# Re Rogers, Heather QC
# [2015] SGHC 174

**Case Number** : Originating Summons No 532 of 2015

**Decision Date** : 08 July 2015

**Tribunal/Court** : High Court

**Coram** : Steven Chong J

**Counsel Name(s)** : George Bonaventure Hwang Chor Chee (George Hwang LLC) for the applicant; Davinder Singh SC, Angela Cheng, Samantha Tan and Imran Rahim (Drew & Napier LLC) for the plaintiff in S 569/2014; Jeyendran Jeyapal (Attorney-General's Chambers) for the Attorney-General; Christopher Anand Daniel, Harjean Kaur and Aw Sze Min (Advocatus Law LLP) for the Law Society of Singapore.

**Parties** : Re Rogers, Heather QC

*Legal Profession – Admission – Ad hoc*

8 July 2015

**Steven Chong J:**

**Introduction**

1 In this summons, the applicant, Ms Heather Rogers QC, sought to be admitted to practise as an advocate and solicitor of the Supreme Court of Singapore on an *ad hoc* basis under s 15 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") in order that she might represent Mr Roy Ngerng Yi Ling in Suit No 569 of 2014 ("S 569/2014"). After due consideration of the matter, I dismissed the application and delivered brief oral grounds.

2 The decision of the Court of Appeal in *Re Beloff Michael Jacob QC* [2014] 3 SLR 424 ("*Re Beloff*") introduced a great deal of analytical clarity to this area of the law. However, it was still my observation that there were several features of the new admission regime which still appear not to be properly understood. Two of them stand out for mention: the first was the requirement of "*special* qualifications and experience" [emphasis added] stipulated in s 15(1)(*c*) of the LPA; the second was the concept of an "inequality of arms", which is often cited as a factor which is believed to weigh in favour of admission. Thus, I decided to issue full written grounds in order to amplify on some of the points I made in my brief oral grounds.

**Facts**

***Suit No 569 of 2014***

3 On 15 May 2014, Mr Ngerng published an article entitled "Where Your CPF Money Is Going: Learning From The City Harvest Trial" ("the article") on his blog, "The Heart Truths to Keep Singaporeans Thinking by Roy Ngerng". Mr Ngerng also published a link to the article on his Facebook page and on the Facebook page registered in the name of his blog (see *Lee Hsien Loong v Roy Ngerng Yi Ling* [2014] SGHC 230 ("*LHL v RNYL*") at [1]–[4]). On 29 May 2014, Mr Lee Hsien Loong, the Prime Minister of Singapore, commenced S 569/2014 claiming that the article was defamatory of him. After the close of pleadings, Mr Lee applied, in Summons No 3403 of 2014 ("SUM 3403/2014"), for the court

to ascertain the natural and ordinary meaning of the allegedly defamatory materials pursuant to O 14 r 12 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC") and to grant summary judgment under O 14 r 1 on the basis that Mr Ngerng had no defence to the claim.

4 The parties appeared before Lee Seiu Kin J on 18 September 2014 for the hearing of SUM 3403/2014. On that occasion, Mr Ngerng was represented by Mr M Ravi of M/s L F Violet Netto and Mr Eugene Thuraisingam of M/s Eugene Thuraisingam. The sole defence pleaded was that the law of defamation contravened Art 14 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution"). On 7 November 2014, Lee Seiu Kin J adjudged that the article was indeed defamatory and that Mr Ngerng had not established a triable defence to the claim (see *LHL v RNYL* at [25] and [61]). Lee J granted interlocutory judgment in favour of Mr Lee with damages to be assessed.

5 Between 7 November 2014 and 28 May 2015, when the present application was filed, the parties appeared before this court on eight occasions. Mr Ngerng was represented first by Mr Ravi (assisted by Mr Thuraisingam), then by Mr Thuraisingam alone (from 23 February 2015), [note: 1] and finally by Mr George Hwang, who took over from Mr Thuraisingam on 9 March 2015. The assessment for damages hearing took place from 1 – 3 July 2015.

