

**IN THE COURT OF FINAL APPEAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION**

FINAL APPEAL NO. 2 OF 2023 (CRIMINAL)
(ON APPEAL FROM HCMA NO. 236 OF 2021)

BETWEEN

HKSAR

Respondent

and

CHOY YUK LING (蔡玉玲)

Appellant

Before: Chief Justice Cheung, Mr Justice Ribeiro PJ,
Mr Justice Fok PJ, Mr Justice Lam PJ and
Mr Justice Gummow NPJ

Date of Hearing: 3 May 2023

Date of Judgment: 5 June 2023

JUDGMENT

Chief Justice Cheung:

1. I agree with the judgment of Mr Justice Fok PJ.

Mr Justice Ribeiro PJ:

2. I agree with the judgment of Mr Justice Fok PJ.

Mr Justice Fok PJ:

A. *Introduction*

3. The appellant was convicted, on 22 April 2021, of two counts of knowingly making a false statement in a material particular for the purpose of obtaining a certificate under the Road Traffic Ordinance (Cap. 374) (“the RTO”), contrary to s.111(3)(a) of the RTO, and fined \$3,000 on each count.¹ Her appeal to the Court of First Instance was dismissed and her conviction upheld on 7 November 2022.² With leave of the Appeal Committee,³ the appellant appeals against her conviction to this Court. The issues arising for determination in this appeal are identified in Section A.5 below.

A.1 *The facts*

4. The appellant is a journalist and was, at the material time, a contracted service provider for Radio Television Hong Kong (“RTHK”). On 17 May 2020 and 10 June 2020, the appellant made an online application for, and obtained, the Certificate of Particulars of Vehicle of a private car with the

¹ WKCC 4075/2020, [2021] HKMagC 5, Ms Chui Yee-mei Ivy, Principal Magistrate, Reasons for Verdict dated 22 April 2021 (“RV”).

² HCMA 236/2021, [2022] HKCFI 3343, Alex Lee J, Judgment dated 7 November 2022 (“CFI Judgment”).

³ FAMC 54/2022, [2023] HKCFA 1, Ribeiro, Fok and Lam PJJ, Determination dated 17 January 2023 at [1]-[2].

registration number LV755 for the dates 21 July 2019 and 10 June 2020. The process of application by which the appellant obtained the Certificate of Particulars of Vehicle on the two occasions in question, which is of central importance to this appeal, is described in greater detail in Section A.2 below.

5. The car, LV755, was purchased in 2017 by a Mr But Yu Sang (PW1), who registered a company called Conred Industries Limited as the owner of the vehicle and gave the registered address of another company, called Prosperous Property Development, in Tai Po as the registered address of the vehicle.

6. Having obtained the Certificate of Particulars of Vehicle for LV755 for the two dates concerned, the appellant and another RTHK reporter went to the Tai Po address of Prosperous Property Development on 22 June 2020. The appellant presented her RTHK press card and told a member of its staff (PW2) that she would like to interview someone from Conred Industries Limited. PW2 said he did not know that company and the appellant left her contact details and departed. On 23 June 2020, PW2 provided PW1 with the appellant's contact number and PW1 phoned her. The appellant explained she was a reporter with RTHK and that a member of the public had photographed LV755 in Yuen Long on 21 July 2019. Between 29 June 2020 and 6 July 2020, the appellant called PW1 several times to interview him in respect of the vehicle and asked him whether he had driven it to Yuen Long on the night of 21 July 2019.

7. The relevance to this appeal of the appellant's inquiries about Yuen Long on 21 July 2019 is that events there on that date were the focus of a television documentary broadcast by RTHK on 13 July 2020, entitled "*Hong Kong Connection – 7.21 Who Owns the Truth*". The documentary was written and directed by the appellant. On that date, there was an incident in Yuen Long

involving a number of people dressed in white who assaulted some others dressed in black with bamboo sticks or canes. This violence was one incident amongst numerous instances of social unrest and unlawful activity that occurred in Hong Kong during 2019. One part of the documentary examined the role of vehicles which appeared to have been used to transport the alleged attackers and to have delivered weapons to them. A CCTV clip included in the documentary showed LV755 arriving at, and parking in, Yuen Long on 21 July 2019 and white-clad individuals collecting and distributing bamboo sticks from the vehicle. The documentary included footage showing the English name of Prosperous Property Development and an excerpt of the telephone conversations between the appellant and PW1 referred to in the preceding paragraph.

A.2 Applying for a Certificate of Particulars of Vehicle

8. As will be seen below, the Commissioner for Transport is obliged under the RTO to maintain a register of vehicle particulars. Applications may be made by members of the public for a certificate of the particulars kept in the register in respect of a vehicle. The online application process consists of the following five steps:

- (1) **Step 1 – Authentication**: An applicant is required to verify their identity and may apply through the personal e-Cert mechanism by inputting (i) their Hong Kong Identity Card number or passport number, and (ii) the storage media and password of their digital certificate.
- (2) **Step 2 – Filling in of the application**: This includes (i) the applicant's English name, daytime contact number and residential or company or organisation address, and (ii) the registration number of the vehicle for which the particulars of registration are requested, and

the date and time for which the certificate of relevant particulars are requested. In addition, under the statement:

“I note that the personal data provided by a certificate of particulars of motor vehicle should only be used for activities relating to traffic and transport matters. I wish to apply for a certificate of particulars of motor vehicle for the following traffic and transport related purpose(s)”,

an applicant is required to select from a pulldown menu one of the following three options:

“Legal proceedings
Sale and purchase of vehicle
Other traffic and transport related matters”

- (3) Step 3 – Declaration, signature and submission: An applicant ticks a box to confirm that all the information submitted is complete and accurate and makes a declaration in the following terms:

“I hereby declare that I understand that the personal data provided by a certificate of particulars of vehicle should only be used for activities relating to traffic and transport matters. I have read through and understand the content of this application, and accept all terms and conditions stated therein.”

