Re Lord Goldsmith Peter Henry PC QC
[2013] SGHC 181

Case Number : Originating Summons No 586 of 2013

Decision Date : 19 September 2013

Tribunal/Court : High Court

Coram : V K Rajah JA

Counsel Name(s) : Shashidran Nathan, Tania Chin Li Wen and Shen Peishi Priscilla (KhattarWong LLP) for the applicant; Aedit Abdullah SC, Jeremy Yeo Shenglong, Sherlyn Neo Xiulin and Jurena Chan Pei Shan (Attorney-General's Chambers) for the Attorney-General; Christopher Anand Daniel and Harjean Kaur (The Law Society of Singapore) for the Law Society of Singapore.

Parties : Re Lord Goldsmith Peter Henry PC QC

Legal Profession – Admission – ad hoc

19 September 2013 Judgment reserved.

V K Rajah JA:

1 This is an application made pursuant to s 15 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA") for Lord Peter Henry Goldsmith PC QC ("Lord Goldsmith") to be admitted on an *ad hoc* basis as an advocate and solicitor of Singapore for the purpose of representing Lim Meng Suang and Kenneth Chee Mun-Leon (collectively, "the Appellants") in Civil Appeal No 54 of 2013 ("CA 54"). If admitted, Lord Goldsmith will act as co-counsel with Ms Deborah Evaline Barker SC ("Ms Barker SC") in CA 54.

2 CA 54 is an appeal against the decision of Quentin Loh J ("the Judge") affirming the constitutionality of s 377A of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). The Appellants will argue that s 377A offends Art 12, and potentially Art 9, of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution"). CA 54 is to be heard by the Court of Appeal on a date to be fixed in the week commencing 14 October 2013.

The facts

Background to CA 54

3 The Appellants claim to be two homosexual men who have been "in a romantic and sexual relationship" with each other for the past 16 years (see *Lim Meng Suang and another v Attorney-General* [2013] 3 SLR 118 ("*Lim Meng Suang*") at [2]). On 30 November 2012, they filed Originating Summons No 1135 of 2012 ("OS 1135"), seeking declarations that:

i. Section 377A of the Penal Code is inconsistent with Article 12 of the Constitution, and is therefore void by virtue of Article 4 of the Constitution; and

ii. Section 377A of the Penal Code is inconsistent with Article 12 of the Constitution, and is therefore void by virtue of Article 162 of the Constitution.

4 This matter was filed after the Court of Appeal issued its decision in *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong*") on 21 August 2012 finding that that the applicant in that case had *locus standi* under O 15, r 16 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) to pursue a somewhat similar claim for declaratory relief. A salient difference between the facts of the present appeal and those of *Tan Eng Hong* is that the applicant in the latter had been arrested, investigated and detained (although not eventually prosecuted) under s 377A and sought a further declaratory relief in relation to his arrest, detention and investigation, which he claimed was contrary to Art 9 of the Constitution. When this matter was heard by the High Court it was assumed (without argument) that the Appellants had *locus standi* to maintain these proceedings; see *Lim Meng Suang* at [12]. This issue has now been resurrected for the appeal.

5 In their supporting affidavit for OS 1135, the Appellants averred that they had grown up with the awareness that having gay sex was illegal under s 377A of the Penal Code and that they had felt the social stigma of being gay as they grew up. The Appellants assert that s 377A reinforces existing prejudices against homosexual men and that its very existence labels them as criminals regardless of whether it is enforced against them.

6 Before the Judge, counsel for the Appellants, Mr Peter Cuthbert Low ("Mr Low"), submitted that s 377A introduced two levels of discrimination: first, between homosexuals and heterosexuals; and second, between homosexual males and homosexual females. Mr Low argued that s 377A thus fails the two-step test of determining constitutionality under Art 12, namely, that the classification discloses no intelligible differentia and that any differentia upon which the classification is based bears no rational relation to the object of s 377A.

7 Mr Low further argued that s 377A was so absurd, arbitrary and unreasonable that it could not be considered good law. His main arguments for this are laid out by the Judge in *Lim Meng Suang* (at [20]):

> The reasons given for this are that: (a) s 377A criminalises sexual orientation, which is practically immutable; (b) s 377A is overly broad; (c) even the Government has acknowledged that s 377A has been arbitrarily and selectively enforced; (d) s 377A attempts to legislate morality in an arbitrary and discriminatory manner; (e) s 377A comes from tainted origins; (f) s 377A causes tangible harm to a segment of the population in that it limits the outreach of HIV/AIDS preventive measures to and inflicts psychological damage on that segment of the population; (g) s 377A makes it difficult for gay or bisexual men who have been exploited or abused by their sexual partners to approach law enforcement officers for protection, leaving them particularly vulnerable to blackmail; and (h) s 377A provides potential grounds for impugning otherwise regular commercial transactions involving homosexual men.

8 As an additional string to his bow, Mr Low drew extensively on international and comparative jurisprudence showing a growing international trend of guarding against discrimination based on sexual orientation.

9 OS 1135 was opposed by the Attorney-General. Counsel for the Attorney-General, Mr Aedit Abdullah SC ("Mr Abdullah SC") submitted that the classification in s 377A was based on intelligible differentia. He argued that the objective of s 377A is to preserve public morality in relation to male homosexual conduct and that this is thus connected to the criminalisation of male homosexual sex. The non-inclusion of female homosexual sex in s 377A was, Mr Abdullah SC submitted, because public morality does not target female homosexual conduct in the same way. At most, the exclusion of female homosexual conduct was under-inclusive and not over-inclusive, and this was not sufficient for a finding that s 377A was contrary to Art 12.

10 The Judge in dismissing the application found that s 377A was not unconstitutional. Applying the two-step test mentioned above (at [6]), the Judge found that s 377A covered acts of gross indecency between males but not gross indecency between males and females and between females. This was an intelligible differentia that was supported or justified by, and had a complete coincidence with, the purpose of s 377A, which "clearly targeted homosexual males and applied to acts of "gross indecency" between males" (*Lim Meng Suang* at [65]). In discerning the purpose of the legislature, the Judge examined the historical basis of s 377A, tracing it to the United Kingdom ("UK")'s Criminal Law Amendment Act 1885 (c 69). The Judge also examined the Singapore Parliamentary debates of 2007 where Parliament decided to retain s 377A but jettisoned a related provision, s 377, which criminalised "carnal intercourse against the order of nature". The Judge additionally relied on the presumption of constitutionality.

