Hong Kong Institute of Certified Public Accountants
香港會計師公會

Dear Assignment/News/Business Section Editor

Hong Kong Institute of Certified Public Accountants takes disciplinary action against a certified public accountant

(HONG KONG, 27 June 2016) - On 20 June 2016, a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants reprimanded Wu Kit Man, Athena (membership number A17959) and ordered her to pay a penalty of HK$5,000 and the costs of the disciplinary proceedings of HK$28,211.

Wu was convicted at the Magistrates Court of theft for having taken cash which did not belong to her from an ATM machine. Her subsequent appeal to the higher courts was unsuccessful. Wu notified the Institute of the conviction in accordance with her membership obligations. After considering the information available, the Institute lodged a complaint against Wu under section 34(1)(a)(ii) of the Professional Accountants Ordinance.

The Disciplinary Committee found, on Wu's admission, that the complaint against her was proved. Having taken into account the circumstances of the case, the Disciplinary Committee made the above order against Wu under section 35(1) of the Ordinance.

Under the Ordinance, if Wu is aggrieved by the order, she may give notice of an appeal to the Court of Appeal within 30 days after she is served the order.

The order and findings of the Disciplinary Committee are available at the Institute's website under the "Compliance" section at www.hkicpa.org.hk.

Disciplinary proceedings of the Institute are conducted in accordance with Part V of the ordinance by a five-member Disciplinary Committee. Three members of each committee, including a chairman, are non-accountants chosen from a panel appointed by the Chief Executive of the HKSAR, and the other two are CPAs.

Disciplinary hearings are held in public unless the Disciplinary Committee directs otherwise in the interest of justice. A hearing schedule is available at the Institute's website. A CPA who feels aggrieved by an order made by a Disciplinary Committee may appeal to the Court of Appeal, which may confirm, vary or reverse the order.

Disciplinary Committees have the power to sanction members, member practices and registered students. Sanctions include temporary or permanent removal from membership or cancellation of a practicing certificate, a reprimand, a penalty of up to $500,000, and payment of costs and expenses of the proceedings.

- End -

About the Hong Kong Institute of Certified Public Accountants

The Hong Kong Institute of CPAs is the only body authorized by law to register and grant practising certificates to certified public accountants in Hong Kong. The Institute has more

than 40,000 members and 17,000 registered students. Members of the Institute are entitled to the description *certified public accountant* and to the designation CPA.

The Hong Kong Institute of CPAs evolved from the Hong Kong Society of Accountants, which was established on 1 January 1973.

The Institute operates under the Professional Accountants Ordinance and works in the public interest. The Institute has wide-ranging responsibilities, including assuring the quality of entry into the profession through its postgraduate qualification programme and promulgating financial reporting, auditing and ethical standards in Hong Kong. The Institute has responsibility for regulating and promoting efficient accounting practices in Hong Kong to safeguard its leadership as an international financial centre.

The Hong Kong Institute of CPAs is a member of the Global Accounting Alliance – an alliance of the world's leading professional accountancy bodies, which was formed in 2005. The GAA promotes quality services, collaborates on important international issues and works with national regulators, governments and stakeholders.

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Hong Kong Institute of Certified Public Accountants
香港會計師公會

致：編採主任／新聞／財經版編輯

香港會計師公會對一名會計師作出紀律處分

（香港，二零一六年六月二十七日） — 香港會計師公會轄下一紀律委員會於二零一六年六月二十日對胡潔敏女士(會員編號：A17959) 作出譴責，並命令她須繳付罰款五千港元予公會及支付紀律程序的費用共二萬八千二百一十一港元。

胡女士從自動櫃員機拿取屬於別人的現金，因而在裁判法院被判犯下盜竊罪。上級法院及後駁回她的上訴。胡女士按照公會會員申報責任，向公會申報裁判法院對她的定罪。公會經考慮所得資料，根據《專業會計師條例》第34(1)(a)(ii)條對胡女士作出投訴。

紀律委員會根據胡女士承認投訴中的指控，裁定投訴屬實。經考慮有關情況後，紀律委員會根據《專業會計師條例》第35(1)條向胡女士作出上述的命令。

根據《專業會計師條例》，如胡女士不服紀律委員會對她作出的命令，可於命令文本送達後30天內向上訴法庭提出上訴。

紀律委員會的書面判決可於公會網頁內"Compliance"部分查閱，網頁為 http://www.hkicpa.org.hk。

公會的紀律程序是根據《專業會計師條例》第V部份，由五位成員組成的紀律委員會執行。每個紀律委員會的大多數成員，即包括主席在內的三名成員，是從業外人士組成的紀律小組中選派，該紀律小組的成員是由香港特別行政區行政長官委任的；另外兩名成員由專業會計師出任。

