Re Andrews Geraldine Mary QC
[2012] SGHC 229

Case Number : Originating Summons No 589 of 2012

Decision Date : 15 November 2012

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Narayanan Vijya Kumar (Vijay & Co) for the plaintiff in Suit No 453 of 2009; Cavinder Bull SC, Woo Shu Yan and Lin Shumin (Drew & Napier LLC) for the defendants in Suit No 453 of 2009; Jeffrey Chan Wah Teck SC, Dominic Zou Wen Xi and Cheryl Siew May Yee (Attorney-General's Chambers) for the Attorney-General; Christopher Anand s/o Daniel (Advocatus Law LLP), Alvin Chen and Harjean Kaur for the Law Society of Singapore.

Parties : Re Andrews Geraldine Mary QC

LEGAL PROFESSION – Admission – Ad hoc

15 November 2012 Judgment reserved.

V K Rajah JA:

Introduction

1 This application is made pursuant to s 15 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the current LPA") for Ms Geraldine Mary Andrews QC ("the Applicant") to be admitted as an advocate and solicitor of Singapore for the purpose of representing one Ng Chee Weng ("the Plaintiff") in the hearing of Suit No 453 of 2009 ("Suit 453/2009"), including in any appeals therefrom. It is opposed by all the statutorily identified interested parties. As this is the first application under the new *ad hoc* admission scheme for Queen's Counsel or foreign counsel holding an appointment of equivalent distinction (collectively referred to hereafter as "foreign senior counsel") introduced earlier this year, I attempt to explain here how the applicable provisions ought to be construed and might be applied. It appears to me, after considering counsel's submissions, that there has been a serious misapprehension as to the real extent of the change brought about by the new *ad hoc* admission scheme. A formulaic approach no longer applies in assessing the merits of an application for *ad hoc* admission. The court's discretion to admit a foreign senior counsel is now to be exercised after considering holistically all the matters identified as relevant, and not primarily by assessing the complexity of the case. Complexity of the case is no longer a threshold requirement that must be satisfied in every *ad hoc* admission application. Lamentably, there has been undue reliance on outdated case law by counsel. The Bar and court users may therefore find it helpful if there is further elucidation of the matters which the court may consider in similar applications in future.

The facts

2 On 26 May 2009, the Plaintiff commenced Suit 453/2009 against Bryan Lim Jit Ming ("the First Defendant") and Teo Soo Geok Josephine (collectively, "the Defendants"). The Plaintiff claimed that a portion of the dividends declared by SinCo Technologies Pte Ltd ("the Company") between 2003 and 2007, amounting to about $8.88m, were due to him from the Defendants because they held certain shares in the Company on trust for him with effect from April 2002. For convenience, I will refer to

this claim as "the original cause of action".

3 When the Plaintiff commenced Suit 453/2009 on 26 May 2009, he was represented by Mr Peter Low ("Mr Low") from Colin Ng & Partners LLP. [note: 1] The Defendants were then, and are still, represented by Mr Cavinder Bull SC ("Mr Bull") from Drew & Napier LLC ("D&N").

4 On 3 June 2009, the Defendants applied to strike out various paragraphs in the Plaintiff's Statement of Claim ("SOC") and in two affidavits supporting the Plaintiff's application for a Mareva injunction. This was on the basis that the paragraphs in question disclosed "without prejudice" communications between the Plaintiff and the Defendants for the purpose of settlement of the dispute. The SOC contained paragraphs which referred to settlement discussions between the Plaintiff and the First Defendant, but stopped short of alleging that a settlement agreement had been reached. On 14 July 2009, a High Court judge struck out the paragraphs in question: see *Ng Chee Weng v Lim Jit Ming Bryan and Another* [2010] SGHC 35 ("*Ng Chee Weng (HC)*").

5 On 31 July 2009, Mr Low, on behalf of the Plaintiff, filed an appeal in Civil Appeal No 93 of 2009 ("CA 93/2009") against the decision of the High Court judge allowing the Defendants' striking-out applications. Sometime in February or March 2010, the Plaintiff discharged Mr Low and instructed Mr Narayanan Vijya Kumar ("Mr Vijya") from Vijay and Co to represent him in Suit 453/2009 and CA 93/2009. The basis of this appointment was that Mr Vijya would only act as his solicitor, and would assist him in securing an able advocate who would be able to "stand up" to Mr Bull and ensure that his claim was properly presented. Mr Vijya in turn instructed Mr Roderick Edward Martin ("Mr Martin") to prepare for and argue CA 93/2009. [note: 2] Mr Martin, it bears mention, is an experienced and well-regarded counsel who was subsequently appointed a Senior Counsel in January 2011.

6 At the hearing of CA 93/2009 on 17 May 2010, Mr Martin presented to the Court of Appeal the Plaintiff's proposed amendment to the SOC to plead a claim to enforce a settlement agreement as an alternative claim to the original cause of action ("the First Proposed Amendment"). In the First Proposed Amendment, the Plaintiff pleaded in the alternative that settlement negotiations had concluded in a settlement agreement under which the Defendants agreed to pay him $4.5m. The Court of Appeal adjourned the hearing to 19 May 2010 for further submissions on whether the First Proposed Amendment should be allowed. On 19 May 2010, after hearing Mr Martin, the Court of Appeal dismissed the Plaintiff's appeal in CA 93/2009 and disallowed the First Proposed Amendment. It, however, subsequently issued an addendum on 21 May 2010 ("the Addendum") to clarify the consequences of its decision.

7 In the Addendum, the Court of Appeal stated that the dismissal of CA 93/2009 did not preclude the Plaintiff from applying for leave to make further amendments to the SOC. However, the Court of Appeal reiterated that leave to make any proposed amendment in the precise form and sequence as that of the First Proposed Amendment would not be granted because it had already ruled that the First Proposed Amendment was not in order. The Court of Appeal also observed that the admissibility of evidence pertaining to "without prejudice" negotiations would still have to be assessed with reference to the form of the pleadings before the court, whether presently or as amended in future, and that the dismissal of CA 93/2009 did not mean that such evidence would be inadmissible under any circumstances.

8 Thereafter, Mr Martin did not want to continue acting as counsel for the Plaintiff in Suit 453/2009. [note: 3] The Plaintiff immediately attempted to find "a local senior counsel of commensurate experience in commercial disputes" [note: 4] who would be prepared to represent him.

Mr Vijya approached two leading law firms, Wong Partnership ("WP") and Allen & Gledhill LLP ("A&G"). However, they informed him that they were conflicted out from acting for the Plaintiff in Suit 453/2009. [note: 5]

9 Before Mr Vijya formally approached Rajah & Tann LLP ("R&T") (which had previously informed him informally that it was also in a position of legal conflict), Professor Tan Cheng Han SC ("Prof Tan") agreed to represent the Plaintiff. Mr Vijya felt then that there was no need to look elsewhere for local counsel to represent the Plaintiff. [note: 6]

10 Concerned by his counsel's persistent lack of success up to that point in properly formulating his claim before an assistant registrar ("AR"), the High Court and the Court of Appeal, the Plaintiff also concurrently sought the advice of foreign senior counsel. [note: 7] An approach was made to the Applicant, who accepted his instructions and reformulated the pleadings. The reformulated pleadings were eventually accepted by the Court of Appeal as disclosing viable causes of action (see [13] below).

11 On 23 August 2010, the Plaintiff applied via Summons No 3969 of 2010 ("SUM 3969/2010") for leave to amend his SOC again. The proposed amendment this time ("the Second Proposed Amendment") reversed the order of pleading the Plaintiff's causes of action. His primary claim now was that there was a settlement agreement. Alternatively, if the court determined that there was no settlement agreement, the Plaintiff claimed that he was entitled to the dividends declared on the shares held by the Defendants on trust for him. The AR who heard SUM 3969/2010 denied the Plaintiff leave to make the Second Proposed Amendment. On 15 October 2010, a different High Court judge affirmed the AR's decision: see *Ng Chee Weng v Lim Jit Ming Bryan and another* [2011] SGHC 120. The Plaintiff appealed to the Court of Appeal in Civil Appeal No 190 of 2010 ("CA 190/2010"). CA 190/2010 was heard on 15 August 2011.

12 At the hearings before the High Court and the Court of Appeal, the Plaintiff was represented by Prof Tan. However, Prof Tan informed the Plaintiff that he was only prepared to act for the Plaintiff in respect of the application for leave to amend the SOC, and that he could not take on any further role in the case because of his other commitments. [note: 8] The Applicant, I note, drafted the Plaintiff's submissions and arguments for these hearings in consultation with Prof Tan.

13 On 18 November 2011, the Court of Appeal delivered its judgment allowing the Plaintiff's appeal: see *Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 ("*Ng Chee Weng (CA)*"). The Court of Appeal held that:

(a) The Plaintiff was not precluded from pleading inconsistent causes of action in the alternative so long as the facts were not mixed up and were stated separately in order to specify the facts upon which each cause of action was based. This was what the Plaintiff did in the Second Proposed Amendment, which was accordingly properly pleaded.

(b) The Plaintiff was not otherwise precluded from amending his pleadings.

(c) The Second Proposed Amendment disclosed a reasonable cause of action and was not an abuse of the process of the court. Therefore, it was not liable to be struck out under O 18 r 19(1)(*a*) or O 18 r 19(1)(*d*) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed).

The Court of Appeal also noted with dismay that the case had been seriously (and, by implication, unnecessarily) delayed. It censoriously observed (at [105] of *Ng Chee Weng (CA)*) that "*more than*

two years ha[d] passed since the commencement of the suit, yet the actual trial ha[d] not even begun because the [Defendants had] been valiantly resisting every single application of the [Plaintiff] at the interlocutory stage" [emphasis added]. While, in fairness, I should add that the Defendants were of course not responsible for the bewildering muddle in the Plaintiff's pleadings, there can be no doubt that the Defendants attempted to take all conceivable procedural steps to peremptorily resolve this dispute in their favour. The Court of Appeal, in allowing the appeal in *Ng Chee Weng (CA)*, quite clearly concluded in relation to the Second Proposed Amendment that these attempts were mistaken. I shall return to this point later (see [81] and [87] below).

14 On 21 June 2012, Mr Vijya filed the present application for the *ad hoc* admission of the Applicant. During the course of the hearing of this application, Mr Vijya explained that he had filed the present application only in June this year as he had required some time to consider the implications of the amendments to s 15 of the current LPA that took effect from 1 April 2012 (collectively, "the 2012 Amendment"). In his supporting affidavit, Mr Vijya stated that in the event that the present application was successful, he would be acting as the Applicant's instructing solicitor and would appear as her junior at the trial. [note: 9]

15 At present, Suit 453/2009 is ready for hearing as discovery has been completed and affidavits of evidence-in-chief have been exchanged. In fact, trial dates have already been tentatively fixed for 26 November 2012 to 30 November 2012.

The amended pleadings

16 The Plaintiff's Statement of Claim (Amendment No 3) dated 2 December 2011 ("the SOC (No 3)") alleged as follows:

(a) As at 2000, the Company's beneficial shareholding was as follows:

(i) the Plaintiff: 45%;

(ii) the First Defendant: 25%;

(iii) one Terence Ng: 15%; and

(iv) one Perry Ong: 15%.

(b) In or around April 2002, the Plaintiff transferred his 45% shareholding to the First Defendant to be held on trust by the First Defendant for the Plaintiff.

(c) On 6 January 2003, Perry Ong transferred two-thirds of his 15% shareholding to the First Defendant and one-third of his 15% shareholding to Terence Ng. Pursuant to a private arrangement between the First Defendant, Terence Ng and the Plaintiff, half of the shares received by the First Defendant from Perry Ong (*ie*, a 5% shareholding) were held on trust by the First Defendant for the Plaintiff. The Plaintiff thus became the beneficial owner of 50% of the shares in the Company.

(d) In or around April 2007, the First Defendant offered to purchase the Plaintiff's 50% shareholding in the Company. However, the First Defendant suppressed the material fact that substantial dividends which had been declared had been paid. The Plaintiff agreed to sell his 50% shareholding for $5m, not knowing that dividends had previously been paid out by the Company.

(e) After the First Defendant paid the $5m to the Plaintiff in three tranches, the Plaintiff was informed by Terence Ng that dividends had been paid out by the Company.

(f) On 18 March 2009, the Plaintiff, the First Defendant and Terence Ng discussed, *inter alia*, the issue of the First Defendant's non-disclosure and withholding of dividend payments belonging to the Plaintiff.

(g) On or around 23 March 2009, the Plaintiff and the First Defendant began negotiations with a view to reaching an amicable settlement of the Plaintiff's claim for an account of his share of the dividends. The Plaintiff enlisted the assistance of one Roy Ng, who was a mutual friend.

(h) These negotiations culminated in a binding oral agreement between the Plaintiff and the First Defendant on 31 March 2009 at Roy Ng's office. It was agreed that the First Defendant would pay the Plaintiff $4.5m in full and final settlement of the Plaintiff's claim. This agreement was either a variation or a replacement of an earlier oral agreement made on 23 March 2009 to settle at a lower figure of $3.5m, which agreement the Plaintiff successfully renegotiated.