11 The Appellants filed CA 54 on 30 April 2013 against the Judge's decision. On 12 July 2013, the Appellants made a further application, Summons No 3366 of 2013 ("SUM 3366") seeking the following orders:

1. That the time period in which the Appellants are to file and serve the Appellants' Case, the Record of Appeal and the Core Bundle of Documents be extended by two (2) week (i.e. to 6 August 2013) ["Prayer 1"]; and,

2. That the Appellants be at liberty to amend Originating Summons No. 1135 of 2012/C in the manner as set out in the copy attached as Annex A ["Prayer 2"] …

Annex A stated:

…

i Section 377A of the Penal Code is inconsistent with Articles 9 and 12 of the Constitution, and is therefore void by virtue of Article 4 of the Constitution; and

ii Section 377A of the Penal Code is inconsistent with Articles 9 and 12 of the Constitution, and is therefore void by virtue of Article 162 of the Constitution.

[proposed amendments underlined]

12 Lai Siu Chiu J ("Lai J"), sitting as a single judge of the Court of Appeal pursuant to s 36(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), granted Prayer 1 in terms but dismissed Prayer 2. The Appellants appealed Lai J's decision to dismiss Prayer 2 and obtained leave for the application to be heard on an expedited basis. At the hearing before the Court of Appeal on 2 August 2013, the Court of Appeal opted to hear SUM 3366 with the substantive hearing in CA 54.

13 The Appellants identified the following issues in their case in CA 54:

(a) what the object or purpose of s 377A was, and in particular:

(i) whether the Court should examine the legitimacy of the purpose of the enacted legislation;

(ii) whether and to what extent the 2007 Parliamentary Debates on the *Penal Code (Amendment) Bill* (22 October 2007), can and should be used to discern Parliamentary intent with respect to s 377A;

(b) whether the classification in s 377A which discriminates against male homosexuals based on public disapproval and criminalises their acts is plainly arbitrary on its face or operates arbitrarily, and in particular:

(i) whether the purpose of s 377A is arbitrary;

(ii) whether s 377A operates arbitrarily by making criminals out of victims and/or permits blackmail/extortion;

(iii) whether s 377A operates arbitrarily as it effectively prevents male homosexuals from approaching and receiving health care, and in particular seeking treatment for HIV/AIDS; and

(iv) whether s 377A operates arbitrarily by causing serious psychological harm to male homosexuals;

(c) whether the decriminalisation of private consensual acts of male homosexuals promotes the deterioration of public morality, the erosion of the traditional family unit (procreation and lineage) or the spread of HIV/AIDS;

(d) whether s 377A is unconstitutional for inconsistency with Art 12(2) of the Constitution;

(e) whether s 377A satisfies the reasonable classification test for determining constitutionality under Art 12(1); and

(f) whether the presumption of constitutionality applies for colonial laws where the legislature, when enacting the laws, failed to appreciate the needs of the subjects of the colony.

14 If SUM 3366 is granted, the Appellants would also be submitting on the following Art 9 issues in CA 54:

(a) whether a right to life and personal liberty should be given a purposive interpretation to reflect the true intention of the framers of the Constitution;

(b) whether a right to life and personal liberty protects a wider sphere than freedom from physical incarceration;

(c) whether a right to life and personal liberty encompasses a limited constitutional right of privacy; and

(d) whether s 377A falls within the definition of law under Art 9.

Background to this application

15 On 20 June 2013, the Appellants filed a notice of change of solicitors from Mr Low's firm to M/s KhattarWong LLP, as they had decided to engage Ms Barker SC to argue the appeal. Not long after, on 1 July 2013, the present Originating Summons No 586 of 2013 ("OS 586") was filed by the Appellants' solicitors seeking the *ad hoc* admittance of Lord Goldsmith for the purposes of arguing the Appellants' case in CA 54. Both the Law Society of Singapore, represented by Mr Christopher Anand Daniel ("Mr Daniel"), and the Public Prosecutor vigorously object to this application.

16 Counsel for the applicant, Mr Shashi Nathan ("Mr Nathan"), contends that the necessity for

engaging Lord Goldsmith as foreign counsel arose as a result of the peculiar complexities of the matter and that taking into account Lord Goldsmith's special qualifications, this was a compelling instance for *ad hoc* admission. He informed the Court that Lord Goldsmith had agreed to take on the matter on a *pro bono* basis. All of these considerations prompted the Appellants to seek to have Lord Goldsmith admitted as co-counsel alongside Ms Barker SC so that they could have the best available representation in CA 54.

17 There is no doubt that Lord Goldsmith is, in a broad sense, well qualified to take on the Appellants' case in CA 54. A member of the English bar since 1972 and appointed a Queen's Counsel ("QC") in 1987, Lord Goldsmith has dealt with a wide range of cases including, most recently, cases of human rights law, public law and private international law. From 2000 to 2001, he was a member of the Joint Committee of the UK Parliament on Human Rights. As Attorney-General of the UK and chief legal adviser to the British Government on matters of domestic, European and international law from 2001 to 2007, Lord Goldsmith also has extensive experience in constitutional, public and human rights cases. Lord Goldsmith is also a member of the Belize Bar. Earlier this year, Lord Goldsmith appeared before the Supreme Court of Judicature of Belize, the highest of four tiers of courts in Belize, on behalf of three international organisations (the Commonwealth Lawyers Association, the International Commission of Jurists and the Human Dignity Trust) to argue that a similar provision in Belize should be struck down as unconstitutional and discriminatory. Lord Goldsmith is thus not only experienced in general human rights and public law, but has also acquired, through his involvement in the Belize case, a specific knowledge and expertise of provisions with similar objectives. I am thus prepared to accept that Lord Goldsmith has sufficient competence and standing to argue CA 54. While he has no specialist knowledge of the historical origins of s 377A and the relevant legislative framework in Singapore, the appropriateness of the particular foreign counsel chosen is not therefore at issue here.

The issues before this court

18 What is at the heart of this application is whether the applicant should be admitted based on the legal principles governing applications for the *ad hoc* admission of foreign senior counsel as laid out in Re *Caplan Jonathan Michael QC* [2013] 3 SLR 66 ("*Re Caplan*"). Of especial importance in this particular case is whether there is a "special reason" for admitting a foreign senior counsel to argue CA 54 pursuant to the "special reason" requirement under s 15(2) of the LPA read with r 32(1) of the Legal Profession (Admission) Rules 2011 (S 244 of 2011) ("the Admission Rules").