A further statement is included above that declaration in these terms:

“I understand that if I knowingly make any statement which is false in a material particular, I shall render myself liable under Section 111(3) of Road Traffic Ordinance (Cap. 374) to a fine of \$5,000 and imprisonment for 6 months. I also understand that, according to Section 64 of Personal Data (Privacy) Ordinance (Cap. 486), a person commits an offence if the person discloses any personal data of a data subject which was obtained from a data user without the data user’s consent, (a) with an intent to obtain gain in money or other property, whether for the benefit of the person or another person; or (b) with an intent to cause loss in money or other property to the data subject; or (c) the disclosure causes psychological harm to the data subject. Offender is liable on conviction to a fine of \$1,000,000 and to imprisonment for 5 years.”

- (4) Step 4 – Payment: An applicant then pays the fee (currently \$45) by PPS or credit card.
- (5) Step 5 – Printing and obtaining certificate of vehicle particulars: After completing the above steps, an applicant may download the certificate of particulars in respect of the vehicle applied for. This will state the name, address and identity document of the registered owner of the relevant vehicle.

9. The evidence before the courts below was that, in the event a member of the public applied for a certificate of vehicle particulars in person or by post, the form distributed by the Transport Department was the same in content and declaration as the online process described in the preceding paragraph. Thus, the Transport Department only accepts the three purposes provided in Step 2 of the online application process. If an applicant does not tick one of those purposes, the Transport Department will not process the application. In short, the application process is treated the same way whether it is made online, in person or by post.⁴

A.3 The relevant statutory provisions

10. The Secretary for Transport and Logistics is empowered, by s.6 of the RTO, to make regulations to provide for, amongst many other matters, “the maintenance of a register of motor vehicles and the issue of extracts therefrom”.⁵ The Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap.

⁴ CFI Judgment at [58].

⁵ RTO, s.6(1)(e).

374E) (“the Regulations”) are the material regulations in the context of this appeal.

11. By reg. 4(1) of the Regulations, the Commissioner of Transport “shall maintain a register of vehicles containing the particulars specified in Schedule 1”. Schedule 1 specifies 18 items of particulars to be entered in the register, 15 of which relate to the physical properties of the vehicle itself and three of which relate to the registered owner (being the full name and residential or corporate address and identity document of the registered owner).

12. Reg. 4(2) provides as follows:

“The Commissioner shall, on payment of the fee prescribed in Schedule 2, supply to any person making application for any particulars in the register in respect of a vehicle a certificate stating such particulars.”

13. The prescribed fee is \$45. Reg. 4(3) also provides, however, that:

“The Commissioner may waive the fee payable in respect of any application under subregulation (2) where he is satisfied –

- (a) that the applicant has good reason for requiring the particulars; and
- (b) it is in the public interest that the particulars be disclosed.”

14. The appellant was convicted of the offence provided for in s.111(3)(a) of the RTO, which states:

“A person who, for the purpose of –

- (a) obtaining any driving licence, vehicle licence, permit, certificate or other document under this Ordinance;

...

knowingly makes any statement which is false in a material particular commits an offence and is liable to a fine at level 2 and to imprisonment for 6 months.”⁶

A.4 The proceedings below

15. The background facts were common ground. The prosecution’s case was that the appellant committed the offence under s.111(3)(a) of the RTO because, in applying on the two occasions (on 17 May 2020 and 10 June 2020) for the Certificate of Particulars of Vehicle of LV755, she had knowingly made a statement that was false in a material particular. The falsity alleged was the appellant’s selection of the purpose of her application as “[o]ther traffic and transport related matters” in Step 2 of the application process (as described above), when in fact her real reason for applying for the certificate was for investigative journalism.

16. The argument in the courts below was directed to three issues, namely: (1) whether the appellant’s statement as to the purpose of her application was material; (2) whether the statement was false; and (3) whether the appellant knew that the statement was false in a material particular. The magistrate found against the appellant on each of those three issues and therefore convicted her of the two counts of the offence charged and fined her \$3,000 in respect of each. The judge reached the same conclusions as the magistrate on those issues and dismissed her appeal against conviction.

A.5 The issues on this appeal

17. Those three same issues are raised on this appeal. The Appeal Committee granted the appellant leave to appeal on two questions of law which

⁶ Criminal Procedure Ordinance (Cap. 221), s.113C: a fine of level 2 is between \$2,001 and \$5,000.

respectively raise the materiality and falsity issues argued below. Those questions are:

“Question 1

Under regulation 4(2) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E), can the Commissioner for Transport refuse to supply a certificate to an applicant on the ground that the applicant’s purpose of the application is not connected with ‘traffic and transport related matters’?

Question 2

If the answer is yes, then how should the phrase ‘traffic and transport related matters’ be construed? In particular, does it include an applicant’s journalistic investigation into or involving the use of a vehicle on the road?”

18. The Appeal Committee also granted leave to appeal on the ground that it is reasonably arguable that, in drawing the inference that the appellant knowingly made a false statement, substantial and grave injustice has been done to her.⁷

B. Question 1 – materiality

B.1 The parties’ rival constructions of reg. 4(2)

19. This appeal concerns the appellant’s conviction under s.111(3)(a) of the RTO for the offence of knowingly making a statement that was false in a material particular. It does not concern a refusal by the Commissioner to supply a certificate of vehicle particulars to the appellant, which would exclusively involve an examination of the ambit of reg. 4(2) of the Regulations, and the significance of this distinction will be addressed below in Section B.4 and in the discussion of Question 2.

⁷ See footnote 3 above.

20. It is common ground between the parties both below and in this Court that, for the purposes of the offence in s.111(3)(a), “a material particular” is one which would be capable of affecting the Commissioner’s decision whether to issue the document applied for or not: *Kong Sau Mei v Director of Immigration*.⁸ Although there might be scope for argument in this regard, this test of materiality can be accepted for present purposes. Hence, Question 1 asks, in effect, whether the applicant’s purpose of seeking the certificate of vehicle particulars is relevant to the application and, in addressing this, the parties have advanced competing arguments as to the proper construction of reg. 4(2).

