CACV 4/2012

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

CIVIL APPEAL NO. 4 OF 2012

(ON APPEAL FROM HCAL NO. 90 OF 2011)

HUI KEE CHUN Applicant

Before : Hon Yeung VP, Chu JA and A To J in Court

Date of Hearing : 22 January 2013

Date of Judgment : 1 February 2013

J U D G M E N T

Hon Yeung VP:

1. I agree with the Judgment of Chu JA. The appeal is dismissed.

Hon Chu JA:

2. This is the applicant's appeal against the Decision of Chung J refusing him leave to apply for judicial review against: (1) the Enforcement Notice dated 16 August 2006 ("Enforcement Notice") issued by the Privacy Commissioner for Personal Data ("the Commissioner"); (2) the decision dated 17 April 2007 of the Administrative Appeals Board ("the Board")

dismissing the applicant's appeal against the decision of the Commissioner; and (3) the conviction and sentence in Magistracy Case No. TMS12120/2007 dated 2 and 17 December 2008 respectively.

Background

3. The applicant was formerly a term lecturer of the Hong Kong Institute of Vocational Education (Morrison Hill) ("the Institute") of the Vocational Training Council ("VTC").

4. On 26 October 2005, the applicant met his department head ("Mr Tam") for lunch, during which the applicant's work performance was discussed. Unknown to Mr Tam, the applicant secretly recorded their conversations.

5. On about 20 November 2005, the applicant provided to the media download links in two internet web pages to the lunch conversations. Between 23 and 25 November 2005, several Chinese newspapers carried reports of the lunch meeting between the applicant and Mr Tam. Among the media reports was a report that appeared on the 23 November 2005 issue of Ming Pao with the title "專教院教師被迫為學生做功課" ("the Report"). Part of the lunch conversations was transcribed and published in the Report. It was alleged in the Report that Mr Tam told the applicant he had completed assignments for his students and the applicant should do the same.

6. On or about 26 November 2005, the applicant posted on two websites ("the Websites") an article ("the Article"), in which reference was made to the conversations mentioned in the Report and hyperlinks for

downloading two extracts of the lunch conversations ("Recorded Conversations") were provided.

7. At about the same time, messages were posted on two internet forums ("the Forums") showing hyperlinks to the Websites and readers were invited to download.

8. Subsequently, the VTC published a press release stating that after investigation, it found the allegations of teaching misconduct made against Mr Tam were unsubstantiated.

9. Mr Tam made a complaint to the Commissioner that the applicant had without his consent collected and disclosed his personal data on the Websites and the Forums. An investigation was carried out by the Commissioner.

10. On 16 August 2006, the Commissioner wrote to the applicant informing him of the result of the investigation, which concluded that the applicant had contravened Data Protection Principle 3 ("DPP 3"). The Commissioner also enclosed in his letter a Result of Investigation detailing the complaint, the relevant law, the inquiries conducted and the findings of the Commissioner. The Result of Investigation recorded that in the course of the investigation, the applicant had on several occasions been invited to respond to the complaint, but he did not provide any information or representation in reply to the questions raised by the Commissioner.

11. Pursuant to section 50 of the Personal Data (Privacy) Ordinance, Cap. 486 ("PDPO"), the Commissioner served on the applicant the Enforcement Notice directing him to: (1) remove from the Websites and the Forums, the Recorded Conversations and any hyperlinks through

which the Recorded Conversations could be downloaded; (2) remove the personal data of Mr Tam, including his name and other identifying particulars, from the Article in the Websites and the messages in the Forums; and (3) cease to use the personal data of Mr Tam in association with the Recorded Conversations for public dissemination.

12. On 14 September 2006, the applicant lodged an appeal to the Board against the findings of the Commissioner and the Enforcement Notice. The appeal was heard on 27 March 2007. By the decision dated 17 April 2007, the Board dismissed the appeal.

13. The applicant did not comply with the Enforcement Notice. As a result, he was prosecuted in Tuen Mun Magistrate Court for contravening the Enforcement Notice (case no. TMS1210/2007). On 2 December 2008 he was convicted and a fine of $5,000 was passed on 17 December 2008. The applicant is appealing against the conviction and sentence (case no. HCMA80/2009). The hearing of the appeal has been adjourned part-heard to 6 February 2013.