The relevant legal principles

19 The applicable principles as set out in *Re Caplan* revolve around the interpretation of the statutory framework explicitly set out in ss 15(1), 15(2) and 16(5A) of the LPA, which read 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 [QC]; 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.

(2) The court shall not admit a person under this section in any case involving any area of legal practice prescribed under section 10 for the purposes of this subsection, unless the court is satisfied that there is a ***special reason*** to do so.

...

(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]

20 Pursuant to r 2(1) of the Admission Rules, the areas of legal practice referred to in s 15(2) of the LPA as requiring a "special reason" for admittance are criminal law, family law, and constitutional and administrative law. As I observed in *Re Caplan* (at [26]), these three areas "*have been statutorily ring-fenced apparently because of their critical domestic content and because they have features peculiar to Singapore*" [emphasis added].

21 The following four factors under para 3 of the Legal Profession (Ad Hoc Admissions) Notification 2012 (S 132/2013) ("the Notification") read with s 15(6A) of the LPA are also to be considered ("the Notification factors"):

(a) whether the nature of the factual and legal issues renders this the type of case which would merit admittance of a foreign senior counsel;

(b) whether the services of a foreign senior counsel are necessary;

(c) the availability of any Senior Counsel or other counsel with appropriate experience; and

(d) whether, having regard to the circumstances of the case, it is reasonable to admit a foreign senior counsel.

Admission of foreign senior counsel only for appellate proceedings

22 In the present case, the above factors, and in particular the necessity of having the services of a foreign senior counsel, must be considered in the context of *appellate advocacy* here. Before I address this, two distinctive features of appellate advocacy ought to be considered.

23 First, an important feature of appellate advocacy (whether oral or written) in a final Court of Appeal is its ability to effect binding precedent and develop the jurisprudence of courts in that jurisdiction. In a final appeal, it is more important, for both the parties and for the development of jurisprudence in that area, that the Court have the benefit of the best arguments available. In a speech given at the World Bar Conference in London on 29 June 2012 ("the 29 June 2012 speech"), Australia's Chief Justice R S French AC ("French CJ") opined (at p 1):

The outcome of litigation is always uncertain. But good advocacy can resolve that uncertainty. It

is particularly true of appeals to the High Court at the sometimes shifting boundaries of the law of the Constitution, the common law and the interpretation of important statutes. Such appeals are not the same as appeals to the intermediate courts of appeal. Generally they will raise matters of public importance or questions on which there are different opinions in the lower courts. Sometimes they may involve reconsideration of existing lines of authority. Former Chief Justice Sir Harry Gibbs observed in an address to the Australian Bar Association in 1986:

> There is an essential difference between a court of last resort and an intermediate court of appeal … a final court of appeal can be persuaded to depart from established precedent …

24 This is in contrast to trial advocacy in a lower court. The precedential value of a case and its potential impact on the body of jurisprudence may not be as great in a lower court as it will be the court of final appeal which has the power to depart from established precedent. There is thus an additional element of importance in relation to the outcome when assessing the Notification factors in relation to appeals. I should add that the absence of an intermediate appellate court in the Singapore context does not make a material difference to the points made here.

25 Second, an equally important feature of appellate advocacy is its focus on certain discrete areas of a case or of the law engaged by that case. An appellate court is not a fact-finding court. It is an error-correcting court. By the time a case has reached the stage of final appeal, parties will often have filtered the issues and identified a small number of critical (often legal) issues which could determine the entire appeal. Unlike the fact centred scenario in *Re Caplan* (which related to trial proceedings), the present case concerns an appeal on broad legal principles, with little or no fact sensitivity. The distinctiveness of appellate advocacy lies in its role in the development of the jurisprudence of the Court and skill in the presentation of cogent legal arguments. In contrast, trial advocacy engages an additional peculiar skill set – that of adducing evidence from a witness in cross-examination. The latter requires skills and experience that are not readily transplantable from one advocate to another. If foreign senior counsel was engaged as a trial advocate, his value would be in his general conduct of the case and, in particular, his cross-examination of witnesses in order to adduce the salient facts as well as his proficiency in making irreversible strategic decisions in the context of a dynamic process. At the appeal stage, there would be little or no opportunity for further facts to be adduced; the Court is ordinarily limited to those facts already adduced. The non-transferable skills and experience of a foreign senior counsel in eliciting certain information from a witness would thus not apply in the case of an appeal. The ascertainment of necessity in the context of an appeal is accordingly an enquiry that focuses on the importance of oral advocacy in arguing primarily legal issues.

26 The real value of having a foreign senior counsel admitted to the Singapore Bar for the purposes of arguing CA 54 is in the quality of his *oral* advocacy, his ability to respond to queries from the Bench and his capacity to generate further thought. Mr Nathan submitted that while Ms Barker SC may have the breadth of a good generalist, Lord Goldsmith would have both breadth *and depth* in making arguments before the Court of Appeal.

27 Nevertheless, it bears emphasis that the admittance of a foreign senior counsel or QC is not necessary for the preparation of the written appellate brief ("Case"). There is thus no bar to Lord Goldsmith applying his expertise and experience in the drafting of the Appellants' Case for CA 54. The only impediment which he faces under the LPA, unless accorded *ad hoc* admission, is that he cannot present the oral arguments in CA 54 nor directly answer the questions directed at counsel by the Court of Appeal. Nevertheless, the existing potential for his intimate participation in the preparation of the written appellate brief is not to be underestimated. Writing on the importance of appellate briefs, Paul Tan in "Writing a Persuasive Appellate Brief" (2007) 19 SAcLJ 337, made the

following insightful observations in the context of local appeals (at 337–338):