***The present application***

6 On 30 May 2015, Ms Rogers filed Originating Summons No 532 of 2015 (HC/OS 532/2015). Two affidavits were filed in support of the application: one by Ms Rogers herself and the second by Mr Hwang, who identified himself as "the solicitor instructing the Applicant in this action". Mr Hwang explained that Ms Rogers had been instructed by Mr Ngerng sometime on or about 20 March 2015 (after Mr Hwang assumed conduct of the matter) and that she had been advising Mr Ngerng since. Mr Hwang also indicated that should Ms Rogers be admitted, he would serve as her junior counsel in future hearings. [note: 2]

**The parties' arguments**

7 I begin by reproducing the relevant portions of s 15 of the LPA, which governs *ad hoc* admissions, for ease of reference:

> **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.
>
> (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.

8 The admission framework was neatly summarised by the Court of Appeal at [54] of *Re Beloff*. In gist, every application for *ad hoc* admission proceeds sequentially in two stages: the court first has to ensure that the *mandatory* statutory conditions precedent for admission found in ss 15(1) and (2) are satisfied *before* it proceeds to consider whether it should exercise its discretion in favour of admission with reference to the framework of considerations listed at para 3 of the Legal Profession (Ad Hoc Admissions) Notifications 2012 (S 132/2012) ("the Notification Matters"). In other words, if the mandatory requirements are not met, "the application must fail and the question of discretion does not arise" (see *Re Beloff* at [54]). In adopting this approach, the Court of Appeal departed from the position taken in *Re Caplan Jonathan Michael QC* [2013] 3 SLR 66 ("*Re Caplan*") where the court held the mandatory requirement in s 15(2) of the LPA was not a "prior threshold provision but should instead be read harmoniously with the Notification matters" (at [48]).

9 As a practical matter, I agree that there is some overlap in the considerations which will be taken into account in the mandatory requirements and in the Notification Matters (see *Re Caplan* at [49]). However, the two requirements remain distinct and should be given separate treatment. In *Re Beloff* at [58], the Court of Appeal opined that even though there is a "substantial overlap" between s 15(1)(*c*) and the Notification Matters, for clarity of analysis, the former should be "considered as a distinct requirement that must be met *before* the court considers whether the Notification Matters call for admission" [emphasis added].

***The applicant's arguments***

10 Mr Hwang argued that the application should be allowed for the following reasons: [note: 3]

(a) First, the mandatory formal requirements in ss 15(1)(*a*) and (*b*) had been satisfied since Ms Rogers holds the title of Queen's Counsel.

(b) Second, it was "beyond doubt" that Ms Rogers, being one of the foremost authorities on the law of defamation in the United Kingdom, possessed "special qualifications or experience for the purpose of the case". In support, Mr Hwang pointed to the long list of defamation cases she had argued in her career, the fact that she had co-authored a leading practitioner's textbook on the law of defamation — Brian Neill, *et al*, *Duncan & Neill on Defamation* (LexisNexis, 4th Ed, 2015), and that Ms Rogers was intimately involved in the drafting of the Defamation Act 2013 (c 23) (UK).

(c) Third, a "special reason" for admission need not be shown since the present matter involves the tort of defamation, which was not one of the "ring-fenced" areas of practice specified in r 32(1) of the Legal Profession (Admission) Rules 2011 (S 244/2011) ("Legal Profession (Admission) Rules").

(d) Fourth, there was a "need" to admit the applicant to prevent Mr Ngerng's interests from being prejudiced at trial. This was so for three reasons: there were (i) "novel factual and legal

issues" which should be argued by an advocate of Ms Rogers' standing; (ii) Mr Ngerng was unable to secure the services of local senior counsel; and (iii) given the quality of counsel on the opposing side, there would be an "inequality of arms" if she were not admitted.

***The respondents' arguments***

11 Mr Lee, the Law Society of Singapore, and the Attorney-General all opposed the application (collectively, "the respondents"). They did not dispute that the mandatory requirements in ss 15(1)(*a*) and (*b*) had been satisfied and they also accepted that no "special reason" need be shown for admission since S 569/2014 did not involve a "ring-fenced" area of practice.

