Summary of Judgment

Chen Hai Tao & Yin Wai Ho ("Applicants") v Transport Tribunal (Respondent) & Commissioner for Transport (Interested Party) ("Commissioner")
HCAL 1597/2021; [2025] HKCFI 2686

Decision	:	**Application for judicial review allowed**
Date of Hearing	:	**24 August 2022**
Date of Judgment	:	**3 July 2025**

Background

1. Each Applicant applied for judicial review seeking to quash the decision ("**Decision**") of the Transport Tribunal ("**Tribunal**") that confirmed the decision of the Commissioner in refusing that Applicant a Hire Car Permit ("**HCP**") to use his private car for e-hailing point-to-point services as self-employed driver through the "Uber" mobile application ("**Uber App**").

2. Under regulation 14(3)(b) of the Road Traffic (Public Service Vehicles) Regulations, Cap. 374D ("**Reg. 14(3)(b)**"), the Commissioner may issue a HCP if she "is of the opinion that the type of hire car service specified in the application is reasonably required". Both HCP applications by the Applicants were rejected by the Commissioner on 8 June 2018 on the basis that the proposed hire car services were not "reasonably required" under Reg. 14(3)(b). Both Applicants applied for the Commissioner's decisions to be reviewed by the Tribunal, but the reviews were dismissed on 31 August 2021.

3. The Applicants sought to challenge the Decision on three grounds:-

   (i) The Tribunal made an error of law in misconstruing and/or misapplying the "reasonably required" test in Reg. 14(3)(b) ("**Ground 1**");

   (ii) Alternative to Ground 1, if the Tribunal's construction was correct, that construction contravenes the constitutional right to property under Article 6 and Article 105 of the Basic Law ("**BL6**" and "**BL105**"); and the right to freedom of choice of occupation in Article 33 of the Basic Law ("**BL33**") ("**Ground 2**"); and

   (iii) The Decision was based on errors of analysis and hence irrational ("**Ground 3**").

4. Leave was granted to the Applicants on papers by The Honourable Mr Justice Coleman ("**Coleman J**") on 29 November 2021 to apply for judicial review. A substantive hearing took place before Coleman J at the Court of First Instance on 24 August 2022.

Department of Justice's Summary of the Court's rulings
(Full text of the CFI's judgment at
https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=170126&currpage=T)

5. The Court allowed the judicial review on Ground 1. Ground 2 (as an alternative to Ground 1) was not necessary to be dealt with, whereas Ground 3 was found to have not been made out.

Ground 1 – Error of law on construction of Reg. 14(3)(b)

6. It was the Applicant's core contention that the Tribunal made an error of law in misconstruing and/or misapplying the "reasonably required" test in Reg. 14(3)(b) and the correct construction is that only the "type of hire car service specified in the application" rather than the "hire car service specified in the application". The Tribunal's construction essentially strikes out or ignores the express words "type of" (§§81-89).

7. The Commissioner argued that a HCP applicant had to demonstrate that his proposed hire car service as specified in the application was "reasonably required". It was not the legislature's intention that such test was satisfied by the mere existence of market demand. The HCP regime was further not intended to open up alternative fleets of public vehicles (§§91-98).

8. The Court held that the Tribunal misconstrued Reg. 14(3)(b) and rejected the Commissioner's submission that an applicant was to prove that his proposed private hire car service had to be "unique" (§§109-110). The focus of the inquiry was not on the individual applicant's or his car's characteristics (§111).

9. The Commissioner's submission that the Applicants' interpretation would lead to opening the floodgates for all e-hailing services was rejected as the Court considered that there was in place a statutory limit of 1,500 HCPs for private hire car service (which the Applicants have not asked to be revised, nor challenged its legitimacy) (§§106, 108). Further, it would not blur the line between "public"

and "private" transport since the hiring of a vehicle through the e-hailing app is a private service, though it does provide a service to the public (§112).

10. The Commissioner further submitted that the "reasonably required" test in Reg. 14(3)(b) should be read in light of the "public/private" divide intended by the legislature, that is, if the proposed private hire car service operated in a mode intended to be provided by a form of public transport such as taxis, then it should not be seen as "reasonably required" as it did not allow private cars to operate as "pseudo-taxis". The Court rejected this further submission as the legislative history did not appear to support such proposition. After the implementation of the HCP regime, both taxis and private cars with HCPs would be lawfully used for hire or reward and the main distinction between taxis and HCP private cars lay in the way they obtained their passengers; it would not be right to suggest that there should be a categorical ban for private hire car to provide personalised point-to-point service to the public generally because such service was intended to be provided by taxis (§§128, 144, 151, 155-156, 161-162).

11. As for the constitutional arguments, the Court did not accept that it should automatically take into account an individual's constitutional rights in discerning the meaning of a statutory provision as intended by the legislature, if the meaning of the provision is otherwise clear. In any event, the Court did not think there can be any real complaint even if the grant or refusal of a HCP might affect an individual's choice of work or his right to freely use his own property (§§117-118).

12. The Court also considered the Court of Final Appeal's comments in *HKSAR v Yuong Ho Cheung* (2020) 23 HKCFAR 311 (concerning the prosecution of Uber drivers contrary to section 52(3) of the Road Traffic Ordinance, Cap. 374) but did not find that the case shed light on the proper interpretation of "type of hire car service specified in the application" (§119).

13. For these reasons, Ground 1 was made out.

Ground 2 – Constitutional challenge

14. Ground 2 (an alternative to Ground 1), in the case the Court was with the Tribunal on the correct construction of Reg. 14(3)(b), is that such interpretation would present an impermissible restriction on a vehicle owner's property right under BL6 and BL106 and right to freedom of choice of occupation under BL 33. Since the Tribunal's construction of Reg. 14(3)(b) was found incorrect, the Court

considered it not necessary to deal with Ground 2 (§§165-166).

Ground 3 – Irrationality

15. None of the arguments relied upon by the Applicants was found to support an irrationality challenge. Ground 3 was thus not established (§172).

Relief and costs

16. The Court ordered the appropriate relief was to quash the Decision in respect of both Applicants and remit the matter back to the Tribunal for reconsideration, with the Applicants' costs to be paid by the Commissioner (as the Interested Party and "contradictor" in the proceedings) (§§173-175).

Civil Division
Department of Justice
3 July 2025