17 On this basis, the SOC (No 3) postulated the following two alternative causes of action:

(a) In breach of the settlement agreement made on 31 March 2009, the First Defendant failed to pay any part of the sum of $4.5m to the Plaintiff. On 13 May 2009, the First Defendant sent an email to the Plaintiff refusing to pay him anything, thereby evincing a clear intention not to be bound by the terms of the settlement agreement. Hence, the Plaintiff was entitled to $4.5m plus interest from 13 May 2009.

(b) Alternatively, if there was no binding settlement agreement made on 31 March 2009 or if the First Defendant was not bound by that agreement for any reason, the Plaintiff was entitled to continue to pursue his claim for an account of the dividends, which claim had ostensibly been compromised by the settlement agreement.

18 In their Defence (Amendment No 4) dated 3 October 2012, the Defendants stated as follows:

(a) The First Defendant did not hold a 50% shareholding in the Company on trust for the Plaintiff.

(b) There was no settlement agreement between the Plaintiff and the First Defendant.

(c) Even if such a settlement agreement had been reached, the Plaintiff's conduct would have amounted to a repudiation of any such agreement.

The issues before the court

19 The issues before the court arising from the present application are as follows:

(a) what are the legal principles which govern applications for the *ad hoc* admission of foreign senior counsel after the 2012 Amendment; and

(b) whether, on the facts of this case, the Applicant's application for *ad hoc* admission should be granted.

The statutory framework

Historical background

20 Before the current statutory scheme for the *ad hoc* admission of foreign senior counsel is analysed, it would be helpful to examine how this scheme has evolved in Singapore over time. I should point out here that prior to 1 April 2012, only Queen's Counsel, as opposed to other foreign counsel holding "any appointment of equivalent distinction of any jurisdiction" (see s 15(1)(*a*)(ii) of the current LPA), could be admitted on an *ad hoc* basis. The expression "foreign senior counsel", when used hereafter in relation to the law before 1 April 2012, should thus be construed as referring to Queen's Counsel only. Further, I should make it clear that this judgment deals with the admission criteria for foreign senior counsel in relation to *ad hoc* admission to conduct commercial cases. Since 1997, the criteria for admitting foreign senior counsel in criminal cases has been stricter, with the insertion of a new s 21(1A) to the Legal Profession Act (Cap 161, 1994 Rev Ed) ("the 1994 LPA") on 1 January 1997. Section 21(1A) of the 1994 LPA provided that the court was not to admit foreign senior counsel in any criminal case unless it was satisfied that there was a "special reason" to do so. Since 1 April 2012, this requirement of a "special reason" for the *ad hoc* admission of foreign senior counsel has been extended to two other areas of law, *viz*, family law, and constitutional and administrative law. With these clarifications, I now turn to the history of the provisions on the *ad hoc* admission scheme in Singapore.

21 Provision for the *ad hoc* admission of foreign senior counsel was first introduced by cl 2 of the Advocates and Solicitors (Amendment) Bill 1962 (Bill 174 of 1962) ("the 1962 Bill"). No such provision existed at that time in the then equivalent of the current LPA (*viz*, the Advocates and Solicitors Ordinance (Cap 188, 1955 Rev Ed ("the ASO")). Clause 2 of the 1962 Bill stated:

> The Advocates and Solicitors Ordinance ... is hereby amended by inserting immediately after section 7 thereof the following new section:—
>
> **"*Ad hoc.* admission.**
>
> 7A.—(1) Notwithstanding anything to the contrary contained in this Ordinance the Supreme Court *may at its discretion and for the purpose of any one case* admit to practise as an advocate and solicitor any person ... —
>
> (*a*) who holds Her Majesty's patent as Queen's Counsel; and
>
> (*b*) who does not ordinarily reside in Malaya but who has come or intends to come to Singapore for the purpose of appearing in such case.
>
> (2) Any person applying to be admitted under the provisions of this section shall do so by originating motion verified by an affidavit ... and the originating motion and affidavit ... shall be served on the State Advocate-General and on the Secretary of the Bar Committee ...
>
> ..."
>
> [emphasis added]

During the second reading of the 1962 Bill, the then Minister for Health and Law, Mr K M Byrne ("Mr Byrne"), stated (see *Singapore Parliamentary Debates, Official Report* (17 April 1962) vol 17 at col 735):

> Mr Speaker, Sir, because of certain developments in the Federation [of Malaya] where the *ad hoc*

admission of Queen's Counsel has been refused, the Government would like an opportunity to reconsider certain clauses of the Bill, and I will therefore name another sitting day. ...

22 On 6 July 1962, after considering the developments in the Federation of Malaya, Mr Byrne stated that an amendment would be made to the 1962 Bill and explained the purpose of the amendment as follows (see *Singapore Parliamentary Debates, Official Report* (6 July 1962) vol 18 at cols 1030–1031):

> Provision is made for the *ad hoc* admission of Queen's Counsel to appear in cases in Singapore. *I shall be moving an amendment to this clause* [*ie*, cl 2 of the 1962 Bill] *to provide that such Queen's Counsel may only be admitted by the court* ***for one or more special reasons in the public interest*** *and that such Queen's Counsel have* ***special qualifications or experience for the purpose of the case*** *for which they are to be admitted*. Before admitting such persons, the court will have regard to the views of the State Advocate-General and the Bar Committee.
>
> *Sir, the present position in Singapore is that Queen's Counsel can be admitted to the Singapore Bar without much formality, and the practice has been that no opposition is raised by the Singapore Bar Committee or the State Advocate-General*. In the Federation of Malaya, however, statutory provisions have been strictly enforced, and in a recent case, the Chief Justice of the Federation has decided that the provisions of section 7 of the Federation Advocates and Solicitors Ordinance, 1947, must be complied with. This requires, *inter alia*, that the person applying to be admitted must satisfy the Board appointed by the Bar Council that he has an adequate knowledge of the laws of the Federation. There is no corresponding provision requiring knowledge of the laws of Singapore in Singapore. All that is required in Singapore is that the persons seeking admission should satisfy the examiners that they have an adequate knowledge of the practice and etiquette of the profession and of the English language. Queen's Counsel, therefore, have had no difficulty in satisfying the examiners. In the Federation there have been no applications other than the one which recently came before the Chief Justice made by a non-resident practitioner, while in Singapore there has been a number of such admissions.
>
> ***The proposal for* ad hoc *admissions will restrict the admission of non-resident practitioners, as Queen's Counsel will only be admitted to appear in a particular case. It is proposed to restrict the right still further by requiring the Queen's Counsel seeking admission to show that he has special qualifications and experience for the purpose of the case*** . The court is further required to have regard to the views of the State Advocate-General and of the Bar Committee before admitting such a person.
>
> [emphasis added in italics and bold italics]

23 As a result of the amendment made during the second reading of the 1962 Bill, s 3 of the Advocates and Solicitors (Amendment) Ordinance 1962 (No 22 of 1962), which amended the ASO to provide for the *ad hoc* admission of foreign senior counsel, read as follows:

> The principal Ordinance [*ie*, the ASO] is hereby amended by inserting immediately after section 7 thereof the following new section:—
>
> **"*Ad hoc.* admission.**
>
> 7A.—(1) Notwithstanding anything to the contrary contained in this Ordinance the Supreme Court ***may for one or more special reasons in the public interest*** *and for the purpose of any one case* admit to practise as an advocate and solicitor any person ... —

(*a*) who holds Her Majesty's patent as Queen's Counsel;

(*b*) who does not ordinarily reside in Malaya but who has come or intends to come to Singapore for the purpose of appearing in such case; and

(*c*) ***who has special qualifications or experience for the purpose of such case*** .

(2) Any person applying to be admitted under the provisions of this section shall do so by originating motion verified by an affidavit ... and the originating motion and affidavit ... shall be served on the State Advocate-General and on the Secretary of the Bar Committee ...

(3) ***Before admitting a person under the provisions of this section the Court shall have regard to the views of the State Advocate-General and the Singapore Bar Committee.***

..."

[emphasis added in italics and bold italics]

24 This amendment resulted in three changes to the provisions of the 1962 Bill, namely:

(a) the phrase "for one or more special reasons in the public interest" was introduced;

(b) a third limb to s 7A(1) – *viz*, the requirement in s 7A(1)(*c*) that the foreign senior counsel sought to be admitted must have "special qualifications or experience for the purpose of [the] case" – was introduced; and

(c) the court was expressly required to have regard to the views of the State Advocate-General and the Bar Committee.

These changes were expressly intended to restrict the circumstances in which *ad hoc* admission of foreign senior counsel could be granted. The changes in 1962 were substantially retained in s 18 of the Legal Profession Act 1966 (Act 57 of 1966) ("the 1966 LPA"). I should add that the 1966 LPA also repealed the ASO (see s 155 of the 1966 LPA).

25 Although the amendments in 1962 were clearly intended to restrict the circumstances in which *ad hoc* admission of foreign senior counsel would be granted, Parliament appeared to relent on this issue not long after this. The phrase "for one or more special reasons and" in s 18 of the 1966 LPA was deleted by s 4 of the Legal Profession (Amendment) Act 1970 (Act 16 of 1970). Although no reason was given for this deletion in the parliamentary debates (see *Singapore Parliamentary Debates, Official Report* (30 March 1970) vol 29 at cols 1271–1273 (Mr E W Barker, Minister for Law and National Development)), the Explanatory Statement to the Legal Profession (Amendment) Bill 1970 (Bill 6 of 1970) stated:

The Legal Profession Act, 1966, introduced a large number of novel provisions. It has been found in the light of the operation of the Act that certain amendments would be desirable for the more efficient organisation of the legal profession and also to take into account the functions of other professions, such as public accountants. This Bill seeks to make such amendments as are necessary to give effect to such changes. The Bill introduces the following detailed amendments: —

...

The requirements of one or more special reasons hitherto necessary for a Queen's Counsel to be admitted "ad hoc*" to appear in the Singapore Courts are deleted*, ***it having been the practice of the Courts to admit any English Queen's Counsel to appear "*** ad hoc ***" on his being briefed on the instructions of an advocate and solicitor*** ...

...

[emphasis added in italics and bold italics]

26 In *In the Matter of Section 21 of the Legal Profession Act (Chapter 161) and In the Matter of an Application by Michael Jacob Beloff, Queen's Counsel of England* [1993] SGHC 85, G P Selvam J drily made the following observation about the *ad hoc* admission practice in relation to the above scheme:

> In any given field of law there would be no difficulty in finding Queen's Counsel with special qualifications or experience. ***This led to admissions virtually becoming a matter of choice of a party to litigation in Singapore . In the past the Law Society and the Attorney General to whose views the Court listened before making an order developed a propensity of not objecting to admissions.*** The unprecedented economic growth in Singapore during the last decade and a half or so facilitated the retention of expensive silk[s] to appear in Singapore. Silks found it attractive and became eager to appear in the Far East including Singapore. *And it became prestigious and fashionable for wealthy litigants to engage them. This practice led to excessive independence* [*sic*] *on foreign counsel and dampened the desire of Singapore advocates to excel in advocacy.* [emphasis added in italics, bold italics and bold italics with underlining]

27 In 1991, the pendulum swung the other way again when the Legal Profession (Amendment) Act 1991 (Act 10 of 1991) amended the provision governing the *ad hoc* admission of foreign senior counsel at that time – *viz*, s 21 of the Legal Profession Act (Cap 161, 1990 Rev Ed) ("the 1990 LPA") – by introducing the requirement that the case must be "of sufficient difficulty and complexity". The then Minister for Law, Prof S Jayakumar ("Prof Jayakumar"), explained the purpose of this amendment as follows (see *Singapore Parliamentary Debates, Official Report* (14 January 1991) vol 56 at cols 796–798):

> ***Queen's Counsel***
>
> If I may turn to the question of Queen's Counsel. Members will recall the debate we had on this matter last year during the Committee of Supply. The Chairman of the GPC for Home Affairs and Law, Dr Arthur Beng, noted the increasing tendency to use QCs for cases which are not complex and he expressed the fear that such a trend could impede specialisation by local lawyers.
>
> Mr Davinder Singh believed that QCs continue to play a useful role in Singapore but he felt that there must be "stricter guidelines" to limit admissions of QCs "to highly complex matters".
>
> Mr Shanmugam on his part also felt that QCs provide a useful service and we should not shut the door on them altogether. But he felt that the present system should be reviewed to "tighten the rules" so as to ensure that "only in really necessary cases ... QCs are admitted".
>
> In response to them, I said that the rationale for admitting QCs continued to be valid and the practice should not be stopped. But I also added the following that:

> "... the legislative policy is very clear. [QCs] are obviously to be admitted for *cases of complexity or difficulty where the needed skills or experience or the specialist knowledge is not readily available here*. To put it in a different way, *Parliament never envisaged or contemplated that they should be admitted for the routine or the ordinary or the simple case which can easily be handled by Singapore lawyers.*"
>
> ...
>
> Sir, the existing section [21] of the Legal Profession Act allows QCs to be admitted on an ad hoc basis. The discretion is vested in the Courts. The problem is that the existing provision does not give any criterion or guidance to the Courts except merely to state that the QC must have "special qualifications or experience for the purpose of the case".
>
> What the proposed amendment before the House seeks to do is to meet this gap by adding a criterion that the Court must be satisfied that the case is one of "sufficient difficulty and complexity" to warrant a QC being admitted. It is important to note that this amendment leaves the decision to the Courts. This is underscored by the fact that the amendment also states that the Court shall have "regard to the circumstances of the case".
>
> Sir, this amendment better reflects the original intent of the legislature while, at the same time, preserving the exercise of discretion by the Courts.
>
> We have taken some time to craft this amendment because Government considers QCs to perform a useful role in our efforts to be the leading commercial and financial sector. A study done for me by two members of the academic staff of the Faculty of Law of the National University of Singapore on admission of QCs for the period 1985 to 1989 showed that commercial law cases formed the majority, some 60%, of cases where QCs were admitted. ***It is desirable that they continue to perform this role. Therefore, any amendment which we craft to ensure that there is no abuse and that QCs are not admitted for the very simple, routine or uncomplicated cases, must not shut the door to admission of QCs in those areas where solicitors are especially needed, particularly in banking and commercial law sectors.***
>
> ***Obviously, it will take some time to develop a significant pool of local litigation lawyers who can service the requirements of Singapore as an international financial and commercial centre.*** *When we will achieve that is difficult to predict.* ***In the meantime, however, we should not deprive our financial and commercial centre of the assistance of QCs.*** *The proposed amendment will allow the Courts to continue to liberally admit QCs for the important and complex commercial and banking cases.*
>
> ...
>
> [emphasis added in italics and bold italics]

The key objective of the amendment was plainly to facilitate the development of a strong core of good advocates at the local Bar by restricting access to foreign senior counsel to the more difficult and complex cases: see *Price Arthur Leolin v Attorney-General and others* [1992] 3 SLR(R) 113 ("*Price QC*") at [5]. The Court of Appeal stated in *Price QC* (at [6]) that the required difficulty and complexity might be present not only where questions of law were involved, but also in cases dealing with complex facts where assistance was required to determine what the actual legal problems were.

28 Following the amendments made in 1991 ("the 1991 Amendments"), s 21 of the 1990 LPA read

as follows:

> **21.**—(1) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case *where the court is satisfied that it is of sufficient difficulty and complexity* and having regard to the circumstances of the case, admit to practise as an advocate and solicitor any person who —
>
> (*a*) holds Her Majesty's Patent as Queen's Counsel;
>
> (*b*) does not ordinarily reside in Singapore or Malaysia but who has come or intends to come to Singapore for the purpose of appearing in the case; and
>
> (*c*) has special qualifications or experience for the purpose of the case.
>
> …
>
> [emphasis added]

This remained the position in the successor versions of s 21 of the 1990 LPA until 1 April 2012.

The present law

29 Notably, the phrase "where the court is satisfied that [the case] is of sufficient difficulty and complexity *and* having regard to the circumstances of the case" [emphasis added] has been deleted from s 15 of the current LPA with effect from 1 April 2012 by the Legal Profession (Amendment) Act 2012 (Act 3 of 2012). Section 15 of the current LPA now provides as follows:

> **Ad hoc admissions**
>
> **15.**—(1) Notwithstanding anything to the contrary in this Act, the court may, ***for the purpose of any one case*** , admit to practise as an advocate and solicitor any person who —
>
> (*a*) holds —
>
> (i) Her Majesty's Patent as Queen's Counsel; or
>
> (ii) any appointment of equivalent distinction of any jurisdiction;
>
> (*b*) does not ordinarily reside in Singapore or Malaysia, but has come or intends to come to Singapore for the purpose of appearing in the case; and
>
> (*c*) ***has special qualifications or experience for the purpose of the case*** .
>
> ...
>
> (6A) ***The Chief Justice may*** , after consulting the Judges of the Supreme Court, by notification published in the *Gazette*, ***specify the matters that the court may consider when deciding whether to admit a person under this section*** .
>
> ...
>
> [emphasis added in bold italics]

30 Pursuant to s 15(6A) of the current LPA, Chan Sek Keong CJ issued the Legal Profession (Ad Hoc Admissions) Notification 2012 (GN No S 132/2012) ("the Notification"), which states as follows:

> **Matters specified under section 15(6A) of Act**
>
> **3**. For the purposes of section 15(6A) of the Act, ***the court may consider the following matters*** , in addition to the matters specified in section 15(1) and (2) of the Act, when deciding whether to admit a person under section 15 of the Act for the purpose of any one case:
>
> (*a*) the ***nature of the factual and legal issues*** involved in the case;
>
> (*b*) the ***necessity for the services of a foreign senior counsel*** ;
>
> (*c*) the ***availability of any Senior Counsel or other advocate and solicitor with appropriate experience*** ; and
>
> (*d*) ***whether*** , ***having regard to the circumstances of the case, it is reasonable*** to admit a foreign senior counsel for the purpose of the case.
>
> [emphasis added in bold italics]

31 The 2012 Amendment was first announced by the Ministry of Law in December 2011 by way of a public consultation on a draft of what later became the Legal Profession (Amendment) Bill 2012 (Bill 1 of 2012) ("the 2012 Bill"). During the parliamentary debates on the 2012 Bill ("the 2012 parliamentary debates"), the Minister for Law, Mr K Shanmugam ("the Law Minister"), explained the objective of the 2012 Amendment as follows (see *Singapore Parliamentary Debates, Official Report* (14 February 2012) vol 88):

> ... Sir, the Bill makes three key amendments to the Legal Profession Act, to strengthen the legal industry in Singapore. Let me explain the changes.
>
> ***The first of these changes makes it slightly easier for foreign expert counsel to appear in our Courts. The policy on the admission of foreign counsels to appear in our courts has evolved over time*** . **Prior to 1991, more QCs appeared in our courts.** Many of us benefited from … working with them, watching them in action, and pitting ourselves against them in Court. As our Bar developed, the conditions for admitting QCs were tightened. In 1991, admission was restricted to cases which were, in the view of the Court of "sufficient" complexity and difficulty. In 1997, the first batch of Senior Counsel was appointed. **Over the years, the Courts have gradually restricted *ad hoc* admissions of QC. This was in line with the 1991 Amendments.** Meanwhile, Singapore has grown exponentially as a business and financial centre with *a corresponding growth in the demand for top-tier legal representation.* ***This has thrown up a different set of challenges. One of the key challenges has been that in several cases, litigants had difficulties getting a Senior Counsel (SC) in Singapore of their choice when they are up against a bank or a large corporate [entity]*** .
>
> We have several SCs. The majority of them practise in large firms. These firms have extensive corporate practices serving a wide range of clients. As a result, many of our SCs from the big law firms often find themselves unable or unwilling to act for a client when a large bank or corporate [entity] is on the other side. The larger firms would have had some relationship with such banks and corporat[ions]. Thus, even if the bank or corporate [entity] does not instruct them in the specific case in question, the SCs will decline to accept instructions from the other side. The

Courts have observed this to be quite a serious problem over the years. When he opened the Legal Year in 2010, the Chief Justice (CJ) said:

> "… ***there is another area of practice we might want to revisit – litigation, and the availability of top counsels to appear in our courts*** . Currently, we have a provision in the Legal Profession Act for the *ad hoc* admission of Queen's Counsel and Senior Counsel from other Commonwealth jurisdictions, in cases where legal expertise is not available. Fortunately, it is rare that we cannot find the necessary expertise since we have built up a pool of first class litigation counsel under our Senior Counsel scheme. ***However, many of them are no longer in active practice and not many appear frequently in our Courts, especially the Court of Appeal.*** In Opening of Legal Year 2002, I spoke on this topic and pointed out that a major corporate client with a court case could immobilise all the litigators in the large law firms, including our best Senior Counsel. (This is a point that the Chief Justice when he was Attorney-General thought about 10 years ago.) ***To maintain our eminence as an international business and financial centre, we should make available to litigants in important commercial and financial disputes a greater diversity of legal representation in our courts.*** I have discussed this with the Minister for Law. He agrees with me that this is an issue that needs looking into, and he intends to consult the Law Society on it."

The CJ was very clear in what he has said and he did speak with me on several occasions on this matter. The CJ reiterated his point during the opening of the Legal Year in 2011. Again I quote:

> "This year will see the revival of the Singapore Circuit – not the Singapore Grand Prix – but something older which was sidelined by the need to grow our own pool of expert advocates. **We now have a sizeable pool of Senior Counsel who provides [*sic*] advisory, arbitral and litigation services to offshore and onshore clients. However**, ***experience has shown that their services may not be available to the general public in times of need*** . We have a very large financial and business sector in terms of contributions to our GDP – it grew from 24.4% out of a nominal GDP of S$158.1 billion in 2002 to 25.9% out of a nominal GDP of S$303.7 billion in 2010. But, the legal services provided to these sectors are dominated by a small number of large law firms. ***The result is that the best litigation counsel are usually conflicted out of advising or acting for claimants against big business as they are mainly concentrated in the large firms. So we need a greater diversity of expert counsel to advise, negotiate and pursue legitimate claims in court.*** This is not a new problem. The Ministry of Law has consulted the Law Society and the Senior Counsel Forum on the best way forward. We can expect amending legislation to be enacted this year. ***The Bar can rest assured that this will not be a free for all. The courts will admit*** **ad hoc** ***expert counsel on the basis of need, and not simply because a litigant can afford to pay. We do not want to disadvantage litigants who cannot afford equivalent representation, nor do we want to impede the nurturing of our own Senior Counsel. So*** , **ad hoc** ***admission will be on a case by case basis, with the court doing a judicious balancing of competing interests in each case*** .["]

Sir, clause 4 [of the 2012 Bill] amends section 15 to deal with this situation. *The amendments were made after frank and intensive consultations with the Law Society, the Forum of Senior Counsel and the Bar at large. The Bar was generally supportive of this proposal.* ***Lawyers from mid sized and small firms in particular were very supportive. There can now be a less restrictive approach to the*** **ad hoc** ***admission of QCs and foreign counsel holding appointments of equivalent distinction to QCs. Greater discretion will be given to the Courts.*** Nevertheless, the Chief Justice has stated during his address during the Opening of the

Legal Year in 2012: that **ad hoc *counsel will only be admitted on the basis of need, and it will not be a free for all*** . **The CJ will, before the amendments come into force, gazette the matters that the Court may consider in deciding whether to admit foreign counsel and the [a]mendments give him the power to do so .** ...

[emphasis added in bold, bold with underlining, italics, bold italics and bold italics with underlining]

32 In response to queries by several Members of Parliament, the Law Minister elaborated as follows (see *Singapore Parliamentary Debates, Official Report* (14 February 2012) vol 88):

In 1991, the concern was with developing the local Bar, and even then, the intention was to allow QCs to be admitted for complex commercial cases. Strict judicial interpretation has helped to build up our local Bar and a core of SCs. ***Today, the challenge is not so much the quality of our local counsel but the availability of SCs in commercial cases*** .

... Actually the number of active SCs is about 40. This figure has to [be] set in context as to why I said what I said in my opening speech. Out of the 40 active Senior Counsels, 35 come from large or medium sized firms. I explained why many SCs are often conflicted out of complex commercial and financial cases. It is because their firms are conflicted out, [or] their firms do not wish to accept instructions by clients who wish to sue a bank even though those firms are not instructed by the bank or a corporate [entity] in that particular case. …

...

... ***The clear overwhelming preference among the small and medium law firms was that they wanted this. The Senior Counsel Forum was a little less clear*** .

What we had put forward originally was the idea that we will have three lawyers or four lawyers who would be given a licence to practise. In that way, the numbers are restricted for very much the reasons that Members of this House have articulated – that we should support and nurture [the] local Bar. And we thought one way of doing it is to have a small number of QCs. But the Senior Counsel Forum was quite decisive. Mr Harry Elias, as coordinator, sent it to me in writing that, not unanimously but overwhelmingly, the SCs preferred the *ad hoc* admission route to be liberalised rather than having three or four being chosen.

... Often, what happens in reality is that many of our banks or large corporations – which is the kind of case we are talking about – will go to a major law firm. They will get an SC and the other side may go, sometimes not infrequently, to a small or medium sized law firm, something along the lines of Mr Lim Biow Chuan's law firm.

The first thing for the client to ask is – it is human psychology – the other side has an SC, am I going to get an SC? Even if Mr Lim or his peers are entirely competent to handle the case, the psychology is, can I have an SC ? And then the problem starts because the firm will hunt around for an SC and, often , and I can only quote what the Chief Justice said, ***"they will find it difficult to get an SC"*** . It has happened – I am not saying it is 100% – but it has happened frequently enough for the Chief Justice to have noted it and mentioned it twice, and put it in very concrete terms, that there needs to be an amendment.