12 Mr Davinder Singh, on behalf of Mr Lee, submitted that the present application should be dismissed on two grounds.

(a) First, the applicant had not shown that she had "special qualifications or experience for the purpose of the case". Mr Singh argued that the only issue remaining for resolution in S 569/2014 was the assessment of damages. He contended that this was an area of practice on which a significant body of local jurisprudence had developed and which was informed by an understanding of local political and social conditions, neither of which the applicant had any demonstrable expertise in or familiarity with. [note: 4]

(b) Second, the applicant had not provided sufficient basis for the court to exercise its discretion in her favour. Mr Singh argued that the issues in contention were neither complex nor difficult and did not necessitate the skills of local senior counsel, let alone foreign senior counsel. That being the case, there was a large pool of local counsel who could competently represent Mr Ngerng in this matter and he need not be represented by Ms Rogers. [note: 5]

13 Mr Christopher Daniel, on behalf of the Law Society, and Mr Jeyendran Jeyapal, on behalf of the Attorney-General, expressed some doubt on the question of whether Ms Rogers had satisfied s 15(1)(*c*) of the LPA. [note: 6] However, neither of them went as far as to say that s 15(1)(*c*) had not been satisfied. Instead, they focused on the Notification Matters. On this point, they agreed with Mr Singh that the only remaining issue in S 569/2014 was the quantification of damages and that it was a straightforward exercise involving the application of well-settled principles in the law of damages. This was an issue which they contended could competently be handled by local counsel and did not require the expertise of foreign senior counsel. [note: 7] Furthermore, they argued that there had not been any reasonably conscientious search for local counsel since Mr Ngerng had confined his search for local counsel (which began very late in the day) only to senior counsel. [note: 8] In conclusion, they submitted that this court ought not to exercise its discretion to admit Ms Rogers.

**Mandatory requirements**

14 I need not say much about the mandatory formal requirements in ss 15(1)(*a*) and (*b*) of the LPA since it was not disputed that they had been satisfied. It was clear that a "special reason" for admission under s 15(2) of the LPA need not be shown since the present matter did not involve (a) constitutional and administrative law; (b) criminal law; or (c) family law, which are the areas prescribed under r 32(1) of the Legal Profession (Admission) Rules. Thus, I only had to consider the requirement in s 15(1)(*c*) of the LPA.

15 Before proceeding, I pause to highlight one point. In her affidavit, Ms Rogers did not personally depose that she satisfied the requirement set out in s 15(1)(*b*) of the LPA: *ie*, that she "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". Instead, it was Mr Hwang who deposed to this on her behalf. [note: 9] I must stress that facts within an applicant's personal knowledge (such as his/her domicile and travel plans) should be personally affirmed instead of being affirmed on his/her behalf by the instructing solicitor (see *Re Caplan* at [22]).

***Section 15(1)(c): the importance of specificity***

16 Section 15(1)(*c*) requires that the person seeking admittance be one who possesses "*special* qualifications and experience *for the purpose of the case*" [emphasis added]. There is no question that persons who possess the title of Queen's Counsel are lawyers of some eminence. Having perused the supporting affidavits, I had no doubt that Ms Rogers is a well-respected lawyer in the field of defamation in the United Kingdom. However, that alone was insufficient. General subject-matter expertise is not the test. In order to satisfy s 15(1)(c), the applicant "must have a *notable and particular expertise* that is *relevant to the issues that are presented in the case at hand*" [emphasis added] (see *Re Beloff* at [57]).

17 This is a critical point which is often overlooked. The whole purpose of having an *ad hoc* admissions scheme (rather than a general one) is to ensure that each application is assessed on a case-by-case basis, according to the requirement of "need" (see *Re Beloff* at [42]). Therefore, it can never be sufficient to argue, in a vague and general fashion, that an applicant has "special qualifications and experience" merely by reference to his/her expertise in a generic practice area. Instead, the inquiry is whether the *specific issues which arise in the case at hand* fall within the applicant's domain of expertise. I will illustrate this point by way of several examples.