14. In the meantime on 7 September 2006, the applicant issued a writ in the High Court against the Commissioner (case no. HCA 1980/2006). The claim was struck out by a Master of the High Court, whose decision was affirmed by a Judge on appeal. The applicant's appeal to the Court of Appeal (case no. CACV 401/2007) was dismissed on 5 March 2009. His appeal to the Court of Final Appeal under FAMV 48/2009 was dismissed on 7 January 2010. It can be seen from the Judgment of the Court of Appeal quoted in Chung J's Decision that the basis of the applicant's claim in the writ action and that of his intended judicial review application are the same.

The Commissioner's findings

15. The Commissioner found that the applicant had created the hyperlinks for the Recorded Conversations and uploaded them together with the Article and messages via the Websites and the Forums. The Commissioner further found that the applicant secretly recorded the conversations at the lunch meeting on 26 October 2005. Neither of these findings appears to be disputed by the applicant.

16. The Commissioner was of the view that the covert recording of the meeting was *prima facie* collection of personal data by means that were unfair in the circumstances of the case, contrary to Data Protection Principle (DPP) 1(2) which requires personal data to be collected by lawful and fair means. However, the Commissioner had regard to the contents of the Recorded Conversations and considered they could be said to be matters concerning the management of the applicant's personal affairs. Since section 52(a) of PDPO exempts personal data held for such purpose from the DPPs, and there is no evidence to show that at the time he recorded the conversations, the applicant had other purposes to attain, the Commissioner concluded that the collection in the form of the Recorded Conversations was exempt from DPP 1(2).

17. The Commissioner took the view that, although the Recorded Conversations alone would not render it practicable for Mr Tam's identity to be ascertained, when considered together with the Article, which contained information of Mr Tam's full name, his employment and position in the Institute, the identity of Mr Tam to be the data subject involved in the Recorded Conversations was revealed. With the uploading of the Article

and the Recorded Conversations on the internet via the Websites and Forums, the personal data of Mr Tam was disclosed to the public.

18. DPP 3 requires a data user to obtain the consent of the data subject if he uses the personal data for a purpose different from the original collection purpose or a directly related purpose. Taking into account the fact that the applicant did not report any impropriety or wrongful act of Mr Tam's teaching method to the VTC but chose the privacy intrusive means of exposing Mr Tam's personal data to the public through the media, the Websites and the Forums, that the mode and magnitude of the exposure was to lower the esteem and reputation of Mr Tam and that the applicant continued to post the Article and the Recorded Conversations on the Websites and the Forums after the VTC published a statement that their investigations concluded the allegations against Mr Tam to be unsubstantiated, the Commissioner considered the applicant's subsequent use of the Recorded Conversations had exceeded the original purpose of collection and amounted to a change in purpose of use.

19. The Commissioner found that by reason of the change in purpose, the exemption provided by section 52(a) has no application. Given there was no evidence of seriously improper conduct (especially in the light of the VTC investigation results) and there was no basis to suggest non-disclosure of Mr Tam's personal data would prejudice the purpose of remedying seriously improper conduct, the Commissioner also found the exemption under section 58(1)(d) and (2) of PDPO did not apply. The Commissioner therefore concluded that the applicant had contravened DPP 3 by publishing the Recorded Conversations to the public via the Article and messages on the Websites and the Forums.

The Board's decision

20. The applicant raised 16 grounds in his appeal to the Board. Shortly before the commencement of the hearing, he put forward another 37 further grounds of appeal. Having heard submissions from the applicant, the Commissioner and Mr Tam, the Board accepted some of the further grounds as they were related to issues or arguments already before the Board, treated some of the grounds as submissions and disallowed the rest of the further grounds. In particular, the Board refused to consider grounds that raised the exemption under section 61 of PDPO for the reasons that the applicant had never raised with the Commissioner that he had reasonable grounds to believe and did believe that the publishing or broadcasting of the data was in the public interest and that there was no evidence to support such assertions.