So, it is in that context and which is why when we consulted the small, medium sized law firms, they were overwhelmingly in support of this recommendation. ***It benefits the small man – small, as in the individual – but you do need to pay for a QC obviously; so I do not mean***

financial means. But for the individual or person who is prepared to fight, it benefits that person . At the same time, MAS and the banks also welcome this because it gives them greater flexibility. **So, on different ends of the scale, people welcome this approach.**

As for the Members' queries on the criteria for admission, **the changes give the discretion to the Court to admit foreign counsel on a case-by-case basis.** Mr Hri Kumar asked if I can set out the criteria. I think what is being done is not radical. If you look at clause 4, the original provision (section 15) read, "Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case where the court is satisfied that it is of sufficient difficulty and complexity and having regard to the circumstances of the case, admit to practise as an advocate and solicitor ...". **We have proposed to remove the phrase, "where the court is satisfied that it is of sufficient difficulty and complexity and having regard to the circumstances of the case", basically, reverting to the 1991** [*sic*] **position, which is the subject of ... case law. There are criteria and guidance on what sort of factors the courts would have to take into account and, going further, bearing in mind the Chief Justice's remarks in the Opening of the Legal Year this year, that it is not to be a free-for-all. And the courts want to be very careful about admissions**, precisely for the kind of reasons that Mr de Souza spoke about.

We are amending the section to have an additional provision which gives the courts greater flexibility in identifying the factors and gazette it so that it is transparent. And the Chief Justice has made it clear that it would be a fairly strict approach and that is an indication that has been given. The Chief Justice has given guidance, in his speech, on the approach the courts will take.

For the balance between Parliament, the Legislature and the courts, Mr Singh feels that we should give more discretion to the courts; others here feel that we should set it out. I agree it is a question of getting the right balance. **It is a question of judgment in these matters because each case can turn on its own facts. My own preference is to tilt more towards giving discretion to the courts with the general guidance of setting up the framework in the legislation, and that is what we seek to do, by removing the phrase "of sufficient difficulty and complexity".**

Mr Singh also made a number of other points on this area. I think his first point was, why amend section 15 because it already gives the courts discretion? I went through clause 4 of the Bill – what it does is that it removes some phrases, and as a result of that, it gives the courts greater discretion. So I am not sure that we are on different wavelengths. I think the purpose of the amendments is actually to give the courts greater discretion in complex civil matters.

The second point that Mr Singh made was that there may be, as a result of these amendments, a bifurcation – I think this is what he said – where in commercial law cases, the quality of the lawyers would be much higher and would be international, whereas in criminal cases, the quality would be lower because it is more difficult to admit foreign lawyers in that area. Bearing in mind [that] the courts continue to retain the discretion to admit QCs or foreign counsel even for those cases – I think we accept that the [B]ar is different – would it result in this bifurcation? That argument proceeds from an assumption that I do not share, which is that local lawyers are simply not good enough. I do not agree because – of course, in any profession, there will be a gradation – if we can accept that the best of the local lawyers will be equal to the best anywhere in the world, then there should be no bifurcation.

The real rationale for the approach here is that in complex civil cases, for the reasons that

I have given, we frequently find that the litigants are unable to engage the best of the SCs that they do want to engage. That is the problem. If we accept that to be a problem – and I have quoted the Chief Justice a number of times and I accept what he says – then we will see immediately why a distinction can be drawn between criminal cases and civil cases, because in criminal cases, we do not have that problem. There is no difficulty for any top SC accepting a brief in a criminal, constitutional, or public case because there is no real issue of conflict. Or even if there is no direct conflict, it is not as if the law firm is on a retainer which prevents any particular SC from taking up a case on a public or constitutional criminal matter.

...

I will take the three points that Mr de Souza made. **The first that he is reassured that I agreed with the Chief Justice and that the courts would have the power on how these admissions would be done. I think I would refer him to the proposed subsection 6(a) of section 15, Clause 4 – the amendment clause – "the Chief Justice may after consulting the Judges of the Supreme Court by notification published in the Gazette specify the matters that the court may consider when deciding whether to admit a person under this section". *So, if Parliament passes this legislation, it would have given the Chief Justice the power to decide on the factors.* In fact, this goes back to Mr Singh's point which I more or less agreed with that *the courts should have substantial discretion* .** In fact, Mr Hri Kumar was not comfortable with this. **But my own view, on balance, is that the courts should have a greater degree of discretion. *What I think about the criteria in this context will become less relevant.***

...

[emphasis added in bold, bold with underlining, italics, bold italics and bold italics with underlining]

The applicable legal principles

The approach prior to the 2012 Amendment

33 Prior to the 2012 Amendment, the courts applied a three-stage test in determining an application for *ad hoc* admission under s 15(1) of the current LPA: see Re *Joseph David QC* [2012] 1 SLR 791 ("*Joseph QC*") at [15]. The three stages were as follows:

(a) firstly, whether the case contained issues of fact or law of sufficient difficulty and complexity to justify the admission of a foreign senior counsel;

(b) secondly, whether the circumstances of the case warranted the court's exercise of its discretion in favour of the applicant; and

(c) thirdly, whether the applicant was a suitable candidate for admission in that he or she possessed special qualifications or experience for the purpose of the case.

I observed in *Joseph QC* at [22] that this three-stage approach was not expressly mandated by s 15(1) of the current LPA, and that the test might be more coherently conceived of as comprising two, *contra* three, stages because the applicant's suitability for admission was, in the final analysis, simply one of the factors to be considered in determining whether the circumstances of the case warranted the court's exercise of its discretion to admit the applicant. I also noted that the requirement of "sufficient difficulty and complexity" (referred to hereafter as the "'sufficient difficulty

and complexity' requirement" where appropriate) was set at a high threshold and had, in recent years, been notoriously difficult to satisfy: see *Joseph QC* at [42].

34 Before I turn to consider what should be the approach after 1 April 2012, I pause to note that before the "sufficient difficulty and complexity" requirement was introduced in 1991, the courts apparently from time to time considered that the difficulty of the underlying issues in the case was a statutorily relevant and important factor in deciding whether to exercise their discretion to grant an application for *ad hoc* admission: see Re *Phillips Nicholas Addison QC* [1979–1980] SLR(R) 111 at [12] ("*Re Phillips*"). However, in practice, prior to 1991, the *ad hoc* admission of foreign senior counsel was almost always a routine matter (see above at [25]–[26]). This peculiar state of affairs was also detailed by Chan Sek Keong J in Re *Oliver David Keightley Rideal QC* [1992] 1 SLR(R) 961 at [8]:

> ... Prior to the [1991] [A]mendment[s], the primary consideration for admission of a Queen's Counsel was whether he had special qualifications or experience for the purpose of the case. *The court was seldom required to exercise its general discretion against admission as it was a common practice of solicitors for the parties not to object to each other's applications*. ... [emphasis added]

I pause to add that *Re Phillips* surfaces as the only reported decision on the *ad hoc* admission of foreign senior counsel between 1970 and 1990. It is conspicuously brief on the interpretation of the relevant provisions for *ad hoc* admission, and it is unclear whether it reflected the then judicial consensus on this issue. In this regard, I note that in *In the Matter of Section 21 of the Legal Profession Act (Chapter 161) and in the Matter of an Application by Mr David Edward Michael Young, Queen's Counsel of England* [1991] SGHC 177, Selvam J briefly referred to *Re Phillips* as an illustrative case where "[e]ven before the amendments [*viz*, the 1991 Amendments] the Court insisted on the complexity of the case as a condition to admission of [foreign senior] counsel". Unfortunately, there is no other case law that clearly indicates how the courts prior to 1991 made an assessment on complexity. Returning to the 1991 Amendments, it appears to me that the requirement of "sufficient difficulty and complexity" which was expressly introduced inexorably became in practice the threshold requirement for an *ad hoc* admission application – unless the issues raised in the case were sufficiently difficult and complex (or unless there was a dearth of local expertise), the application would not be acceded to. As a result, over the two decades between 1991 and 2012, only a small number of such applications were successful in contrast to the rather liberal position prior to 1991.

The present approach

35 Pursuant to s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed), the courts must prefer an interpretation which supports the intended purpose of a provision over an interpretation that does not: see *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [57] and *Chief Assessor and another v First DCS Pte Ltd* [2008] 2 SLR(R) 724 at [10].

36 The Law Minister's speech during the 2012 parliamentary debates indicates that the 2012 Amendment was premised on certain considerations and reveals several significant insights about the changes introduced, namely:

(a) A pool of premier litigation counsel has been built up over the years. The concern today is not so much about nurturing the local Bar (although that consideration remains pertinent), but about the *availability* of good quality counsel to *represent litigants in cases of need*.

(b) The 2012 Amendment is intended to give *greater discretion to the courts* by altogether removing the threshold "sufficient difficulty and complexity" requirement. Consequently, the

courts should adopt a less restrictive approach to the *ad hoc* admission of foreign senior counsel. It is pertinent that the Law Minister concluded his comments at the 2012 parliamentary debates by stating that the courts should have "*substantial discretion*" [emphasis added]. This more liberal approach should, however, not morph into a "free for all" (*per* the Law Minister in *Singapore Parliamentary Debates, Official Report* (14 February 2012) vol 88).

(c) The Law Minister observed that "*if Parliament passe[d] this legislation*,*it would* [*give*] ***the Chief Justice the power to decide on the factors*** [*which may be considered in assessing an* ad hoc *admission application*]" [emphasis added in italics and bold italics]. He concluded by reiterating that "*the courts should have a greater degree of discretion.* ***What I think about the criteria in this context will become less relevant*** " [emphasis added in italics and bold italics]. This is an important acknowledgment in so far as the Law Minister recognised that his parliamentary observations might not be entirely relevant in construing the factors specified by the Chief Justice as being applicable in assessing applications for *ad hoc* admission. Parliament has conferred on the Chief Justice (after consulting the judges of the Supreme Court) broad authority to stipulate the matters that the court should consider in assessing an application for *ad hoc* admission. Pursuant to this, Chan CJ issued the Notification, which sets out (at para 3) four specific matters for consideration. The difficulty and complexity of the issues in the underlying case may be a pertinent (but not decisive) consideration. It is relevant in so far as it is reflected as one of the four factors specified in para 3 of the Notification (see above at [30]).

(d) Although the changes to the *ad hoc* admission scheme were prompted by concerns about "litigants [being] unable to engage the best of the [local Senior Counsel] that they do want to engage" (see *Singapore Parliamentary Debates, Official Report* (14 February 2012) vol 88) in complex matters involving financial institutions, *it was not stated during the 2012 parliamentary debates that the more liberal approach was to be confined to such matters.* The courts have plainly been given substantial discretion to admit foreign senior counsel in relation to commercial cases generally as a category (as opposed to, *eg*, criminal cases, as specified under s 15(2) of the current LPA). Significantly, the express reference to the "difficulty and complexity" of the case as a criterion has been removed. Parliament has also decided that *the court is in the best position to conduct a judicious balancing of the competing interests* in each case to determine whether it is reasonable to admit a foreign senior counsel in commercial cases.

37 Plainly, the reference by the Law Minister during the 2012 parliamentary debates to cases where litigants are up against banks or large corporate entities (see [31] above) is merely illustrative, and is not intended to spell out the only circumstances in which *ad hoc* admission of foreign senior counsel can be granted. As the Law Minister stated, the difficulties faced by litigants in engaging local Senior Counsel ("Senior Counsel") of their choice in litigation involving banks or large corporations was merely *one* of the key challenges arising in the *ad hoc* admission regime prior to 1 April 2012 (see [31] above). The problem identified by the Law Minister and the Chief Justice – *viz*, the situation where many of the Senior Counsel are unavailable (for reasons of conflict or otherwise) to act for a particular individual – may sometimes exist regardless of whether a litigant is up against an individual or a corporate entity. It must also be noted that when the Law Minister made his comments during the 2012 parliamentary debates, the Notification had yet to be issued (the Notification came into operation only on 1 April 2012, together with the 2012 Amendment). The Law Minister's comments, while obviously important in a contextual sense, should not be construed as unduly limiting the plain intent and purport of the Notification since broad authority has been delegated to the Chief Justice by s 15(6A) of the current LPA to exercise "*the power to decide on the factors*" [emphasis added] (*per* the Law Minister in *Singapore Parliamentary Debates, Official Report* (14 February 2012) vol 88) which may be considered in assessing an *ad hoc* admission application. In the final analysis, the question before the court is one of construing s 15 of the current LPA

(subsequent to the 2012 Amendment) and the Notification and applying them to the facts of the particular case at hand to determine whether to allow the *ad hoc* admission of the foreign senior counsel concerned.