18 In *Re Fordham, Michael QC* [2015] 1 SLR 272 ("*Re Fordham*"), the applicant sought admission to represent Mr Deepak Sharma in his application for judicial review of the decision of a Review Committee ("RC") constituted under s 85(6) of the LPA to evaluate the merits of Mr Sharma's complaint that two solicitors were guilty of professional misconduct in seeking grossly excessive party-and-party costs. The RC wholly dismissed Mr Sharma's complaints against the first solicitor and partially dismissed his complaint against the second. In *Re Fordham*, I noted that the substantive issues in the contemplated judicial review application pertained to matters of ethics and professional responsibility, which fell to be decided almost exclusively on the basis of local case law and statutory instruments. At [60], I observed:

> … *While the Applicant is clearly well-versed in the principles of judicial review, that does not inexorably mean that he is well-placed to argue all kinds of judicial review proceedings*. The potential issues arising in those proceedings have to be looked at closely and, having done so, I am in no doubt that it attracts an abundance of local content. *I have not, however, been pointed to any, much less special, qualifications and/or experience which the Applicant may have in dealing with these domestic sources of law*. Putting it bluntly, it is simply not clear what the Applicant can bring to the table given the ***highly local-centric nature of the issues*** arising at both the leave application stage and at the substantive hearing for the quashing order. [emphasis added in italics and bold italics]

19 By contrast, the applicant in *Re Lord Goldsmith Peter Henry PC QC* [2013] 4 SLR 921 ("*Re Lord Goldsmith*") was held to have the requisite "special qualifications and experience". In that case, the applicant sought admission to represent two individuals who sought declarations that s 377A of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"), which prohibited sexual intercourse between men, was unconstitutional because it violated Art 12 of the Constitution. At [17], the court held:

> *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. … *Earlier this year, Lord Goldsmith appeared before the Supreme Court of Judicature of Belize … 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.*** [emphasis added in italics and bold italics]

20 In *Re Caplan*, the applicant sought to be admitted in order that he may represent a defendant who had been charged with, *inter alia*, six counts of abetting by engaging in a conspiracy to commit criminal breach of trust under s 409 of the Penal Code read with s 109 of the same. In that case, the court was likewise satisfied that the applicant possessed the requisite "special qualifications and experience" because he had previously been admitted to practise *in Singapore* to defend a person accused of an almost identical offence (conspiracy to commit criminal breach of trust under s 405 read with s 109 of the Penal Code (Cap 224, 1985 Rev Ed)). Thus, the applicant was assessed to be familiar not just with the substantive law of the offence, but also with the attendant rules of criminal procedure which would be applied.

21 The significant difference between *Re Fordham* on the one hand and *Re Lord Goldsmith* and *Re Caplan* on the other is the presence of *specific subject matter expertise*. The applicants in both *Re Lord Goldsmith* and *Re Caplan* had argued cases involving almost identical issues and had, through that process, acquired demonstrable expertise in the particular issues in dispute. By comparison, what was notably absent in *Re Fordham* was *any* evidence that the applicant had any prior experience in conducting judicial review proceedings of disciplinary tribunals constituted under legislation similar to our LPA. As observed by V K Rajah JA in *Re Andrews Geraldine Mary QC* [2013] 1 SLR 872 ("*Re Andrews"*) at [63], "[c]oncern for the *particular case* at hand is at the heart of the discretion of the court" [original emphasis omitted; emphasis added in italics]. At the end of the day, the applicant bears the burden of demonstrating that there is a clear nexus between (a) the *specific* issues which are presented in the case; and (b) his qualifications and experience. With that in mind, I turn to the facts of the present case.

***Analysis: do the issues fall within the applicant's domain of expertise?***

22 In light of the foregoing, it can be seen that the framing of the issues plays a critical role in determining the success of an admission application. It affects not only the court's analysis under s 15(1)(*c*) of the LPA, but also the court's evaluation of the considerations set out in the Notification Matters. If the issues are framed too narrowly, no foreign senior counsel will ever be able to gain admission because of their lack of familiarity with local case-law. However, if the issues are pitched at too high a level of generality then the requirement that there be "*special* qualifications… *for the purpose of the case*" will be stripped of all content. This difficulty was recognised in *Re Beloff* at [68]:

> … The issues in a case may be formulated at different levels of generality, incorporating more or less reference to the specific facts of the case. In general, the issue should be framed at a level where it is sufficiently general so that the formulation remains neutral and does not in and of itself suggest the answer to the ultimate question presented to the court. At the same time, it should be sufficiently particular so that the utility of framing the issues is not lost in vague generalisations.