21. The Board upheld the Commissioner's decision that there was a breach of DPP 3 and gave the reasons in paragraphs 48 and 49 of the decision as follows:

> "48. It should be noted the access to the Recorded Conversations could only be made via the links in the Websites or the Forums so that the Recorded Conversations do not stand on their own. The Recorded Conversations are an integral part of the information on the Websites or the messages on the Forums. Having regard to the fact that the preamble contains the personal data of Mr Tam and clearly refers to the Recorded Conversations as being between Mr Tam and the *[applicant]* and that the Article refers to writing assignments for students which was what they discussed at the lunch meeting, it would be practicable for the identity of Mr Tam to be ascertained from the Recorded Conversations.
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> 49. As we said earlier, the fact that Mr Tam's personal data could be found in other public domains does not mean that the *[applicant]* could without Mr Tam's consent use Mr Tam's personal data in the manner he did. The Commissioner was correct to find that the Websites, the Forums and the Recorded

> Conversations contained personal data of Mr Tam and uploading them on the internet was without the consent of Mr Tam."

22. The Board agreed with the Commissioner that the exemption under section 58 of PDPO has no application, saying (at paragraphs 59 and 61 of its decision):

> "59. It is not disputed that the VTC conducted an investigation into the allegations of teaching misconduct against Mr Tam as a result of what was disclosed in the Report. The VTC did not embark on an investigation because the *[applicant]* had made a complaint of misconduct against Mr Tam. The *[applicant]* did not come forward to give evidence against Mr Tam. The result of the investigation was that these allegations were not substantiated.
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> …
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> 61. The *[applicant]* has not shown or otherwise provided information to show how, if the provisions of DDP 3 were to apply to the *[applicant's]* use of the personal data of Mr Tam, the purpose of remedying the serious improper conduct or malpractice by any person would be likely prejudiced."

23. With regard to the Enforcement Notice, the Board took the view that until the Recorded Conversations together with the Article and the messages were removed from the Websites and the Forums, it was likely that the personal data of Mr Tam would continue to be misused and that the Commissioner's decision to issue the Enforcement Notice was fully justified by the circumstances of the case.

24. Additionally, the Board considered that the secret recording of the conversations at the lunch meeting was a collection of personal data of Mr Tam in circumstances that could not be regarded as fair and was a breach of DPP 1(2). The Board, however, observed that section 52 of the PDPO has a limited scope and only applies to personal data held by an individual, hence it does not apply to the collection of personal data through secret recording by the applicant.

Form 86

25. On 21 October 2011, the applicant commenced the proceedings below to apply for leave to bring judicial review proceedings. In the Form 86, he seeks an interim stay of the hearing of his magistracy appeal, orders of *certiorari* to quash the Enforcement Notice, the decision of the Board and his conviction and a remission of the fine that he had paid together with interest.

26. A total of eight grounds were relied on by the applicant as follows:

(1) The Commissioner failed to give reasons pursuant to section 50(1)(b)(ii) of the Personal Data (Privacy) Ordinance, Cap. 486 ("PDPO");

(2) The Commissioner acted *ultra vires*, illegally or unlawfully and abused his power in issuing the Enforcement Notice in that the Article and the Recorded Conversations did not contain any personal data;

(3) The Commissioner violated the applicant's right of freedom of speech, freedom of the press and of publication provided for in Article 27 of the Basic Law and his right to freedom of opinion and expression under Article 16 of the Hong Kong Bill of Rights Ordinance, Cap. 383 ("HKBORO");

(4) The Commissioner acted inconsistently and abused his power in submitting to the Board that he had no duty to fish for exemption provision that might be relied upon by a party and that the Board should ignore the exemption provided by section 61 of PDPO;

(5) The Commissioner made an error of fact in asserting the applicant had collected the personal data of Mr Tam when he also found that the Recorded Conversations did not contain personal data;

(6) The Board acted *ultra vires*, unlawfully and irrationally in refusing to consider the exemption under section 61 of PDPO but went on to re-examine whether the exemption under section 52 applied to breach of DPP 1(2) when the Commissioner had already decided that the exemption applied; and

(7) The Board acted *ultra vires* and unlawfully in refusing to listen to the Recorded Conversations.

27. The applicant also gave an explanation for the delay in bringing the judicial review proceedings. It was said that he was trying to exhaust the available remedies by bringing a civil claim in HCA 1980/2006, that he was not aware of the time limit until January 2010 when he then applied for but was refused legal aid and that he has been adjudicated bankrupt and has no financial resources to retain legal representation.

The decision refusing leave to apply for judicial review

28. After an *ex parte* hearing, Chung J refused to grant leave to the applicant to apply for judicial review. He was of the view that none of the grounds had merits or was arguable. The Judge referred to the Commissioner's findings in the Result of Investigation and the decision of the Board and held that full, express and valid reasons had been given for the conclusion that the personal data of Mr Tam was involved.

