's an action  
13 under section 21 or within section 21K(2) where the  
14 court which provides only that judicial review may be  
15 used, nevertheless, given the principles in O'Reilly v  
16 Mackman as they have been applied by the courts both  
17 here and in England, it is an abuse of the process to  
18 have brought those proceedings by judicial review.

19 Mr Justice Lam mentioned the topic of delay at the  
20 end of the passage I cited in Wong Fuk Tim, and the key  
21 case on that is AW v Director of Immigration which is at  
22 tab 15, and the legal principles are set out at  
23 paragraphs 23 to 27.

24 This concerned an application for leave for judicial  
25 review which was made more than six months out of time,  
26 and so the Court of Appeal was considering the legal

1 principles concerning an extension of time. This is in  
2 the judgment of Madam Justice of Appeal Kwan at  
3 paragraph 23 where she says:

4 "There are two relevant statutory provisions: O 53  
5 r 4(1) and s 21K(6) of the High Court Ordinance ...  
6 (reading to the words) ... or substantially prejudice  
7 the rights of, any person or would be detrimental to  
8 good administration."

9 And then it refers to the case of Thomas Lai in  
10 which Mr Justice Godfrey Lam considered the relevant  
11 authorities and stated the principles, and it summarises  
12 those principles:

13 "While in a public law field, it is essential that  
14 the courts should scrutinise with care any delay in  
15 making an application ... (reading to the words) ...  
16 Questions of general public importance."

17 Also addressing each of those factors in turn, this  
18 is not a technical application with a time limit because  
19 there is no suggestion in Mr Koo's affirmation that he  
20 has behaved sensibly and reasonably in waiting so long  
21 to issue the writ. On the other hand, it's obvious in  
22 my submission that the delay is detrimental to good  
23 administration.

24 It has to be borne in mind that a disciplined  
25 approach has to be taken to applications for judicial  
26 review out of time. In the present case, the factors

1 relevant to the question of whether time would be  
2 extended all speak against it. It is the length of the  
3 delay, nine months and 16 days. Explanation for delay,  
4 there's no explanation. Prejudice, the question of  
5 prejudice has two sides. The prejudice to the applicant  
6 if time is not extended, and the prejudice to the  
7 respondent and to public administration if a challenge  
8 allowed to proceed out of time. There is no prejudice  
9 to Mr Koo if he has no arguable case or sufficient  
10 interest in the application. On the other hand, the  
11 prejudice to the Commission and the public  
12 administration is clear. And there are also third  
13 parties affected; namely, Mr Chan, his companies and  
14 their shareholders and investors.

15 As for questions of general public importance, this  
16 writ raises no questions of general public importance,  
17 in my submission.

18 Master, those are the questions of delay that would  
19 have been considered on an application for judicial  
20 review, had this case been brought by way of judicial  
21 review, instead of by writ, and in my submission leave  
22 would not have been granted. It's well out of time and  
23 there's no factor in favour of granting extension of  
24 time.

25 MASTER LO: Is this a convenient moment?

26 MR BERESFORD: Yes.

1 MASTER LO: We will have the morning break for 15 minutes. (經  
2 傳譯員：休息十五分鐘。)

3 (11.43 am)

4 (A short adjournment)

5 (12.04 pm)

6 MASTER LO: Yes.

7 MR BERESFORD: Master, just two more points, if I may.

8 I've mentioned but haven't shown you section 380 of  
9 the Securities and Futures Ordinance, which is at tab 17  
10 of my list of authorities. The section is headed  
11 "Immunity" and it says:

12 "A person shall not incur any civil liability,  
13 whether arising in contract, tort, defamation, equity or  
14 otherwise, in respect of any act done or any omission  
15 made by reason only of-

16 (a) his performance or purported performance in  
17 good faith of any function (including that under each of  
18 the paragraphs of section 5(1) under any of the relevant  
19 provisions; or.

20 (b) his furtherance or purported furtherance in good  
21 faith of any regulatory objective or performance or  
22 purported performance in good faith pursuant of any  
23 function, pursuant to or consequent upon any written  
24 direction given by the chief executive under  
25 section 11."

26 So that, in my submission, is a substantive and not

1 a procedural provision. It says:

2 "A person shall not incur any civil liability".

3 So it takes away any cause of action that there may  
4 have been in tort or otherwise. So even if Mr Koo were  
5 to plead some kind of a cause of action in contract tort  
6 or otherwise, it would be -- it couldn't succeed by  
7 virtue of this provision, unless it could be shown that  
8 the Commission or the person acting on behalf of the  
9 Commission was not acting in good faith. There's  
10 nothing in Mr Koo's affidavit that provides any ground  
11 for any suggestion that the Commission was acting in bad  
12 faith.

13 The second point is that in Mr Koo's written  
14 submissions, there is simply no answer to the  
15 exclusivity principle. So with those two points  
16 together, it's enough to resolve the whole matter, in my  
17 submission, because in the first case, although we say  
18 there's no cause of action, there's no private law cause  
19 of action pleaded. There couldn't be on the facts of  
20 this case by virtue of section 380, or at any rate it  
21 couldn't succeed. Secondly, as for the exclusivity  
22 principle, that means it's purely a public law matter,  
23 which had to be brought by judicial review.

24 Those are my submissions, Master.

25 MASTER LO: You have also relied on other grounds apart from  
26 no reasonable cause of action. Do you want to address

1 on those other grounds?

2 MR BERESFORD: The three grounds relied upon, Master, are no  
3 reasonable cause of action, frivolous and vexatious, and  
4 abuse of the process of the court. No reasonable cause  
5 of action is that there is nothing pleaded by way of  
6 a private law cause of action, and nothing that could be  
7 properly pleaded or could succeed by virtue of  
8 section 380.

9 Frivolous and vexatious goes to section 380 as well,  
10 because we say that section 380 makes any private law  
11 cause of action hopeless, unless he is prepared to  
12 allege or unless there are facts justifying  
13 an allegation of bad faith.

14 Also in that connection we do say -- we take a point  
15 about locus standi, and we say that he has insufficient  
16 interest to bring these proceedings.

17 And the third point, the abuse of process, relates  
18 to the exclusivity principle, Master. We say that the  
19 O'Reilly v Mackman line of cases and section 21K,  
20 especially section 21K(1), demonstrate that it's  
21 an abuse of the process of the court to make a public  
22 law claim by way of an ordinary action. So when I was  
23 taking you through O'Reilly v Mackman and all those  
24 principles in section 21K, those all go to the abuse of  
25 process ground.

26 Master, on the second ground, the locus standi

1 point, we mainly rely on section 380, and perhaps that's  
2 enough, but I should just draw your attention to  
3 Anderson Asphalt at tab 9 of my list of authorities,  
4 which is an authority on locus standi.