The s 15(1)(c) requirement: special qualifications or experience for the purpose of the case

38 Applicants applying for *ad hoc* admission are required by s 15(1)(*c*) of the current LPA to have "*special* qualifications or experience *for the purpose* of the case" [emphasis added]. This phrase was first introduced in 1962, and was intended to restrict the circumstances in which foreign senior counsel would be admitted (see [22] above). However, no indication was provided in the legislative debates at that time as to how this restriction was intended to operate. This problem was recognised by Parliament in 1991 when the 1990 LPA was amended to introduce the requirement that the case must be of "sufficient difficulty and complexity" (see [27] above). Since this amendment, the distinct requirement in s 15(1)(*c*) of the current LPA that the foreign senior counsel in question must have "special qualifications or experience for the purpose of the case" ("the s 15(1)(*c*) requirement") has been somewhat overlooked because the focus of the courts and of counsel prior to 1 April 2012 was largely on the question of whether the high threshold of "sufficient difficulty and complexity" had been surmounted in each case.

39 Now that the "sufficient difficulty and complexity" requirement has been altogether removed, it becomes important to consider the scope of the s 15(1)(*c*) requirement and how it relates to the matters set out by the Chief Justice in para 3 of the Notification. In my view, the s 15(1)(*c*) requirement deals with the idea that the foreign senior counsel's qualifications and/or experience must be *relevant* to the issues in the case. This is distinct from the question of whether those issues are difficult and complex because a foreign senior counsel's qualifications and/or experience may be relevant to issues which are not difficult and complex. The s 15(1)(*c*) requirement sets a threshold which is met so long as there is evidence to show that the foreign senior counsel has special qualifications and/or experience which indicates that he or she will be able to expertly discharge his or her duties to the client and to the court "for the purpose" of the case for which *ad hoc* admission is sought. For instance, where a case raises issues which require specialised knowledge of areas of law such as arbitration, insolvency or intellectual property, the foreign senior counsel should have the appropriate expertise in these areas of law.

The Notification

40 Before I go on to consider the meaning and ambit of the specific factors set out in para 3 of the Notification as well as the question of how these factors relate to each other and to the requirements in s 15(1) of the current LPA, it is important to first consider whether the court is in fact obliged to consider all the factors set out in para 3 of the Notification.

41 Although para 3 of the Notification states that "the court *may* consider ..." [emphasis added] rather than "the court *shall* consider ..." [emphasis added], this is not in itself decisive of the question of whether the court is under a legal duty to consider all the factors listed by the Chief Justice in that paragraph. Recently, in *Lim Mey Lee Susan v Singapore Medical Council* [2012] 1 SLR 701, the Court of Appeal observed (at [39]):

> ... [T]he dichotomy between the mandatory effect and the directory effect of words (used in statutory provisions) which are *ex facie* mandatory (*eg*, the word "shall") has been abandoned by the English courts in favour of *the practical approach of determining Parliament's intention in each case* so as to ascertain whether or not a failure to comply with a "shall" requirement would result in a nullity (see *Regina v Soneji* [2006] 1 AC 340). Our courts should follow suit. [emphasis

added]

While this observation was made in the context of a statutory provision which used the word "shall" rather than "may", logically, the same purposive approach to statutory interpretation mentioned at [35] above must also mean that where the statutory provision in question uses the word "may", it can mean "shall".

42 This can be seen from the Privy Council case of *Da Costa v The Queen* [1990] 2 AC 389, an appeal from Jamaica. One of the issues before the Privy Council was the interpretation of s 6(2) of the Gun Court Act (Jamaica), which stated:

> A resident magistrate ... before whom any case involving a firearm offence is brought—(*a*) if the offence is not a capital offence, *may* make such inquiry as he deems necessary in order to ascertain whether the offence charged is within his jurisdiction ...; (*b*) if the offence is a capital offence, *may* order that a preliminary examination be held ... with a view to committal for trial ... [emphasis added]

The Privy Council stated as follows (at 405F–406A):

> Talbot J. said in *Sheffield Corporation v. Luxford* [1929] 2 K.B. 180, 183–184:
>
> > "'May', is a permissive or enabling expression; but there are cases in which, for various reasons, as soon as the person who is within the statute is entrusted with the power it becomes his duty to exercise it."
>
> An authoritative modern textbook puts the matter thus:
>
> > "*Where a court or tribunal is given in terms a power to exercise a certain jurisdiction, this may be construed as imposing a mandatory duty to act*. This will arise where there is no justification for failing to exercise the power. In such cases, as it is often put, 'may' is held to mean 'shall'": see *Bennion on Statutory Interpretation* (1984), p. 27, and cases there cited.
>
> Their Lordships consider that this principle should be applied in construing section 6(2)(*a*) and (*b*) [of the Jamaican Gun Court Act].
>
> Crown counsel, when asked by their Lordships, stated that a mandatory construction of section 6(2)(*a*) would not give rise to difficulty and their Lordships are therefore content to adopt that construction, which they prefer for the reasons stated.
>
> [emphasis in original omitted; emphasis added in italics]

43 Similarly, in *Lombard Commodities Ltd v Alami Vegetable Oil Products Sdn Bhd* [2010] 2 MLJ 23, the Malaysian Federal Court stated (at [21]–[22]):

> 21 The critical issue is whether a declaration in the *Gazette* notification by the Yang Di Pertuan Agong is a condition precedent before an award made in a state, who is a party to the [New York Convention], could be regarded as a convention award under the CREFA [*viz*, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 1985 (M'sia)]. In my view, the answer to this question does not depend on whether the word 'may' appearing in s 2(2) of the CREFA has to be read to mean 'must' or otherwise. As observed by Cotton LJ in *In re Baker;*

Nichols v Baker (1890) 44 Ch D 262 at p 268, *'It is an inaccuracy of language to say that 'may' can mean 'must' or 'shall'. It simply confers a power. We must look at the object of the statements to see whether a duty to exercise the power is imposed'*.

22 In NS Bindra's *Interpretation of Statutes* (9th Ed) at p 948, it is stated that:

> It is well-settled that the use of [the] word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word 'may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like.

And at p 950 it is stated:

> The ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover the legislative intent; and the use of [the] words 'may' and 'shall' is not decisive of its discretion or mandates. *The use of the words 'may' and 'shall' may help the courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect.* ***The courts have further to consider the subject matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed.***

[emphasis added in italics and bold italics]

44 In my view, the architecture of the 2012 Amendment and the Notification plainly indicates that the courts are under a duty to consider all the matters listed in para 3 of the Notification. *The 2012 Amendment is not intended to lead to a "free for all", and in assessing applications for* ad hoc *admission, the courts are required to conduct a judicious balancing of the competing interests in the particular case at hand within the framework of the matters specified in para 3 of the Notification.* Interpreting para 3 of the Notification to mean that the courts are obliged to consider all the matters set out therein also ensures consistency in assessing future applications for the *ad hoc* admission of foreign senior counsel. In turn, this consistency in approach will lend some predictability and certainty for both the Bar and litigants who intend or are considering whether to apply for the *ad hoc* admission of foreign senior counsel. At the same time, however, it bears emphasis that the matters set out in para 3 of the Notification, and in particular, para 3(*d*), have been judiciously designed to be sufficiently flexible to allow for the inclusion of other situational considerations which may carry significant weight in a particular case.

45 The four criteria in para 3 of the Notification are schematically set out in a mode that does not indicate any particular precedence or that all four of the listed criteria must be identically satisfied in every application for *ad hoc* admission. No particular weight has been assigned to any of the matters identified as being relevant in assessing the merits of an application. Paragraph 3 of the Notification does not set out a new rigid four-stage test that replaces the earlier test in s 21 of the 1990 LPA of "sufficient difficulty and complexity and having regard to the circumstances of the case". Additionally, the court is not obliged to invariably accord equal weight to each of the matters listed in para 3 of the Notification (see below at [63]). It would be inappropriate, and, indeed, unprincipled, to give equal emphasis to the four matters identified in para 3 of the Notification, given that the application of these matters to the facts is necessarily fact-dependent. What the court is obliged to do in considering an application for the *ad hoc* admission of foreign senior counsel is to *carefully evaluate*

these matters in the exercise of its discretion to grant or reject the application. Having considered all these matters, the court may well decide that on the facts of a particular case, less weight should be assigned to some or even most of them. In short, the emphases to be placed on the matters identified in paras 3(*a*)–3(*d*) of the Notification will necessarily vary from case to case. The court now has a *substantial*, although not unfettered, discretion in assessing the merits of each *ad hoc* admission application. Having made this clear, I now consider each of the specific matters identified in para 3 of the Notification.

(1) The nature of the factual and legal issues involved in the case

46 Paragraph 3(*a*) of the Notification evinces an important shift in the law on *ad hoc* admission. As mentioned above (at [33]–[34]), prior to the 2012 Amendment, it was an essential requirement for the applicant to satisfy the court that the issues in the underlying case were of "sufficient difficulty and complexity". If the applicant failed to do so, his or her application would fail *in limine* without the court having to go on to consider whether the circumstances of the case warranted the court's exercise of its discretion to admit him or her: see *Price QC* at [8] and [11].

47 This threshold requirement has now been unambiguously removed by the 2012 Amendment. Paragraph 3(*a*) of the Notification now provides that the court must consider "the nature of the factual and legal issues involved in the case" when deciding whether to grant an application for *ad hoc* admission. This requires the court to identify and apply its mind to the factual and legal issues which have been raised by the parties' pleadings in the underlying case. This may also include considering procedural or evidential complexities which will or are likely to arise in the course of the underlying case, and which will thus affect or influence the resolution of the factual and legal issues. Such procedural and evidential issues may, depending on the course which the case takes, sometimes even overshadow the factual or legal issues and consequently be decisive of the entire dispute.

48 While the courts may, all other things being equal, be more inclined to grant an application for the *ad hoc* admission of foreign senior counsel in cases where the legal and/or factual issues are complicated and difficult, this is no longer the only perspective from which these issues should be viewed. Given that para 3(*a*) of the Notification merely deals with the "nature" of the issues in the case, the courts may also consider, *inter alia*, the novelty of the issues involved (even if they are not complicated and difficult) and the area of law in which these issues arise. For instance, if the issues are novel and concern an area of law in which the decision can have significant precedential value, or if there is considerable public interest in the outcome, such as in the areas of corporate governance or finance, the courts may be more likely to grant an application for *ad hoc* admission even if the matter does not involve particularly complex legal or factual issues.

49 In the present case, I granted leave to Mr Vijya to file a supplementary affidavit setting out the factual, legal, procedural and evidential issues which are in issue in Suit 453/2009 (see below at [71]) as this application is the first application under the new regime for the *ad hoc* admission of foreign senior counsel. Going forward, however, applicants should support their application by specific reference to the issues involved in the underlying case with reference to the pleadings and/or affidavits (where appropriate). This will assist the court in deciding whether to grant the *ad hoc* admission application.

(2) The necessity for the services of a foreign senior counsel

50 Paragraph 3(*b*) of the Notification provides that the court must consider "the necessity for the services of a foreign senior counsel". The word "necessity" is an etymological chameleon that takes colour from its context. An attempt to conclusively define it would not be helpful. In my view,

para 3(*b*) of the Notification should be read broadly and in a common-sense manner to include all matters which indicate that the services of a foreign senior counsel are needed by the litigant for the proper conduct of the case. That said, in assessing the "necessity" or otherwise of the services of a foreign senior counsel, the context which the court ought to consider is the need for such services *in relation to* the particular case before it.

51 An example where it is necessary to engage the services of a foreign senior counsel might be where there are either no Senior Counsel or other local lawyers with appropriate expertise or experience available, or where even if the theoretical availability of Senior Counsel or such local lawyers exists, they are not *readily* available. Not infrequently, a case may require urgent undivided attention because of the nature of the case and/or because of the court's timelines. The reality is that competent counsel of choice in Singapore are not always immediately available. It may then become necessary to secure the services of a foreign senior counsel who can be immediately engaged to put forward and argue a litigant's case. The services become a "necessity" for the litigant because of the pressing imperatives of the case. These observations should not be interpreted as suggesting that it would be appropriate to immediately engage a foreign senior counsel in every case that demands urgent attention. As I mentioned earlier, this is just one of the matters to be considered in assessing an application for *ad hoc* admission.

52 I should add that the fewer the number of local counsel with appropriate experience, the more "necessary" it becomes for the services of a foreign senior counsel. It is important to note, however, that what is relevant is the number of local counsel with *appropriate* expertise, *ie*, experience which allows them to put forward and argue the litigant's case competently, having regard to the specific issues raised in the underlying case. I should also point out that there is some overlap between para 3(*b*) and para 3(*d*) of the Notification, particularly where the factor of equality of arms is concerned (see below at [59]–[61]).

(3) The availability of any Senior Counsel or other advocate and solicitor with appropriate experience

53 Paragraph 3(*c*) of the Notification requires the court to consider "the availability of any Senior Counsel or other advocate and solicitor with appropriate experience".