Consequently, the Enforcement Notice was lawfully issued. The Judge also considered that restrictions of the rights conferred by Article 27 of the Basic Law and Article 16 of HKBORO would be valid where it was necessary and not disproportionate and that having regarded to the reasons given by the Commissioner and the Board, there was no infringement of the two Articles. As to section 61 of PDPO, the Judge accepted there were good reasons for the Board to refuse to consider the section. On the criminal conviction, the Judge took the view that the correctness of the conviction would be considered by the Court in the magistracy appeal and an interim stay of the magistracy appeal was not necessary since the hearing of it had been adjourned pending the outcome of the leave application. In relation to the rest of the grounds raised by the applicant, the Judge found no substance in them. The Judge additionally pointed out that there was no satisfactory explanation for the serious delay in bringing the application and that on the ground of delay alone, the application ought to be refused.

Grounds of appeal

29. The applicant puts forward a variety of matters in his Amended Notice of Appeal. In the written submissions that he handed up at the hearing before us and also in his oral submissions, four major grounds were argued. They are: (1) The Commissioner's decision to issue the Enforcement Notice is *Wednesbury* unreasonable; (2) The refusal of leave to apply for judicial review violates the applicant's right of access to court under Article 35 of the Basic Law and Article 10 of the HKBORO; (3) Leave to apply for judicial review should not be refused on the ground of delay alone; and (4) As an overriding principle, justice must be done.

Discussions

30. I begin with the second, third and fourth grounds.

31. Under section 21K(3) of the High Court Ordinance, Cap. 4 and Order 53 rule 3(1) of The Rules of the High Court, Cap. 4A, leave of the court is required to bring judicial review. Leave to proceed will only be granted where the case enjoys realistic prospects of success: *Po Fun Chan v. Winnie Cheung* (2007) 10 HKCFAR 676. The Court of Final Appeal had also held that the granting of leave is discretionary and leave can also be refused on other grounds, including delay or where the proceedings are academic or that there exists an adequate alternative remedy: at paragraphs 18 and 52.

32. In the light of the statutory requirement for leave, it is untenable that the refusal of leave to apply for judicial review *per se* amounts to a violation of the right of access to court under the Basic Law or the HKBORO. As the Court of Final Appeal pointed out, the leave requirement is an important filter to prevent public authorities from being unduly vexed with unarguable challenges. Further, the filtering out of unarguable cases is conducive to according expedition to those arguable cases in particular need of being dealt with expeditiously: at paragraphs 14 and 19. Since the Judge came to the conclusion that the application for judicial review was unarguable, he was duty bound to refuse leave. The only issue is whether the Judge was correct in concluding that the applicant's intended application for judicial review has no realistic prospect of success.

33. The applicant also argues that the Judge's refusal of leave violates his right to seek legal challenge against the Enforcement Notice. In his Notice of Appeal against the criminal conviction, which was included in the bundle of authorities handed up at the hearing, he had raised the challenge that there was no contravention of DPP 3 and in turn called into question the validity of the Enforcement Notice. There is therefore no impediment to the applicant arguing against the lawfulness of the Enforcement Notice in the magistracy appeal. Whether the argument will succeed is another matter, but there is clearly an alternative remedy available to the applicant on this issue of the lawfulness or validity of the Enforcement Notice. Hence, not only is the applicant's submission that the refusal of leave to judicial review violates his right to challenge the Enforcement Notice untenable, but also the fact that he could have challenged the lawfulness of the Enforcement Notice in the magistracy appeal is an additional reason for refusing leave to apply for judicial review.

34. The applicant's referral to the judgment of the European Court of Human Rights in *Golder v. The United Kingdom* (1975) 1 EHRR 524, at paragraphs 35 and 36 is for the reasons stated above irrelevant.

35. As to the issue of delay, Order 53 rule 4(1) of The Rules of High Court provides that an application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.

36. Section 21K(6) of the High Court Ordinance also provides that:

> "Where the Court of First Instance considers that there has been undue delay in making an application for judicial review, the Court may refuse to grant-
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> (a) leave for the making of the application; or
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> (b) any relief sought on the application,
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> if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration."

37. In respect of the challenge to the Enforcement Notice and the Board's decision, the relevant dates for the purpose of Order 53 rule 4(1) are 16 August 2006 and 17 April 2007 respectively. There is no doubt that the application for leave is seriously out of time when it was filed on 21 October 2011.