> ***There are at least three reasons to believe that particularly in appeals it is the written submission that exercises a disproportionate effect on the outcome.*** **First**, **appellate judges here usually read the written submissions before oral argument.** *A weak or unpersuasive brief creates doubts about one's case. A strong brief, on the other hand, may have the effect of pre-empting the concerns of the judges, making one's job at the hearing easier*. **Second**, ***time allocated to parties to present their oral arguments on appeal is limited.*** Even if, as in Singapore, time constraints are more relaxed, it is usually still not possible to argue each and every issue or sub-issue on appeal without having to seek leave from the bench for an extension of time. This invariably means that on certain issues, even those that are very important, counsel will have to rely on their written briefs to "do the talking". **Third**, ***it is not uncommon for the Court of Appeal to reserve judgment.*** *This diminishes the impact of the oral submission relative to the written brief on the final decision.* As Justice Thurgood Marshall of the United States Supreme Court once remarked:
>
> > Regardless of the panel you get, the questions you get, or the answers you give*, I maintain it is the brief that does the final job*, if for no other reason than that opinions are often written several weeks and sometimes months after the argument. The arguments, great as they may have been, are forgotten. *In the seclusion of his chambers the judge has only his briefs and the law books. At that time your brief is your only spokesman.*
>
> Even where decisions are not reserved or where they are arrived at fairly quickly in judicial conferences after oral submissions are made, well-written briefs would still be important in supplying the foundation for the grounds of decision.
>
> [emphasis added in italics, underlining and bold italics]

28 That is not to say that oral advocacy is unimportant or that it infrequently has a meaningful impact on the outcome of the appeal process in Singapore. Mr Nathan, relying on eminent jurists such as French CJ, argued that good oral advocacy may be able to persuade the judges of the Court of Appeal to depart from any preliminary view which they may have taken after the reading of the written appellate briefs. French CJ, commenting on the importance of oral advocacy in his 29 July 2012 speech, remarked (at pp 2–3):

> [T]he advocacy of counsel is not just some sort of cosmetic trapping to create an appearance of procedural fairness. It informs the exercise of the judicial power. It finds expression in the written submissions filed before the appeal, the written outline of oral argument handed up at the beginning of the hearing, and also and particularly, the exchange between the Bench and the Bar during the oral hearing. *It is in the course of that exchange that the argument will be most rigorously tested. It is in the course of that exchange that the shape of a case may alter as premises are examined and the priorities accorded to issues in the case shift.* Counsel must be ready to adapt to the changing currents of discourse in the case without losing the forward momentum of the primary argument. [emphasis added]

29 There are, however, some marked differences in the practices of our appellate courts as compared to the Australian courts, UK courts and other common law court systems. First, the appellate process in the Singapore Court of Appeal has evolved to be more *writing-centred* than that in many other common law court systems. *The written medium occupies a central role in the appellate process here*. The usual portrayal in the media of oral arguments having a pivotal role in the appellate process, while alluring and ripe with drama, does not accurately reflect the reality of legal

practice here.

30 Court rules require the parties to make detailed written submissions in the form of Cases prior to the hearing of oral arguments. The Case is a formal document that must provide structured and comprehensive arguments. It affords counsel a platform to make rational, dispassionate and intellectual submissions on the merits of their cause and the finer points of law that are in play. In short, the parties are expected to place on record their entire panoply of submissions through the written medium well in advance of the appeal hearing. In addition, they are accorded a further right to restate the essence of their arguments and respond to the opposing parties' arguments through written skeletal arguments filed shortly before the hearing. The time for making oral arguments is also strictly limited and counsel are given ample notice of the limited time allotted to them. This is intended to have the effect of inducing them to further refine their arguments in preparation for making these arguments orally. The time ordinarily allotted for oral arguments is short and is not intended to allow counsel to repeat verbatim what is stated in the Case or to give a complete exposition of all their legal arguments.

31 Oral arguments therefore ordinarily serve as a useful concluding supplement to the Case. During the oral phase, counsel are expected to present the essence of their Case. Counsel also assumes the role of assisting the court to clarify information that could give a clearer picture of the issues rather than functioning as traditional orators who have an expectation that they will be heard out at length according to their desires.

32 That said, the potential significance of competent oral arguments at the appellate stage is not to be lightly dismissed. At the appellate stage, counsel are often required to marshal facts and legal arguments in accordance with the questions posed by the Court to give a much more focused picture. It goes without saying that counsel who is incapable of organising and characterising the relevant facts and arguments properly would add little to the oral phase. However, in my view, where the counsel on record is already more than competent and the Case is comprehensive, the additional benefits of oral advocacy from a foreign senior counsel may be less significant.

33 Second, in more complex cases, the Court of Appeal has adopted the practice of calling for further written submissions when critical queries or issues have not been adequately addressed in earlier written submissions or during the hearing itself. The oral exchange which French CJ describes is not, at least in Singapore, invariably counsel's last word in more complex cases where the Court of Appeal requires further elucidation of certain points or where counsel, unable to immediately respond to difficult queries, request for time to respond in writing. While oral advocacy does afford counsel an opportunity to clarify aspects of their Case and to make impact statements, there is also a further opportunity (with leave of the Court) for counsel to do so after the hearing. This is particularly so in more complex cases such as the present one, as the Court will ordinarily adjourn the matter for further deliberation before delivering its determination. This procedure mitigates the obvious infirmity of relying on spontaneous responses in relation to crucial queries made during oral arguments and gives counsel time to make well-considered responses to unanticipated queries from the Court of Appeal.

34 These distinctive features of the Singapore appellate process are not entirely present either in the UK or Australia, where the appellate process remains predominantly centred on oral advocacy. I should add for completeness that some of the features mentioned above are also not entirely present in other writing-centred appellate processes that have taken root in courts in the United States of America and elsewhere.

35 I think it can be said with some force that a carefully crafted written statement can make as

much or even greater impact than a transitory and spontaneous oral statement. Brief oral arguments are not the ideal medium to secure a thoughtful or well-considered response from counsel in the Singapore context. In short, in the Singapore context, written advocacy has a more prominent part to play in the appellate process than that in other common law jurisdictions, where speech centred processes still take centre stage. The written medium functions as the focal means by which counsel informs and persuades the Court on the merits of their submissions; counsel's oral submissions thus build upon, rather than supplant, the arguments in the Case.

36 The opportunities for the effective deployment of a foreign senior counsel's skills in marshalling the existing facts and making cogent and persuasive legal arguments are, in the Singapore context, more ample in the context of an appeal than in the context of a trial. The crystallisation of legal issues which is an inherent aspect of appellate advocacy evolves differently from the trial process. It requires the benefit of good legal arguments and the involvement of good legal minds as some of these legal issues may not have been adequately canvassed in the court below. However, the preparation for such arguments is a more focussed written process which permits a variety of inputs from a variety of experts who have mastery of the fields of law involved in that case. The number of blind spots which may potentially be met by counsel decreases where the record and facts have already been established by the court below.