54 Under the old (*ie*, pre-1 April 2012) law, the availability of local counsel who were able and willing to handle the case was an important factor for consideration by the court, although it need not be shown by the applicant that absolutely no local counsel was able and willing to take on the case: see *Joseph QC* at [46]–[51]. The lack of local expertise in a particular area of law would tend to indicate that even a moderately difficult or complex case might warrant the admission of a foreign senior counsel: see *Joseph QC* at [19].

55 A litigant must take reasonable steps to ascertain the availability of Senior Counsel or other local counsel with appropriate experience. [note: 10] As the Law Minister reiterated during the 2012 parliamentary debates, "ad hoc counsel will only be admitted on the basis of need, and it will not be a free for all". This does not, however, mean that the litigant must take steps to contact all Senior Counsel or even a significant number of them. The scope of inquiry which a litigant is reasonably expected to undertake will depend, *inter alia*, on the nature of the issues being contested as well as the developments in the case. Matters can become procedurally complex and/or legally intricate if missteps have been taken. It is trite that some matters, despite having substantive merits, can be severely compromised if incorrect procedures are adopted.

56 I do not agree with the Law Society's narrow submission that it is only in cases where a litigant seeks counsel to act against a bank or a large corporate entity that it suffices for the litigant to

ascertain the availability of Senior Counsel in just the larger law firms. The Law Society's submission suggests that in other matters, more extensive efforts ought to be made to ascertain the availability of other counsel. Where a case involves a dispute between individuals, it does not necessarily follow that the litigant is required to make more extensive efforts in approaching Senior Counsel as well as other local counsel with appropriate experience to act. *Focusing on the identity of the parties to the litigation alone would prize form over substance.* Indeed, the facts of Suit 453/2009 illustrate the danger of having regard to the identity of the parties to the litigation *per se*: although the Plaintiff and the Defendants are all individuals, the amount at stake here is significant – being $4.5m under the primary cause of action and $11.4m under the alternative cause of action – and the four largest law firms in Singapore are either conflicted out of acting for the Plaintiff or are unwilling to take on the case for him. As more than a third of all practising Senior Counsel are from these four law firms, there is force in Mr Vijya's submission that he has made reasonable attempts to secure local counsel with appropriate experience.

57 In deciding whether the litigant concerned has in fact taken reasonable steps to secure Senior Counsel or other local counsel with appropriate experience, the court should consider, *inter alia*, the number of Senior Counsel or other local counsel who have the appropriate experience to deal with the issues in the underlying case, the steps taken (if any) by the litigant to instruct such Senior Counsel or local counsel and the reasons (if any) why those steps were unsuccessful. Where a litigant has taken reasonable steps to instruct Senior Counsel or other local counsel with appropriate experience, this will generally be a factor in his favour for the court to consider. Where a litigant has in fact previously instructed Senior Counsel or other local counsel with appropriate experience at an earlier stage of the same proceedings but where the counsel instructed has since ceased to act for the litigant, this may *a fortiori* count as a factor in the litigant's favour. I should caution here, in respect to this scenario, that the reasons why the counsel instructed ceased to act for the litigant could also be relevant. A litigant who has conducted himself unreasonably, thereby leading to his instructed counsel discharging himself, should not have his application for the *ad hoc* admission of foreign senior counsel assessed more favourably. Where, however, a litigant who has previously engaged Senior Counsel or other experienced local counsel has lost confidence in the counsel instructed for legitimate reason(s) and subsequently seeks the assistance of foreign senior counsel, this may assist in justifying the application for *ad hoc* admission.

(4) Whether, having regard to the circumstances of the case, it is reasonable to admit a foreign senior counsel for the purpose of the case

58 Turning now to para 3(*d*) of the Notification, I agree with the Law Society's submission that this sub-paragraph is a catch-all provision in so far as it allows the court to consider other relevant matters not set out in the other limbs of para 3 of the Notification when deciding whether a foreign senior counsel should be admitted. [note: 11] Plainly, the 2012 Amendment is intended to give greater discretion to the courts in deciding whether or not to grant an application for *ad hoc* admission, with each application to be assessed on a case-by-case basis (see above at [31]–[32]). Given the broad nature of this discretionary mandate, I will not circumscribe para 3(*d*) of the Notification by attempting to define "reasonableness" for the purposes of this sub-paragraph. It will suffice to illustrate some of the factors that might be considered in assessing "reasonableness".

59 One particular factor which may now be considered, in view of para 3(*d*) of the Notification, is equality of arms. Prior to the coming into force of the 2012 Amendment, the idea of equality of arms was not relevant *per se*. This was made clear in *Godfrey Gerald QC v UBS AG and others* [2003] 2 SLR(R) 306 ("*Gerald QC*"), where the Court of Appeal stated:

> 33 Without the assistance of a QC, Mr Wee would have it that he would be embroiled in a

battle of "David and Goliath" proportions because UBS was represented by Mr Davinder Singh SC, "arguably Singapore's foremost litigator" with the backing of the "vast resources of Drew and Napier". In support of his contention that the courts should admit a QC to level the playing field, Mr Wee seized upon the case of *Re Beloff Michael Jacob QC* [2000] 1 SLR(R) 943, where the High Court permitted the defendant, who was already represented by a SC, to hire a QC in order to "ensure a level playing field" against the plaintiff, who was already represented by a QC.

34 We were of the view that Re Beloff Michael Jacob QC *does not stand for the general principle that the circumstances warrant the admission [of] a QC when the opposing side is represented by a SC. The High Court's reference to the principle of a level playing field must be read in the context where the court had already decided that the factual and legal matrix of the case was sufficiently complex and difficult to warrant the admission of a QC on the plaintiff's behalf.* It would seem perverse in those circumstances, therefore, to deny the application by the defendant's QC.

[emphasis added]

Similarly, Prof Tan Yock Lin observed in "Legal Profession" (2003) SAL Ann Rev 354 at para 18.11 *vis-à-vis* the pre-1 April 2012 *ad hoc* admission scheme:

The level-playing-field argument is never an adequate consideration ***on its own*** **.** It necessarily presupposes the existence of points of difficulty and complexity requiring elucidation by a QC; without that, the level-playing-field argument proves too much. [emphasis added in italics and bold italics]

60 The position set out in the two extracts just quoted was apparently primarily predicated on the wording of the then equivalent of s 15 of the current LPA, which, before the 2012 Amendment, required the court to be satisfied that the issues in the case were "of sufficient difficulty and complexity" before it could grant an application for the *ad hoc* admission of foreign senior counsel. That was why the Court of Appeal in *Gerald QC* held that the mere fact that there was inequality of arms was not *per se* sufficient to justify granting the application for *ad hoc* admission: the threshold "sufficient difficulty and complexity" requirement had to be satisfied as well. As this threshold requirement has since been *removed*, the relevance and/or importance of the idea of equality of arms has to be considered afresh. The Law Minister pointedly noted during the 2012 parliamentary debates (quoting from Chan CJ's speech during the Opening of the Legal Year 2011) that the 2012 Amendment was not intended "to disadvantage litigants who [could not] afford equivalent representation" (see [31] above). In my view, however, in cases where one party has *already* obtained representation by Senior Counsel and the other party has been unable to secure *equivalent representation* locally despite *genuine efforts* to do so, this could now be a pertinent consideration in assessing whether it is a "necessity" and/or "reasonable in all the circumstances" to permit the *ad hoc* admission of foreign senior counsel. Nonetheless, this issue is not *ex ante* a decisive consideration because the express wording of the Notification requires the court to consider various other matters before arriving at its decision, although decisive weight may well be attributed to this factor in the context of a particular case. I agree with Mr Vijya that there may sometimes, depending on the particular factual matrix of a case, be "a world of difference between having the assistance of leading counsel behind the scenes in formulating written submissions, and having the advantage of their presence in court to argue the case", [note: 12] especially in a trial which turns on findings of fact.

61 I would add that although the threshold "sufficient difficulty and complexity" requirement under the old law has been removed, the nature of the issues in the underlying case will usually affect the weight (if any) which will be placed on equality of arms in a particular case. Equality of arms is but a

means to an end, and if that end is likely to be achieved *even if* there is an inequality, or even significant inequality, of arms, there is no reason to accord substantial weight to this factor. This may occur, for instance, where the issues in the underlying case are simple. Here, I note that the then Minister for Law, Prof Jayakumar, rightly cautioned during the parliamentary debates on the 1991 Amendments that there should be "*no abuse and … QCs [should] not [be] admitted for the* ***very*** *simple, routine or uncomplicated cases*" [emphasis added in italics and bold italics] (see above at [27]). For instance, it is difficult to imagine that a foreign senior counsel will be admitted to handle a summary judgment application even if the amount at stake is substantial. Nonetheless, the courts should be slow to discount equality of arms altogether because a skilled advocate may, while adhering to the spirit of his legal and ethical responsibilities, be able to secure success for his client where a less experienced or skilled advocate may falter.

62 Another issue which falls within the ambit of para 3(*d*) of the Notification is the financial ability of the opposing party in the underlying case to engage equivalent representation. As Chan CJ stated (see [31] above), the courts do not want to disadvantage litigants who cannot afford equivalent representation. This would therefore be a relevant consideration where it is the party with deeper pockets who first seeks the *ad hoc* admission of a foreign senior counsel even though the opposing party is not represented by a Senior Counsel.

General principles

63 From the foregoing analysis, it is apparent that the various factors set out in para 3 of the Notification are inter-connected in myriad ways. It follows that the court should always adopt a holistic (and not a formulaic) approach when assessing the facts of a particular case and deciding what weight to attribute to any given factor in the context of that case. An analogy may be drawn here with the law on sentencing, where the matters to be taken into account by the sentencing judge are clear, but the variability of their application gives the sentencing judge considerable discretion. The references by the Law Minister during the 2012 parliamentary debates to a "judicious balancing of interests" and "substantial discretion" indicate that it was Parliament's intention, in deciding not to opt for a special licensing scheme with a small number of foreign senior counsel being licensed to practise at the Singapore Bar (see [32] above), to permit the court to approach each *ad hoc* admission application with a relatively open mind to decide what would be reasonable in the circumstances. *Concern for the particular case at hand is at the heart of the discretion conferred on the court.* The court has the discretion to extend or make exceptions to the factors stipulated in the Notification if it is reasonable to do so in order to take into account the facts of the underlying case. That said, although the weight attached to a particular factor by the court will largely be a question of the exercise of discretion, the court must nonetheless consider *all* the matters listed in para 3 of the Notification. As noted in William Wade & Christopher Forsyth, *Administrative Law* (Oxford University Press, 10th Ed, 2009) at pp 322–323:

> *The decision-maker must take the obligatory relevant considerations into account* and if he fails to do so the judicial review court will set him right. ***But the weight to be attached to any consideration is a matter for the decision-maker.*** [emphasis added in italics and bold italics]

The learned editors' observation was made in the context of administrative law, and the role of a supervisory court is of course quite different from that of a court exercising an original discretion. Nonetheless, the general proposition relating to how discretion should be exercised in attributing weight to multiple relevant factors – *viz*, that the decision-maker should consider all the obligatory relevant considerations and should not attribute manifestly excessive or manifestly inadequate weight to any of them – applies generally throughout the law. The task of applying the statutorily-mandated factors to particular situations will often be a complex matter requiring an irreducible element of

assessment or judgment. Similar observations have been made by the Court of Appeal in other contexts: for instance, in *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [13]–[16] in the context of the appellate review of sentencing decisions by lower courts, and again in *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 at [40] in the context of the appellate review of decisions on whether to grant a stay of proceedings on the ground of *forum non conveniens*.

64 As stated earlier, the intent of the 2012 Amendment is to give the courts greater discretion in dealing with applications for the *ad hoc* admission of foreign senior counsel by removing the threshold requirement that the issues in the case must be of "sufficient difficulty and complexity" and by easing the admission requirements for appropriate matters. In turn, the purpose of granting greater discretion to the courts is to ensure that a litigant is able to instruct foreign senior counsel with expertise that is commensurate with and relevant to the issues in the underlying case if the litigant has been unable to instruct equivalent local counsel despite taking reasonable steps to do so (see [31]–[32] above). It is no longer necessary to show that the issues in the case are of "sufficient difficulty and complexity". Conversely, even if the issues are of sufficient difficulty and complexity, it will not necessarily follow that the application for the *ad hoc* admission of foreign senior counsel will be granted. The focus has now shifted from the difficulty and complexity of the issues in the underlying case to all the matters stated in para 3 of the Notification. Difficult and complex issues may well be competently put forward and argued by local counsel who are available and who have the appropriate expertise.

65 The above examination of the historical evolution of the *ad hoc* admission scheme amply illustrates how the present scheme has radically modified the earlier criteria for admission. Of particular relevance is the decision by Parliament to devolve to the Chief Justice the discretion to set out the matters to be considered by the courts in deciding each and every application for *ad hoc* admission. The four matters specified in para 3 of the Notification are now the touchstone for the courts in assessing applications for *ad hoc* admission. Previous cases on *ad hoc* admission are now only of limited relevance. The effect of this sea change has not been properly appreciated by counsel opposing the present application, who appear to be still unduly wedded to case law based on the previous *ad hoc* admission scheme.