21. The respondent submits that the answer to Question 1 is “yes” and that, on a proper construction of reg. 4(2) of the Regulations, the Commissioner’s duty and power to supply particulars of a vehicle in the register only arises where the application is made “for a purpose connected with the statutory objectives of the RTO” and the respondent contends those objectives are “for the purpose of regulating traffic and transport related matters”.⁹

22. For the appellant, it is submitted that Question 1 should be answered in the negative and that, properly construing reg. 4(2) of the Regulations, the Commissioner has no power, as a matter of law, to refuse to supply a certificate of vehicle particulars on the ground that an applicant’s purpose of application is not connected to “traffic or transport related matters”.¹⁰ Since, therefore, the purpose of the application cannot affect its outcome, the argument runs, a falsity in respect of a statement as to that purpose cannot be material.

⁸ [1999] 1 HKC 174 at 181D-G.

⁹ Case for the Respondent at [6(1)] and Part D.

¹⁰ Case for the Appellant, Section B, esp. at [76].

23. In support of that construction, the appellant points to the mandatory and apparently absolute language of reg. 4(2) (“shall, on payment of the fee prescribed in Schedule 2, supply to any person making application ... a certificate”) and relies on the context of its language within reg. 4 as a whole together with the legislative history and further context including the freedom of expression and of the press.

24. Since the issue between the parties is one of statutory construction, it is necessary to construe the relevant statutory language in the light of its context and purpose. The “long-established approach to statutory construction in Hong Kong involves an integrated consideration of text, context and purpose”.¹¹ Context “should be taken in its widest sense and certainly includes the other provisions of the statute and the existing state of the law”.¹² Context also includes the legislative history of the relevant provision.¹³ These principles are not controversial and there is no dispute between the parties as to their applicability. The difference between the parties concerns the application of those principles and, ultimately, the result of the construction exercise.

B.2 The proper construction of reg. 4(2)

25. For the following reasons, I would reject the construction of reg. 4(2) advanced by the appellant. That construction involves acceptance of the contention that reg. 4(2) imposes an absolute duty on the Commissioner, upon payment of the prescribed fee, to supply the vehicle particulars regardless of the reason for which they are sought. In my judgment, notwithstanding the use of

¹¹ *HKSAR v Chui Shu Shing* (2017) 20 HKCFAR 333 at [42] per French NPJ.

¹² *HKSAR v Cheung Kwun Yin* (2009) 12 HKCFAR 568 at [13] per Li CJ.

¹³ *Town Planning Board v Town Planning Appeal Board* (2017) 20 HKCFAR 196 at [29(2)] per Ma CJ; *Secretary for Justice v Cheng Ka Yee* (2019) 22 HKCFAR 97 at [34] per French NPJ.

the word “shall”, that contention is unacceptably wide and incorrect on a proper construction of reg. 4(2) having regard to its context and purpose.

26. The information required to be kept in the register of vehicles includes the registered owners’ name, residential or corporate address and identity document. The appellant’s construction of reg. 4(2) would offer no protection for such information at all. It would instead require acceptance of the startling proposition that, for example, a person with an improper motive such as stalking an individual he had seen driving a car in order to harass them sexually could require the Commissioner to provide him with a certificate of the vehicle particulars so that he might discover the potential victim’s name, address and identity and thereby pursue her. This would follow even if the applicant told the Commissioner that this was his reason for seeking the particulars of the vehicle. Other similarly unattractive examples can be postulated, such as an application for vehicle particulars in order to engage in doxing or in an attempt to blackmail the vehicle owner.

27. Depending on its context and purpose, the word “shall” in a statutory provision may not be absolute.¹⁴ As a matter of public policy, even where a statutory duty is framed in apparently absolute terms, it should be presumed not to be intended to be exercised so as to enable a person to benefit from serious past crime or to facilitate serious crime in the future¹⁵ and that policy supports some limit to the Commissioner’s duty under reg. 4(2). In any event, in its context,

¹⁴ *HKSAR v Chan Yik Zee and Others* [2002] 3 HKLRD 541 at 558; *Democratic Party v Secretary for Justice* [2007] 2 HKLRD 804 at [68]-[71].

¹⁵ *Reg. v Secretary of State for the Home Department, Ex parte Puttick* [1981] 1 QB 767; *Reg. v Registrar General, Ex parte Smith* [1991] 2 QB 393.

“shall” may denote an action required to be performed only subject to satisfaction of some express or implied condition.

28. Here, it is apparent that some application process is necessarily contemplated by reg. 4(2) itself since the obligation on the Commissioner arises upon payment of the prescribed fee and in respect of “any person *making application for* any particulars in the register in respect of a vehicle” (emphasis added). The Regulations prescribe the fee payable and, although they do not specify the form of the application, it is implicit in reg. 4(2) that one must be made. The Commissioner must, therefore, devise some form of application process and this supports the conclusion that the particulars kept in the register of vehicles are not intended to be arbitrarily available.

29. This is also consistent with the offence provision itself. Whilst the focus of Question 1 is on the wording of reg. 4(2), the offence is contained in s.111(3)(a) of the RTO. The offence creating provision is a relevant part of the context of the RTO in which the Regulations are to be construed. That section makes it an offence for a person knowingly to make a false statement in a material particular “*for the purpose of obtaining* any... certificate or other document under [the RTO]” (emphasis added). This necessarily implies there will be a relevant application process in order to obtain the document in question and that statements may have been made in support of that application and caused, or be intended to cause, the document to be issued to the applicant.

30. Since an application process is involved in obtaining the certificate of vehicle particulars, it follows that the information which the Commissioner requires in support of that application, providing the requirement is not *ultra vires*, is material since it is information which would be capable of affecting the Commissioner’s decision whether to issue the document applied for or not. If

that information is false in a material particular (which is a matter to be addressed in this appeal under Question 2), the offence under s.111(3)(a) may have been committed.

