### **FACV No. 7 of 2023**

**[2024] HKCFA 16**

IN THE COURT OF FINAL APPEAL OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

**FINAL APPEAL nO. 7 OF 2023 (CiVIL)**

(ON APPEAL FROM CACV NO. 152 OF 2022)

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BETWEEN

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|  | **TAM SZE LEUNG** | **1st Applicant**  **(1st Appellant)** |
|  | **TAM CHUNG WAI** | **2nd Applicant**  **(2nd Appellant)** |
|  | **KONG CHAN** | **3rd Applicant**  **(3rd Appellant)** |
|  | **LEE KA LO** | **4th Applicant**  **(4th Appellant)** |
|  | **and** |  |
|  | **COMMISSIONER OF POLICE** | **Respondent** |

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| Before: | Chief Justice Cheung, Mr Justice Ribeiro PJ,  Mr Justice Fok PJ, Mr Justice Lam PJ and  Lord Collins of Mapesbury NPJ |
| Date of Judgment: | 20 June 2024 |

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| **JUDGMENT ON COSTS** |

**Chief Justice Cheung and Mr Justice Ribeiro PJ:**

1. This is the Court’s judgment on costs. By its main judgment dated 10 April 2024,[[1]](#footnote-1) the Court unanimously dismissed the appellants’ appeal in which they had sought to challenge the practice of the CP involving the issue of LNCs to banks regarding their dealing with property suspected to represent the proceeds of indictable offences in the context of OSCO. The abbreviations used in that judgment are adopted here.
2. The respondent CP submits that costs should follow the event and seeks an order that the appellants pay his costs here and below, certified fit for three counsel.
3. The appellants, on the other hand, submit that there should either be no order as to costs or that any costs awarded to the CP should be substantially discounted. This is because, they argue, the Court decided the appeal “fundamentally” on a basis “contrary to the parties’ common position”, holding that the constitutional and other rights relied on were not engaged. They also argue that the case was not of such complexity as to justify instructing three counsel.
4. In our view, costs here and below should clearly follow the event. The appellants launched an attack on what they called the “No Consent Regime”, alleging that by their actions the police “froze the appellants’ assets, infringing their protected rights”. They contended that the conduct of the police was ultra vires, unconstitutional (not “prescribed by law” and disproportionate), involved misuse of a statutory power for improper purposes and deprived the appellants of their rights to private and family life and to a fair hearing.[[2]](#footnote-2)
5. The appellants failed on every one of those arguments, a crucial reason being that they had erroneously attributed the “freezing” of their bank accounts to the police when, on a proper understanding of the law and the facts, it was clear that such action had actually been taken by the banks. The Court held that in consequence, the constitutional and certain other rights relied on by the appellants were not engaged, which, it is true, was not a point made by either side below. However, there were substantial additional reasons for rejecting the appellants’ case, as held by the Court of Appeal and in Sections G, H and I of this Court’s judgment. The appeal was dismissed because the appellants’ challenge was fundamentally flawed and it does not affect the costs order that this Court identified a basis not raised below for so concluding.
6. Moreover, by the time the case came up for trial at first instance, the challenge to the LNCs had become academic, as pointed out by the Court of Appeal:

“As mentioned above, by the time of the hearing below, the Restraint Order had been granted and the LNCs issued to the Banks had in effect been withdrawn. It would be pointless for the court to quash the LNCs or the decision to issue them or the refusal to consent to the withdrawal of funds, which were among the orders sought in the Form 86.”[[3]](#footnote-3)

1. The Courts have nonetheless dealt with the legal issues raised because of their general importance, but it is difficult to see what practical relief the appellants were hoping to gain in their pursuit of the proceedings.
2. We therefore see no basis for departing from the general rule that costs should follow the event. We consider a certificate for three counsel justified given the range of issues raised by the appellants and the fact that they have themselves instructed three counsel.
3. Accordingly, we order that the appellants pay to the respondent the costs of the appeal and of the proceedings below, certified fit for three counsel.

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| (Andrew Cheung) | (R A V Ribeiro) | (Joseph Fok) |
| Chief Justice | Permanent Judge | Permanent Judge |

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| (M H Lam) | (Lord Collins of Mapesbury) |
| Permanent Judge | Non-Permanent Judge |

Written submissions by Mr Abraham Chan SC, Mr Timothy Parker and Mr Geoffrey Yeung, instructed by O Tse & Co., for the 1st to 4th Applicants (Appellants)

Written submissions by Mr Jenkin Suen SC and Mr Peter Dong, instructed by the Department of Justice, for the Respondent

1. [2024] HKCFA 8. [↑](#footnote-ref-1)
2. Judgment §15. [↑](#footnote-ref-2)
3. CA§41 [↑](#footnote-ref-3)