



Summary of Judicial Decision

HKSAR v Cheung Albert and Yu Lik Wai William FACC 4/2025 & FACC 1/2026; [2026] HKCFA 22

Decision : **Appeals against convictions dismissed**
Date of Hearing : **22 May 2026**
Date of Judgment : **11 June 2026**

Background

1. The Appellants were convicted in the District Court of conspiracy for an agent to solicit an advantage and of dealing with property representing the proceeds of an indictable offence. The prosecution relied on the testimony and covert recordings of undercover ICAC officers who attended meetings with the Appellants. The meetings were covertly recorded pursuant to prescribed authorizations for covert surveillance granted under the Interception of Communications and Surveillance Ordinance (Cap. 589) (“ICSO”).
2. The defence unsuccessfully sought disclosure of redacted parts of the documents relied on by the ICAC in support of the authorization applications, which were redacted pursuant to section 61(2) of the ICSO. On appeal, the Appellants challenged the authorizations and the constitutionality of the relevant ICSO provisions. The Court of Appeal held that section 61(4)’s allocation of the task of assessing whether telecommunication interception (“TI”) material is disclosable to the law enforcement agency rather than the prosecution was unconstitutional, and provided a remedial interpretation allocating the task to the prosecution. However, the Court of Appeal dismissed the appeals as the unconstitutionality did not affect the safety of the convictions. The Appellants further appealed to the Court of Final Appeal (“CFA”).

Questions of law involved

3. The Appeal Committee of the CFA granted leave in respect of the following questions of law of great and general importance:

“Question A: In the light of ICSO s.3(1)(c), was the Court of Appeal correct to adopt the ‘manifestly without reasonable justification’ standard in holding that the ICSO’s scheme for executive authorizations is



proportionate and constitutionally unobjectionable?

Question B: On the true construction of the relevant provisions of the ICSO, is s.61 engaged in the present case?

Question C: What are the implications, if any, of the prohibition against disclosure to any party contained in ICSO s.61(2) on the remedial interpretation adopted by the Court of Appeal?

Question D: On the true construction of the ICSO, what is the scope of the restrictions on disclosure regarding the contents of applications for prescribed authorizations (as opposed to the product of Type 1 or Type 2 surveillance) such as to justify the withholding or redaction of such materials?

Question E: As an adjunct to each of Questions A to D inclusive, to what extent if any, does the answer have an impact on the applicants' convictions?"

Department of Justice's Summary of the Court's rulings

(Full text of the reasons for judgment of the CFA (English version only) at https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=181772)

4. The CFA unanimously dismissed the appeals.
5. On Question A, the CFA held that the correct standard for assessing the constitutionality of the ICSO's scheme of executive authorization is the standard of reasonable necessity, section 3 of the ICSO having imported that standard for authorizing intrusion into a target's privacy. Applying the test of reasonable necessity, the executive authorization scheme was constitutional given the nature of covert surveillance as involving a low level of intrusiveness into privacy and the presence of relevant safeguards.
6. On Question B, the CFA held that as the surveillance in the present case did not involve the use or product of TI, section 61 was not engaged in respect of TI product. The Court of Appeal's remedial interpretation of section 61 was not called for and should therefore be disregarded. The common law rules regarding disclosure of unused materials should be



applied in respect of covert surveillance product. Nevertheless, the CFA suggested, on a tentative basis, had section 61(4) been engaged, the remedial interpretation had much to recommend it because section 61(4), by giving the task of vetting information obtained from TI to the law enforcement agency rather than to the prosecution, may be seen to be deleterious to a defendant's right to a fair trial.

7. On Question C, the CFA suggested that the Court of Appeal's remedial interpretation of section 61(4) necessitated a consequential remedial interpretation of section 61(2) and observed that the Court of Appeal's remedial interpretation had limited effect. In a case where section 61(4) is engaged and where information is disclosed to the judge pursuant to section 61(4), the order which the judge may make under section 61(5) to secure the fairness of the proceedings is limited to a permanent stay of proceedings, in light of the restrictions in section 61(7).
8. On Question D, the CFA accepted the representations made by prosecution counsel that the redactions in the application documents for prescribed authorizations involved references to TI. Accordingly, section 61(2) was engaged in respect of particulars as to TI and the redactions were justified. Section 61(2) did not prohibit disclosure of TI product or particulars to the judge, who is entitled to review the prosecution's non-disclosure decision.
9. On Question E, the CFA held that the answers to Questions A to D had no impact on the Appellants' convictions.

Prosecutions Division
Department of Justice
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