5 And at paragraph 62 Mr Justice Lam says:

6 "For present purposes, the law can be taken from ...  
7 National Federation of Self-Employed and Small  
8 Businesses Ltd ... (reading to the words) ... it is  
9 useful to look at the statute and see whether it gives  
10 an applicant a right enabling him to have that duty  
11 performed."

12 And we do say that in this case, which is a case of  
13 an alleged failure to perform a duty imposed by statute,  
14 we do say that the statute clearly does not give the  
15 applicant a right enabling him to have that duty  
16 performed. One could engage in a detailed construction  
17 of the statute, but in my submission it's sufficient to  
18 look at section 380, which makes it's clear that there's  
19 no such right because there's no civil liability arising  
20 from the performance of any of those functions.

21 MASTER LO: Mr Koo.

22 Submissions by MR KOO

23 MR KOO: 原告人的論點綱要我補一補，法庭理應押後審理剔除的申請，在2016年11  
24 月8號，被告人根據高等法院規則申請剔除本人，即是原告人申索陳述書中列明的  
25 申索，並與狀書 A，沒有披露合理的訴訟一樣；B，瑣事無聊或無理纏擾；及／或

1 C, 濫用高等法院的法律程序為由。(經傳譯員: I would like to read out  
2 the skeleton submission of the plaintiff. The court should  
3 really adjourn the hearing of the application for striking out.  
4 On 8 November 2016, the defendant applied for striking out the  
5 plaintiff's statement of claim under rule 19, order 18 of the  
6 High Court rules. In the pleadings it was stated that, A, there  
7 was no reasonable cause of action shown; B, frivolous and  
8 vexatious; and/or C, on the ground of abuse of process of the  
9 High Court.)

10 MASTER LO: Mr Koo, it is not necessary to read through the  
11 whole submissions, because I can read it. (經傳譯員: 顧先生,  
12 其實不需要由頭這樣讀的。)

13 Mr Beresford, are you able to have the translation?

14 MR BERESFORD: I have a translation, Master.

15 MASTER LO: Fine.

16 So it is not really necessary to read through the  
17 whole submissions. Maybe you can summarise the main  
18 point you want to address to the court. (經傳譯員: 不需要由頭  
19 讀到尾, 因為法官會懂得看的, 對方也是有翻譯本的, 只需要將重點講出來。)

20 MR KOO: 多謝。就是說整篇內容, 對方被告人也有英文的翻譯本, 法官大人也都有  
21 看過, 等如我讀過一次了。(經傳譯員: As far as my submission is  
22 concerned, another party had sent English translation, and you,  
23 Master, have read my submissions.)

24 MASTER LO: Yes, I have.

25 MR KOO: 我就補充一下重點, 讓法庭可以了解。

1           首先，我想講一講，解釋一下，剛才被告人解釋，有其中一點就是說過時的  
2           問題。但我的看法就是說，如果這件罪行或者是這個違規，上市公司繼續違規的  
3           時候，就是說其實這個是無時效性的限制。如果這件案，即是如果其中裏面的違  
4           規是一時間的，只是做一次的，那麼，就有一個時限性。就是說在多少時間內如  
5           果你不投訴的話，就會喪失了權力，那麼這個我們就容易明白。

6           但是現在這兩間的太平洋網絡公司和新天地地產集團，他們裏面的獨董虛假  
7           學歷是一路由我開始投訴到了現在，都繼續存在，是沒改善到，沒停止過的。另  
8           外，如果說好逆權侵佔二十年，這個行為一路去到二十年，才可以成功申請逆權  
9           侵佔。另外，就是說如果有關被告人要剔除我的申索，是因為瑣事無聊及沒理據  
10          的滋擾為原因的話，如果我的投訴的內容不是屬實的，是虛假的話，那麼我同意  
11          被告人以這個理由來剔除。

12          但事實上，剛才被告人都表達了，他是很明白其中這兩間的上市公司的獨董  
13          陳之望先生的學歷是虛假的。所以這個首先認定事實，雙方都沒有異議，是事實，  
14          這個學歷是虛假。

15          如果是虛假的，那麼在兩個上市公司聘用了他做非執行獨立董事，任用他在  
16          很多執委委員會中擔當重要的職務，這個是違背了上市公司的要求和規定。

17          我們知道上市公司的非執董，特別是在重要的委員會裏面，好似說是審核的  
18          委員會中的成員。他們的獨董身分是代表公眾，是法例規定，代表公眾小股東的  
19          利益，去監察這間上市公司的，令到上市公司是可以正規地為小股東、金融制度、  
20          證券界作出貢獻，而不會受到損害。

21          總括來說，陳之望的虛假學歷證明，陳之望是沒有《主板上市規則》中第3.08  
22          條，他的誠信責任，以及3.10(2)及3.21條所指的適當的專業資格。

1           太平洋網絡和新天地委任陳之望已經構成未能拒絕或者忽略遵守《主板上市  
2           規則》第3.08(a)、3.10(2)及3.21條的規定。

3           但是，除了這個關鍵人物，他是不適宜於擔當上市公司獨董這個事實。而這  
4           個被告人是沒盡到他應盡的責任，作為一個監管的機構去盡他們的責任。

5           現在有一個很諷刺的問題。剛剛在上個禮拜六，在報章的報道裏面講，我們  
6           恭喜被告人中的歐達禮先生續約三年的證監。政府認同他，是因為他強勢打虎的  
7           作風。

8           裏面有講到致力打擊違規上市公司，就是他的打虎作風。在被告人的主席唐  
9           家成先生表示，他說歐達禮先生倡導了多項重大的監管措施和政策，亦都維持香  
10          港證券市場質數的同時，促進市場發展，令到香港在塑造全球金融監管規定方面  
11          擔當更重要的角色。據了解，歐達禮先生身兼國際證監會組織IOSCO的主席，亦  
12          都是獲得政府垂青的重要因素而續任他的。

13          所以現在不是程序的問題這麼簡單，本人用民事或者是司法覆核來進行這個  
14          投訴。最緊要是被告人是不是講一套做一套，如果不是有法庭命令，否則，他可  
15          以繼續不作爲、不需要負責去監管上市公司是不是違規？說回轉頭，那兩間上市  
16          公司任用的非執董，這個執董的誠信是在一個虛假學歷裏面證明是很有問題的。

17          首先，他的虛假學歷是可以證實的，被告人也都清楚明白這樣件事。但是現  
18          在變本加厲的是被告人將他非法製造的文件，非法向法庭使用，造成欺騙法庭。  
19          這個，我所認識到是妨礙司法公正的嚴重的刑事罪行。這麼嚴重的一個違規事項  
20          在上市公司中發生，被告人在我投訴之後，還可以視而不見嗎？

21          而這個，我所講的虛假文書，非法製造的虛假文書，非法使用，這樣妨礙司  
22          法公正的證據，我是可以有信心在2017年10月，我就可以拿到的。如果有這樣的

1 證據，進一步的證明，他這個犯了嚴重刑事罪行的非執董，在上市公司裏面，這  
2 就是違規的。

3 所以我認為這個投訴不是瑣事無聊，也不是無理繞擾。所以我希望法庭能够  
4 接納，容許我修改狀書，將這些證據可以拿來作為呈堂的資料，等法庭可以考慮。

5 所以我亦都說將這個陳之望列入為第二被告是勢在必然，有所必要的。

6 其實我都已經準備好了。不過，剛才法官大人說會考慮不接受，那麼我沒有  
7 辦法。但我再次懇求在法庭，法官大人可以接納我submit這個作為修改的狀書，  
8 以及將陳之望列為第二被告，懇請考慮。（經傳譯員：So I would like to  
9 supplement some major points so the court would have a better  
10 understanding.

