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## Summary of Judgment

**Tse Sai Kit (“Applicant”) & Chan Ka Lam (“Intended Applicant”)  
v The Director of Environmental Protection (“DEP”) & The Director of Civil  
Engineering and Development (“DCED”)  
HCAL 1256/2024; [2025] HKCFI 1447**

**Decision :** Substitution Summons dismissed with leave granted  
to the Applicant to withdraw the  
judicial review application

**Date of Hearing :** 7 April 2025

**Date of Judgment :** 11 April 2025

### **Background**

1. On 1 August 2024, the Applicant lodged an application for leave to apply for judicial review against DEP’s decision approving the environmental impact assessment report submitted by the Civil Engineering and Development Department for the San Tin Technopole Project (“**Project**”).
2. On 12 August 2024, leave to apply for judicial review was granted by the Honourable Mr Justice Coleman (“**Coleman J**”) upon consideration of papers.
3. On 14 August 2024, the Applicant applied for legal aid.
4. The substantive hearing date was fixed from 9 to 13 June 2025.
5. On 9 January 2025, the Director of Legal Aid (“**DLA**”) refused the Applicant’s legal aid application.
6. On 6 March 2025, the Applicant sought, *inter alia*, leave for the Intended Applicant to be substituted as the applicant in these judicial review proceedings due to, *inter alia*, the Applicant’s alleged personal and financial difficulties (“**Substitution Application**”).



7. On 11 April 2025, Coleman J handed down decision dismissing the Substitution Application and granted leave for the Applicant to withdraw the judicial review application with the substantive hearing vacated.

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

(Full text of the judgment at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=167862&QS=%2B%7C%28hcal%2C1256%2F24%29&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=167862&QS=%2B%7C%28hcal%2C1256%2F24%29&TP=JU))

8. Upon examining a number of local and UK decisions relating to substitution in the context of judicial review, Coleman J set out a comprehensive set of guiding principles on substitution, *inter alia*, as follows (§33): -

- (1) In judicial review proceedings, the Court has the inherent jurisdiction to permit the substitution of an original applicant by a replacement/substitute applicant (§33(3));
- (2) That discretionary exercise has to be exercised on a principled basis, within the proper context of the ordinary requirements of judicial review proceedings (§33(4));
- (3) The Court will be astute to avoid the case of a stranger who has failed to apply in time seeking to take opportunistic advantage of someone else's claim (§33(8));
- (4) Substitution in judicial review proceedings should not be permitted simply on the basis of a community of interest, in the broad sense, between an applicant who no longer wishes to proceed and a new applicant who wishes to pick up the baton (§33(10));
- (5) Substitution is only permissible where it can be seen (1) that the original applicant was from the start bringing the proceedings for the benefit of a wider group which was in some sense associated with him in doing so, and (2) that the new applicant has a sufficient identity of interest (§33(12)); and
- (6) There is no bright line indicating exactly where there begins to be a sufficient identity of interest between the original applicant and the person



seeking to be substituted, but the connection must be such so that it can be seen that the policy underpinning the mandatory timing of applications for judicial review, and the policy of finality, are not being substantially undermined (§§33(17)-(18)).

9. By applying the above principles to the circumstances of this case, Coleman J reached the conclusion that the Intended Applicant falls on the wrong side of the line (§74) upon balancing the following matters.

#### Public Interest

10. Coleman J accepted that the issues of general public importance raised by the Applicant in the present proceedings are not such as should be cursorily passed over without determination. However, Coleman J held that it is also necessary to keep in mind that the Court looks at those questions of legality, rationality, fairness and integrity in judicial review proceedings only if those proceedings are properly brought before it. Maintenance of the rule of law does not require every potential public challenge to be identified and determined. If no public law challenge is brought, that is the end of the matter from the Court's point of view. If an attempted public law challenge is brought out of time, in circumstances which do not properly support the grant of an extension of time, that is also the end of the matter (§§58-59).

#### Reason for the Applicant's Withdrawal

11. Coleman J accepted that the evidence identifies that the primary, if not sole, reason for the Applicant's decision to withdraw from these proceedings is because he has failed to obtain legal aid and has been unable to source any alternative funding (§60).
12. As regards the harassment and doxxing as described by the Applicant in his evidence, while Coleman J considered it deeply unattractive that persons pursuing legitimate legal rights in matters of public interest should ever be concerned that they or their families might face potential harassment and intimidation from faceless and nameless third parties hiding in the shadows, His Lordship did not think the harassment described by the Applicant in his evidence was necessarily performed specifically in order to cause the Applicant



to withdraw from these proceedings, as many of the matters contained in the social media activity related to other aspects of the Applicant's circumstances (§§63-64).

### Prejudice

13. Coleman J acknowledged that the potential prejudice suffered by DEP and DCED has been present since the commencement of these proceedings (§66). While one may think DEP and DCED would be no worse off than if the Applicant were to continue with his own challenge if the Substitution Application is permitted, that is in reality only the case if the Intended Applicant and the Applicant have the necessary sufficient identity of interest. If they do not, and the Applicant withdraws his challenge, then DEP and DCED are simply in the position they would have been in had no challenge been made by anyone at all (§§67-68).

### Sufficiency of Identity of Interest

14. This is the key point in the exercise of the relevant discretion as to whether or not to permit the Substitution Application (§69). There is no suggestion that the Intended Applicant previously contemplated bringing a challenge to the DEP's decision about the Project, but left it to the Applicant to do so (§72). Whilst the Applicant and the Intended Applicant both have an interest in environmental matters, the protection of the environment and the rule of law in general, Coleman J did not think that there has been demonstrated a sufficiency of identity of interest as would justify substantially undermining the policy behind the strict time limits and finality. The overlap between the Applicant and the Intended Applicant was little and not specific (§73).

### Disposition

15. Coleman J held that the appropriate guiding principles point firmly that the discretion potentially to substitute the Applicant with the Intended Applicant at this time should not be exercised in favour of substitution on the particular circumstances of this case (§75). Accordingly, **the Substitution Application was dismissed** (§76).



16. On the basis of the Applicant's clear statement of his intention to withdraw the challenge made by him in these proceedings irrespective of whether the Substitution Application were to be permitted, **Coleman J granted leave for the Applicant to withdraw the judicial review application (§77).**
17. As a result, Coleman J directed that **the substantive judicial review application shall fall away**, all outstanding directions be revoked and the substantive hearing dates in June 2025 be vacated (§78). The issue of costs shall be dealt with separately on paper (§79).

#### Postscript

18. Coleman J reassured that in Hong Kong there can be no suggestion that the government or public authorities seek to suppress legal challenges brought against them. Rather, the fact is that they meet such challenges on the merits on an open and principled basis. Following that proper respect for the rule of law, private citizens should also not seek to place undue pressure on litigants or their lawyers.

**Civil Division**

**Department of Justice**

**June 2025**