



Summary of Judicial Decision

HKSAR v Chiu Ka-wai HCMA 473/2023; [2026] HKCFI 3602

Decision : **Appeal against conviction dismissed**
Date of Hearing : **29 May 2025**
Date of Judgment : **27 July 2026**

Background

1. Armed with search warrants issued under section 17(1A) of the Prevention of Bribery Ordinance (Cap. 201) (“POBO”), ICAC officers conducted searches of the homes of the Appellant and other suspects, and examined the digital contents of their mobile phones seized.
2. At trial, prosecution heavily relied on the WhatsApp messages retrieved from the seized mobile phones. The Appellant, having been convicted of four counts of fraud and one count of attempted fraud, appealed against conviction.

Issues in dispute

3. The Appellant complained, apart from the factual grounds of appeal, that her right to timely legal advice under Article 35 of the Basic Law (“BL35”) and her right to freedom and privacy of communication under Article 30 of the Basic Law (“BL30”) had been infringed, giving rise to two issues for the Court’s determination:
 - (1) Whether the Appellant’s right to timely legal advice under BL35 was infringed by the ICAC officers’ failure to remind her and other suspects of that right before asking whether they were willing to provide their mobile phone passwords.
 - (2) Whether the Appellant’s right to freedom and privacy of communication under BL30 was infringed, and whether the search warrants remained valid for the examination of the digital contents of the mobile phones seized after the “Certificate of Execution” was signed.



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

(Full text of the reasons for judgment of the Court of First Instance of the High Court (Chinese version only) at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=183188&QS=%2B%7C%28HCMA%2C473%2F2023%29&TP=JU)

4. The appeal was dismissed.
5. On the right to legal advice (BL35), the Court held that the right to timely legal advice is not absolute and may be subject to limitation if it pursues a legitimate aim and is proportionate. A balance must be struck between safeguarding suspects' rights and the public interest in ensuring efficient investigation of crimes. The duty to remind a person of his/her right to legal advice arises only when the person is:
 - (1) A suspect;
 - (2) In custody or his freedom of action is significantly curtailed;
 - (3) Being subject to interrogation (i.e. being questioned with a view to extracting confession or eliciting an incriminating response).
6. The mere fact that a suspect is unable to leave a place during a house search is insufficient to regard his freedom of action as having been "significantly curtailed". Such curtailment is difficult to envisage in the absence of arrest or some form of statutory detention. Asking a suspect whether he is willing to provide mobile phone passwords, like asking him to open lockfast places, does not amount to interrogation. Applying these principles, there was no violation of BL35: the Appellant and other suspects were not in custody, nor was their freedom of action significantly curtailed; and they were not being interrogated at the material time.
7. On freedom and privacy of communication (BL30) and the validity of the search warrants, the Court held that, on a proper understanding of their terms, the warrants authorized both the house search and the examination of the digital contents of mobile phones, consistent with the requirement that the two be regarded as two separate "places" for the purpose of a search. Although the warrants authorized only "enter" and "search" of a place under section 17(1A) of POBO, ICAC officers are independently empowered under section 10C(1)(c) of the ICAC



Ordinance (Cap. 204) to “seize” and “detain” exhibits found upon search. Implicit in the power to “search” is the power to “examine” or “inspect” the contents of exhibits seized, including the digital contents of mobile phones.

8. The search warrants remained valid until fully executed or when any limitation of time ended. The “Certificate of Execution” on the back of the warrants is not a statutory requirement but only a reminder that the warrants are to be executed within a reasonable period within the time limit stated. In the present case, the Certificate was signed upon completion of the house search while the examination of the digital contents remained outstanding, i.e. the warrants were not yet fully executed. Since the examination took place subsequently while still within the warrant’s validity period, the examination was lawful.
9. Even if the search warrants had expired, ICAC officers had statutory powers under section 10C(1)(c) of the ICAC Ordinance to “examine” or “inspect” the contents of the seized devices “at a proper pace”. In any event, the Appellant and other suspects had voluntarily provided their mobile phone passwords under caution knowing full well that the contents would be examined. As a search warrant serves only to authorize a search if no consent is volunteered, if the search is consented to, even in the absence of a search warrant, the fruits of the search remain admissible.

Prosecutions Division
Department of Justice
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