31. The certificate of vehicle particulars may include personal data within the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”) which is entitled to protection. The application form properly includes a statement of the legal liability arising under s.64 of the PDPO in respect of that data. As the guardian of personal data kept in the vehicle register, the Commissioner is a data user within the meaning of the PDPO and required to manage that data responsibly. That would include an interest and a duty to record the identity of any person to whom such personal data is released. It is no answer to this responsibility on the part of the Commissioner to point to the exemption under s.60B(a) of the PDPO¹⁶ from data protection principle 3 (restricting the use of personal data), as was argued on behalf of the appellant. Neither the existence of that exemption nor the fact vehicle owners might have been informed pursuant to data protection principle 1 (limiting the purpose and manner of the collection of personal data) that the purpose of the collection of their personal data included the keeping of a register of vehicles that might be open to public inspection¹⁷ compels the wide and extravagant construction of reg. 4(2) contended for by the appellant. The mere fact vehicle owners provide their personal data for registration does not undermine the importance of the right to control the dissemination of that information, which is subject to the right of privacy.¹⁸

¹⁶ PDPO, s.60B(a) provides: “Personal data is exempt from the provisions of data protection principle 3 if the use of the data is – (a) required or authorized by or under any enactment, by any rule of law or by an order of a court in Hong Kong”.

¹⁷ Case for the Appellant at [58].

¹⁸ *Junior Police Officers’ Association of Hong Kong Police Force v Electoral Affairs Commission (No.2)* [2020] 3 HKLRD 39 at [42].

32. Plainly, it is relevant for the Commissioner to know the identity details of the person applying for the supply of vehicle particulars. A false statement knowingly made in that regard, for example a false Hong Kong Identity Card number, would attract potential liability under s.111(3)(a) despite the apparently mandatory wording of reg. 4(2). It therefore follows that reg. 4(2) should not be construed literally as imposing an absolute duty on the Commissioner to supply vehicle particulars.

33. Since the focus of this appeal is on the conviction of the appellant under s.111(3)(a) of the RTO in respect of her statement as to the purpose of her application for the certificate of vehicle particulars, it is necessary to ask if the Commissioner's requirement that she select one of the reasons specified in the application process for the certificate of vehicle particulars is within the proper ambit of reg. 4(2). In my judgment, for the following reasons, it is.

34. The RTO is to be construed as a whole. As expressed in its Long Title, the RTO is “[t]o provide for the regulation of road traffic and the use of vehicles and roads (including private roads) and for other purposes connected therewith”. This is necessarily a broad statement of statutory purposes since the content of the RTO is itself broad. Its breadth is demonstrated in relation to the registration and licensing of vehicles as the Court noted in *HKSAR v Cheung Wai Kwong*.¹⁹ The Court has also noted the multiple legislative purposes served by the RTO and its various provisions in *HKSAR v Yuong Ho Cheung*, a case concerning the licensing of cars for the carriage of passengers for hire or reward in which a narrow description of the legislative purpose of s.52(3) of the RTO was rejected.²⁰ These references demonstrate that the statutory purposes of the

¹⁹ (2017) 20 HKCFAR 524 at [20].

²⁰ (2020) 23 HKCFAR 311 at [40]-[41].

RTO and its regulations are wide and encompass purposes ancillary to the driving of vehicles on roads. They also include law enforcement of traffic regulations, taxation and revenue generation, maintenance of records and information relating to vehicles, the licensing of various forms of public and private transport, and evidential matters relating to legal proceedings.

35. As well as having these multiple and broad purposes, the RTO is also to be construed in the context of the state of the law in Hong Kong. Reference has already been made to the obligations upon a data user, and the rights of a data subject, in respect of personal data subject to the PDPO. The relevance of the purpose for which the vehicle particulars are sought is inherent in the duty of the Commissioner to manage the personal data kept in the register and to minimise the risk of potential abuse of such data. For this reason, to require an applicant to indicate the purpose of the request for particulars from the register of vehicles is consistent with the Commissioner's responsible management of the register of vehicles maintained under the Regulations.

36. In my judgment, construing reg. 4(2) purposively and in context, the Commissioner may limit the purposes for which vehicle particulars may be required to be supplied. While the precise extent of that limit is not the focus of this appeal (see Section B.4 below), it is, in my view, consistent with reg. 4(2) to provide for the release of vehicle particulars for "activities relating to traffic and transport matters" and to further expand that category to cover "traffic and transport related purpose(s)" sub-divided as to "[l]egal proceedings", "[s]ale and purchase of vehicle" and "[o]ther traffic and transport related matters".

37. The ambit of those various categories will be discussed in the context of addressing the issue of falsity in Question 2 below. However, for the purposes of answering Question 1, and subject to what is said below in Section

B.4, it is sufficient to conclude that the Commissioner was entitled to require the appellant to state the reason for the supply of a certificate of vehicle particulars by selecting one of the purposes specified in the online application form. Therefore, that fact was material to the application and, if an applicant's statement of purpose was relevantly false, potential liability for the offence under s.111(3)(a) might arise.

B.3 Further arguments raised by the appellant

38. The appellant argues that the permissive "may waive" in reg. 4(3) contrasts with the mandatory language of reg. 4(2) ("shall ... supply") and contends that this therefore shows there is no discretion in releasing the vehicle particulars upon payment of the prescribed fee. Although superficially the argument appears to support the appellant's construction, I would reject it. Reg. 4(3) is necessary in the context of the Regulations since a fee is statutorily prescribed for the supply of vehicle particulars. Since the fee is statutory, in order to give any leeway to the Commissioner in respect of the fee, any possible waiver of it must be provided for in the legislation, which must specify the circumstances under which any waiver discretion may be exercised.

39. The appellant relies on the legislative history of the Regulations, and in particular the previous versions of reg. 4(2), in support of the contention that the Commissioner is under a mandatory requirement to supply particulars kept in the register of vehicles regardless of purpose. The appellant points to the consistent use of the word "shall" in all versions of reg. 4(2) or its equivalent since the Regulations were first introduced in 1956.²¹ Reference is also made to s.74(1) of the RTO, and the provision included within the predecessor versions

²¹ Case for the Appellant at [28], referring to the Vehicle and Road Traffic (Registration and Licensing of Vehicles) Regulation 1956.

of the Regulations, from 1961 to 1978,²² as to the admissibility of a certificate of vehicle particulars as evidence in “any ... proceedings” as demonstrating that such a certificate might be used in proceedings other than those relating to traffic or transport matters. Hence, it is argued, the purpose of a person’s application for the particulars is irrelevant. The appellant contrasts the position under the equivalent UK legislation since 1949²³ which has consistently permitted the supply of vehicle particulars where a person has “reasonable cause” for obtaining them.