In essence, the process of identification must be fair: it must strive to accurately capture the

essence of the underlying dispute in a manner that still remains neutral as regards the outcome of the admission application.

23 At the highest level of generality, S 569/2014 was an action in defamation. However, it was distinguished by the following features. First, interlocutory judgment had already been entered and the matter was already scheduled before Lee J for an assessment of damages (see [4] above). Thus, liability was no longer an issue and the court was only concerned with the *quantification of damages*. Second, Mr Lee was pursuing a claim for aggravated damages, *inter alia*, because he asserted that the publication of the defamatory article was actuated by malice. [note: 10] The third distinguishing feature was the status of Mr Lee as a public leader. This was important because Singapore courts have consistently distinguished between categories of plaintiffs in the award of damages, with higher damages being awarded for public leaders (see *Lim Eng Hock Peter v Lin Jian Wei and another and another appeal* [2010] 4 SLR 357 ("*Lim Eng Hock Peter*") at [11] and [12]).

24 It seemed to me, therefore, that the primary issue in S 569/2014 was the quantification of general damages to be awarded for libel against a public leader while the subsidiary issue was whether aggravated damages for malicious publication should be awarded.

*The character of the issues: is the jurisprudence uniquely local?*

25 At [56] of *Re Beloff*, the Court of Appeal held:

> … It follows that when a case involves *an area of law in which the jurisprudence is uniquely local*, such as where the case turns on the meaning of legislation that has no analogue elsewhere *or at least where the counsel concerned has no direct experience with that body of law, it will ordinarily be difficult to satisfy the court that foreign counsel has "special qualifications or experience"* for the purpose of that case. [emphasis added]

26 Citing this paragraph, Mr Singh argued that the underlying case raised issues on which the jurisprudence is uniquely local. [note: 11] I accepted his submission. Thus far, this principle had been applied in two cases. The first was *Re Beloff* itself. In that case, the applicant sought admission to represent the plaintiff (a company providing financial services) in the latter's application to set aside a judgment of the Court of Appeal on the basis that it was made without jurisdiction and infected by breaches of natural justice. In analysing the application, the Court of Appeal held that the underlying case disclosed three issues: (a) insolvency law, particularly that relating to schemes of arrangement under the Companies Act (Cap 50, 2006 Rev Ed); (b) the court's jurisdiction under the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed); and (c) the rules of natural justice. The court held that the applicant, a noted Queen's Counsel with extensive experience in administrative and public law, did not have "special qualifications and expertise" for the purposes of the first two issues because they touched on pieces of local legislation which the applicant did not have any particular expertise in (although he was adjudged to have the requisite expertise for the third): see *Re Beloff* at [74]. The second was *Re Fordham*, where I observed that the outcome of the intended judicial review proceedings turned largely on an examination of local statutory instruments — chiefly the LPA and the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) — which the applicant did not have any demonstrable expertise in (see [18] above).

27 Although both *Re Beloff* and *Re Fordham* concerned the interpretation of local legislation, I do not think that it is *only* in such situations where the jurisprudence could be said to be uniquely local. The Court of Appeal made it clear that the principle applies also in cases where the counsel concerned has "no direct experience with that body of law" (see *Re Beloff* at [56]). Indeed, I would go as far as to say that the characterisation of an issue as being "uniquely local" is not confined only

to situations in which the *body of law* is largely domestic. Thus, it appears that an issue can be considered "uniquely local" if it involves an intimate knowledge of local social conditions (*eg*, inheritance laws). To me, the touchstone appears to be whether the issues at hand involve a preponderance of domestic content (*ie*, they are "local-centric": see *Re Fordham* at [60] and [63]).

28 In any event, the characterisation of an issue as being "uniquely local" is not the end of the matter. It only means it will "ordinarily be difficult" to satisfy the court that the requirement in s 15(1)(*c*) has been satisfied but it remains possible that the court may be so persuaded. In both *Re Lord Goldsmith* and *Re Caplan*, the underlying issues turned on matters which involved the construction of local statutes (the Constitution and the Penal Code respectively) yet the applicants were both assessed to have the requisite "special qualifications and experience" (see [19] and [20] above).