11 I would like to say something about the out-of-time  
12 application, as explained by the defendant just now. What I  
13 would like to say is that if the crime involved or the offending  
14 listed company continue to commit other offences, or the same  
15 offence, there shouldn't be a timeframe to control the  
16 application. If the wrongful act involved is only a one-time  
17 wrongful act or temporary in nature, then there should be a  
18 timeframe set for it; that is, within a certain time, if you  
19 don't raise your complaint or lodge your complaint, you would  
20 lose your right to do so. That can be understood.

21 But as far as the false academic qualifications of the  
22 independent non-executive director of the Pacific Online Ltd  
23 and this Talent Property Group Ltd is concerned, my complaint  
24 about his false academic qualification, since my complaint of  
25 his false academic qualification up to now, the condition has

1           been existing and has never been improved. For example, so  
2           far as adverse possession is concerned, which involves a period  
3           of 20 years, that means one can only make an application in  
4           that regard after 20 years. And if the defendant is striking  
5           out my application on the ground of frivolous or vexatious  
6           application on my part, if the substance of my complaint is  
7           false instead of genuine, then I would agree that is a  
8           reasonable ground for striking out.

9           But just now, as can be seen by all, the defendant well  
10          understand that the academic qualification of the independent  
11          non-executive director of these two listed companies was false,  
12          so that means both sides of the proceedings agreed that the  
13          fact is his academic qualification is false.

14          So when knowing that his academic qualification is bogus  
15          and the two listed companies still appointed him as independent  
16          non-executive director, taking up very important posts in  
17          different committees in the two companies, I would say that  
18          is something done against the rules and regulations for listed  
19          companies.

20          We all know that the independent non-executive directors,  
21          especially those taking up important posts in important  
22          committees like audit committee, their status as known by the  
23          all would be to represent the public and small shareholders  
24          to supervise the operation of the listed companies so that the  
25          listed companies can in a regular manner make contributions

1 to the small shareholders, to the financial system, and to the  
2 securities and financial sector instead of causing damage.

3 In short, Mr Chan Chi Mong, with his bogus academic  
4 qualification, simply doesn't comply with the integrity  
5 obligation as set out in rule 3.808 of the Main Board Listing  
6 Rules, and that is also against rule 3.10(2) and 3.21 which  
7 talks about request of appropriate professional  
8 qualifications.

9 Pacific Online Ltd and Talent Property Group Ltd, by  
10 appointing Mr Chan Chi Mong, have already failed, refused,  
11 and/or neglected the compliance of the Main Board Listing Rules,  
12 rule 3.08(a), 3.10(2), and 3.21.

13 But apart from the fact that Mr Chan shouldn't take up the  
14 post of independent non-executive director of the listed  
15 companies, the defendant simply hasn't fulfilled its  
16 obligation as a supervisory body.

17 And there is something ironic here. Last Saturday from  
18 some newspaper articles, we can see that, it says we  
19 congratulate -- this is a transliteration -- Mr Ah Tek Lai(?)  
20 to be able to have the contract renewed for three years as  
21 commissioner. The government approve of him or his acts  
22 because of him strongly cracking down on the big tigers.

23 And in that article, it said that the so-called cracking  
24 down on big tigers is actions against those listed companies  
25 that go against the law. And Mr Tong Ka Shing of the SFC said  
26 -- chairman of the SFC said that Mr Ah Tek Lai had introduced

1 a lot of important measures on supervising those listed  
2 companies and he introduce a lot of policies on supervising  
3 those companies.

4 And at the same time of upholding the quality or up-keeping  
5 the quality of the Hong Kong security market, development of  
6 the securities market was also promoted, so making Hong Kong  
7 in a better position to take up the role of supervising  
8 financial organisations in the global financial world, and it  
9 was said that Mr Ah Tek Lai also took up the post of chairman  
10 of the international supervisory organisation, IOSCO. And  
11 that's a very important factor why the government would think  
12 that his contract should be renewed.

13 So now what we're facing, it's not only the procedural  
14 things. Whether I lodged complaint by way of judicial review  
15 or civil litigation, the main concern is whether the defendant  
16 is doing what they have claimed or not. Without a court order,  
17 should the defendant be allowed to take no action against those  
18 companies, and there is no need for them to supervise to see  
19 if any listed company has gone against the rules and  
20 regulations? Well, talking back about the two listed companies,  
21 the independent non-executive director that they appointed,  
22 the integrity of this independent non-executive director of  
23 the companies is in question because of his bogus academic  
24 qualifications.

25 First of all, his bogus academic qualifications can be  
26 proved, and the defendant knows that very well. But what is

1 worse is that now the defendant facing the fact that he has  
2 made -- illegally made some documents and used them in court  
3 to deceive the court. As far as I know, that is a serious  
4 criminal offence involving perverting the course of justice.  
5 With such a serious contravention of the rules committed by  
6 the listed company, can the defendant simply turn a blind eye  
7 to this matter after I have lodged the complaint?

8 And about the bogus instrument made and used I just now  
9 mentioned, and about the evidence on perverting the course of  
10 justice, I'm confident that I will be able to get that by  
11 October 2017. If there is proof that a serious criminal offence  
12 has been committed, then the existence of this independent  
13 non-executive director in the listed company would simply be  
14 against the rules.

15 So to me, my complaint is not at all frivolous or vexatious.  
16 That's why I would like to ask the court to allow me to amend  
17 my pleadings so that I can submit the relevant evidence to court  
18 with the relevant information.

19 I would also say that it is absolutely necessary to add  
20 Chan Chi Mong as the 2nd defendant. In fact, we have prepared  
21 everything, as you can see the stack of documents here now,  
22 just now you, Master, said you wouldn't accept the application  
23 for amendment or deal with the application for amendment.  
24 Anyway, I would like to beg the court to consider that again,  
25 to accept a submission of all these, and to amend pleadings  
26 and add Chan Chi Mong as the 2nd defendant.)