66 Now, the overriding concern of the courts in dealing with applications for the *ad hoc* admission of foreign counsel is to strike a balance between a plurality of objectives, which include: (a) nurturing the local Bar; (b) allowing litigants to engage counsel of their choice to advance their case as well as possible; and (c) ensuring the proper and timely administration of justice. In Re *Caplan Jonathan Michael QC* [1997] 3 SLR(R) 412 ("*Caplan QC*"), Yong Pung How CJ held (at [21]) that it would also be relevant if any adverse findings at the trial would be likely to impugn the integrity of the litigants and thereby cause significant harm to their business interests. More recently, I observed in *Joseph QC* (at [59]) that another relevant factor was whether there was a wider public interest in the development of local law in the specific area(s) of law involved in the underlying dispute.

67 The aforesaid balancing process is highly discretionary and will turn on the precise factual matrix of each case. The court is required to engage in a judicious balancing of the competing interests in each case (see [31] above). In considering each application for *ad hoc* admission, the courts will examine the nature of the issues in the underlying case with reference to the availability of local counsel with appropriate experience as well as other factors, including whether there is a necessity for the services of a foreign senior counsel to represent the litigant in court. In this process, it is incumbent on the litigant to set out the steps (if any) which he has taken to instruct local counsel with appropriate experience, *ie*, experience which adequately equips the local counsel in question to advance the litigant's case competently. I should stress, however, that the mere fact

that there are available local counsel who can, having regard to the issues raised, *competently* put forward a litigant's case will not *necessarily* mean that there is no necessity for the services of a foreign senior counsel because all the other circumstances of the case will also have to be considered. Competent representation is one aspect of the equation; skilled representation is another. One factor which may be highly pertinent is the degree of imbalance between opposing counsel in the underlying case in terms of skill, knowledge and available resources. In addition, the courts also have an interest in every matter to ensure that a litigant's interests are not only competently represented, but also litigated in a timely manner.

Whether the Applicant's application for *ad hoc* admission should be granted

68 Having set out the general principles which now govern applications for the *ad hoc* admission of foreign senior counsel after the 2012 Amendment, I now consider whether the Applicant's application should be granted with reference to Suit 453/2009.

69 There can be no doubt that the Applicant's qualifications and experience are relevant to Suit 453/2009, thus satisfying the s 15(1)(*c*) requirement (see [38]–[39] above). The Applicant has extensive experience in dispute resolution in the courtroom and in arbitration, with a particular emphasis on commercial law. [note: 13] She is an experienced trial advocate with a reputation as a formidable cross-examiner, and is also the co-author of a leading practitioners' textbook on guarantees. I note that the Law Society did not argue that the Applicant did not satisfy the s 15(1)(*c*) requirement, and that the Attorney-General did not doubt that the legal issues in Suit 453/2009 were well within the Applicant's capabilities. [note: 14] I therefore determine that she has special experience for the purpose of the case.

70 The parties in Suit 453/2009 have proceeded to the Court of Appeal twice on interlocutory matters, *viz*, in relation to, respectively, the Defendants' striking-out applications and the Plaintiff's application for leave to amend his pleadings. This is relevant in so far as it indicates that counsel handling the trial of Suit 453/2009 may have to contend with issues arising from the conduct of and/or the affidavits filed in these interlocutory matters.

71 In his supplementary affidavit dated 31 August 2012, [note: 15] Mr Vijya stated that the issues in Suit 453/2009 are, *inter alia*, as follows:

(a) Procedural and evidential issues:

(i) Should the question of whether there was a settlement agreement, and, if so, whether the settlement agreement was enforceable by the Plaintiff, be tried as preliminary issues?

(ii) How should the evidence relating to the settlement negotiations be dealt with at the trial? Should such evidence be admissible only for the purpose of determining if there was a settlement agreement?

(iii) What is the scope and impact of the decision in *Ng Chee Weng (HC)* (cited at [4] above), which struck out (*inter alia*) various paragraphs of the Plaintiff's SOC on the basis that the evidence relating to the settlement negotiations was inadmissible with reference to the pleadings at that time?

(b) Factual issues:

(i) Was a settlement agreement reached in 2009? If so, what were the terms of this settlement agreement? Was this settlement agreement subsequently repudiated?

(ii) Was there a trust arrangement such that the First Defendant held certain shares in the Company on trust for the Plaintiff between 2002 and 2007?

(c) Legal issues:

(i) If there was a repudiatory breach of the settlement agreement by the Plaintiff and the First Defendant accepted it, what legal consequences follow? Is the First Defendant left with a remedy in damages only, or can he elect to treat the settlement agreement as rescinded?

(ii) If there was an agreement in 2002 for the First Defendant to purchase the Plaintiff's shares in the Company, as the Plaintiff has alleged, at what point in time did the beneficial ownership in those shares pass to the First Defendant so as to entitle him to keep any dividends declared? Was it: (A) as soon as the shares were transferred into his name on the register so that he became their legal owner; (B) when he paid part of the price, and, if so, how much of the purchase price; or (C) when he paid the purchase price in full?

72 Having considered these issues, I must say that the issues identified by Mr Vijya hardly impress me as being beyond the expected expertise of experienced local commercial counsel. This application would plainly not satisfy the previous test of "sufficient difficulty or complexity". But, the law has changed and the previous test is no longer dispositive. While the magnitude and significance of some of the issues set out in Mr Vijya's supplementary affidavit appear to have been overstated, there are nonetheless certain factual and legal issues which have to be carefully forensically assessed and then addressed at the trial of Suit 453/2009 and any appeal therefrom (see [73]–[74] below).

73 I accept Mr Bull's submission that the resolution of the two main factual issues in Suit 453/2009 – *viz*, whether there was a settlement agreement in March 2009 and, alternatively, whether any shares in the Company were held on trust for the Plaintiff by the First Defendant from 2002 to 2007 – will largely turn on the credibility of the Plaintiff and the First Defendant. [note: 16] This is because there appears to be a dearth of documentary evidence in the underlying case – as the Defendants themselves have stated, there are no documents evidencing the alleged settlement agreement or the alleged trust. [note: 17] The only available contemporaneous documents appear to be two emails from the Plaintiff to the First Defendant and one SMS message, which, according to the Defendants, collectively constitute evidence of a repudiation by the Plaintiff of the alleged settlement agreement even if such an agreement existed. [note: 18] Therefore, this case would in substance and in reality turn very much on the word of either party. Accordingly, a lawyer skilled in cross-examination and trial matters would greatly assist the Plaintiff in putting forward his case in the best possible manner, affording him the representation that he needs and desires. In this regard, it is pertinent to note Yong CJ's observation in *Caplan QC* (cited at [66] above) that (at [20]):

> … [T]he complex factual matrix of the case bears elucidation through the skilful advocacy of Queen's Counsel. Counsel appearing at the trial will face the crucial task of assembling the relevant pieces of evidence, marshalling them into coherent form and presenting them lucidly to the trial court. He will also have to undermine and if possible, destroy the version of events being offered by witnesses from the opposing side. In all, this is an exercise where the expert court craft of a Queen's Counsel will be of invaluable assistance to the trial court.

While Yong CJ's observation was made in the context of a case which he held to be factually difficult and complex (thus satisfying the high threshold under the previous law), whereas Suit 453/2009 does not appear to involve issues of such a high degree of difficulty and complexity, Yong CJ's observation on the invaluable assistance offered by foreign senior counsel (who generally possess "expert court craft" (see *Caplan QC* at [20])) in resolving factual disputes still resonates in the present case.

74 Additionally, there appear to be some legal issues in respect of which cross-examination and argument by experienced counsel with a strong grounding in the relevant areas of contract law and commercial law will likely benefit the Plaintiff as well as the court (see [71(c)] above). There is, for one, the issue of the consequences of a possible repudiatory breach of the alleged settlement agreement by the Plaintiff and, more importantly, the nuanced issue of precisely when the beneficial ownership in the shares which the Plaintiff allegedly sold to the Defendant passed. [note: 19] While the Law Society sought to argue that the latter issue was not necessarily beyond the expertise of local counsel, it nonetheless accepted that this was a novel point yet to be considered in local cases. [note: 20]

75 I hasten to add that I do not disagree with Mr Bull's submission that there are certainly a good number of competent local commercial counsel who can handle the trial of Suit 453/2009 and any appeal therefrom. However, this is not a decisive consideration in this case. In the circumstances of this particular application, the most significant considerations are as follows:

(a) The Plaintiff has already been represented by several local counsel in the past, *ie*, Mr Low, Mr Martin and Prof Tan. Two of them (*viz*, Mr Martin and Prof Tan) are Senior Counsel, and Mr Low is an experienced senior lawyer. This is not a case where the litigant's *first* port of call was to apply for the *ad hoc* admission of a foreign senior counsel. In fact, the Plaintiff had earlier sought and engaged Senior Counsel to prepare and argue his case before the Court of Appeal twice.

(b) It would appear as well that once the history of this matter is appreciated, it is not difficult to surmise that the Plaintiff has lost confidence in local counsel. Certain paragraphs of the Plaintiff's original SOC were struck out by a High Court judge (see [4] above) because facts pertaining to "without prejudice" negotiations were pleaded even though the SOC did not plead that a settlement agreement had been reached. The Plaintiff's case was pleaded at the outset in a less than satisfactory way. [note: 21] In fairness to Prof Tan and Mr Martin, I should add that they were not responsible for this unhappy entanglement in the Plaintiff's pleadings. As a result of these altogether avoidable pleading problems, the Plaintiff has been exposed to additional and unnecessary costs, and has been seriously procedurally disadvantaged. The trial has also been unduly delayed. The Plaintiff must be deeply unhappy that, and bewildered by how, his "straightforward" claim has been unhappily mired through no fault of his.

(c) This may be contrasted with the more positive experience which the Plaintiff has had in the course of the proceedings from the time he received the Applicant's assistance and advice. Notably, the Applicant helped extensively with the reformulation of the Plaintiff's pleadings after the First Proposed Amendment was found by the Court of Appeal to be legally embarrassing. [note: 22] I find that in the prevailing circumstances after the Plaintiff's appeal in CA 93/2009 was dismissed and Mr Martin ceased to act for the Plaintiff, it was perfectly understandable for the Plaintiff to engage a foreign senior counsel to get his pleadings back on track, given that the legal assistance which he had initially obtained had severely undermined his confidence in local counsel. In fairness again to Mr Martin, he appears to have been involved in the preparation for the hearing of CA 93/2009 only at a late stage. The Plaintiff's case for CA 93/2009, which was

filed on 1 March 2010, was prepared by Mr Vijya, and it was only the Plaintiff's skeletal submissions, which were filed on 12 May 2010, that were prepared by Mr Martin. The first hearing of CA 93/2009 took place on 17 May 2010. Despite being involved at such a late stage, Mr Martin nonetheless pragmatically attempted to put forward the best possible case he could for the Plaintiff in the circumstances by suggesting the First Proposed Amendment.

(d) The dismissal of the present application would result in the incurring of further and considerable costs as well as inconvenience on the Plaintiff's part because he would then have to find and instruct experienced local commercial counsel in whom he can securely repose his confidence. Most experienced counsel usually insist on working with their teams, and this may drive costs up substantially. Here, in contrast, the Applicant appears to be content to be instructed and supported by Mr Vijya alone. The quantum of solicitor-and-client costs becomes a more acute consideration if the litigant is an individual (as contrasted to a bank or other large corporate entity).

(e) A very real and practical consideration would also be the schedules of leading local commercial counsel. These individuals are, for obvious reasons, usually very busy. They will therefore typically be less willing to take on a case for a one-off client who is an individual.

(f) Another consideration is the potential uphill task faced by the Plaintiff in embarking at this late stage on a search for leading local commercial counsel to represent him. This case has already passed through the hands of several experienced counsel, and the trial is to take place very shortly. Unfortunately, in such circumstances, it is less likely that any leading local commercial counsel will readily take up this file with alacrity. Few (if any) experienced riders will ordinarily want to attempt to mount an unruly horse in difficult terrain, especially when it is known that others either have been thrown off or have declined to mount the horse. The reality that must be openly acknowledged is that leading counsel have considerably less appetite to accept engagements for matters that they would have handled quite differently had they been engaged from the outset.

76 The Defendants continue to be ably represented by Mr Bull, a well-regarded Senior Counsel. Mr Bull has managed twice to persuade the High Court to effectively dismiss the Plaintiff's case (*viz*, by allowing the Defendants' striking-out applications and by denying the Plaintiff leave to make the Second Proposed Amendment to the SOC). The Court of Appeal, however, has twice taken the view that the Plaintiff ought to have his day in court. The Plaintiff, in my view, should not be put to further and *unnecessary expense and difficulties* that might impede his ability to effectively air his legal grievances in court.