37 The writing process therefore serves both a creative function in generating and marshalling ideas, and a critical function that allows counsel to identify ambiguities and inconsistencies in their own cases as well as those in the opposing side. There is nothing to prevent the participation of foreign senior counsel in the preparation of the written submissions, the writing of further submissions (if any), and the preparation of the oral case (in anticipating and preparing for questions). Because of the wider scope for the involvement of the expertise of a foreign senior counsel in appeal cases, there may thus be *less necessity* in appeals, notwithstanding the importance of the issues engaged, to have foreign senior counsel admitted to *orally* present the Case. It is strong written advocacy that usually has determinative consequences. I am fortified in my views on this issue by the approach adopted by the Court of Appeal in Re *Platts-Mills Mark Fortescue QC* [2006] 1 SLR(R) 510 at [19], an application for *ad hoc* admission solely for the purpose of appellate advocacy, where it was observed:

> Our courts have often expressed the view that even if complex issues are raised … local counsel should be able to address the court adequately on these issues with the assistance of written advice from Queen's Counsel ...

38 It will be readily apparent that a tension exists in the nature of appellate advocacy, where there are differing features which both favour and militate against the admission of foreign senior counsel. The particular features of the appeal in question and the legal issues which are sought to be raised in that appeal may be important considerations and provide the context for the Court to consider the four Notification factors and, in particular, the necessity for foreign senior counsel. However, it appears to me for the above reasons that the necessity for the admission of a foreign senior counsel purely for the purposes of an appellate hearing will ordinarily be less apparent as the ability to meaningfully participate in the appellate process is always present in Singapore's more written-centred procedures. Plainly the appellate process is more deliberate and measured than the trial process where decisions and arguments are often made on the hoof. I somewhat jestingly remarked in the course of the arguments that during the trial process the advocate has to think on his feet in contrast to the appellate process where the advocate can think from his seat. This is not an inapt generalisation.

39 Nevertheless, for the avoidance of doubt, I should add that if a foreign senior counsel is admitted for the purposes of conducting a trial, he should be permitted as a matter of course to have

carriage of the appellate phase as well. In such instances, it stands to reason that his familiarity with the matter will be a boon and would also lead to the saving of costs.

The special reasons requirement

40 I now turn to the "special reason" requirement in s 15(2) of the LPA. In *Re Caplan*, involving a request for the admission of a QC in a criminal case, I reached the following conclusion (at [48] and [49]) on the statutory framework for the *ad hoc* admission of a foreign senior counsel in one of the three restricted areas of law:

> 48 … The present architecture of s 15 of the current LPA also hints at such a "twin key" approach since para 3 of the Notification expressly states that the court may consider the Notification matters "*in addition to*" [emphasis added] the matters specified in ss 15(1) and 15(2) of the current LPA. This indicates that while the "special reason" requirement in s 15(2) *must* be satisfied, it does not necessarily have to be satisfied *before* the Notification matters can come into play.
>
> 49 To sum up, a foreign senior counsel seeking *ad hoc* admission in a criminal case (and, by extension, in any case involving the other two restricted areas of law) must show that the "special reason" criterion in s 15(2) of the current LPA is met *in addition* to satisfying the court that it is appropriate to admit him having regard to the Notification matters. In the final analysis, it seems to me that nothing really turns on whether the "special reason" criterion in s 15(2) is a prior or a concurrent requirement to be satisfied for the purposes of an *ad hoc* admission application. Ordinarily, there would be some degree of overlap in the considerations which the court takes into account when evaluating, respectively, the "special reason" criterion and the Notification matters. Furthermore, depending on the facts and circumstances of the particular *ad hoc* admission application in question, the Notification matters could well constitute "special reason" for the purposes of s 15(2).
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> [emphasis in original]

41 Whilst there may be some degree of overlap, it was clear to me then, and still is now, that the requirement of a "special reason" must present some criterion over and above the Notification factors. Otherwise, the word "special" would be emptied of meaning. I would add that the nature of the present case, *viz* that it is an appeal, merely provides the context for an assessment of the Notification factors and, to some extent, the "special reason" requirement and does not, of itself, constitute a special reason. This applies *a fortiori* as some features of an appeal may, as I have observed above (at [28]), provide reasons which militate *against* the admission of a foreign senior counsel.

42 The statutory framework thus makes it inherently very unlikely that a foreign senior counsel ought to be admitted in one of the three restricted areas. When the "special reason" requirement was first introduced in 1996, it applied only in the context of criminal cases. Explaining the introduction of this new criterion, the Minister for Law, Mr S Jayakumar ("Minister Jayakumar") said, in *Singapore Parliamentary Debates, Official Report* (10 October 1996) ("10 October 1996 Parliamentary Debates") vol 66 at col 633:

> The general policy of allowing QCs to appear in our courts remains unchanged. However, *there should be less need for QCs in criminal cases with the growth of the Criminal Bar in the last five years, not only in terms of numbers, but also in terms of advocacy skills, experience and expertise.* Since 1991, only 10 QCs have been admitted to appear in criminal cases in Singapore

and I am told that out of the nine cases dealt with by QCs, only two cases were successful. Presently, there are 89 criminal lawyers who are designated as senior counsel and 125 criminal lawyers who are designated as junior counsel for the purposes of the Assignment List of the High Court for capital cases. There is no shortage therefore of criminal lawyers in the local Bar who have the confidence to undertake all criminal cases without having to rely on [QC].

I should add that it is also important to note that *our criminal process and criminal law are, except for basic principles, quite different from English criminal law and procedure*. Our Penal Code, Criminal Procedure Code and Evidence Act are all based on Indian law and not on English criminal law and procedure and evidence. Many of our criminal statutes were enacted to meet local circumstances. [QC], in general, are not familiar with our criminal justice system. Indeed, Sir, I should also say that as a result, we have even experienced some cases of our criminal justice system being distorted in the foreign media.

Eventually, we should do away with representation by [QC] in criminal cases. But this should be looked at again when we have an adequate number of Senior Counsel practising at the Criminal Bar. I am using the term "Senior Counsel" as spelt out in the Legal Profession Act which provides for the status of Senior Counsel. The Senate of the Academy of Law, in fact, is now about to appoint such Senior Counsel. In 1989, when the Legal Profession Act was amended to provide for Senior Counsel I said, and I quote:

> "... only those lawyers who by virtue of their ability, standing at the Bar or special knowledge or experience of the law who deserve the distinction and the title of Senior Counsel will be appointed. Our Senior Counsel will, in effect, be the local equivalent of [QC] in England and it is hoped that these leaders at the Bar will provide the inspiration for the younger members of the profession to strive for excellence in their profession."