1 MASTER LO: Mr Koo, I think I already have dealt with this matter.  
2 The reason why I say that I'm not accepting new evidence or  
3 the amendment to add Mr Chan as a 2nd defendant is because these  
4 proposed amendments would not affect the striking out  
5 applications. You have not made formal applications at this  
6 stage, so I'm not dealing with your applications. But what  
7 I'm trying to say is that I won't allow you to have an  
8 application to be made at this stage to amend the pleadings  
9 so as to affect the striking out application because it will  
10 not affect the striking out application. (經傳譯員：其實剛才都  
11 講得很清楚，主要的原因就是說這些你提議的修訂，對於狀書的修訂，是不會影  
12 響今次對方提出這一個剔除的申請的，就不是說不接受你的內容或者證據的。)

13 MR KOO: 多謝，明白。對於被告人質疑本人以民事訴訟而非司法覆核，查究此事的  
14 合法性，本人指出，本人是兩間投訴中的上市公司，新天地和太平洋網絡的潛在  
15 投資者之一，我是可以向該等公司股票進行買賣，正是符合了《證券及期貨條例》  
16 第4條(c)，本來應被保障的公眾。

17 我們看看，根據《證券及期貨條例》第4條，被告人必須：

18 (a)維持和促進證券貨業的公平性、效率、競爭力、透明度及秩序；

19 (c)向投資或持有金融產品的公眾提供保障。

20 在這裏我想解釋一下，這個(c)點，被告人的責任是沒區分時效先後，就好  
21 像這個責任一路繼續在一般的情況之下，都會是繼續繼續，都是他的責任的，都  
22 是他的工作範圍來的。他的這個責任，我們可以考慮到，是不是持有股票就有身  
23 分可以做這個原告。這個被告人十分清楚，因為他是做監管，他是設立所有的條  
24 例。被告是很清楚明白甚麼是投資者，投資者不是買了股票的就叫投資者，不僅

1           是包括這樣，他很明白還有拋空、賣空的制度存在。在這個股票市場，所以說如  
2           果你未買股票的時候，就是潛在投資者之一，但投資了之後，就叫做股東。但是  
3           如果你是拋空的話，你是沒有股票在手的，但是你也在這間公司的股票買賣中是  
4           有利害關係的。（經傳譯員：Okay. Understood.

5           About the allegation made by the other side about me not  
6           lodging my complaint by way of judicial review instead of civil  
7           litigation, I would like to point out that I am a potential  
8           investor of the two companies involved, the Pacific Online  
9           company and the Talent Property Group company. And I have the  
10          right to sell or purchase the shares of the companies, and in  
11          that I am one of those people as stated in section 4(c) of the  
12          Securities and Futures Ordinance who should be under  
13          protection.

14          So let us look at section 4 of the Securities and Futures  
15          Ordinance. The defendant must uphold and promote the fairness,  
16          effectiveness, and competitiveness, transparency, and order  
17          of the securities industry.

18          And, (c), to give protection to the public investing in  
19          the companies or holding financial products.

20          I would like to talk about point (c) which doesn't say that  
21          there is a time bar or a sequence of things, so under normal  
22          circumstances, this obligation of the defendants would  
23          continue and go on and on. In that regard, we may have to  
24          consider whether someone can act as a plaintiff simply by  
25          holding shares of the company. About this, defendant should

1 know that very well because it is the regulatory and  
2 supervisory body setting down all the rules, and the defendant  
3 knows very well about the definition of "investors".

4 Concerning the definition of "investors", that should not  
5 only include those who have bought in shares. And the defendant  
6 knows very well that there is short-selling operating in the  
7 stock market. So with that as a background, one can see that  
8 when you haven't bought in the shares, you can be considered  
9 as a potential investor, one of the potential investors.

10 Once you have invested in a company, then you are one of  
11 the shareholders. But if you are selling short and you wouldn't  
12 have the shares in hand, but you are still a stakeholder in  
13 terms of the sale and purchase of shares of the company.)

14 MASTER LO: Can you clarify which category of the persons  
15 you mentioned just now you are being -- which category  
16 should you be under? (經傳譯員：你可不可以澄清一下，你剛才所講的幾  
17 個類別中，你是屬於哪一個類別?)

18 MR KOO: 我是屬於潛在投資者之一和公眾之一。這一點很緊要，不理那一個範疇，  
19 屬於那一個範疇之中，都是應該受到保障，受到被告人的工作範圍之內的保障。

20 我舉一個例子來說，例如好像香港的警察，在香港執行他的職務的時候，是  
21 保障市民的秩序、安全，不會受到犯罪的侵擾。但警察不會說那理你是那類人，  
22 不理你是香港的市民，拿著香港的身份證，或者你是遊客，來到香港旅遊，都是  
23 一樣受到他本身警察工作的責任所保障的。

1           所以個重點不是說你是那一類的人，或者是那一類的投資者，而最緊要的是  
2           我們現在要提醒被告人，他的責任在哪裏，他不能夠總是整日不作為，視而不見，  
3           將違規上市公司的違規行為視而不見，這是不對的。

4           我們都可以明白到被告人自己本身有工作的責任，如果有人提示過他，他應  
5           該很高興，人家支持他去執行這個打擊違規上市公司。

6           如果被告人他不是盡他的責任，做好他的職位，而返轉頭，他却認為，我們  
7           提供資料給他，協助他打擊上市公司，協助他盡他的工作，做好他的責任。而且  
8           仲還在今日庭上，對協助他打擊違規上市公司的工作責任，而提出恐嚇原告人，  
9           是濫用高等法院的法律程序，是很不對的。

10          我們看一下，陳之望這個非執董在這兩間上市公司裏面，理應知道了他的學  
11          歷是不被有關政府的承認，但是他仍然多次在外面宣傳他是有博士學歷。

12          陳之望他毋庸置疑是違背符合《證券及期貨條例》第214條(1)(b)款裏所講  
13          的欺詐、不當行為或其他失當行為。所以本人認為，本人反對被告人在這件案件  
14          裏面對我所作出的指控。A，我是有披露合理的訴訟因由；B，我不是所瑣事無聊  
15          或者是無理纏擾；C，我沒有濫用到高等法院的法律程序。我相信剛才被告人不斷  
16          提示我是應該用司法覆核。我所聽到和我所理解到的，他一路講到我是錯用，不  
17          是濫用，錯用和濫用兩個是有小小的分別。

18          我本人明白法律是用來保護和彰顯社會公義，以及維護秩序而成立這個法  
19          律，因此，本人基於彰顯公義而使用法律是正確的，而且應當受到保障的合法行  
20          為。

21          正如候任特首林鄭月娥女士強調「有人違法，不能視而不見」，特別是充分  
22          表達了本人是對被告人十分支持，支持被告人，鼓勵被告人要盡他的責任，致力  
23          打擊違規上市公司的職責。（經傳譯員：I should be categorised as a

1 potential investor, and one of the public. This is a very  
2 important point. No matter which category I belong to, one  
3 should be protected by the defendant within the ambit of his  
4 obligations and functions.

