



Summary of Judgment

K (the “Applicant”) v Secretary for Environment and Ecology and Secretary for Justice (together, the “Government”)
HCAL 646/2022, [2025] HKCFI 3170

Decision: Leave to apply for judicial review granted; substantive JR application allowed
Date of Hearing: 12 and 13 January 2023
Date of Judgment: 23 July 2025

Background

1. The Applicant is a pre-operative female-to-male transgender person, who was required to undergo real life experience (“RLE”) in his preferred gender (male) as part of his medical treatment, which included using male bathrooms. He applied for leave for judicial review challenging the constitutionality of Regulations 7 and 10 of the Public Conveniences (Conduct and Behaviour) Regulation (Cap. 132BL) (the “Relevant Provisions”), which criminalise a person for using public conveniences that are allocated for the opposite sex to that person, on grounds that they violate his (i) right to privacy under BOR14 and (ii) right to equality under BOR1, BOR 22 and BL25¹.
2. The Applicant seeks remedial construction of the Relevant Provisions to the effect that the word “male” and “female” should respectively be read as including pre-operative, female-to-male transsexual persons and pre-operative, male-to-female transsexual persons, both meeting the two criteria of (i) being diagnosed with gender dysphoria and (ii) having a medical need to undergo RLE in their preferred gender.
3. A rolled-up hearing for leave to apply for judicial review and the substantive application for judicial review was conducted before the Honourable Mr Justice Coleman on 12 and 13 January 2023.
4. Subsequent to the hearing, the CFA decision (“Q(CFA)”) in *Q and Tse Henry Edward v Commissioner of Registration* (2023) 26 HKCFAR 25, [2023] HKCFA 4 was handed

¹ For convenience, article X of the Basic Law refers as “BLX” and article Y of the Hong Kong Bill of Rights as “BORY”.



down on 6 February 2023. It was held that the previous policy requiring transgender persons to undergo full sex reassignment surgeries in order to apply for altering the gender markers on their HKID cards is unconstitutional.

Issues in dispute

5. The key issue is whether the Relevant Provisions contravene the Applicant's right to privacy under BOR14 and the right to equality under BOR1, BOR 22 and BL 25 following a proportionality analysis, and the appropriate relief to be made.

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

(Full text of the Decision at:

https://legalref.judiciary.hk/lrs/common/search/searchbox_result.jsp?txtselectopt=4&isadvsearch=0&selDatabase=ALL&selDatabase=JU&selDatabase=RV&selDatabase=RS&selDatabase=PD&stem=1&selall=1&ncnValue=&ncnParagraph=&ncnLanguage=en&txtSearch=HCAL+646%2F22&query=&selallct=1&selSchct=FA&selSchct=CA&selSchct=HC&selSchct=CT&selSchct=DC&selSchct=FC&selSchct=LD&selSchct=OT)

6. The Court allowed the JR application. The Court accepted the legitimate aim of the sex-segregated facilities under the Relevant Provisions is to preserve bodily privacy, security and (at least to some extent) social norms and cultural expectations, and that there is a rational connection between the legitimate aim and the measure adopted (paras 134 – 135).
7. As to the proportionality analysis, following the decision in *Q(CFA)*, the Government did not seek to uphold the Relevant Provisions as being proportionate by reference to either the meaning of “male” and “female” as biological sex at birth, or the approach adopted to the practice involving the sex or gender marker on a person's HKID on the then applicable policy. In any event, the Court held that the Relevant Provisions, by restricting access based solely on biological sex at birth and being a blanket exclusion of pre-operative transgender persons undergoing medical treatment and RLE, constituted a disproportionate interference with the Applicant's rights to privacy and equality (para 136).
8. On remedy, the Court declined to adopt the remedial interpretation of determining access by relying on (i) the HKID gender markers (as proposed by the Government (para 124)) which is merely for verification of identity and based on policy which could be revised from time to time (paras 144-145), or (ii) the medical



certification of gender dysphoria and the need to undergo RLE (as proposed by the Applicant (para 138)) which may be subject to further challenge and lacks the necessary specificity (para 139). Instead, the Court deferred to the legislature to define where the line is to be drawn between a “female person” and a “male person” in the context of public toilet access by taking into account wider policy issues (para.150).

9. Accordingly, the Court declared that the Relevant Provisions contravene the right to equality (BL 25, BOR1 and BOR22) and right to privacy (BOR 14), and ordered the Relevant Provisions to be struck down. The said declaration is to be suspended for a period of 12 months to permit the Government time to consider whether it wishes to implement a way to deal with the contravention.

Civil Division

Department of Justice

July 2025