29 The area of defamation law involves a critical balance between the twin imperatives of the constitutional right to freedom of expression on the one hand and the protection of the reputational interest of individuals on the other. This is a balance which each society must strike for itself, applying what the Privy Council in *Lange v Atkinson* [2000] 1 NZLR 257 at 263 referred to as a "value judgment which depends on local political and social conditions." This statement was approved by our Court of Appeal in *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 ("*Review Publishing*") at [271] and it serves as a reminder that the law in this area, while tracing its heritage to the English common law, is now largely a product of autochthonous development. I also note that Mr Hwang himself recognised that Singapore had developed its own set of legal principles on this subject. [note: 12]

30 Furthermore (and more importantly for present purposes), this extends also to the principles governing the assessment of damages in the tort of defamation. In *Lim Eng Hock Peter* at [4] and [8], the Court of Appeal explained that the award of general damages in defamation serves four purposes: as a consolation for distress suffered, repair for harm suffered, a vindication of the plaintiff's reputation in the eyes of the public, and as a deterrent against future infractions. Determining an appropriate sum that reflects the consolatory, reparative, vindicatory, and deterrent objectives at play is a fact-sensitive exercise that is, in the words of the Privy Council in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1981-1982] SLR(R) 353 at [26], "peculiarly dependent on local conditions and local tariffs" (*ie*, the socio-political climate and conditions unique to each political culture). Apart from this general point, two further features of the present case stand out for further comment.

31 The first is the fact that our courts have consistently emphasised that our political culture places a heavy premium on the values of honesty and integrity in public discourse (see *Review Publishing* at [272(d)]). Thus, the reputational interest of political figures is given particular protection as it impacts on the public's impression of the integrity of the political system of which they are a part. In *Lim Eng Hock Peter*, the Court of Appeal put it the following way:

> 1 2 *Singapore courts have consistently awarded higher damages to public leaders than other personalities for similar types of defamation because of the greater damage done not only to them personally, but also to the reputation of the institution of which they are members*. The expression "public leaders" in this context would be a reference to political and non-political leaders in the Government and public sector and private sector leaders who devote their careers and lives to serving the State and the public. … *Public leaders are generally entitled to higher damages also because of their standing in Singapore society and devotion to public service. Any libel or slander of their character with respect to their public service damages not only their personal reputation, but also the reputation of Singapore as a State whose leaders have acquired a worldwide reputation for honesty and integrity* in office and dedication to service of

the people. …

13 *Defaming a political leader is a serious matter in Singapore because it damages the moral authority of such a person* to lead the people and the country. …

[emphasis added]

32 The second is that our courts have long ceased to rely on English awards as a benchmark for local awards, being chary of the inconsistencies produced by the jury system (see *Lee Kuan Yew and another v Tang Liang Hong and others and other actions* [1997] 2 SLR(R) 81 ("*Tang Liang Hong*") at [83]). Instead, the court in *Tang Liang Hong* stressed, in the context of the assessment of damages for torts, that "[w]e have our own awards which the courts here have sought to apply" and that it could not "see any reason why a different approach should be adopted for defamation" (at [84]). That being the case, it was unclear if Ms Rogers' admittedly extensive experience with defamation cases brought in the United Kingdom would be of much utility in the assessment of damages in S 569/2014. Furthermore, I noted that the law of defamation in the United Kingdom is now heavily influenced by jurisprudence from the European Court of Human Rights (see *Duncan and Neill on Defamation* (LexisNexis, 3rd Ed, 2009) at pp 3–19), which has taken it even further away from the position in Singapore.

33 Taken together, these points — the centrality of an understanding of local socio-political conditions, the unique emphasis placed on the reputational interests of public leaders, and the preponderance and importance of local decisions on the subject — suggest that this is an area of practice in which counsel would, as I put it in *Re Fordham* at [52], "have to draw ineluctably from a distinctly local well of legal sources" in the preparation of their cases. That being the case, the fact that the present case concerned jurisprudence which was uniquely local made it *unlikely* that the applicant would be able to show that she had the requisite expertise.