The present amendments will restrict the admission of QCs unless the applicant can show that there is any special reason for the need for a QC. It will be for the court to determine what a special reason is for this purpose. This amendment is provided for in the new section 21(1A) (clause 3). I should add that the amendment does not affect the existing provision for admission of QCs in civil cases.

[emphasis added]

43 The extension of the "special reason" requirement in the Admission Rules to family as well as constitutional and administrative cases in 2011 would have been made with the benefit of two considerations:

(a) first, the rationale for the "special reason" requirement in certain areas as articulated in the 1996 Parliamentary debates, namely:

> (i) that after the passage of time, certain areas of Singapore law, including constitutional and administrative law and family law, have become distinct from the prototypes they may have originally been derived (including the Westminster model in the context of constitutional and administrative law) and local jurisprudence has developed significant changes to the scheme and structure of those areas of the law. For example, the Women's Charter (Cap 353, Rev Ed 2009) is a unique piece of local legislation which does not have a close parallel in the UK and which has been locally developed alongside the local bar's growing expertise in the area of family law;

(ii) that Parliament had taken the view, with criminal law (and by extension, the other two restricted areas), that there was a sufficient body of local expertise to deal with the three restricted areas such that foreign senior counsel would one day no longer be necessary. As early as 1996, the "special reasons" requirement had already been articulated to be the first step taken before representation by foreign senior counsel in criminal cases would be eventually done away with; and

(b) second, the knowledge that there had been *no* successful applications for admission of foreign senior counsel in criminal cases since the introduction of the "special reason" requirement. Two applications had been brought since the introduction of the "special reasons" requirement in 1996 and are reported as Re *Caplan Jonathan Michael QC* [1997] 3 SLR(R) 404 ("*Re Caplan (No 1)*") and Re *Seed Nigel John QC* [2003] 3 SLR(R) 407 ("*Re Nigel*"). In both cases, the High Court expressed the view that there were no "special reasons" to justify admission of those two eminent QCs. Yong Pung How CJ, in *Re Caplan (No 1)*, expressed the view (at [13], [14] and [17]) that the "special reasons" requirement was meant to be a stricter criteria which would be developed on a case-by-case basis having regard to the particular circumstances of the case. If the original aim was, as expressed by Minister Jayakumar, to eventually "do away with" the need for foreign senior counsel in criminal cases, then it would have been apparent to Parliament from the drop of 10 admissions (in the five year period between 1991 to 1996) to no admissions of foreign senior counsel thereafter in criminal cases that the objective was on its way to being achieved. The fact that they chose to expand this requirement to two further areas of law indicates that Parliament intended that it would be extremely difficult to admit foreign senior counsel in those two areas of law as well.

44 Defining the meaning of a "special reason" was, however, a task which Parliament declined to take on. During the 10 October 1996 Parliamentary debate, Dr Ker Sin Tze ("Dr Ker") pointed out that the term "special reason" was "too general and not adequately specific" and that it may be "desirable to spell out clearly the conditions under which a QC can be admitted to a court in Singapore to argue a criminal case". He raised the specific example of a capital case where possible loss of life was involved and argued that it may be better to admit QCs to "ensure that we have adequate good criminal lawyers to defend defendants who may be innocent." Dr Ker argued for a wider and clearer definition of "special reason" (at cols 636¬–638). Minister Jayakumar made the following reply (at cols 643–644):

There are two ways in which we could have handled this. One is for Parliament itself to have spelt out in the provisions in an exhaustive way all the possible special reasons. ***But our preference was to draft it in such a way that we would leave it to the courts to decide what the special reasons would be.*** I think that is the better approach just as the existing provision in respect of QCs leaves the discretion to the court when it says, as a general criterion, "if the court is satisfied that it is of sufficient difficulty or complexity and having regard to the circumstances of the case." That is the general criterion.

From the general criterion, when we come to the specific matter of criminal cases, there will now be ***a further criterion for criminal cases*** that the court is satisfied that there is a special reason to do so. Between the two approaches, I think it is better to take this approach and leave it to the court. If he were to press me to indicate an example of a criminal case which I think would constitute a special reason, there could be a criminal case where an important constitutional law issue arises as to whether some constitutional rights have been or have not been breached, or whether the regulations or the Act under which the person is being charged raises the question of conformity with some provisions of the Constitution. ***So it then becomes not just a criminal case on the particular set of facts, but broader and more fundamental questions may be***

raised, and one can argue that this could be a "special reason". I give this as an indicative example. But I think it is better to leave it to the courts. The courts have had experience in handling such applications and I am sure we can leave it to their wisdom to decide what are the special reasons.

What is important is that the legislative intent is what I have said in my speech. And if I may very quickly sum it up, it is ***that [QC], as a feature in our legal landscape, is an exception to the norm.*** In fact, we are one of the few countries in the world which permits [QC]. *As I said in 1991 and as I have briefly alluded to in my speech, it was never meant to be a permanent feature of our scheme.* We had it way back in our statutes for good reason when our own legal profession was in its infancy. But we have developed our legal profession a long way since the early days of our Legal Profession Act. We have not completely abolished QCs. *But the legislative intent is that we will progressively reduce our dependence on it, commensurate with the development of our own legal profession, our own Bar, bearing in mind three factors.*

Firstly, the differences in our legal system and the systems in which [QC] operate; secondly, *for the foreseeable future, we may still need [QC] in the civil cases, particularly, commercial and banking cases*; and, *thirdly, the development and appointment of Senior Counsel in our local scene*. Therefore, Dr Ker will note that, while we are making these amendments, we are not in a rush to completely stop [QC] even for criminal cases. So they are not barred from representing accused defendants in criminal cases. What we are doing is that, for criminal cases, for the reasons I have set out in my speech, there is a justification for adding the special additional criterion.

…

I agree with him that it is important to develop sufficient numbers of people at our criminal Bar who have the competence, expertise and the ability who can stand out to [QC] and I have confidence that our local Bar will be able to produce such people as we develop.