除非負責的紀律委員會因公平理由認為不恰當，否則紀律聆訊一般以公開形式進行。紀律聆訊的時間表可於公會網頁查閱。如當事人不服紀律委員會的裁判，可向上訴法庭提出上訴，上訴法庭可確定、修改或推翻紀律委員會的裁判。

紀律委員會有權向公會會員、執業會計師事務所會員及註冊學生作出處分。紀律處分範圍包括永久或有限期地將違規者從會計師註冊紀錄冊中除名或吊銷其執業證書、對其作出譴責、下令罰款不多於五十萬港元，以及支付紀律程序的費用。

關於香港會計師公會

香港會計師公會是香港唯一獲法例授權負責專業會計師註冊兼頒授執業證書的組織，會員人數超過四萬，註冊學生人數逾一萬七千。公會會員可採用「會計師」稱銜 (英文為 certified public accountant，簡稱 CPA)。

公會(Hong Kong Institute of Certified Public Accountants)於一九七三年一月一日成立，當時的英文名稱為 Hong Kong Society of Accountants。

公會根據《專業會計師條例》履行職責，以公眾利益為依歸。其職能廣泛，包括開辦專業資格課程(Qualification Programme)以確保會計師的入職質素，以及頒布香港的財務報告、審計及專業操守準則。此外，公會亦負責在香港監管和推動優良而有效的會計實務，以鞏固香港作為國際金融中心的領導地位。

香港會計師公會是全球會計聯盟（Global Accounting Alliance，GAA）的成員之一。全球會計聯盟於二零零五年成立，聯合了全球頂尖的專業會計團體，推動優質服務，並積極與各地監管機構、政府及關連人士就國際重要議題共同合作。

香港會計師公會聯絡資料

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Proceedings No: D-15-1009H

IN THE MATTER OF

A Complaint made under section 34(1A) of the Professional Accountants Ordinance (Cap. 50)

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants — COMPLAINANT

AND

Wu Kit Man, Athena (A17959) — RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants ("the Institute").

Members: Miss CHAN, Jo Ying, Bonnie (Chairman)
Mr. CHAN, Kin Man, Eddie
Mr. CHIN, Vincent
Mr. DOO, William Junior Guilherme
Mr. SHEN, Ka Yip, Timothy

ORDER

Upon reading the complaint against Wu Kit Man, Athena, being a certified public accountant, as set out in a letter from the Registrar of the Institute ("the Complainant") dated 29 October 2015, the written submission of the Respondent dated 1 April 2016, the written submission of the Complainant dated 1 April 2016, and other relevant documents, the Disciplinary Committee is satisfied by the admission of the Respondent and the evidence adduced before it that the following complaint is proved:

> Section 34(1)(a)(ii) of the Professional Accountants Ordinance ("PAO") applies to the Respondent in that she had been convicted in ESCC 553/2014 of the offence of theft, being an offence involving dishonesty.

IT IS ORDERED that:-

1. the Respondent be reprimanded under section 35(1)(b) of the PAO;

2. the Respondent do pay a penalty of HK$5,000 under section 35(1)(c) of the PAO;

3. the Respondent do pay the costs and expenses of and incidental to the proceedings of the Institute in the sum of HK$28,211 under section 35(1)(iii) of the PAO.

Dated the 20th day of June 2016

Proceedings No: D-15-1009H

IN THE MATTER OF

A Complaint made under section 34(1A) of the Professional Accountants Ordinance (Cap. 50)

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants — COMPLAINANT

AND

Wu Kit Man, Athena (A17959) — RESPONDENT

Members: Miss CHAN, Jo Ying, Bonnie (Chairman)
Mr. CHAN, Kin Man, Eddie
Mr. CHIN, Vincent
Mr. DOO, William Junior Guilherme
Mr. SHEN, Ka Yip, Timothy

REASONS FOR DECISION

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1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants ("the Institute") as Complainant against the Respondent, who is a certified public accountant. Section 34(1)(a)(ii) of the Professional Accountants Ordinance ("PAO") applied to the Respondent.

2. The particulars of the complaint as set out in a letter dated 29 October 2015 ("the Complaint") from the Registrar of the Institute to the Council of the Institute for consideration of the Complaint for referral to the Disciplinary Panels were as follows:-

   (a) In January 2015, the Respondent declared to the Institute that she had been convicted of the offence of theft in Hong Kong.