*The applicant's pleaded expertise*

34 Ms Rogers' affidavit comprised nine short paragraphs of which the last five related to the question of her "special qualifications and experience". They read:

5 I graduated with a First Class degree in Law from the London School of Economics (London University), LLB(Hons) in 1980. I studied for the Bar examinations at the Inns of Court School of Law and was placed first in the year. I was called to the bar by the Honourable Society of Middle Temple in 1983. After pupillage (twelve months) and a short period working in-house for a London newspaper, *I have been practising as a barrister in the area of defamation law* since 1987.

6 I was appointed a Queen's Counsel in 2006. I have been named as a leading barrister in the field of defamation law, both as a junior and as Queen's Counsel, by the principal directors in the UK, that is, "Chambers & Partners" and the "Legal 500" for a number of years.

7 I have been involved in numerous defamation cases, both at trial and in appeals. *I have been involved in leading cases in relation to the principles relating to the assessment of damages for defamation at the appellate level*. The defamation cases I have been involved include:

…

8 I am co-author of a leading practitioner text-book "Duncan & Neill on Defamation" 4th ed., (LexisNexis, 2015). I was also a co-author of the previous (3rd) edition (2009). Moreover, I

worked closely with Lord Anthony Lester QC in devising his private member's bill to reform the law of defamation, which played a part in the preparation of the UK Defamation Act 2013.

9 *I confirm that I have considered the application and all the relevant material* in relation to the underlying proceedings in Suit No. 569 of 2014 *and confirm that I will be able expertly [sic] discharge my duties to the client and to the court*.

[emphasis added]

35 I observed that Ms Rogers' affidavit was deficient in many respects. First, there was *no* supporting documentation appended — not even a copy of the letters patent appointing Ms Rogers as Queen's Counsel. Second, there was no attempt to identify the issues in S 569/2014, let alone how they fell within the domain of her expertise. This compared rather unfavourably with the affidavit filed by the unsuccessful applicant in *Re Fordham* (see *Re Fordham* at [20] and [50]), where the applicant had at least rendered a lengthy written opinion setting out his views on the legal issues which would arise in connection with Mr Sharma's intended application for judicial review (see [18] above). This shortcoming was particularly surprising given that Ms Rogers was instructed by Mr Ngerng sometime in March 2015 and should therefore have had ample time to prepare a detailed opinion. Third, the list of cases found at para 7 of her affidavit (which was omitted from the quoted text) merely listed, *in seriatim*, some twenty-six cases in which Ms Rogers had been instructed without any elaboration as to the issues which fell to be decided, what each revealed about Ms Rogers' expertise, or, more importantly, how Ms Rogers' involvement in those cases had given her experience which may be brought to bear on the issues in S 569/2014. As I stressed at [21] above, there must be a nexus between the identified issues and the appellant's avowed expertise. However, *no* attempt was made to draw this crucial link in the affidavit.

36 Let me be clear: I do not, for a moment, mean to cast *any* doubt on Ms Rogers' expertise. I have no doubt that she is an excellent lawyer who is well-regarded in the field of defamation. Rather, the point which I seek to make is that, at the end of the day, it is the court which must be satisfied that the mandatory requirements have been satisfied (see *Re Beloff* at [51]) and on this issue, I derived little assistance from the supporting affidavits which had been filed. In the final analysis, there was simply no material before me to suggest that Ms Rogers would be particularly conversant with the delicate matrix of factors which inform the award of damages for libel against public figures in Singapore.

37 During the oral hearing, Mr Hwang sought to persuade me that given Ms Rogers' experience and expertise in English law on defamation, she would be able to get up to speed on the relevant local principles in time for the assessment hearing. This was a *non-sequitur*. The relevant inquiry was whether she *already* had the requisite special qualifications for the purposes of this case and not whether she had the ability to *acquire* that expertise over time.