[emphasis added in italics and bold italics]

45 There has been no comprehensive attempt, to date, to define the meaning of "special reason". Yong Pung How CJ in *Re Caplan (No 1)* gave some indicative suggestions (at [16]) that a "special reason" was not confined to cases which had both criminal and constitutional implications but could encompass cases where the verdict "holds significant repercussions not just for the individual accused but also for the way in which an entire section of the population orders their daily lives or the conduct of their business." Some five years after *Re Caplan (No 1)* was heard, both these factors were sought to be used to fulfil the special reason requirement in *Re Nigel*. Counsel for the applicant in *Re Nigel* argued that the criminal case involved potential Art 9 considerations arising from the deprivation of liberty of the accused. Tay Yong Kwang J ("Tay J") found (at [33] and [34]) that this was not sufficient to constitute a "special reason". Tay J further found that the attention which would have been attracted by the high profile criminal case involving criminal breach of trust by a Catholic priest was also not a "special reason". Tay J thus approached the notion of "special reason" by virtue of what it was not, rather than what it was.

46 In *Re Caplan*, I sought to clarify the indicative suggestions of Minister Jayakumar and Yong Pung How CJ. It had been suggested by the Attorney-General in that case that a "special reason" may be defined as a case of a macro nature. I disagreed as I found no sound policy reason to limit the Court's discretion to only cases of a macro nature. There could well be cases where the interests of the individual or issues pertaining solely to that individual were so out of the ordinary that they

could constitute special reasons.

47 Conversely, not all cases of a macro nature may be enough to qualify as a "special reason". This applies *a fortiori* in constitutional matters. It is possible to argue, in criminal cases, that the only person affected is the accused, because it is the accused's life and liberty at stake, and it is the exact circumstances of his act which will determine the appropriate conviction and sentence. In almost all constitutional matters, however, the challenge mounted will be a challenge to the law at large as the law will have been drafted in a general manner and targeted either at the population at large or at a section of the population. If a "special reason" could be made out simply because it held significant repercussions beyond the individual concerned, then almost invariably every constitutional case would necessarily engage a "special reason". This would wholly defeat Parliament's aim in adding the area of constitutional and administrative law to the list of restricted areas. As I have already observed, the statutory framework necessitates that a more restrictive approach should be taken towards any of the three areas named in s 32(1) of the Admission Rules. A "special reason" must thus be a reason that is unique to the circumstances of that case rather than one which is inherent in the nature of all constitutional cases. Otherwise, the "special reason" requirement would not *restrict* the *ad hoc* admission of foreign senior counsel in constitutional and administrative cases, but would *expand* the scope for such admission.

48 Perhaps the reason why the term "special reason" has not been definitively enumerated is because it implies exceptionality, or a state which is generally beyond the normal experience. It would be something of a contradiction in terms to attempt to identify a prototypical "special reason". If it is something which one can reach for and define, it is also unlikely to be so out of the ordinary that it becomes a "special reason". Any attempt to define "special reason" would require an exercise of the imagination to reach beyond issues or situations that one normally encounters. That is not generally the practice of common law courts, which are better equipped to develop the law incrementally and by reference to the specific facts and circumstances of each case.

49 In my view, it is not necessary nor desirable to attempt to place definitive parameters on the requirement of a "special reason" save to observe that there must be something specific to the nature of the facts or legal issues concerned beyond the expected features of ordinary constitutional cases.

Application of the notification criteria

50 I now turn to the specific application at hand. I have already stated (above at [17]) that Lord Goldsmith is in a broad sense qualified to take on this case. This is not, however, the critical statutory test. This is not enough to warrant Lord Goldsmith's admittance without consideration of the other Notification factors.

Nature of the factual and legal issues

51 The primary issue in this case is a purely legal one. The issues are set out above at [13] and [14]. At the hearing on 29 August 2013, counsel for the applicant argued that the legal issues in this case were complex as the case required not merely a consideration of the legitimacy of the statute but required the Court to consider the legitimacy of *the purpose behind* that statute. I agree that this is a reason to consider that the legal issues in this case are of a more complex nature than the average case.

52 There are also contextual issues engaged in the present case which required extensive research in the court below not only on local law but also on the historical origins of s 377A. Comparative case

law on how and why the approach of the UK and other jurisdictions in handling the same historical statute has diverged from local treatment of that same statute may also need to be studied. However, this aspect does not create peculiar or particular difficulties that counsel in Singapore cannot address with conscientious effort.

Whether the services of a foreign senior counsel are necessary

53 I was, however, not convinced that the services of a foreign senior counsel were necessary. As Mr Abdullah SC quite rightly pointed out, Mr Low had marshalled multiple cases from different jurisdictions in the court below and had been able to competently make submissions using these authorities in the court below. It may be suggested, however, that at the appeals stage, there is a need for even more sophisticated arguments and greater mastery over the existing material as there would be no further appeals therefrom.

54 For the appellate stage, the Appellants have engaged a local Senior Counsel. Mr Nathan candidly acknowledged when queried that Ms Barker SC would be "*more than competent*" to present the Appellants' case and answer any questions from the Court. I place some weight on this concession by Mr Nathan. The main argument seemed to be that Lord Goldsmith would be able to do an *even better* job than Ms Barker SC. Such an argument does not really address the question of necessity. Necessity would imply that there was some chance that the issues in a case would not be properly ventilated or framed without the participation of foreign senior counsel (as had been the case in Re *Geraldine Andrews Mary QC* [2013] 1 SLR 872 ("*Re Geraldine Andrews*")), or that there might be some issue pertaining to the inequality of arms unless foreign senior counsel was admitted. For example, In Re *Beloff Michael Jacob QC* [2000] 1 SLR(R) 943 ("*Re Beloff*"), there was an issue of inequality of arms as the applicant was sought to be admitted to represent Singtel where Singtel's opponents were already being represented by QC. The court thus found that though Singtel was already represented by Senior Counsel the admission of the applicant would level the playing field for Singtel *vis-à-vis* its opponent.

55 Significantly, Mr Nathan accepted that this case did *not* engage questions of inequality of arms. This case is thus distinguishable from *Re Beloff*. There is also no suggestion that Ms Barker SC would not be able to frame or exposit the issues in the present case comprehensively. Indeed, the Appellant's Case filed on 12 August 2013 (to which Ms Barker SC has appended her signature) shows she has already acquired an admirable proficiency of the relevant aspects of constitutional law. Further, there was no intimation by Mr Nathan that the Appellants would suffer any prejudice or injustice if Lord Goldsmith is not admitted for the purpose of presenting oral arguments.

