



### Summary of Judgment

**CB (“Appellant”) v Commissioner of Police, Secretary for Justice & Secretary for  
Security (“Respondents”)  
FACV 1/2025, [2025] HKCFA 10**

**Decision** : Appellant’s appeal unanimously dismissed  
**Date of Hearing** : 14 May 2025  
**Date of Decision** : 11 June 2025

### Background

1. This is CB, the Appellant’s appeal before the Court of Final Appeal (“**CFA**”) in relation to the Judgment dated 22 February 2024 by the Court of Appeal (“**CA**”).
2. CB, a Filipina domestic helper, worked for an elderly retired doctor (anonymised as “Z”) in Hong Kong from September 2018 to May 2019. She claimed that in the course of her employment she had been subjected to various sexual abuses.
3. CB resigned from her employment in July 2019 and reported the alleged abuse to police in December 2019. The police investigation led to Z being charged with two counts of indecent assault. Z was initially convicted by a magistrate on 2 July 2021, and sentenced to 30 months imprisonment, but his convictions were subsequently quashed on appeal on 29 April 2022. Following a retrial in November 2022, Z was acquitted on 14 November 2022, because the magistrate had doubts about CB's evidence.
4. In the Court of First Instance, by the Judgment dated 22 April 2022 Mr Justice Coleman (“**Judge**”) found that there were operational failures by the Police in not pursuing further investigations into Z’s alleged sexual conduct in relation to his other foreign domestic helpers. Consequently, the Judge quashed the decisions of the Police that CB was not the victim of trafficking in persons or forced labour and remitted them for renewed consideration. The Judge concluded that the absence of a bespoke offence “substantially contributed” to the investigative failures in the Appellant’s case, and granted a declaration that such failures were causally connected to the absence of specific legislation criminalising forced labour.



5. The CA by the Judgment dated 22 February 2024 affirmed the Judge's finding in respect of the investigative failures. However, the Court of Appeal held that the correct approach to examining whether a bespoke offence was required was to ask if it was the "only effective solution" to the breaches of Article 4 of the Hong Kong Bill of Rights ("**BOR4**") involved and further held that the Judge failed to focus on the actual breaches of BOR4 in the present case. As such, the CA allowed the Respondents' appeal in part, insofar as it had not been demonstrated that the investigative failures were causally connected to the absence of a specific offence of forced labour, and set aside the declaration made by the Judge.
6. After the CA's judgment was handed down, on 23 July 2024 a civil action by the CB against Z seeking tortious damages for the indecent assaults was dismissed after trial. At the time of the present CFA's judgment, CB's application for leave to appeal to CA was dismissed by the District Court but the renewed application is yet to be heard by CA.

### **Issues in dispute**

7. By the Judgment dated 25 November 2024, the CA granted leave to CB to appeal to CFA against the aforesaid partially allowed appeal on the question of, whether the breaches of the investigative duties owed by the Police to CB led to the conclusion that the Hong Kong Special Administrative Region Government ("HKSARG") was required to enact a bespoke offence specifically criminalising forced labour to comply with its obligations under Article 4(3) of the Hong Kong Bill of Rights ("**BOR4(3)**").

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

(Full text of CFA's Judgment at

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=169532&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=169532&currpage=T))

*Appeal not rendered academic by acquittal and dismissal of civil action*



8. The CFA began by considering whether the appeal was academic due to the current state of the proceedings against Z (i.e. his acquittal of the indecent assault charges and the dismissal of the Appellant's civil claim against him).
9. The CFA held that this appeal was not rendered academic by such as it was accepted by the Police that the Appellant's evidence was *prima facie* credible which rendered the compliance with the Appellant's BOR4 rights a live question (§36).

*Proper approach is that of an "only effective solution"*

10. The CFA clarified that where there was a breach of duties under BOR4 by the HKSARG, the proper approach was fact-sensitive and remedy-based, asking whether the proposed remedy was the "only effective solution" to the breach found in order to comply with the duty to provide practical and effective protection of rights under BOR4. Where there may be more than one potential remedy, the HKSARG is afforded a wide margin of discretion to determine the appropriate remedy for the failure found. This is consistent with the approach previously adopted by CFA in the case of *ZN v Secretary for Justice* (2020) 23 HKCFAR 15 (§§40, 46).
11. Therefore, the Appellant's contention that the correct test should be the lower threshold of "substantial contribution" was dismissed, and the CA's ruling in this regard was upheld (§§49-51).

*Bespoke offence for forced labour not required on the facts*

12. In the present case, the specific breaches of BOR4 were the failures to conduct further investigation into Z's alleged conduct towards his other foreign domestic helpers. However, there was no suggestion that such investigative failures affected the prosecution of Z, which was confined to the alleged indecent assault committed against CB, or that Z would have been convicted of a forced labour offence had it existed (§§66-67).
13. Consequently, the CFA held that it has not been shown that the enactment of bespoke legislation criminalising forced labour is required as the only effective solution to provide a remedy for the breaches of CB's BOR4 rights as found by the



courts below. Nor do those investigative failures as found demonstrate that such legislation is required to provide practical and effective protection of CB's BOR4 rights (§§68-69).

**CFA's Disposition**

14. The CFA unanimously dismissed the appeal and affirmed the Court of Appeal's setting aside of the Judge's declaration. The CFA also made an order *nisi* that CB pay the costs of the appeal to the Respondents.

**Civil Division**

**Department of Justice**

**June 2025**