5 Let me give you an example. It's like the police force  
6 in Hong Kong. When carrying out its obligations, the police  
7 force are actually protecting or under an obligation to protect  
8 the safety of the citizens, but the police simply wouldn't put  
9 you into different categories as like Hong Kong citizens  
10 holding Hong Kong ID cards or tourist or other kinds of people.  
11 They would simply carry out their obligations to protect all  
12 these people.

13 So the main point here is not to categorise people into  
14 different types, investors or not. The main point is to remind  
15 the defendant to perform its obligations to stop their  
16 non-action and to stop turning a blind eye to those  
17 contraventions of rules.

18 The defendant, with its obligations on them when reminded  
19 of their obligations and functions, should be happy that they  
20 are reminded and that they are supported by people in their  
21 enforcement of the relevant rules and regulations against  
22 those companies contravening the rules.

23 When the defendant doesn't perform its duty when someone  
24 provides information to them to assist them in cracking down  
25 those companies contravening the rules, it would be wrong for  
26 the defendant to raise the point that the plaintiff is abusing

1 the process of court by providing information to them by  
2 lodging the complaint to help them carry out their duties.

3 Let us take a look at Mr Chan Chi Mong, the independent  
4 non-executive director in the two companies. He should have  
5 known very well that his academic qualifications were not  
6 approved by the relevant governments, but he kept telling  
7 people, the external parties, that he had such qualifications.

8 Clearly, Mr Chan Chi Mong has gone against section 214(1)(b)  
9 of the Securities and Futures Ordinance which talks about  
10 deception, wrongful acts and other illegal acts, so I would  
11 oppose the allegations raised by the defendant against me in  
12 the proceedings. A, I have given reasonable cause of action;  
13 B, my application is not frivolous or vexatious; and, C, I  
14 haven't abused the process of court. I believe that the  
15 defendant, by reminding us time and again just now that I should  
16 have raised the matter by way of judicial review, my  
17 understanding of what they said was that I mistakenly used a  
18 wrong channel, not that I have abused the process of court.  
19 They are different things.

20 I understand that the laws are set down to protect the  
21 citizens and to do justice and for keeping order of the society.  
22 So I understand that my action here, it's rightful action taken  
23 on the ground of protection of the citizen and to have justice  
24 done.

25 As pointed out by the chief executive elect Ms Carrie Lam,  
26 we can't turn a blind eye to people going against the law,

1 especially when my action prove clearly that I am strongly  
2 supporting the defendant's work, supporting and encouraging  
3 the defendant in performing its duties on supervising and  
4 cracking down on those listed companies which have contravened  
5 the rules and regulations.)

6 MASTER LO: Pausing there, you seem to suggest that the  
7 defendants fail in performing its duties, but I think in  
8 your statement of claim you have quoted section 5 of the  
9 Securities and Futures Ordinance. Can you tell me which  
10 particular provisions under section 5 that you want to  
11 rely on in making your claim? Because I don't think you  
12 have specified that, you just quote the whole sections. (經  
13 傳譯員：這樣看上來，你就是說被告是沒有去執行他的職務，在你的申索陳述書  
14 中，但你只是引述了，根據《證券及期貨條例》的第5條這樣去講的，但是你沒有  
15 說明第5條中那一個條文就是有關的，可不可以指出?)

16 MR KOO: 剛才我說是根據《證券及期貨條例》第4條裏面所說的，被告人必須 A，維  
17 持和促進證券貨業的公平性、效率、競爭力、透明度及秩序。(經傳譯員：What  
18 I said just now is about section 4 of Securities and Futures  
19 Ordinance, which states that the defendant has to uphold and  
20 promote the fairness, effectiveness, competitiveness,  
21 transparency and order of the securities industry.)

22 MASTER LO: So section 4 is not pleaded in your statement of

1 claim, section 5 is pleaded. (經傳譯員：但是這一條在你的申索陳述  
2 書中是沒有說及和沒有提及，你在申索陳述書中只是提到第5條，《證券及期貨條  
3 例》第5條。)

4 MR KOO: 第5條(a)(1)。(經傳譯員：Section 5(a)(1).)

5 MASTER LO: You mean (1)(a)?

6 MR KOO: Bundle A/1.

7 MASTER LO: What bundle? (經傳譯員：甚麼文件夾?)

8 MR BERESFORD: It sounds like a reference to the statement  
9 of claim, Master, which is bundle A, tab 1.

10 MASTER LO: That is the statement of claim, but in the  
11 statement of claim I think in paragraph 3 you mention  
12 section 5 of the ordinance. (經傳譯員：這個就是你的申索陳述書，但  
13 是在你的申索陳述書裏面第3段你似乎就提到是《證券及期貨條例》的第5條。)

14 MR KOO: 這是一般性的責任。(經傳譯員：As a general obligation.)

15 MASTER LO: Yes, I know, but the point is you have pleaded  
16 the whole section 5 here. I just want to know which  
17 particular provision under section 5 to you want to rely  
18 on in saying that the defendant has not performed its  
19 duties. (經傳譯員：但是這裏你只是講了整條第5條，在你的狀書裏面。現在  
20 想問你的就是說，你想依靠是第5條中那一個條文指控被告沒有執行他的職務，履  
21 行他的職務。)

22 MR KOO: 在(a)裏面，"To take such steps"這裏。(經傳譯員：Subparagraph  
23 (a) -- paragraph 3(a):

24 "To take such steps as it considers appropriate to

1 maintain and promote the fairness, efficiency,  
2 competitiveness, transparency and orderliness of the  
3 securities and futures industry ..."

4 MASTER LO: Is that the only provision you want to rely on? (經  
5 傳譯員：你唯一就是依靠的是這一條?)

6 MR KOO: 及(b)。(經傳譯員：And (b).)

7 INTERPRETER: Should I read it out?

8 MASTER LO: I can see it. So you want to rely on (a) and (b). What  
9 else? (經傳譯員：好的，法官已經看到了(a)和(b)。)

10 MR KOO: 及(f)。(經傳譯員：And (f).)

11 MASTER LO: Any more? (經傳譯員：還有嗎?)

12 MR KOO: 還有(n)。(經傳譯員：And (n).)

13 MASTER LO: What else? (經傳譯員：還有其他嗎?)

14 MR KOO: Okay，就是這樣了。(經傳譯員：That's about all.)

15 MASTER LO: Yes. It's already over 1.

16 MR KOO: 還有一些的。(經傳譯員：And just a little more to say.)

17 MASTER LO: Let's continue then.

18 MR KOO: 所以這一次的訴訟不應該被視為濫用高等法院的法律程序。所以我認為被  
19 告人申請剔除本人在本案的申索，甚至恐嚇本人達至包庇陳之望等違規上市公司  
20 的所作所為才是濫用司法程序。所以我希望懇請貴法院駁回被告人的剔除申請，  
21 並頒令被告人因為他自己本身的嚴重失職，而需要支付本人的訴訟費用。根據《主  
22 板上市規則》和《證券及期貨條例》，嚴查兩間違規公司獨董陳之望的虛假學歷  
23 和相關的刑事罪行。是，我說完了。(經傳譯員：So the present litigation  
24 should not be considered as an abuse of the High Court process.

