



### Summary of Judgment

#### Woo Tak Yan (“Applicant”) v Secretary for the Civil Service HCAL 1640/2021 and [2022] HKCFI 1465

<b>Decision</b>	<b>: Application for leave to apply for judicial review dismissed with costs</b>
<b>Date of Hearing</b>	<b>: 23 May 2022</b>
<b>Date of Judgment</b>	<b>: 24 May 2022</b>

### Background

1. The Applicant was formerly a civil servant under the employment of the Environmental Protection Department (“EPD”). He sought leave to apply for judicial review to challenge the decision of the Secretary for the Civil Service (“SCS”) to retire him from the civil service in the public interest under section 12 of the Public Service (Administration) Order (“PS(A)O”) (“Decision”).
2. On the basis of Article 99 of the Basic Law (“BL”) and the Civil Service Code, the Civil Service Bureau (“CSB”) issued CSB Circular 2/2021 on 15 January 2021 requiring all serving civil servants employed prior to 1 July 2020 to duly sign and return a declaration by a stipulated deadline to confirm that they would uphold BL, bear allegiance to the HKSAR, be dedicated to their duties and be responsible to the HKSAR Government (“Declaration”). Neglect, refusal or failure to duly sign and return the Declaration by the stipulated deadline without reasonable excuse reflects an officer’s refusal to acknowledge, accept and discharge the consistent duties of civil servants, and a serious lack of commitment to adhere to the core values of the civil service which underpin good governance and help the civil service gain and retain the respect and confidence of the public.
3. The Applicant inserted the handwritten words “昭昭日天” (if read from left to right), or “天日昭昭” (if read from right to left) into the signature box on the Declaration. Both EPD and CSB considered the Applicant to have failed to duly sign the Declaration and that the Applicant had failed to put forward any reasonable explanation for his failure to duly sign and return the Declaration by the stipulated deadline of 24 February 2021. As such and having considered the Applicant’s written representations, SCS made the Decision on the ground that the Government had lost confidence in the Applicant’s suitability to continue discharging his duties as a public officer.



4. An *inter partes* hearing for leave to apply for judicial review was conducted before the Honourable Mr. Justice Coleman (“**Coleman J**”) at the Court of First Instance (“**CFI**”) on 23 May 2022.

### **Key Issue in Dispute**

5. Whether the Applicant “duly signed” the Declaration.

### **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=144414&QS=%2B&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=144414&QS=%2B&TP=JU))

6. The Applicant’s intended grounds of review are broadly (para. 56):-
  - (1) Illegality (abuse of power): there was no prior and specific express requirement on the form of signature for the purpose of the declaration;
  - (2) Procedural unfairness (infringement of the right to be heard): the Applicant was not provided with the documents he requested;
  - (3) Illegality: failing to take into account relevant factors, and taking into account irrelevant factors;
  - (4) Unequal treatment: other civil servants were given ample opportunities to remedy their Declaration with guidance following “neglect or refusal”, but not “failure”;
  - (5) Unreasonableness: the Declaration submitted by the Applicant ought to have been regarded as duly signed; and
  - (6) Illegality: the Decision was not made in accordance with PS(A)O section 12.
7. CFI dismissed the Applicant’s leave application for judicial review for the following reasons.
  - (1) The CFI rejected the Applicant’s allegation that there was no specific express requirement on the form of signature for the purpose of the Declaration.
    - (a) The requirement on how the Declaration should be signed is a question of ordinary common sense and reasonableness, in the context that the making of the Declaration is a serious matter and intended to be taken seriously. Ultimately, the question is whether the person making the Declaration can be seen objectively to have made and demonstrated a genuine and open acknowledgement of



- the acceptance of the responsibilities of and expectations on civil servants, and to have faithfully and truthfully committed to upholding and abiding by the obligations set out in the Declaration (paras. 59-61);
- (b) The relevant Bureau or Department seeking the Declaration must logically have the power to decide whether any particular declaration form is duly signed, subject to potential judicial scrutiny under the principles of public law (para. 62);
  - (c) The requirement that the Declaration be duly signed identifies that the basic elements of a signature should be present, so as to show the signatory's assent to the contents of the Declaration and his genuine intention to be bound. One should have regard to the context, applying common sense and reasonable judgment in deciding what would or would not amount to being duly signed. Someone else's name, a common phrase or slogan would not be regarded as a signature (paras. 63-64);
  - (d) Any signature had to be real, true or valid (para. 65); and
  - (e) The Applicant purported to sign using words and in a way which had never been previously used as his signature within his work as a civil servant. The Applicant must have known full well the meaning of the words, phrase or slogan which he placed in the signature box, and that it was a significant departure from his usual signature for official documents in the EPD. It was entirely reasonable for SCS to come to the conclusion that the Applicant failed to return the Declaration without reasonable explanation (paras. 66-69 and 85).
- (2) The CFI rejected the Applicant's allegation of infringement of right to be heard and held that it was baseless for the Applicant to suggest that EPD and/or CSB had refused to provide him with the relevant supporting documents, or had failed to inform him what the real problem was with his "signature". (paras. 75-79)
- (3) The CFI held that the Applicant failed to identify any factor which is said to have been relevant but left out of the consideration or irrelevant and brought into consideration. (paras. 80-81)
- (4) The CFI found that both the Applicant's allegation of unequal treatment and the allegation that the Decision was not made in accordance with section 12 of PS(A)O were misconceived and/or of no substance. (paras. 82-88)



8. The CFI dismissed the Applicant's application for leave to apply for judicial review as it is plainly and utterly unmeritorious, and ordered costs be payable by the Applicant to SCS, taking into account that the leave application was so lacking in merit, and has caused an unnecessary drain on public resources.

**Civil Division**

**Department of Justice**

**May 2022**