38. The applicant's explanation for the delay is that he has all along intended to challenge the Enforcement Notice and the Board's decision and although he knew about judicial review, he was not aware of the time limit. He also adds that he does not have the resources to retain private legal service and he was refused legal aid. I agree with the Judge that these matters do not amount to good reasons for extending time. It is incumbent upon the applicant to acquaint himself with and to abide by the relevant law and legal requirement if he is minded to pursue legal proceedings. The fact that he acts in person will not absolve him from the duty. Both before the Judge and this court, the applicant had been able to put forward detailed arguments, case law and other legal references. This shows that the applicant has the ability and resources to know the law. The applicant complains that the Commissioner and the Board do not in their correspondence or materials provide information about the time limit for

making judicial review applications. I fail to see how the Commissioner and the Board can be put under a duty to provide legal advice or to educate the public on the law and procedure relating to judicial review.

39. Given the lack of good reasons for the serious inordinate delay, there must be undue delay for the purpose of the section 21K(6). While in appropriate cases, such as where the issue of delay requires a substantial inquiry into the merits of the case, leave to apply for judicial review may be granted with the question of delay reserved to the substantive hearing of the judicial review application, the court clearly has power to refuse leave on the ground of delay.

40. The applicant argues that the delay would not cause substantial prejudice or hardship to any person or be detrimental to good administration. I cannot agree. As the Chief Justice pointed out,

> "Whilst in a society governed by the rule of law, it is of fundamental importance for citizens to have access to the courts to challenge decisions made by public authorities on judicial review, the public interest in good public administration requires that public authorities should not have to face uncertainty as to the validity of their decisions as a result of unarguable claims. Nor should third parties affected by their decisions face such uncertainty."

See *Po Fun Chan v. Winnie Cheung*, at paragraph 14.

41. It is evidently not in the interest of good public administration to re-open the Commissioner's investigation and the administrative appeal some four or five years after the issue of the Enforcement Notice and the conclusion of the appeal before the Board. There is also, inevitably, grave prejudice and hardship to Mr Tam to have to re-visit the unpleasant incident so many years afterwards.

42. The case of *Attorney general v. Tran Quoc Cuong* [1995] 5 HKPLR 208 does not advance the applicant's case. The Court of Appeal in that case struck out an appeal against the refusal of judicial review on the basis that the four years' delay was inordinate and inexcusable. In so doing, Bokhary JA (as he then was) emphasized (at paragraph 16) that where public law considerations arise, the detriment to good administration inherent in a delay has to be borne in mind.

43. As to the applicant's submission that as an overriding principle, justice must be done, it is to be noted that although the Judge indicated that leave ought to be refused on the ground of delay alone, he did not in fact refuse leave simply on the ground of delay. The Judge had instead considered the merits of the application and concluded that there was no merit in the application.

44. I turn now to the ground complaining that the Commissioner was *Wednesbury* unreasonable in issuing the Enforcement Notice. This, the applicant says, is related to his ground in the Form 86 that the Commissioner made an error of fact in asserting he had collected the personal data of Mr Tam when he also found that the Recorded Conversations did not contain personal data.

45. The basis for the issuance of the Enforcement Notice is that the applicant had contravened DDP 3 by publishing the Recorded Conversations via the Article in the Websites and the messages in the Forums. DDP 3 was amended in 2012. The pre-2012 version, which applies to this case, provides that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data were to be used at the time of its collection or a directly related purpose.

46. The thrust of the applicant's argument is that there was no collection of personal data to begin with since the Commissioner had accepted that there was no personal data in the Recorded Conversations. It is also said that Mr Tam's name, his employer and job title could be obtained from the VTC, a government-related body, and the information was also contained in the Report and other newspapers reports, and the Websites and Forums merely recited the contents of the newspapers reports. The applicant contends that it is a matter of public interest as to whether personal data for the purpose of PDPO should extend to information that is publicly available to the general public.

47. Section 2 of PDPO defines "personal data" as:

> "any data -
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> (a) relating directly or indirectly to a living individual;
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> (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
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> (c) in a form in which access to or processing of the data is practicable".