1           So, to me, it is the defendant, by threatening me and harbouring  
2           Mr Chan Chi Mong, that is abusing the court process. That's  
3           why I am asking the court to dismiss the defendant's  
4           application for striking out and to order the defendant to pay  
5           costs owing to their serious neglect of duties, and to order  
6           the defendant to make a thorough investigation into the bogus  
7           academic qualifications of Mr Chan Chi Mong of the two listed  
8           companies with reference to the Main Board Listing Rules and  
9           the Securities and Futures Ordinance.

10           Thank you. Finished.)

11           MASTER LO: Earlier on you mentioned that you want to  
12           address me on the damages that you suffered. It seems  
13           that you have not mentioned this at all. (經傳譯員：之前，你好  
14           像是提過，你想說回到你在這個事情裏所受到的損害和損失，但似乎你還沒有說  
15           到。)

16           MR KOO: 多謝法官，我補充一下。因為想到去投資股票，可以有獲利的。但是，因  
17           為我去查問有關他們的公開資料，以及要在投資前了解到這間公司有否做到一些  
18           違規的事情。他們董事的誠信，他們董事有否犯罪紀錄，這些都是我所關心而先  
19           至考慮投資。

20           投資前去做這個調查，了解這間公司裏面所有詳細情況，是每一個投資者都  
21           應該做的步驟。如果我在這裏面是要求證陳之望的誠信是否有問題的時候，如果  
22           我發覺到他是沒有的話，我再看一下公司的業務情況，我就會投資。但是如果我  
23           發覺到他們不能夠解釋，如果是解釋不清楚有關這個非執董是犯了《證券及期貨

1 條例》第214條(1)(b)款裏面有關的欺詐、不當行爲或其他失當行爲的話，調轉  
2 頭我可以拋空這間公司的股票，因爲太平洋網絡公司是被列爲可以拋空的公司。

3 這間公司如果他的獨董是沒有誠信的、有不當行爲的、有欺詐行爲的，而他  
4 擔當這間公司的審核委員會其中一個委員成員，那麼他這盤數財務報表都會有很  
5 大的問題。但現在這兩間公司沒有回答我，而且是拒絕答覆我，拒絕我去做這個  
6 盡職調查。

7 所以我損失了投資或者是投機拋空這兩間公司的股票，而損失了有一個的投  
8 資機會。所以我在這裏就投訴，我這個損失，我是有賴於法庭判決，頒令他們要  
9 付一個懲罰性的賠償。(經傳譯員：Thank you, Master. Let me add in  
10 this. I thought that I would be able to make a profit by  
11 investing in the shares. But before actually investing in the  
12 shares, I was very much concerned about factors like the  
13 information concerning the companies that are open to public,  
14 and whether the company or companies has committed any illegal  
15 acts, and I also care about the integrity of the directors at  
16 the companies and whether there is any criminal records  
17 involving the directors.

18 Before actually investing, by doing due diligence to get  
19 a better understanding of the situation of the company, that  
20 is something that should be done by each and every investor.  
21 If in the process of verifying the integrity of Mr Chan Chi  
22 Mong, if I found that there is nothing wrong, and also after  
23 looking at the other circumstances of the company, I would make  
24 investment. But in that process, if I found that the  
25 independent non-executive director or directors of the company

1 has gone against section 214(1)(b) of the Securities and  
2 Futures Ordinance in relation to deception or wrongful facts,  
3 I could have done short-selling of the shares in the company,  
4 because Pacific Online Ltd has been listed as one of the  
5 companies allowed for short-selling.

6 If the integrity of the independent non-executive director  
7 of the company is in question, then involving wrongful acts  
8 or deception, having him as one of the audit committee members,  
9 then there would be a big question mark as to the fairness and  
10 correctness of the financial statements in relation to the  
11 company. But the two listed companies refused to let me do  
12 due diligence.

13 In the circumstances, I have lost my opportunity of  
14 investing in the company, of speculating in the shares, and  
15 on short-selling of the shares. So that's suffering loss, and  
16 so I rely on the court to order the other party to pay damages  
17 --)

18 INTERPRETER: Sorry, I forgot.

19 MASTER LO: Pecuniary?

20 MR KOO: 所以我要有賴於法庭，要給予一個懲罰性的賠償。(經傳譯員: Yes,  
21 pecuniary damages.)

22 MASTER LO: But this is not repeated in your statement of  
23 claim. (經傳譯員: 但是在你的申索陳述書中沒有講的。)

24 MR KOO: 沒有詳細講。(經傳譯員: Not in detail.)

25 MASTER LO: Is that all? (經傳譯員: 是不是這麼多?)

1 MR KOO: 是的。(經傳譯員: Yes. Thank you.)

2 MR BERESFORD: I note the time. I'll try and keep it to  
3 about ten minutes.

4 MASTER LO: Let's go on then.

5 Reply submissions by MR BERESFORD

6 MR BERESFORD: I suggest on the point of delay, Mr Koo said  
7 that if the -- defending about which he complains is  
8 a continuing act, then there shouldn't be a timeframe.  
9 I understand the argument, but with respect, he's  
10 confusing the alleged acts of Mr Chan with the decision  
11 of the Commission. The decision of the Commission was  
12 related only to one email from the plaintiff's  
13 assistant, and it was a one-off decision, and that was  
14 that.

15 Mr Koo addressed you, Master, at some length on the  
16 question of whether his claim was frivolous or  
17 vexatious. These are, of course, technical terms of art  
18 to lawyers, and he may have misunderstood the sense in  
19 which those terms are meant. Of course it's not  
20 suggested for a moment on behalf of the Commission that  
21 rules relating to independent non-executive directors  
22 are frivolous or vexatious or shouldn't be taken  
23 seriously.

24 The question is whether the plaintiff's claim is  
25 obviously unsustainable. Perhaps for Mr Koo's benefit  
26 I can just point him to the authority for that

1 proposition. It's at tab 20 of my list of authorities  
2 in the notes to order 18, rule 19 at paragraph 18/19/7  
3 at the bottom of page 461 by the words "frivolous or  
4 vexatious" in bold:

5 "The object of the rule is to stop cases which ought  
6 not to be launched - cases which are obviously frivolous  
7 or vexatious, or obviously unsustainable."