   (b) The conviction relates to the Respondent taking money which did not belong to her from an ATM machine in Central, on 4 July 2013. She was charged with one count of theft of that sum of money, $1,800, under section 9 of the Theft Ordinance (Cap. 210).

   (c) The Respondent was convicted at proceeding ESCC 553/2014 at the Eastern Magistracy on 19 March 2014 after trial. The appeal against the

conviction was dismissed by the High Court in HCMA 230/2014 in September 2014. The Court of Final Appeal refused to grant leave for any further appeal in 2015.

(d) The underlying facts of the Respondent's conviction are as follows.

(e) At about 9 pm on 4 July 2013, a Ms. Ip withdrew $1,800 from an ATM machine ("ATM 1") of the Hang Seng Bank inside Central MTR Station. She forgot to take the money and left. When she returned to ATM 1 a few minutes later, the money was not there anymore. She reported the matter to the police.

(f) CCTV recording shows that, at about the same time, the Respondent withdrew $900 from another ATM machine ("ATM 2") which was next to ATM 1. While the Respondent was about to leave after withdrawing money from ATM 2, there were some sounds coming from ATM 1. The Respondent then took the $1,800 from ATM 1.

(g) The Respondent was subsequently identified from bank records. She was arrested in February 2014, and subsequently charged with the theft offence.

(h) When interviewed by the police, as well as at the trial, the Respondent maintained that she was not dishonest – she forgot from which ATM she had withdrawn her money, thought the money at ATM 1 belonged to her, and took the money. Her version of events was however rejected by the court and she was convicted. She was fined $5,000.

(i) The above conviction also constitutes dishonourable conduct as it would bring or likely to bring discredit upon the Respondent and/or the accountancy profession.

3. The Respondent admitted the Complaint against her. She did not dispute the facts as set out in the Complaint. She agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.

4. By a letter dated 11 March 2016 addressed to the Complainant and the Respondent, the Clerk to the Disciplinary Committee, under the direction of the Committee, informed the parties that they should make written submissions to the Committee as to the sanctions and costs.

5. In considering the proper order to be made in this case, the Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaint, the Respondent's personal circumstances, and the conduct of the Complainant and the Respondent throughout the proceedings.

6. In the present case, the Respondent took the cash which did not belong to her from the ATM machine. She was a senior compliance staff member in a bank

and she was well aware that there is CCTV in locations where cash is exchanged. She claimed that her mind was clouded by work and family matters when she committed the offence. She was fined HK$5,000 and was left with a criminal record. She also lost her high-paying job at the bank. Compared to the precedent cases identified by the parties (D-12-0690H, D-10-0515C and D-13-0849H), the present case is of a lesser gravity. The Committee agrees that it was likely to be a "fleeting" momentary greed. The Committee considers that a reprimand and a financial penalty be adequate in the circumstances. As regards the costs, the Committee considers that the Respondent should pay the costs and expenses of and incidental to the proceedings of the Institute.

7. The Disciplinary Committee orders that:-

1) the Respondent be reprimanded under section 35(1)(b) of the PAO;

2) the Respondent do pay a penalty of HK$5,000 under section 35(1)(c) of the PAO; and

3) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Institute in the sum of HK$28,211 under section 35(1)(iii) of the PAO.

Dated the 20th day of June 2016

HCMA 230/2014

香港特別行政區

高等法院原訟法庭

刑事上訴司法管轄權

不服定罪上訴

案件編號：高院裁判法院上訴案件2014年第230號

（原東區裁判法院刑事案件2014年第553號）

答辯人	香港特別行政區
	訴
上訴人	胡潔敏

主審法官 ： 高等法院原訟法庭法官馮驊

聆訊日期 ： 2014年9月17日

判案日期 ： 2014年9月17日

判案理由書日期： 2014年9月22日

判案理由書

1. 上訴人胡潔敏在暫委裁判官戴昭琦席前，經審訊被裁定一項「盜竊」罪。她不服定罪上訴。

2. 本席即席駁回上訴，現頒下理由。

控方案情

3. 上訴人被指控於自動櫃員機盜取他人遺下之款項。她承認取去款項，爭議的是犯罪意圖。

4. 案發當晚9時許，第二證人在中環地鐵站之櫃員機提款。該處有兩部櫃員機，第二證人使用左邊的一部。第二證人提取1,800 元，但忘記取去款項便離去。上訴人則使用右邊一部櫃員機，提取900 元。

