



Summary of Judgment

**Kwok Cheuk Kin (“Applicant”) v
Ms IP LAU Suk-ye, Executive Council Convenor and Executive Members (“ExCo”);
Professor Chung-Mau Lo, Secretary for Health (“SH”)**

HCAL 1155/2022; [2022] HKCFI 3341

Decision : **Application for leave to apply for judicial review
dismissed *ex parte***
Date of Decision : **3 November 2022**

Background

1. On 21 October 2022, the Court of First Instance handed down its judgment (“**1st Judgment**”) on a judicial review application ([2022] HKCFI 3225), holding that the SH did not have the power under the Prevention and Control of Disease (Vaccine Pass) Regulation, Cap. 599L (“**Cap. 599L**”) to invalidate the approximately 20,000 Questionable COVID-19 Vaccination Medical Exemption Certificates (“**MECs**”) issued by 7 private doctors.
2. The Government chose not to appeal against the 1st Judgment. Instead, a decision was made to amend Cap. 599L.
3. The Applicant filed the present application for leave to apply for judicial review, seeking an order that the Amended Cap. 599L was unlawful and/or unreasonable (the “**Challenge**”).
4. The leave application was considered by the Honourable Mr. Justice Coleman, and disposed of on paper.

Grounds of Review

5. The Applicant’s intended grounds of review can be broadly summarised as follows:-
 - (1) there is no appeal mechanism for those holding an invalidated MEC;
 - (2) whilst the incumbent SH is a doctor himself and is professionally qualified to determine the appeal, the next SH may not be a doctor and would thus be in no position to decide the outcome of an appeal; and



- (3) because of a Mainland news report, it is illegal or unreasonable to condition access to certain premises upon vaccination.

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

(Full text of the CFI’s judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=148425&QS=%2B%7C%28HCAL%2C1155%2F2022%29&TP=JU)

6. The Applicant’s application for leave to apply for judicial review is dismissed, for the following key reasons:-

- (1) The Applicant misunderstood the Amended Cap. 599L in relation to the affected MEC holders’ right to regain exemption from the Vaccine Pass requirement – While there are no express provisions in the Amended Cap. 599L allowing affected holders to “appeal” a decision to invalidate MECs, there are means for affected MEC holders to regain exemption and transitional arrangements under sections 4(1A), 5A, 5(2)(ba), 8(2), 8(3) and 17C of the Amended Cap. 599L. The arrangement provided is not unreasonable. (See para. 15)
- (2) There is no principle that only a medically qualified person can invalidate a MEC and then to revoke such invalidation – the Applicant did not put forward any grounds as to why a power to invalidate a MEC and to revoke the invalidation should not be given to SH. (See para. 16)
- (3) The Applicant’s wholesale attack on Cap. 599L was not particularised, and it is not for the Court to try to identify grounds for review from a general complaint – this is especially when the Court has already held that the Vaccine Pass regime under Cap. 599L pursues the legitimate aim of protecting public health in a previous case. (See para. 17)

7. In the circumstances, CFI dismissed the Applicant’s application for leave to apply for judicial review (para. 19).

Civil Division

Department of Justice

November 2022