8 And we say that this case is obviously unsustainable  
9 because, A, Mr Koo has insufficient interest to pursue  
10 these proceedings; and, B, because section 380 of the  
11 Securities and Futures Ordinance says that no liability  
12 shall arise out of any act derived, performed, or  
13 purported to be performed under section 5 or under the  
14 relevant provisions, which is generally defined to  
15 encompass most of the provisions of the ordinance.

16 Mr Koo then said that he was addressing the question  
17 of why he hadn't applied by way of judicial review  
18 rather than ordinary action, but the tenor of his  
19 submissions seemed to go to the question of whether he  
20 had a sufficient interest to bring the claim. It  
21 doesn't actually go to explain or excuse the fact that  
22 these proceedings were not brought by way of judicial  
23 review, and there is, frankly, no answer to the question  
24 of the exclusivity principle, ie that a public law  
25 claim, which this plainly is, must be brought by way of  
26 judicial review.

1 MASTER LO: But what if what he said is that he has suffered  
2 damages because the defendant has not performed its  
3 duties?

4 MR BERESFORD: He still doesn't have a private law claim  
5 because of section 380, quite apart from anything else.

6 MASTER LO: Even if he has suffered damages?

7 MR BERESFORD: Even if he has suffered damages. Can we go  
8 back to section 380, Master. Even if he were able to  
9 put together a claim.

10 MASTER LO: That would give you the defence, but if he  
11 suffered damages, then it would not be a claim for  
12 judicial review?

13 MR BERESFORD: He can claim damages in judicial review.

14 MASTER LO: But it would not be exclusively for judicial  
15 review, right?

16 MR BERESFORD: Not if there's a private law claim.

17 MASTER LO: That's what he's trying to say, right?

18 MR BERESFORD: But there isn't one, because section 380 says  
19 a person shall not incur any civil liability.

20 MASTER LO: That would give you a defence.

21 MR BERESFORD: I understand Master's point, but it is  
22 substantive, it's not just -- it's not just a bar to  
23 a remedy, it takes away the actual liability.

24 MASTER LO: I raise this just because of your submission  
25 about the judicial review being exclusive.

26 MR BERESFORD: I do rely on that, and I go further, because

1 Mr Koo alleges that the defendant is under a duty to  
2 perform what he calls "the functions". These are powers  
3 or duties that are vested in the Commission as a matter  
4 of public law for the protection of the public  
5 generally, and it is a duty owed generally, not to  
6 specific shareholders, members of the public or  
7 potential investors who are each members of  
8 an indeterminate class of the public.

9 If Mr Koo were right, the breach of which of duty of  
10 which he complains would give the whole world a cause of  
11 action against the SFC, and it's inconceivable that the  
12 legislature would have enacted a duty on the Securities  
13 and Futures Commission, or any other public body for  
14 such a breach.

15 If you want authority for that, Master, there's some  
16 authority in the case of X (Minors) at tab 8. It's a  
17 rather bulky report because there are two Court of  
18 Appeal decisions before you get to the House of Lords  
19 decisions, but the House of Lords decision begins with  
20 the speech of Lord Jauncey at page 728. The main speech  
21 is that of Lord Browne-Wilkinson commencing at page 380.  
22 He analyses the way in which claims for breach of  
23 a statutory duty might give rise to a private law cause  
24 of action. He says at 730 F:

25 "The question is whether, if Parliament has imposed  
26 a statutory duty on an authority to carry out

1 a particular function ... (reading to the words) ...  
2 performance or non-performance of that function has a  
3 right of action in damages against the authority."

4 And he makes the all-important point:

5 "It is important to distinguish such actions to  
6 recover damages, based on a private law cause of action  
7 ... (reading to the words) ... A claim for damages must  
8 be based on a private law cause of action."

9 Just pausing there, Master, in my submission, no  
10 private law cause of action is pleaded. So even if he  
11 claims to have suffered damage, the basic position is  
12 that the breach of a public law right gives rise to no  
13 claim for damages.

14 Lord Browne-Wilkinson goes on to say that:

15 "Private law claims for damages can be classified  
16 into four different categories ... (reading to the  
17 words) ... statutory powers either with the intention to  
18 injure the plaintiff or in the knowledge that the  
19 conduct is unlawful."

20 There is no suggestion of misfeasance in public  
21 office in the present case, so we can draw a line under  
22 D. Lord Browne-Wilkinson explains that there is in fact  
23 no separate category of B that doesn't give rise by  
24 itself of a cause of action. So either you've got to  
25 show breach of statutory duty, or a common law --  
26 an action based on a common law duty of care, neither of

1 which are pleaded in the statement of claim, neither of  
2 which are referred to in the skeleton argument or in the  
3 evidence.

4 I say there can't be a breach of statutory duty  
5 because of section 380. It would be completely  
6 inconsistent with section 380 which says:

7 "There shall be no civil liability to construe the  
8 statute that has given rise to a civil liability of  
9 private law action (unclear) for breach of statutory  
10 duty."

11 So we can exclude breach of statutory duty quite  
12 easily. But even if we can't, if you just look down at  
13 page 731, at D:

14 "The basic proposition is that in the ordinary case  
15 a breach of statutory duty does not, by itself, give  
16 rise to any private law cause of action. ... (reading to  
17 the words) ... breach of duty."

18 Then he goes on at H:

19 "Although the question is one of statutory  
20 construction and therefore each case turns on the  
21 provisions in the relevant statute ... (reading to the  
22 words) ... not for the benefit of those individuals but  
23 for the benefit of society in general."

24 So in my submission you can exclude the breach of  
25 statutory duty question, because as a matter of  
26 construction it's quite impossible to construe the

1 Securities and Futures Ordinance as giving rise to  
2 a private law cause of action as a breach of statutory  
3 duty, a tort, when you have section 380 saying that no  
4 civil liability shall arise.

5 Then the question is whether there's a common law  
6 duty of care, and Mr Koo makes no case based on the  
7 common law duty of care, so the question doesn't really  
8 arise. And this is why I have not overburdened my list  
9 of authorities with references to cases.

10 Mr Koo, for example, referred to the police. That's  
11 a very interesting question. You may recall the case of  
12 Hill against the Chief Constable of West Yorkshire where  
13 one of the families of one of the Yorkshire Ripper's  
14 victims sued the police and tried to establish there was  
15 a duty of care to protect the public from such as the  
16 Yorkshire Ripper and they failed. The House of Lords  
17 held that there was no duty of care.