5. 櫃員機有閉路電視監控，有關錄像呈堂（證物P1 號），上訴時亦有播放。錄像顯示第二證人一邊提款，一邊使用平板電腦。第二證人先離開。上訴人提取款項後亦離開，並將她所提取之900 元放入錢包。

6. 錄像顯示，上訴人離開時，回頭望向櫃員機，稍為行前，又再回頭望向櫃員機，然後走到第二證人使用的櫃員機，取去現金，然後離去。

7. 約兩星期後，第二證人報警。警方接觸上訴人，讓她觀看閉路電視錄像，然後進行錄影會面。該會面錄影之可接納性沒有爭議（證物P3號）。

8. 上訴人在會面中承認她取去左邊的櫃員機之款項，但她當時不知道自己是取了他人的款項，直至在警署觀看閉路電視錄像，才知道自己誤取。她指若一早知道，就會立即歸還。

辯方案情

9. 上訴人作供。她沒有刑事紀錄，是專業會計師，任職銀行合規部高級監察主任。她當晚提款，準備翌晨陪母親到中醫師覆診。因為工作問題分心，沒有留意提款過程，根本不知提取了多少現金。聽到提款機發出響號時，以為自己還未有拿取款項，於是折回取去，說法與會面相符。被捕後，她已向銀行歸

還1,800 元。

裁判官的理由

10. 裁判官在裁斷陳述書指出：

「被告人過往沒有刑事紀錄，法庭謹記良好品格指引。」

11. 裁判官指上訴人的證供不合理：

「14. (a) 被告人指，她提款前不會先檢查自己銀包內的金錢，是有違常理的舉動； 即使她銀包內有備用的$100現金、八達通及信用卡等亦然；

(b) 被告人在右邊的櫃員機成功提款，卻指誤以為左邊櫃員機的紙幣是屬於自己是不可置信的事。該位置只有兩部櫃員機，被告人提款後更會行經左邊的櫃員機離開，不可能有此誤會。」

12. 裁判官亦指上訴人在錄影會面有的答案亦不合理：

「既然冇乜人排隊，我就會攰多啲，咁所以我個數目係唔定㗎。」

13. 裁判官認為上訴人的提款金額與是否有人排隊毫無關係，不論她提款多少，提款機所需的操作時間不會大幅增加。而上訴人指沒有為意自己所用的是右邊的櫃員機一點十分牽強。

14. 裁判官指出，閉路電視錄像顯示:

「15.(a) 上訴人插卡後輸入密碼，等待櫃員機操作期間，曾查看銀包內容；拿取現金及單據後，她便把現金放入其銀包內離開；在離開途中，她曾兩度回頭望向左面的提款機，當時被告人的右手剛放好她所提的款項而仍未離開其銀包的拉鍊位置；之後很迅速地，被告人前行至左邊的櫃員機，拿去款項。明顯每一個步驟均在有意識下進行；

(b) 如上所述，當她回看左邊的櫃員機時，手部仍未離開其銀包，在此情況下，若說於提款後緊接的時間，她一時沒為意已拿取所提款項是難以置信的。整件事明顯並非如她所說是一時分神或誤會之下造成；

(c) 她說誤以為左面的櫃員機的款項是屬於她，更是毫無根據； 當時被告人已被櫃員機發出的聲響警醒，以她受過高深教育以及專業的背景，如有懷疑，理應會先查看其銀包內的狀況；

(d) 再者，她所取得的金額，是她所提取的金額的兩倍，法庭排除誤會的可能性，不接納她的證供。」

15. 裁判官亦指出：

「19. 沒有爭議，被告人拿去屬於第二證人的1,800 元現金。

20. 至於為何被告人身居銀行要職及清楚該處有閉路電視系統裝置，仍冒險行事一點，法庭不會揣測。然而每人行事思想模式不同，不可一概而論，但絕不構成固有不可能性。

21. 法庭確信被告人當時是在清醒下行事，她的行為不論是客觀及主觀上，無疑是不誠實的。」

16. 因此，上訴人被裁定罪名成立。

上訴理由

17. 修定完備上訴理由如下：

（1） 本案的關鍵在於上訴人的誠信，上訴人對於控方的證據及證供是沒有爭議的，可是在考慮及處理上訴人的證供時，暫委裁判官錯誤地及/或沒有充份地：

（1.1）對上訴人因有良好品格從而就上訴人的犯罪傾向性及法庭內作供時的可信性作出足夠

的指引、提醒、分析及/或考慮；

（1.2）因一些鎖碎或不正確原因不接納及/或不相信上訴人案發時欠缺專注力是事實或可能的事實。

（2） 暫委裁判官錯誤地基於相關短暫而客觀的閉路電視影像以推斷及否定上訴人的證供及裁定上訴人主觀及客觀上均無疑是不誠實。暫委裁判官不當及錯誤地沒有考慮及/或充分考慮一些支持上訴人說法或對上訴人有利的證供或事實。