56 Ms Barker SC is an experienced Senior Counsel, very familiar and proficient with the demands of appellate advocacy in Singapore. She has appeared multiple times before the Court of Appeal. The fulsome acknowledgment by Mr Nathan that Ms Barker SC has the expertise to represent the Appellants more than competently affirms this (see above at [54]). Indeed, I should add that the issues raised relate to the Singapore context, a point which, in fact, favours Ms Barker SC (see [58] below). Whilst I accept that comparative material is also relevant, the recently filed Appellant's Case that Ms Barker SC has co-authored clearly establishes that she now has an excellent grasp of this area of jurisprudence.

57 I have already observed (above at [32]) that where there is already more than competent local counsel on board and where written submissions present cogent and comprehensive legal arguments, the benefit of foreign senior counsel in making *oral submissions* would be less significant. I have also observed (above at [25] to [36]) that there is no bar to Lord Goldsmith's participation in the drafting of further submissions (if required) or even in anticipating questions from the Court and working with

Ms Barker SC to prepare for the appeal (assuming he has not already done so). These will be the areas where the Court would benefit most from Lord Goldsmith's expertise and which Lord Goldsmith can lend his expertise to without leave of the Court. There is thus, in my view, plainly no *necessity* for the admission of Lord Goldsmith.

58 I would add that if it is simply a matter of mastery over the material in question, then there may be other local counsel and, certainly, academics who may be even more equipped than Lord Goldsmith to present this particular case. As indicated during Parliamentary deliberations, the restricted areas of law are areas where there is a divergence from the prototype statutes derived from the UK. While there may not be specialist local counsel in constitutional and administrative law, there are certainly more than a few local academics who can claim real expertise in this area. Their input would not be out of place in the preparation for CA 54, particularly given the fact that CA 54 involves no factual disputes but is wholly legal in nature. Indeed, Mr Nathan acknowledged that some local academics had assisted in the presentation of the Appellants' arguments before the High Court.

59 The breadth and depth of local academic expertise in Singapore, the opportunity for the participation of Lord Goldsmith in the preparation of the written legal arguments, the engagement of Ms Barker SC, and the lack of any other serious concerns such as inequality of arms all ineluctably point to the conclusion that there is no necessity for Lord Goldsmith to be admitted for the purposes of oral argument in CA 54.

Availability of any Senior Counsel or other counsel with appropriate experience

60 I acknowledged in *Re Caplan* and *Re Geraldine Andrews* that there is some overlap between this factor and the factor just discussed. It will be apparent from the discussion in the preceding paragraphs that there is a Senior Counsel with appropriate experience in appellate oral advocacy who Mr Nathan accepts is more than competent to handle this matter. This is another factor weighing against the admission of Lord Goldsmith.

Reasonableness of admitting foreign senior counsel

61 If a Senior Counsel is already on board, it is difficult for a foreign senior counsel to be admitted unless it can be shown that such admission is necessary and/or reasonable. One such factor may be an issue of inequality of arms, such as was the case in *Re Beloff*. Given that there is already an experienced Senior Counsel representing the Appellants, admitting foreign senior counsel as a 'power up' on competence does not reasonably resonate with the existing statutory framework.

The "special reason" requirement

62 Mr Nathan has not pointed to any special reason to justify the admission of Lord Goldsmith. As I have observed (above at [48]), there must be something out of the ordinary which would constitute a special reason.

63 In this case, Mr Nathan has pointed to the macro nature of the application. This is, however, a factor which is common to almost all constitutional applications, as almost every constitutional challenge would be an attempt to change a law affecting at least a sizeable part of the population. The basis of every Art 12 constitutional challenge is that there is a group of individuals whose rights are being unequally affected as a result of a particular statute. Every Art 12 constitutional challenge will therefore have the potential to affect the rights of the entire class of people to whom the complainants belong. If this is so, then the "macro nature" of the present case and the potential for it to affect a class of people beyond the appellants is nothing out of the ordinary for an Art 12

constitutional challenge. It cannot be considered a "special reason" for the purposes of s 15(2) of the LPA.

64 I am also not convinced that the issues in this case are of such a peculiarly complex nature that they present a case which is out of the ordinary from a legal perspective. The issue is novel in so far as it is the first time, alongside *Tan Eng Hong*, that s 377A has been challenged in this Court. There is also an additional element of novelty because this would be one of the few occasions that a court is being invited to critically examine the legitimacy of Parliament's objective. In my view, however, the Appellants are essentially seeking a development of constitutional law and in particular, a clearer articulation of the principles in an Art 12 constitutional challenge alongside a potentially broader Art 9 embrace. The Court is not being invited to radically depart from or overhaul existing jurisprudence but rather to build upon existing legal foundations. Mr Nathan has sought to sub-divide the issues in CA 54. At its centre, however, it is still a case of whether s 377A offends Art 12 of the Constitution, *viz*, whether there is a rational basis for the alleged discrimination and whether this rational basis is connected to Parliament's (legitimate) purpose as well as the purpose of Art 9. I find that the issues summarised in [13]–[14] above do not constitute a "special reason" within the context of s 15(2) of the LPA which would justify the *ad hoc* admission of Lord Goldsmith.

Conclusion

65 For the reasons given above, and considering Mr Nathan's acknowledgment that Ms Barker SC is more than competent to argue the case and that there is no issue of inequality of arms, I find that this application has failed the applicable twin-key requirements for *ad hoc* admission in the restricted areas, see [40] above. At its highest, the Appellant's case is that two are better than one and it would be better to have the benefit of Lord Goldsmith's expertise and oral advocacy as well as Ms Barker SC's competency as co-counsel. This 'power-up' approach, however, does not satisfy the statutory test, see [61] above. In my view, it is also a relevant consideration that strong written advocacy is often the focal point for counsel in Singapore to make their appellate arguments and there is absolutely no bar to Lord Goldsmith continuing being involved in this matter through the written medium, if he has not already done so, see above (at [28]–[37]). It is through the written medium that advocates in Singapore most fully communicate their arguments to the appellate court judges. Further, neither the novelty of the arguments raised nor the precedential halo of an appellate decision constitutes a "special reason" for the admission of the Lord Goldsmith. Pertinently, Ms Barker SC has co-authored the Appellant's Case and this shows she has acquired an admirable grasp of the relevant aspects of constitutional law both from the Singapore and comparative perspectives, see [55]–[56] above. I therefore dismiss the application. The usual consequential orders are to follow. It only remains for me to express my gratitude to Mr Nathan, Mr Abdullah SC and Mr Daniel for their notable assistance in this matter.