40. In my view, none of these points compels the construction of reg. 4(2) advanced by the appellant. The fact that the UK legislation expressly spells out a requirement of reasonable cause does not mean that reg. 4(2) must be construed as obliging the supply of particulars regardless of purpose. Nor do the previous versions of reg. 4(2). Neither the word “shall”, which still appears in reg. 4(2), nor the admissibility of a certificate in any legal proceedings, require a construction precluding the Commissioner from asking for a statement as to the reason for which the particulars are sought.

41. Finally, the appellant also relies on a view expressed in a Legislative Council Discussion Paper published in 2011 when the Government was considering the issuing mechanism for a certificate of vehicle particulars under the Regulations. Concerns had then been expressed about the number of certificates applied for and the purposes for which they were sought.²⁴ The paper contained the statement, in respect of reg. 4(2), that:

²² *Ibid.* at [29]-[31].

²³ *Ibid.* at [37], referring to the Road Vehicles (Registration and Licensing) Regulations 1949, reg. 27.

²⁴ Legislative Council Panel on Transport, *Issue of Certificate of Particulars of Motor Vehicles*, LC Paper No. CB(1)2647/10-11(01), at [6].

“The Commissioner has no discretion in withholding the release of such particulars, including the personal particulars of the relevant registered owner, provided that the prescribed fee is paid by the applicant. The Commissioner does not have power under the existing law to ask the applicant to provide reasons for obtaining the Certificate.”²⁵

42. With respect to the draftsman of that paper, the view as to reg. 4(2) was expressed without any analysis of the proper construction of that provision by reference to its context and purpose. It is contrary to the conclusion reached above as to the proper construction of reg. 4(2) and, in my judgment, wrong. As such, whilst it reflects a view at one time taken by the Government before the Legislative Council Panel on Transport, it does not assist the appellant’s case in this appeal.

B.4 A difference of approach between reg. 4(2) and s.111(3)(a)

43. This appeal does not involve examining whether, leaving aside the issue of falsity, the categories of purpose specified in the Commissioner’s reg. 4(2) application process are sufficient to cover all proper purposes for which a certificate of vehicle particulars might be sought. That issue might arise on a judicial review if the Commissioner were to refuse to supply particulars to an applicant specifying what he considered to be a proper or legitimate purpose albeit one not within the categories specified in the online application form. Nor does the appeal involve a challenge to the Commissioner’s refusal to provide a certificate of vehicle particulars on the ground that the stated purpose for the application was for an improper or illegitimate purpose. Instead, this appeal concerns the conviction of the appellant on the basis that she made a statement false in a material particular, namely as to her purpose being “[o]ther traffic and

²⁵ *Ibid.* at [3].

transport related matters”, the meaning of which is addressed in discussing Question 2 below.

44. In considering the proper construction of reg. 4(2), the question arises as to whether the Commissioner is entitled to require an applicant for a certificate of vehicle particulars to indicate the purpose of the application and to refuse to supply a certificate if the purpose indicated is improper or illegitimate. In contrast, on a prosecution under s.111(3)(a), the question is whether, given the actual purpose of the application, the menu item selected as the purpose of the application amounts to a statement which is false in a material particular. As will be seen in the discussion of Question 2 below concerning falsity, different issues of construction and approach may apply to reg. 4(2) and s.111(3)(a) respectively. It is important to emphasise, again, that the focus of this appeal is on the conviction of the appellant under s.111(3)(a). As stated in the preceding paragraph, this appeal does not arise on a judicial review brought to challenge a refusal to provide a certificate of vehicle particulars.

C. Question 2 – falsity

C.1 The parties’ contentions as to falsity

45. Question 2 raises the issue of what, objectively, the purposes specified in the online application process cover and whether the appellant made a false statement in selecting the option “[o]ther traffic and transport related matters” from the drop down menu when applying for the two certificates in question.

46. The exercise of statutory construction that is engaged is a determination of whether the statement made by the appellant, on which the prosecution under s.111(3)(a) proceeds, is “false”. Was the appellant’s selection

of “[o]ther traffic and transport related matters”, when she was seeking the particulars in order to interview the registered owner of the vehicle as to its use in transporting weapons to the scene of fighting, factually untrue in the context of the RTO and its various regulations and the wider context of the state of the law?

47. The wording of the online application process is not a statutory form and the phrases “activities relating to traffic and transport matters” and “traffic and transport related purpose(s)”, together with the three dropdown options of “[l]egal proceedings”, “[s]ale and purchase of vehicle” and “[o]ther traffic and transport related matters”, are not legislative provisions. Nevertheless, this appeal requires that the meaning of those phrases be determined by a process of ordinary construction of the words used.

48. The appellant maintains, as she did in the courts below, that her purpose of applying for the certificate of vehicle particulars on the two occasions in question, being in relation to her investigative journalism of the use of LV755 apparently to transport weapons used in the fighting that took place in Yuen Long on 21 July 2019, is within “traffic and transport related matters” and therefore not false.²⁶

49. The respondent’s answer to the appellant’s case on falsity is equally concise. It is contended that the phrase “traffic and transport related matters” must be construed “in its ordinary and natural meaning consistent with the objectives of the RTO” and “[t]he phrase certainly does not include any ‘journalistic investigation into or involving the use of a vehicle’, which has no

²⁶ Case for the Appellant at [79]-[80].

connection with the statutory objectives of the RTO whatsoever.”²⁷ The respondent submits that the application for a certificate of vehicle particulars must be made for one of the three “traffic and transport related purposes” and not any purpose, and the phrase “[o]ther traffic and transport related matters” does not mean any other matter; it must still be a purpose related to “traffic and transport”.²⁸ The respondent further submits that the purpose, which must be “traffic and transport related”, must be that of the applicant herself and not of the use of the vehicle on the road.²⁹

50. Relying on the dictionary meanings of “traffic” and “transport” as meaning “the passage to and fro [of] vehicles” and “the carrying or conveyance of a person or thing from one place to another”, the respondent submits this cannot mean “interviewing”, “reporting” or “journalistic investigation” and so the appellant’s selection of “[o]ther traffic and transport related matters” in the online application process was false.³⁰

C.2 Whether the appellant’s statement of purpose was false

51. In my judgment, for the following reasons, the appellant’s statement that she was applying for the vehicle particulars for “[o]ther traffic and transport related matters” was not false.