77 The Plaintiff earlier unsuccessfully tried to engage or made inquiries about engaging Senior Counsel from the three other largest law firms in Singapore (apart from D&N), *ie*, WP, A&G and R&T. The Plaintiff now seeks to admit comparable foreign senior counsel. This touches on what the Law Minister termed "[t]he real rationale" (see *Singapore Parliamentary Debates, Official Report* (14 February 2012) vol 88) for the 2012 Amendment, which is to avoid a situation where "litigants are unable to instruct the best of the SCs that they do want to engage" (see *Singapore Parliamentary Debates, Official Report* (14 February 2012) vol 88), especially in complex civil cases (see [32] above). This does not mean that a litigant ought not to be allowed equivalent representation in appropriate cases even if the case is not complex. The acid test now, in the final analysis, is whether it is proper in all the circumstances to admit a foreign senior counsel. I reiterate that there is no need for a litigant to exhaust all his options in so far as approaching local counsel is concerned before the court will consider his application for the *ad hoc* admission of a foreign legal counsel to represent him.

78 The approach adopted in the Notification is one of balancing competing interests, and no threshold requirements have been identified as laying down an iron rule, although it may well be that the presence or absence of a particular factor may prove to be decisive in different cases. That said, reasonable efforts to engage local counsel with appropriate experience ordinarily have to be established by the litigant before he makes an application to the court for the *ad hoc* admission of foreign senior counsel. I am satisfied that genuine and adequate attempts to secure local representation have been shown on the present facts, given that the Plaintiff has already made inquiries with three of the largest law firms in Singapore to no avail, and given, further, that Mr Martin and Prof Tan (both of whom are not from large firms) have affirmed that they will not be taking any further part in this matter.

79 I will also add that given the history of this case and the way in which the SOC was originally formulated, it is not surprising that the Plaintiff did not begin looking for experienced local counsel *for the purpose of the trial* at the point in time when he was resisting the Defendants' striking-out applications or arguing that leave to amend the SOC should be granted. The Plaintiff should not be expected to have divided his attention and resources at that time, given the shakiness of his pleaded case then. It was only when the Court of Appeal allowed the Second Proposed Amendment in November 2011 and the Plaintiff cleared the last procedural hurdle that it would be reasonable to expect him to look for an experienced litigator for the trial. But, by then, the costs of instructing yet another local counsel to handle the trial would have been significantly more than the costs of making an application for the *ad hoc* admission of the Applicant, who is already familiar with the case.

80 The imbalance in the quality of legal representation is, in this case, a pertinent factor for the court to consider (see above at [59]–[61]). This is the equality of arms point. It is a legitimate concern of the Plaintiff that he wishes to secure legal representation which *matches* the Defendants' representation in terms of skill (*vis-à-vis* advocacy and advice), experience and knowledge of the law. It would be unjust to deprive the Plaintiff of such representation, in the form of the Applicant, given the particular context and history of this case.

81 I readily agree with Mr Bull's submission that a local lawyer can, given time, familiarise himself with the facts and issues in this case. However, this argument cannot be taken too far because, logically, any lawyer can familiarise himself with the facts and issues in any case, however difficult and complex, given enough time. In this particular case, the Plaintiff has already engaged three different senior lawyers, *viz*, Mr Low, Mr Martin and Prof Tan, at the earlier interlocutory stages of Suit 453/2009. He has already incurred the getting-up expenses of these three lawyers. I must add that much of these expenses would have been entirely avoidable had the Plaintiff's case been properly pleaded at the outset. The Plaintiff is understandably deeply aggrieved and his confidence in local counsel has been severely undermined. Further, any new counsel who might be instructed will have to work under very tight time constraints. While it is true that Mr Vijya might have made this application earlier, I will not take this as a point against the Plaintiff, given the unhappy history of this matter and given also the fact that the 2012 Amendment was officially enacted only earlier this year. I also take into account the considerable delay of well over a year caused by the Defendants' mistaken attempts to resist the Second Proposed Amendment (see above at [11]–[13]).

82 Dismissing the Applicant's application would mean that the Plaintiff would have to incur further costs in instructing new local counsel, who would have to acquaint himself or herself with the case and do the getting-up for the trial. The Applicant, on the other hand, is already intimately familiar with the case (in relation to the facts, the relevant legal issues and the arguably convoluted procedural history), having been involved in the preparation of the Second Proposed Amendment in 2010. [note: 23] In fact if the Applicant is admitted, she would be ready to conduct the trial without undue delay, even if (owing to the date of this decision) she cannot meet the scheduled trial dates of

26 to 30 November 2012 tentatively fixed by the Registry. It would therefore appear eminently more reasonable – effort, experience and cost-wise – to allow her to be admitted to conduct the trial of this matter.

83 I accept the Law Society's and the Attorney-General's submissions that a litigant is not automatically entitled to have a foreign senior counsel represent him merely because the opposing party is represented by a Senior Counsel or a foreign senior counsel. [note: 24] The quality of representation on the opposing side is but one of the many factors which the court must weigh in the balance, and the weight to be attributed to this factor must necessarily be contextually assessed. Indeed, I note that Mr Vijya accepted that the significance of the ability of counsel on the opposing side would vary according to the factual matrix of the case. [note: 25] As noted above (at [31]), "*ad hoc* admission [of foreign senior counsel] will be on a *case by case* basis, with the court doing a judicious balancing of competing interests in each case" [emphasis added] (*per* the Law Minister in *Singapore Parliamentary Debates, Official Report* (14 February 2012) vol 88, quoting from Chan CJ's speech at the Opening of the Legal Year 2011).

84 For ease of reference, I now summarise the key considerations in arriving at my decision to allow this application. For the avoidance of doubt, I should add that it is the totality of the circumstances and matters mentioned in this judgment that have persuaded me to grant this application.

Summary of the key considerations in the present case

85 It is noteworthy that the Plaintiff's claim was not properly formulated at the outset despite the fact that he instructed and/or consulted experienced local commercial counsel. It is highly unusual for any case to reach the Court of Appeal twice on procedural matters. What makes this matter extraordinary is the fact that both appeals involved essentially the same issue – the proper formulation of the Plaintiff's claim. On both occasions, the Court of Appeal concluded that the Plaintiff ought to have his day in court if his claim were properly formulated (see [7]–[13] above). The trial of this matter ought to have taken place long ago. The Plaintiff has already been put to considerable legal expense and subjected to both considerable anxiety and inconvenience. This was not his fault (and, indeed, would have been entirely avoidable if counsel had properly pleaded the Plaintiff's case from the outset). A litigant is entitled to repose in his counsel complete confidence that he can and will competently formulate a legitimate claim in a manner that complies with all the applicable procedural requirements.

86 I find that given the tortured procedural history of this matter and the Plaintiff's unhappy experiences with local counsel (who were either unable to formulate the Plaintiff's claim properly or unable to commit themselves to conduct the entirety of the proceedings), it was entirely understandable and reasonable for the Plaintiff, following the dismissal of CA 93/2009 and Mr Martin's decision to cease acting for him, to have then sought advice from a foreign senior counsel, *viz*, the Applicant. It was the Applicant who finally managed to get the Plaintiff's case back on the procedural runway. She is now familiar with the matter and no additional getting-up will be required if she were to represent the Plaintiff in this matter in court. She is ready to proceed with the trial, although, in view of the date of this decision, she may not be able to meet the tentative trial dates fixed by the Registry. On the other hand, if another local counsel were to be engaged, he or she would have to acquaint himself or herself with the facts as well as the entire history of the matter. Further costs will be incurred by the Plaintiff, and these costs are likely to be substantial. It is, in my view, unjust if this should happen as the Plaintiff is not to be personally blamed for his present unhappy predicament. Given the history of the matter, the Plaintiff also entertains legitimate concerns about his chances of

securing the services of a local counsel who can match the forensic ability of Mr Bull (see [75(e)]–[75(f)] above).

87 There is also a further consideration from the court's point of view that is not unimportant, which is this: the hearing of this matter has been long delayed for procedural reasons. As I mentioned earlier at [13] above, in *Ng Chee Weng (CA)*, the Court of Appeal pointedly noted (at [105]) that "more than two years ha[d] passed since the commencement of the suit, yet the actual trial ha[d] not even begun because the [Defendants had] been *valiantly resisting every single application of the [Plaintiff] at the interlocutory stage*" [emphasis added]. Undoubtedly, this delay was first caused by the inability of the Plaintiff's then counsel to get the Plaintiff's claim off the procedural runway. Nevertheless, another significant contributory factor was the Defendants' unyielding efforts in attempting to have the Plaintiff's claim(s) effectively dismissed without a hearing. The Defendants' misplaced tenacity in impeding the approval of the Second Proposed Amendment prevented a resolution of this case in good time. The Plaintiff should now have his day in court as soon as possible, and so should the Defendants. Much time and considerable costs have already been spent on needless procedural skirmishes. Further prolonged delays in the hearing of this matter would neither be in the interests of the parties nor aid in the proper and timely administration of justice by the court.

88 Given the Applicant's familiarity with this matter, the trial of Suit 453/2009 can now take place without further undue delay if the present application is granted. Should another local counsel be briefed, I am concerned that the hearing of this matter will be inevitably delayed even further. Competent counsel in Singapore are invariably busy, and it will be unreasonable to expect any of them to *immediately* put aside all their pending matters to attend to the Plaintiff's problems just to meet the court's scheduling. Indeed, the court's firm case management practices on the scheduling of trials might also impede the Plaintiff's ability to secure the services of leading local commercial counsel to represent him. I have therefore determined that having regard to the circumstances relevant to this application (as set out at [69]–[83] above) and to all the matters stated in para 3 of the Notification, it is proper for the Plaintiff to be represented by the Applicant in Suit 453/2009, including in any appeals therefrom. For completeness, I should add that even if the Applicant is unable to proceed with the tentative trial dates currently fixed by the Registry (given the very close proximity of the date of this decision and the tentative starting date for the trial), this factor would not affect the exercise of my discretion in granting this application. I have taken time to issue this written decision because of the vigorous opposition to this application (not least from the Defendants) and the precedential value which this decision may have. Neither the Plaintiff nor the Applicant can be faulted for this.

Conclusion

89 For the reasons above, I allow the present application with no order as to costs. I also direct that if, for good reason, any of the parties is unable to proceed with the trial dates tentatively fixed by the Registry, the Registrar is to schedule the case for hearing in January 2013 or, if that is not possible, soon thereafter. The parties have liberty to apply to me for further consequential directions.

[note: 1] Affidavit of Narayanan Vijya Kumar dated 21 June 2012, para 12.

[note: 2] Affidavit of Narayanan Vijya Kumar dated 21 June 2012, para 13.

[note: 3] Affidavit of Narayanan Vijya Kumar dated 21 June 2012, para 13.

[note: 4] Affidavit of Narayanan Vijya Kumar dated 21 June 2012, para 14.

[note: 5] Affidavit of Narayanan Vijya Kumar dated 21 June 2012, para 14.

[note: 6] Affidavit of Narayanan Vijya Kumar dated 27 July 2012, para 5.

[note: 7] Affidavit of Narayanan Vijya Kumar dated 21 June 2012, para 15.

[note: 8] Affidavit of Narayanan Vijya Kumar dated 21 June 2012, para 16.

[note: 9] Affidavit of Narayanan Vijya Kumar dated 21 June 2012, para 4.

[note: 10] Law Society's Written Submissions dated 23 August 2012, para 21.

[note: 11] Law Society's Written Submissions dated 23 August 2012, para 26.

[note: 12] Applicant's Skeletal Arguments dated 22 August 2012, para 27.

[note: 13] Affidavit of Narayanan Vijya Kumar dated 21 June 2012, pp 13–18.

[note: 14] Attorney-General's Submissions dated 21 August 2012, para 11.

[note: 15] Affidavit of Narayanan Vijya Kumar dated 31 August 2012.

[note: 16] Affidavit of Lin Shumin dated 13 July 2012, para 35.

[note: 17] Affidavit of Lin Shumin dated 13 July 2012, paras 9, 18 and 21.

[note: 18] Affidavit of Lin Shumin dated 13 July 2012, para 12.

[note: 19] Affidavit of Narayanan Vijya Kumar dated 31 August 2012 at pp 33–34.

[note: 20] Further Written Submissions of Law Society dated 7 September 2012, para 40.

[note: 21] Written submissions of Narayanan Vijya Kumar dated 23 August 2012.

[note: 22] Affidavit of Narayanan Vijya Kumar dated 21June 2012, paras 13 and 15.

[note: 23] Affidavit of Narayanan Vijya Kumar dated 21June 2012 at para 17.

[note: 24] Attorney-General's Submissions dated 21 August 2012, para 22; Law Society's Written Submissions dated 23 August 2012, para 18.

[note: 25] Narayanan Vijya Kumar's Written Submissions dated 23 August 2012, para 18.