48. It is the applicant's case that Mr Tam is the person who spoke the Recorded Conversations and that the Recorded Conversations relate to Mr Tam's teaching method. It cannot be disputed that the Recorded Conversations were in a form accessible by the general public via the links provided in the Websites and the Forums. Plainly, (a) and (c) of the statutory definition are met. The remaining issue is whether (b) is also met, namely, whether the identity of Mr Tam can be directly or indirectly ascertained from the Recorded Conversations taken together with the Article and messages in the Websites and Forums.

49. In paragraph 11 of the Result of Investigation, the Commissioner made the point that from listening to the Recorded

Conversations alone, it would not be practicable for a third party to identify Mr Tam. The Commissioner, however, went on to hold that by considering the Recorded Conversations together with the Article, the identity of Mr Tam as the person who spoke the Recorded Conversations that related to his teaching method would be revealed. The Commissioner explained that this was because information on Mr Tam's name, his employment and position in the Institute was contained in the Websites and the Forums.

50. In my view, the Commissioner is correct that the Recorded Conversations could not be considered in isolation. As the Board held (at paragraph 48 of the decision), the Recorded Conversations were an integral; part of the information on the Websites or the messages on the Forums and they should be considered together. In providing the links to the Recorded Conversations, the Websites and the Forums stated that they were conversations between the applicant and Mr Tam and also set out the full name, employer and position of Mr Tam. The identity of Mr Tam as the person who spoke in the Recorded Conversations was clearly revealed when the Recorded Conversations were taken together with the Article. The requirement in (b) of the statutory definition is therefore met. Accordingly, the Commissioner is correct to hold that the Websites, the Forums and the Recorded Conversations contained personal data of Mr Tam. The Board is also correct in upholding the Commissioner's decision.

51. It is incorrect for the applicant to say that the Commissioner had in paragraph 11 found that the Recorded Conversations contained no personal data. Quite the contrary. Further, paragraph 11 of the Result of Investigation, when properly read and understood, is not inconsistent with the Commissioner's finding that the covert taping of the lunch conversations amounts to a collection of personal data by unfair means.

52. It is irrelevant that the name, employment and job title of Mr Tam could be ascertained from other sources or had been carried in the newspapers reports or were otherwise publicly available. DPP 3 prohibits the use of personal data without the consent of the data subject for a purpose different from the original collection purpose or directly related purpose. It is directed against the misuse of personal data and it matters not that the personal data involved has been published elsewhere or is publicly available. This is entirely consistent with the objective of the PDPO to protect personal data.

53. The applicant also complains that the Commissioner did not consider all the exemptions available under PDPO. He takes exception with the Commissioner's submission to the Board that he had no duty to fish for exemption under the Ordinance. In my view, the applicant's criticisms are unjustified. The investigation of a complaint by the Commissioner cannot be likened to a criminal trial. The Commissioner does not play the role of a prosecutor and it is not his function to prove that the party being complained has contravened the DPP. He is also under no duty to anticipate or speculate what the defence to the complaint may be. Furthermore, as explained by the Board (at paragraph 27(c) of the decision), the statutory exemptions are not mandatory, whether a data user invokes an exemption is a discretionary exercise, and unless the data user invokes a particular exemption it will be difficult for the Commissioner to assess the matter. If the party being complained wishes to rely on any of the statutory exemptions, it is for him to raise it with the Commissioner and provide all the relevant evidence and information during the investigation process. If, as is the case here, he chooses not to respond to the Commissioner's questions on the complaint, he cannot, when the

investigation is completed, turn round and criticize the Commissioner for not exhausting all the statutory exemptions on his behalf.

54. In respect of the exemption under section 61(2) of PDPO that the applicant says should have been considered, it relates to the use of personal data by disclosing it to someone whose business consists of news activity. To establish the exemption, it has to be proved that the person making the disclosure had reasonable grounds to believe and did so believe that the publishing or broadcasting of the personal data was in the public interest. The applicant's act of contravention of DPP 3 consisted of publishing the Recorded Conversations on the internet via the Websites and the Forums. There is no factual basis for invoking section 61(2). The Board and the Judge are also correct in holding that there is no objective evidence to support the element that the applicant had reasonable grounds to believe and did so believe that the publishing or broadcasting of the personal data was in the public interest.

Conclusion

55. For the reasons stated above, none of the grounds argued by the applicant has merits and the appeal ought to be dismissed.

Hon A To J:

56. I agree.

(Wally Yeung) Vice-President	(Carlye Chu) Justice of Appeal	(A To) Judge of the Court of First Instance

The applicant, unrepresented, appeared in person.