18 Even more extreme, more recently there was Michael  
19 against the Chief Constable of South Wales where a young  
20 lady had dialed 999 complaining that her boyfriend was  
21 at the door threatening to kill her, and the call got  
22 misplaced and he got in and killed her, and then the  
23 police arrived and later on apprehended him. And of  
24 course her family sued saying that the police had  
25 breached their duty of care. But the House of Lords  
26 held that -- or the Supreme Court in this case, 2015 or

1           2016, the Supreme Court held that there was no duty of  
2           care owed to a private individual. The duty is owed to  
3           the public generally, and it was said in Michael that it  
4           doesn't follow from the setting up of a regulatory  
5           system that if it fails to achieve its purpose through  
6           a fault on the part of the regulator, the public at  
7           large should bear the additional burden of compensating  
8           a victim for harm caused by the actions of a third party  
9           for whose behaviour the State is not responsible.

10           Master, I haven't included all those authorities  
11           because Mr Koo has not made those allegations in the  
12           statement of claim. There's no question of a duty of  
13           care in the present case. The plaintiff is getting  
14           ahead of himself. The present case doesn't actually  
15           reach any duty that might even allegedly go to the  
16           plaintiff, because the prior question that arises in  
17           this case is simply whether the Commission was right to  
18           reject the plaintiff's email as not being within the  
19           Commission's remit. And that's a public law question  
20           which must be decided on judicial review. It must be  
21           decided as a pre-condition to all these other claims  
22           that Mr Koo wants to bring. So he's added in all these  
23           claims in his skeleton argument. He's added in claims  
24           under section 214 which are not mentioned in the  
25           statement of claim. He's added in claims for damages  
26           which are not claimed in the statement of claim, but

1 none of that can even arise for consideration unless he  
2 first of all establishes that the SFC were wrong to  
3 conclude that his email was not within their remit, and  
4 that's a public law question.

5 On the question of locus standi, Mr Koo says he's  
6 a member of the general public and a potential investor.  
7 Again the potential investor argument happens to have  
8 been rejected in the Pacific Online case, number 1 in  
9 our list of authorities that I had mentioned to you.  
10 But again it's not a pleaded claim, but it goes to the  
11 question of whether he's entitled to claim damages, and  
12 in my submission section 380 is a complete answer to  
13 that.

14 As far as the judicial review is concerned, of  
15 course the locus standi question or sufficient standing  
16 is (unclear) is a threshold question that has to be  
17 considered on judicial review, but that's perhaps not  
18 a matter that's necessary for you to determine on this  
19 application because it's something that is a safeguard  
20 that has been evaded by the issue of a writ and it's  
21 something that ought be considered on a judicial review  
22 application, had it been made.

23 Just a comment on the last claim. There is in fact  
24 no loss in the sense of loss special to the plaintiff  
25 alleged. In fact, the plaintiff, he says he's been  
26 deprived of the opportunity to invest in these two

1 companies. In fact, he hasn't been deprived of the  
2 opportunity to invest in them at all. He could invest  
3 in them if he wanted to, but he's been saved any loss  
4 that might have been caused by the alleged fraud which  
5 he now complains because he says he knows about it. In  
6 fact, the damage claim makes no sense because he  
7 couldn't possibly have relied upon any misrepresentation  
8 made by Mr Chan.

9 But anyway, even if somehow he could conjure up  
10 a claim for damages, Master, it must be barred by  
11 section 380. So there can be no private law claim. The  
12 action has no prospects of success as a private law  
13 claim because of section 380, and it was wrong to bring  
14 the procedure by way of writ, and whether you call it  
15 an abuse or a misuse -- of course the rule says abuse  
16 and O'Reilly v Mackman says that it is abuse -- but I  
17 recognise that some judges have preferred the term  
18 "misuse". I'm not suggesting that Mr Koo went out of  
19 his way to issue a writ in order to consciously avoid  
20 the provisions of order 53, but the effect of what he  
21 has done, regardless of his purpose, is to evade the  
22 safeguards, and that is what Lord Diplock characterised  
23 as an abuse which would justify striking out as an abuse  
24 of the process of the court.

25 So those are my submissions, Master, unless I can be  
26 of any further assistance.

1 MASTER LO: Thank you.

2 MR KOO: 補充三點，補充三點，很快的，一秒鐘。第一樣剛才被告人說我沒有講到...

3 (經傳譯員: Three points.)

4 MASTER LO: Any objection?

5 MR BERESFORD: Mr Koo is acting in person. I don't wish to  
6 take any unfair advantage.

7 Further submissions by MR KOO

8 MR KOO: 剛才被告人說我沒有講到為甚麼用民事訴訟，而不用司法覆核，其實在我  
9 的論據中第31段已經清楚地說過。

10 第二點，上次太平洋網絡公司那個訴訟內，梁法官已經很清楚的說給我聽，  
11 我是並沒有濫用這個法庭的法律程序，也很清楚說給我聽，不是有惡意中傷。

12 第三點，在今日上庭之前，我亦都很了解被告人聘用了一個在香港很有名  
13 望、很專業的大狀上來。今日在庭上，他的表現亦都很好，我也對他很尊敬，但  
14 是我們上庭，我只是想講有理、沒理，我沒有僥幸能夠今日在法庭上能贏到這位  
15 這麼尊敬的大狀。(經傳譯員: Defendant just now said that I did not  
16 give an explanation as to why I lodged a claim by way of writ  
17 instead of a judicial review. In fact, I've explained that  
18 in paragraph 31 in my submission.

19 The second point is in the litigation involving Pacific  
20 Online Ltd. Master Leung has clearly told me that I have not  
21 abused court process and that I did not defame the company in  
22 ill faith. And the third point I would like to make is, before  
23 I came to court today, I understood that the defendant has  
24 engaged very reputable and professional lawyer to represent  
25 them and has been performing very well in court today, and I

1           respect him very much. But in court, what we should consider  
2           is whether we have merits or we do not have merits the case,  
3           and I never hope that I can win the case.)

4           MASTER LO: Any further reply?

5           MR BERESFORD: Just very briefly, Master.

6                         Further reply submissions by MR BERESFORD

7           MR BERESFORD: Paragraph 31 is no answer to the complaint  
8           that this application has not been borne by way of  
9           judicial review. And similarly, the question of whether  
10          Mr Koo intended abuse or to defame the company or  
11          anything of that nature misses the point of O'Reilly v  
12          Mackman. O'Reilly v Mackman is concerned about  
13          preserving the safeguards of order 53.

14          As for my learned friend's last point about focusing  
15          on the merits, as Mr Justice Lam said in the Wong Fuk  
16          Tim case, this is not an arid procedural point. The  
17          fact that it is procedural in nature doesn't mean that  
18          we're not talking about the merits. There are the kinds  
19          of merits involved, and in particular the merits of the  
20          need for good administration, good public  
21          administration, and the position of third parties who  
22          rely upon the decisions of public administrators. These  
23          are the reasons underlying the safeguards in order 53.

24          It's not purely a procedural point. Thank you.

25          MASTER LO: This is in reserve.

26          (1.38 pm)

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