（3）基於上述或其中理據，有關定罪實為不穩妥。本案仍有潛在疑點。

討論

18. 代表上訴人的張大律師並不爭議，在裁判官席前的審訊，裁判官並非必須根據案例*Berrada*及*Vye*，就被告人作供時作出可信性及其犯罪傾向性的完滿指引，即（1）良好品格的人較為可信；（2）他的犯罪傾向性較低。

19. 張大律師引述*The Queen v Chan Wu-nam* [1996] HKEC 113案高等法院法官馬天敏（當時所任）（Mortimer J, as he then was），指出法官並非在每件案件須作出*Berrada* 指引，但就該案而言，基於可信性之重要，法官應根據*Berrada*指引的兩個環節，小心處理及考慮上訴申請人之良好品格 [1]。

20. 在*The Queen v Fok Tin-yau* [1995] 1 HKCLR 351案，主審前地方法院法官完全沒有提及良好品格之指引。上訴庭副庭長鮑偉華（Power VP）指出，馬天敏法官在*Chan Wu-nam*案之判詞清楚地指出他的裁決是基於案件的個別情況而作出的。而上訴庭法官彭亮庭（Penlington, JA）在*R v Wong Chi-wei* (1994) 1 HKCLR 94案指出，*Chan Wu-nam*案並無確立法官須詳細列出考慮被控人可信性的方式。當法官獨任審訊時，即使沒有提及良好品格的證據，除非有相反的明示或暗示之外，上訴法庭應假定法官清楚知道品格證據及給予他認為恰當的比重。而該案法官沒有提及品格證據亦不致令定罪不安全或不穩妥。[2]

21. 在*The Queen v Chung Siu Ping* [1997] HKLY 305案，上訴人被裁定店鋪盜竊罪。裁判官指他在衡量被告人的可信性時，謹記無犯罪紀錄一定是對他有利。高等法院法官梁紹中（當時所任）指出，當案件係於上訴人之誠信品格，裁判官應考慮良好品格，上訴得直。

22. 張大律師亦指出，即使終審法院*在Tang Siu Man v HKSAR*（1997-98）1 HKCFAR 4案以多數裁定*Berrada* 及*Vye*案的指引並非必需，但Litton PJ在多數的判詞指出，基於普通法有利對待刑事案件被告人的傳統，作為人道及優待的做法，無疑法庭將來會繼續就良好品格作出兩個環節的指引。當案件核心爭議為可信性時，沒有就良好品格作出可信性的指引或會令對陪審團的指引不平衡和不公平。[3]

23. 張大律師指，裁判官除了說過謹記上訴人良好品格的一句之外，並沒有在任何階段分析或考慮到上訴人之良好品格及背景。

24. 張大律師亦指出，裁判官認為「為何被告人身居銀行要職及清楚該處有閉路電視系統裝置，仍冒險行事一點，法庭不會揣測。然而每人行事思想模式不同，不可一概而論」，正正反映了裁判官分析時沒有考慮上訴人的良好品格，對其可信性及犯罪傾向的影響。

25. 獨任審案的區域法院法官或裁判官與陪審團之審判不同，因為陪審團並非專業之法官，而亦不需要給予理由。因此，法官需要向陪審團作出相關的法律指引，例如良好品格的指引，否則對陪審團的指引可能不持平及不公平。而裁判官須頒下裁決理由，從裁決理由中可以清楚見其分析思維。

26. 誠如終審法院在*Tang Siu Man*案中指出，可信性是個抽象的概念。當然，某項證據的比重往往視乎證人的可信性，亦視乎案件整體證據而定。本席認為專業裁判官就被告人良好品格證據之處理應按個別案件的整體證據而定。

27. 在*Chan Wu-nam*案，該上訴申請人在前地方法院被裁定接贓罪有罪。他在失竊短時間後管有失物，他辯稱已向賣家獲取身份證副本及收條，身份證是偽造的。然而，答辯人亦同意法官指買賣是遠低於市價一點是無任何證據支持。因此，上訴得直並非僅基於良好品格指引的問題。