52. The issue of falsity arises in the context of a prosecution under s.111(3)(a) but is to be examined in the light of the answer given to Question 1 that reg. 4(2) does not give an unrestricted and automatic right to an applicant to

²⁷ Case for the Respondent at [85] (emphasis in original).

²⁸ *Ibid.* at [87].

²⁹ *Ibid.* at [88].

³⁰ *Ibid.* at [90]-[91].

require the Commissioner to supply vehicle particulars. The Commissioner is, as concluded above, required and entitled to ask an applicant to provide his own identification details and the reason he wishes to obtain the vehicle particulars. This is in order to prevent abuse of the personal data which is included in a certificate of vehicle particulars.

53. With that in mind, there are several reasons for which vehicle particulars may be required. The online application form defines the purposes for seeking vehicle particulars to “activities relating to traffic and transport matters” and has further sub-divided “traffic and transport purposes” into the three distinct categories in the drop down menu. The first two of those three sub-categories “[l]egal proceedings” and “[s]ale and purchase of vehicle” are relatively specific and self-confined categories and might not necessarily involve the driving of the vehicle itself. The latter is perhaps the most clearly and narrowly defined, since it relates to the sale and purchase of the actual vehicle that is the subject of the request for vehicle particulars from the register of vehicles. However, legal proceedings arising from traffic and transport related matters is also a relatively well-defined category in that some form of legal claim or action is contemplated. Such proceedings might be the obvious category of a claim for compensation in respect of damage or personal injury caused by the use of a vehicle but the proceedings might also be some form of legal claim over a vehicle either by way of ownership claim or a claim to possession for some other reason not involving the actual use of the vehicle. Moreover, there is nothing on the face of the wording of these categories to suggest that they are restricted to applications by the person actually engaged in or contemplating legal proceedings or the sale or purchase of a vehicle.

54. It is to be noted that the categories “[l]egal proceedings” and “[s]ale and purchase of vehicle” are not terms forming any defined class. They are

discrete and different categories, common only because they relate to a vehicle, the particulars of which are recorded in the register maintained by the Commissioner. As such, the third category “[o]ther traffic and transport related matters” is not to be read or construed in accordance with the *ejusdem generis* rule. That rule was recently explained in the judgment of Cheung CJ in *HKSAR v Chan Chun Kit*.³¹ Where it operates, the rule reduces the width of general words by their context as part of a common genus. But where there is no relevant common genus, the rule does not apply.

55. In the RV, the magistrate found:

“... The defence emphasised that the Vehicle Concerned was used for transporting the assailants and the weapons suspected of being used in a crime on a certain day. Therefore, the purpose of the defendant’s application for the Vehicle Certificate was ‘the purpose related to traffic and transport matters’. I have considered the arguments of the defence, and think that this argument cannot stand because the Department clearly aimed at asking the defendant to explain the purpose for which she applied for the vehicle certificate, rather than the purpose for which the Vehicle Concerned had been used. That is to say, the purpose is for the applicant himself, that is, does the applicant have legal proceedings related to the Vehicle Concerned? Does the applicant have matters relating to the sale and purchase of a vehicle which is related to the Vehicle Concerned? Does the applicant have any other traffic and transport related purposes related to the Vehicle Concerned? Regardless of which option (provided by the Department) the defendant chooses from, *the option shall definitely be related to the applicant’s own use*, and the major premise is that it must be applied to ‘traffic and transport related’ matters.

...

As far as this case is concerned, *the defendant did not carry out transport matters involving the Vehicle Concerned, nor did she have a road accident with the Vehicle Concerned* for which the information of the other party was required to be obtained to make a complaint. Undoubtedly, the purpose of the defendant’s application for the vehicle certificate was to obtain the name and address of the registered owner of the Vehicle Concerned, and to conduct interviews and reports, but the purposes of the interviews and reports themselves were irrelevant to ‘other traffic and transport related matters’.”³²

³¹ (2022) 25 HKCFAR 191 at [12]-[14].

³² RV at [49] and [51] (emphasis added).

The judge agreed with the magistrate in this respect³³ and accordingly both held that the appellant's statement as to the purpose for which she was applying for the certificate for vehicle particulars was materially false.

56. Giving the words “[o]ther traffic and transport related matters” their ordinary meaning in their context as one sub-category of “activities relating to traffic and transport matters”, I would not, with respect, share the view of the magistrate or judge below that this category is as limited as they concluded.

57. The width of the statutory purposes of the RTO has been referred to above (at [34]). As there noted, the Long Title of the RTO is “[t]o provide for the regulation of road traffic and the use of vehicles and roads (including private roads) and for other purposes connected therewith”. Given the breadth of activities that occur in relation to road traffic, that very broad statement of legislative purpose is understandable. The keeping of a register of vehicle particulars and its availability to applicants for details from that register are clearly within that broad description of purposes, being captured by the phrase “other purposes connected” with the regulation of road traffic and the use of vehicles and roads. Similarly, the purposes of the RTO need not be tied to the use of a vehicle on the roads: the licensing of a vehicle is another category of activity regulated by the RTO that is anterior to and does not necessarily involve the driving of the vehicle.

58. The breadth of the Long Title is reflected in the overall statement of purposes as “activities *relating to* traffic and transport matters” (emphasis added) in the online application process. As this Court has previously held, in *Moody's*

³³ CFI Judgment at [61].

Investors Service Hong Kong Ltd v Securities and Futures Commission,³⁴ the phrase “relating to” has “a wide and broad import” and “could be said ... to have ‘the widest possible meaning of any expression intended to convey some connection ... between the two subject-matters to which the words refer’”.³⁵

59. The overall statement of purposes thus being broad, the third category of “[o]ther traffic and transport related matters” must be understood to be a catchall for any other activities which relate to traffic or transport matters. As already noted, it is not to be understood *ejusdem generis* with the other two options of “[l]egal proceedings” or “[s]ale and purchase of vehicle” but is instead within other “activities relating to traffic and transport matters”. This is therefore a very broadly phrased expression indeed and there is no obvious reason to restrict the category to a traffic or transport related use of the vehicle by the person applying for the vehicle particulars himself.

