

## **2025 JD1 Administrative Law – 5 February 2025**

### **Week 2: Leave, Delay, Standing & Limits of JR**

#### **1. Leave to Apply for Judicial Review**

- The purpose of a leave requirement in judicial review
  - Distinction between proceedings brought “as of right” and those which require prior permission from the court.
  - The right to access the court and “qualitative” filtering
- Statutory provisions governing leave to apply for judicial review
  - Section 21K(3) of the High Court Ordinance (Cap. 4)
  - RHC Order 53, rule 3
- The applicable merits threshold in a leave application
  - *Po Fun Chan v Winnie Cheung* (2007) 10 HKCFAR 676
- Other matters which will be considered at the leave stage
- The manner to apply for leave to apply for judicial review
- Recommended reading
  - Chapter 9, Thomson, Administrative Law in Hong Kong

#### **2. Promptness and Delay**

- The underlying rationale behind the need to apply promptly
- Statutory provisions governing timing and delay – the relevant test
  - Section 21(K)(3) & 21K(6) of the High Court Ordinance.
  - RHC Order 53, rule 4.

- Law Chun Loy v Secretary for Justice, HCAL 13/2006, 26 October 2006
- The need to identify when time starts to run
- Applications for an extension of time to apply for leave
  - AW v Director of Immigration [2016] 2 HKC 393
    - The length of the delay
    - The reasons for the delay
    - The merits of the intended challenge
    - Prejudice to the parties and good administration
    - Points of general public importance
    - Whether the challenge is against a continuing policy
- Refusal of relief on the ground of delay
  - R v Dairy Tribunal ex p Caswell [1990] 2 AC 738
- Recommended Reading
  - Chapter 5, Thomson, Administrative Law in Hong Kong

### **3. Sufficient Interest & Standing**

- The underlying rationale behind the requirements of standing in judicial review
- Statutory provisions
  - Section 21K(3) of the High Court Ordinance
  - RHC Order 53, rule 3(7)
- Case law on the approach to standing

- R v IRC ex p National Federation of Self-Employed and Small Businesses [1982] AC 617.
- Re Wong Chi Kin, CACV 80/2014, 26 September 2014.
- Kwok Cheuk Kin v Commissioner of Police [2017] 6 HKC 93.
- Ho Kar Hei v Director of Immigration [2018] HKCFI 2517.
- 803 Funds Ltd v Director of Buildings [2021] 2 HKLRD 1274.
- Kwok Cheuk Kin v President of LegCo [2021] 1 HKLRD 1247.
- Kwok Cheuk Kin v Director of Lands [2021] HKCFA 38.
- Kwok Cheuk Kin v Chief Executive in Council [2023] HKCFI 3074.
- Recommended Reading
  - Chapter 6, Thomson, Administrative Law in Hong Kong

#### **4. Alternative Remedies**

- Stock Exchange of Hong Kong Ltd v New World Development Co Ltd (2006) 9 HKCFAR 234
- Leung Ka Lau v Medical Council of Hong Kong [2021] HKCFI 2914

#### **5. Limitations on Judicial Review**

- Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147
- Bahadur v Director of Immigration [2001] 3 HKLRD 225.
- Clean Air Foundation v Government of HKSAR, HCAL 35/2007 (unrep., 26 July 2007)
- Leung Chun Ying v Albert Ho Chun Yan (2013) 16 HKCFAR 735
- Recommended Reading
  - Chapter 8, Thomson, Administrative Law in Hong Kong