28. 在*Chung Siu Ping*案，上訴人與子女在百貨店購物，取了抹布、麵條及洗頭水，在收銀處支付前兩樣貨品離去，店員追出指她沒有付款，她即交出手袋被搜查。上訴人當時正可能被子女分心，和及時交出手袋搜查，也是個別的案情。

29. 在本案而言，上訴人不否認取去他人之款項。她的辯解就是當時她因工作分神，心不在焉，根本不

知道取去別人的金錢。

30. 誠如裁判官指出，上訴人按動鍵盤操作自動提款機，取去本身之提款，放入錢包後離去。聽見響號，不只一次而是兩次回首。裁判官指即使上訴人有任何分神，已被警號驚醒，這裁斷毋任何不合理之處。上訴人取去兩筆款項，還說不知分別的金額，實難以置信，與第二證人分神而忘記取去提款截然不同。

31. 裁判官指出上訴人身居銀行要職，正是提醒自己上訴人是在社會上享有一定位置的人，這亦是對上訴人良好品格的實在考慮。至於裁判官所謂每人行事思想模式不同，不作揣測，就是指出即使上訴人身居要職，仍毫無疑問上訴人並非誠實。

32. 就本案而言，即使裁判官在裁斷陳述書的其他段落沒有再重提上訴人沒有案底，或作出樣本指引的提醒並不重要。

33. 就上訴理由（1.2），張大律師指裁判官拒納上訴人之理由是對上訴人要求過高。張大律師指上訴人不需要看錢包、見無人排隊會多提取款項並非有違常理。既然裁判官指各人思維不同，又為何認為上訴人不合理？實在自相矛盾。

34. 裁判官拒納上訴人證據，完全屬於事實裁斷者取捨範圍，並沒有需要干預之處。

35. 至於上訴理由（2）張大律師指，即使裁判官觀看錄像，但是對上訴人自稱心不在焉是中性的，加上她的良好品格，並不可以作出唯一的有罪推論。

36. 事實裁斷者作推論時，必先要基於其所信納的基本事實。如前所述，裁判官有權拒納上訴人分神一說。上訴人回頭觀看兩次，然後取去他人遺留在櫃員機的款項，結合整體證據絕對足夠支持不誠實之有罪推論。

37. 基於上述理由，上訴駁回。

38. 最後，本席謹對雙方大律師的陳詞致意。

（馮驊）
高等法院原訟法庭法官

答辯人： 由律政司署理高級檢控官柏愛莉代表香港特別行政區

上訴人：由包建原律師事務所轉聘張錦榮大律師代表

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[1] 原文： “We are not to be taken as saying that it is incumbent upon a judge to give himself and to articulate what is called a “*Berrada* Direction” in each case. Suffice it to say that in this case because of the importance of credibility, the judge should have carefully dealt with the effect of the applicant’s good character under both “limbs” of *Berrada* – as to its effect upon the applicant’s credibility and as to the effect upon the proof of guilt.”

[2] 原文： “Mortimer J., however, made it plain that the ruling was one made in the circumstances of that particular case. As Penlington, JA made it clear in *R v Wong Chi-wei* (1994) 1 HKCLR 94, *Chan Wu-nam*’s case is not authority for the proposition that in all cases were credibility is in issue, the judge must set out the manner in which he has considered the accused’s good character in deciding that issue. Where a judge is sitting alone and evidence of good character has been given, this court will, even if he makes no mention of it, unless there be some express or implied indication otherwise, act upon the basis that he was aware of the character evidence and that he gave it the weight which he thought it deserved. In the present case there was no such indication. We have no doubt that the judge had in mind the character and background of the applicant when coming to

his conclusion. We find nothing either unsafe or unsatisfactory in the fact that the trial judge did not make reference to character in his reasons."

[3] 原文："As a matter of humanity and indulgence - expressing the traditional inclination of the common law in favour of the defendant in criminal trials, springing from "the time when the law was according to the common estimation of mankind severer than it should have been" per Cockburn CJ in Rowton at 30 - trial judges have often in practice given both limbs of the good character direction on mere absence of previous convictions. They will doubtless continue to do so in the future. Sometimes one limb of the direction is enough: for example, where in essence the central issue is credibility and an inclination on the part of the jury to believe the defendant means in effect he is entitled to an acquittal: to fail to give the "credibility" direction in such circumstances may well render the summing-up unbalanced and unfair ..."