60. Was the appellant’s purpose of using the vehicle particulars in order to contact the registered owner to conduct an interview in the context of a journalistic investigation of the connection between the owner of the vehicle and its apparent use to supply weapons to the white-clad individuals involved in the fighting in Yuen Long on 21 July 2019 within the meaning of “[o]ther traffic and transport related matters” as a catchall category of other “activities relating to traffic and transport matters”?

61. Here, the Court is presented with what has been described as a “constructional choice”, by which is meant “that there is more than one way of reading” the statutory text: *HKSAR v Chui Shu Shing*³⁶ and *Secretary for Justice*

³⁴ (2018) 21 HKCFAR 456 per Lord Neuberger of Abbotsbury NPJ at [35].

³⁵ See also *Mariner International Hotels Ltd v Atlas Ltd* (2007) 10 HKCFAR 1 at [51].

³⁶ (2017) 20 HKCFAR 333 per French NPJ at [43].

v Cheng Ka Yee.³⁷ One might read “[o]ther traffic and transport related matters” (albeit not statutory text, as noted at [47] above) in the narrow way that the magistrate and judge did (see above) or in a broader way to include the serious investigative journalism undertaken here by the appellant concerning the use of the vehicle.

62. In my view, objectively, the latter is to be preferred. It sits more naturally with the catchall nature of “[o]ther traffic and transport related matters”, whereas the magistrate and judge’s approach narrowly limits the category to the appellant’s own use of or involvement with the vehicle itself. It is also a construction which reflects the principle against doubtful penalisation³⁸ applied by this Court in: *T v Commissioner of Police*;³⁹ *Securities and Futures Commission v Pacific Sun Advisors Ltd*;⁴⁰ and *HKSAR v Chui Shu Shing*.⁴¹ More importantly, it is a constructional choice which gives effect to the constitutionally protected freedom of speech and of the press contained in Article 27 of the Basic Law⁴² and Article 16 of the Hong Kong Bill of Rights.⁴³ Whilst such rights are not absolute and may be restricted where necessary, there is no reason to proceed from a starting point that *bona fide* journalism should be excluded from the phrase “[o]ther traffic and transport related matters”.

³⁷ (2019) 22 HKCFAR 97 per French NPJ at [37]-[39].

³⁸ *Bennion, Bailey and Norbury on Statutory Interpretation* (8th Ed.) at [26.4].

³⁹ (2014) 17 HKCFAR 593 at [196] and [261].

⁴⁰ (2015) 18 HKCFAR 138 at [48]-[50].

⁴¹ See footnote 36 above.

⁴² Basic Law Article 27 provides: “Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.”

⁴³ Hong Kong Bill of Rights Article 16(2) provides: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

63. On the contrary, as was noted in *Yeung May Wan & Others v HKSAR*,⁴⁴ in relation to the offence of obstruction of a public place, a person engaged in a peaceful demonstration may also be engaged in exercising the closely related guaranteed freedoms of opinion, expression and assembly and, in this regard, Li CJ, Chan and Ribeiro PJJ and Sir Anthony Mason NPJ held that:

“Such fundamental rights, when engaged, have an important bearing on the scope of the offence of obstruction and consequentially on the scope of police powers of arrest on suspicion of the offence.”⁴⁵

So too here, the fact that the appellant was exercising her freedom of speech and of the press in connection with investigating the events of 21 July 2019 should be taken into consideration in considering the alleged offence of making a false statement in a material particular.

64. In the context of journalism and privacy, it is also to be noted that the policy of data protection in Hong Kong privacy legislation is to exempt personal data from data protection principle 3 (restricting the use of personal data) where the personal data is held by a data user (a) whose business is a news activity and who holds the data for the purpose of that news activity, and (b) the disclosure is made by a person who has reasonable grounds to believe and does reasonably believe that the publishing or broadcasting of the data is in the public interest.⁴⁶ Thus, given the nature of the appellant’s television documentary broadcast by RTHK, it is reasonable to assume that this exemption would have applied to the appellant, so that her obtaining the certificate of vehicle particulars in respect of

⁴⁴ (2005) 8 HKCFAR 137.

⁴⁵ *Ibid.* at [31].

⁴⁶ Personal Data (Privacy) Ordinance (Cap. 486), s.61(2). The judge’s interpretation of this section, at [41] of the CFI Judgment is, with respect, unduly narrow and wrong.

LV755 including any personal data relating to its registered owner would not be inconsistent with data protection law in Hong Kong.

65. For these reasons, differing from the courts below, I would give a wider meaning to the category “[o]ther traffic and transport related matters” that would include the obtaining of vehicle particulars for the purpose of genuine investigative journalism in relation to a possible connection between the registered owner of a vehicle and its use in connection with a crime. In this case, it has not been suggested that the appellant’s investigative journalism was anything other than *bona fide* and serious. On this footing, the statement made by the appellant when applying for the certificate of vehicle particulars was not false. One may contrast the situation of a request for vehicle particulars by a journalist for the purposes of mere gossip or on a matter of merely salacious interest, which might be argued to be akin to unsolicited stalking or marketing. It has not been suggested that the present case is of that nature.

