



Summary of Judgment

Cheng Yiu Tong (“Applicant”) v Commissioner of Police (“Commissioner”)

HCAL 520/2023; [2026] HKCFI 227

Decision	: Judicial review dismissed with cost order nisi to the Commissioner
Date of Hearing	: 1 August 2023
Date of Judgment/Decision	: 29 January 2026

Background

1. In this case, the Applicant had been under investigation by the Police. The Applicant was suspected of heading a drug trafficking syndicate involved in money laundering and the smuggling of dangerous drugs from the Chinese Mainland to Hong Kong.
2. In January 2013, the Commissioner issued Letters of No Consent (“LNCs”) against the bank accounts held by the Applicant (“Relevant Accounts”) at various banks (“Banks”). The LNCs were subsequently maintained upon monthly reviews conducted by the Police pursuant to the procedures stipulated in the Force Procedures Manual (“FPM”), as the investigations were on-going.
3. By a Notice of Application for Leave to Apply for Judicial Review filed on 31 March 2023, the Applicant applied for leave for judicial review (“JR”). By an amended Form 86 dated 20 July 2023 (“Amended Form 86”), the Applicant sought, and was granted by the Court, leave to apply for JR to challenge the Commissioner’s decisions to: **(a)** maintain LNCs allegedly issued against, *inter alia*, the Relevant Accounts at the Banks between 14 January 2013 and 26 June 2023; **(b)** refuse to consider the issue of a Letter of Consent on 1 March 2023; and **(c)** lift LNCs issued against the Banks without giving consent.
4. In May 2023, the Applicant was charged. In June 2023, the Secretary for Justice obtained a restraint order (“RO”) from the Court, covering, among other things, the Relevant Accounts. As a result of the grant of the RO, the LNCs against the Relevant Accounts were lifted.

Issues in dispute

5. By the Amended Form 86, the Applicant raised five grounds of judicial review:-



- (i) **Ground 1:** The Commissioner breached operational proportionality (“**Operational Proportionality Ground**”);
- (ii) **Ground 2:** The Commissioner breached his own policy to ensure the issue of LNCs and the use of the No Consent Regime (“**LNC Regime**”) is necessary, proportionate and reasonable (“**Breach of Policy Ground**”);
- (iii) **Ground 3:** The Commissioner frustrated the purpose of his statutory powers (*Padfield ultra vires*) (“**Ultra Vires Ground**”);
- (iv) **Ground 4:** The Commissioner fettered his own discretion by relying solely on the consideration of the complexity and the necessary time for the investigation as “exceptional circumstances” (“**Fettered Discretion Ground**”); and
- (v) **Ground 5:** The Commissioner operated the LNC Regime with conspicuous unfairness amounting to an abuse of power (“**Procedural Unfairness Ground**”).

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

(Full text of the judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=176797&QS=%2B%7C%28HCAL%2C520%2F2023%29&TP=JU

6. The Judge first discussed the preliminary issue of whether the intended challenge is academic in light of the fact that the RO was granted and the LNCs were withdrawn. Despite noting that a similar challenge to the LNC Regime was considered and rejected by the Court of Appeal in *Interush Limited v Commissioner of Police*¹ and the Court of Final Appeal (“CFA”) in *Tam Sze Leung v Commissioner of Police*² (“**Tam Sze Leung**”) which will guard against any rule/policy challenge on the constitutionality of the LNC Regime, the Judge remarked that it does not stop a “decision challenge” of the sort made in this case, where there are issues of real public importance in operation of the LNC Regime and different underlying factual circumstances that justify proper consideration: §§41-43.

Ground 1 – Operational Proportionality Ground

7. The Judge accepted the investigations in this case were extremely complex and on an “extraordinary scale”. If the correct test is that LNC may be extended as long as there appears to be justifications for continued extensions, then this case seems to justify the exceptional circumstances so not operationally

¹ [2019] 1 HKLRD 892.

² [2024] 27 HKCFAR 288.



disproportionate, despite the lengthy period of over 10 years (though there must be cases where at some point it will cross the line): §§97-100.

Ground 2 – Breach of Policy Ground

8. The Judge rejected the fact-specific challenge that there was breach of FPM to ensure the issue of LNCs and the use of the LNC Regime is “necessary, proportionate and reasonable”. The Judge found no basis in evidence that the Commissioner acted in bad faith or suggested any delay by the investigator or the prosecutor. Also, the Applicant, who failed to dispel his suspicion, did not adduce any evidence of actual hardship suffered: §§112-113.

Ground 3 – Ultra Vires Ground

9. The Judge applied the CFA’s holdings in *Tam Sze Leung*, that the bank is obliged to and does exercise its own judgment, and found the decisions to maintain the LNCs were not ultra vires: §§121-123.

Ground 4 – Fettered Discretion Ground

10. The Judge in observing that the FPM has a built-in proportionality exercise (as need to consider necessity, proportionality and reasonableness) found that the Commissioner did not fetter his discretion; it is also not for the JR Court to substitute its own views on the facts: §§129-131, 134-136.

Ground 5 – Procedural Unfairness Ground

11. The Judge considers that the question of whether the power to grant or withhold consent under section 25A of OSCO is exercisable within the duration of a RO does not arise on the facts of this case, noting that LNCs were lifted almost as soon as the RO was obtained. Further, the Commissioner not giving reasons for issuing the LNCs and not disclosing anything relating to the investigation did not constitute procedural unfairness: §§137-138, 140-141.

Damages

12. The Applicant’s intimation of a damages claim falls away in light of the Judge’s findings that none of the grounds of judicial review is made out. In any event, the proper venue to pursue it is pursuant to section 29 of OSCO: §§143, 145-146.

13. The Court dismissed all the grounds of review with costs order *nisi* to the



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Commissioner, to be taxed if not agreed with certificate for two Counsel: §§147-149.

Civil Division

Department of Justice

29 January 2026