66. Indeed, given the penal nature of s.111(3)(a), it might be necessary, to avoid infringing the principle against doubtful penalisation, to construe falsity in a manner more favourable to an accused even in those circumstances. It is, however, unnecessary to decide that point in this appeal. The argument would be that there is no necessity to import the concept of legitimacy of the request for vehicle particulars in this context, since this would cut down on the permissible reasons that would negate falsity. Thus, it might therefore be necessary to accept that a journalist’s application for vehicle particulars in order to write a gossip article based, for example, on the whereabouts of a philandering husband’s car is an activity within the wide catchall category of “[o]ther traffic and transport related matters”. So too, the stalker or marketer might successfully assert that an application for vehicle particulars under that catchall category was not false under s.111(3)(a). It is possible that the abuse of the personal data obtained from the

register of vehicle particulars in such circumstances might constitute grounds for prosecution of other criminal offences. But even if no other alternative offence could be used to address such abuse of personal data, the fact that this is an inconvenient or undesirable result does not justify an overly narrow construction of the concept of falsity in the context of a prosecution arising out of an application for vehicle particulars. Instead, if reform were required, the application process and regulatory framework for that process should be strengthened. That was what was proposed to be undertaken by the Government in 2011 as indicated in the Legislative Council Discussion Paper (see footnote 24 above).

67. As noted in Section B.4 above, this appeal has been concerned with the appellant's conviction under s.111(3)(a). Different issues of construction and approach apply to reg. 4(2) and s.111(3)(a). Whilst reg. 4(2) may require to be construed to permit the Commissioner to refuse to supply vehicle particulars where he is not satisfied they are sought for legitimate purposes, a similar construction aimed at expanding the scope of falsity under s.111(3)(a) is not justified.

D. Whether the appellant knowingly made a false statement

68. In any event, whether the statement was or was not false, it is incumbent on the prosecution to establish *mens rea* on the part of the appellant. The offence requires the appellant to have "knowingly" made a statement which was false in a material particular. Was it established beyond reasonable doubt that the appellant knew that her purpose for obtaining the certificate of vehicle particulars on the two occasions in question was not "[o]ther traffic and transport related matters"? If not, substantial and grave injustice was done to the appellant.

69. The appellant contends that it was not so established. The phrase “[o]ther traffic and transport related matters” being inherently broad and its meaning not being settled, it is possible that the appellant believed her purpose “to find out who was using the vehicle on the road to transport weapons or suspected assailants to commit a suspected crime” in the context of her work as a journalist fell within the catchall meaning of that phrase.⁴⁷

70. Reliance is placed on this Court’s judgment in *HKSAR v Wan Thomas*.⁴⁸ In that case, the convictions of the appellants were also quashed because it was not established that they must have known that the correct definition of the word “friend” in the Prison Rules (Cap. 234A) was that as found by the trial court (which was overturned in any event), so it was entirely possible they might have believed they were “friends” of the prisoners awaiting trial whom they visited. It did not follow, because they did not give evidence, that they dishonestly misrepresented their status as friends.⁴⁹

71. Furthermore, the appellant contends, the surrounding circumstances, including the history of journalists applying for certificates of vehicle particulars for journalistic purposes as noted in the Legislative Council Discussion Paper,⁵⁰ and the absence of direct evidence of knowledge that the phrase “[o]ther traffic and transport related matters” was said to exclude journalistic investigation, both

⁴⁷ Case for the Appellant at [103]-[104].

⁴⁸ (2018) 21 HKCFAR 214.

⁴⁹ *Ibid.* at [52]-[54].

⁵⁰ See footnote 24 above; the Paper notes, at [6], that in 2010, of the 22,100 certificates for vehicle particulars issues where the reason was other than legal proceedings or sale and purchase of vehicles, over 11,200 were made by companies of which about 25% were media or news agencies.

weigh against the drawing of an inference that the appellant must have knowingly made a false statement.⁵¹

72. For its part, the respondent contends that no injustice was done since it would be speculative to assume what the appellant might have said in evidence. The respondent submitted that there was no evidence as to what the appellant actually knew or believed at the time when making the online applications. It was contended that *HKSAR v Wan Thomas* was distinguishable because, unlike the relatively vague meaning of “friend” there, here the phrase “[o]ther traffic and transport related matters” was clear and unambiguous.

73. In my judgment, even assuming falsity (contrary to the conclusion above on Question 2), it was not an irresistible inference that the appellant knowingly made a false statement. The facts of this case are analogous to those in *HKSAR v Wan Thomas*. Like the meaning of “friend”, the phrase “[o]ther traffic and transport related matters” is not clear and unambiguous as the respondent contended. On the contrary, even if the phrase were objectively to be construed as excluding a journalistic purpose, a journalist in the appellant’s position faced with the online application form and its drop down menu could well be honestly mistaken in thinking it included that activity as one “relating to traffic and transport matters”. Given the volume of certificates issued on the application of media and news agencies (see the reference at footnote 50 above), it cannot be said to be an irresistible inference that the appellant would have known it was inconsistent with the purpose she selected for a journalist to apply for such a certificate in order to investigate the use of the vehicle concerned.

⁵¹ Case for the Appellant at [106]-[109].

74. The inference of knowledge of falsity drawn by the courts below was therefore not justified and, in convicting the appellant on the basis of that inference, substantial and grave injustice was done to her.

E. Conclusion and disposition

75. For the above reasons, in the courts below, the issue of materiality was correctly decided in the prosecution's favour because the Commissioner was entitled to require the appellant to state her reason for requiring the vehicle particulars but the issues of falsity and knowledge were wrongly decided against the appellant because her journalistic investigation into the use of the vehicle on the dates in question did fall into the wide catchall category of "other traffic and transport related matters" and, further, even if it did not, it was not an irresistible inference that she knew that to be false. I would therefore allow the appellant's appeal and quash her convictions of the two offences in question.

Mr Justice Lam PJ:

76. I agree with the judgment of Mr Justice Fok PJ.

Mr Justice Gummow NPJ:

77. I agree with the judgment of Mr Justice Fok PJ.

Chief Justice Cheung:

78. The appeal is, therefore, unanimously allowed. The appellant's convictions under appeal are hereby quashed and the sentence imposed on her set aside.

(Andrew Cheung)
Chief Justice

(R A V Ribeiro)
Permanent Judge

(Joseph Fok)
Permanent Judge

(M H Lam)
Permanent Judge

(William Gummow)
Non-Permanent Judge

Mr Derek Chan SC, Mr Kei Rui Tien and Mr Geoffrey Yeung, instructed by Ho Tse Wai & Partners, for the Appellant

Mr Derek Lau SADPP (Ag) and Mr Vincent Lee SPP, of the Department of Justice, for the Respondent