*Was Ms Rogers' expertise relevant to any subsidiary issues?*

38 When he appeared before me, Mr Hwang was at pains to stress that there is "no rule that in every case involving multiple issues the foreign counsel's expertise must be relevant to every one of those issues" (see *Re Beloff* at [77]). I accepted this as an accurate statement of the law. Building on this, Mr Hwang sought to persuade me that there were a number of subsidiary issues in the present case on which Ms Rogers' expertise may be brought to bear. They were:

(a) First, whether Mr Ngerng should be held liable for the damage caused by third-party publication of the defamatory material.

(b) Second, the appropriate quantum of costs to be awarded given that Mr Ngerng "lacks the means to make payment into court".

(c) Third, the factual issues surrounding Mr Lee's claim for aggravated damages, with particular attention to the question whether the publication was actuated by malice.

39 It was clear to me that the first issue concerned, generally, the principles governing the award of damages for the tort of defamation which I had already held to be a local-centric issue on which it had not been shown that Ms Rogers had any particular special qualifications or experience.

40 As for the second issue, I must confess that I had some difficulty understanding the issue as initially framed. During the oral hearing, Mr Hwang clarified that what he had in mind was the situation contemplated under O 22 of the ROC, which permits a defendant to pay a sum into court in prospective satisfaction of *damages* to be awarded in the claim brought by the plaintiff. However, I struggled to understand why this was an issue which arose in the context of the assessment of damages hearing. If what Mr Hwang was suggesting was that the impecuniosity of a defendant ought to affect the quantum of damages awarded, that was a staggering submission which I did not think could be supported by any authority.

41 As for the third matter, Mr Hwang stressed that this was a "trial" which "requires a lawyer who is skilled in cross-examination and who is able to make irreversibly strategic decisions in the context of a dynamic process". [note: 13] This passage was lifted from the judgment of this court in *Re Lord Goldsmith* at [25]. However, to my mind, there were two objections which were fatal to this submission. The first was that the primary disputed factual issue is whether the publication was actuated by malice. It had been clear, since the Further and Better Particulars were furnished by Mr Lee in June *last year*, that the assertion of malice was based entirely on matters said and done by Mr Ngerng. [note: 14] Therefore, the factual issues relating to the award of aggravated damages for malice fell to be decided based on the cross-examination of Mr Ngerng, *not* Mr Lee *or his witnesses*. In other words, it was not a matter on which Ms Rogers' expertise in cross-examination may be brought to bear. The second was the problem of specificity which I flagged at the start. It is trite to say that every legal issue turns on the facts. However, an applicant has to show that the factual issues in *this particular case* are of such a nature that he/she is *particularly well-suited to address them*. Mr Hwang made no attempt to contextualise his submissions in this manner.

42 In summary, I concluded that the applicant had failed to show that she had the requisite "special qualifications and experience" for the case as mandatorily required by s 15(1)(*c*). On this ground alone, the application failed.

***An observation on the role of local counsel in admission applications***

43 Before I leave this point, I think it is pertinent to make an important observation about a point of practice in relation to the preparation of applications for *ad hoc* admission. Applicants who seek to be admitted to practise in Singapore are not from our jurisdiction and are therefore not familiar with the legal requirements in the LPA. Therefore, it is incumbent upon the *local instructing solicitor* preparing the application to ensure that the documents are in order. This extends towards ensuring that the supporting affidavits contain sufficient information to assist the court on the merits of the application, particularly the question of whether the identified issues fall within the domain of the applicant's expertise.

44 In preparing the supporting affidavits, two general principles must be borne in mind: (a) first,

supporting affidavits should assist this court by providing *all the facts that may be relevant* in an assessment of the merits of the application supported by the relevant documentary evidence (see *Re Caplan* at [23] and [24]); and (b) second, facts should be affirmed by persons with personal knowledge of them (see O 41 r 5(1) of the ROC). Insofar as applicants are concerned, their supporting affidavits should, at a minimum, cover the following matters: (a) the date that the applicant was appointed a Queen's Counsel (or attained any appointment of equivalent distinction in any jurisdiction); (b) the applicant's present residence and an affirmation that he/she intends to travel to Singapore for the purpose of appearing in the case; (c) the applicant's personal understanding of the legal issues in the underlying case; and (d) a brief description of the applicant's legal expertise and how it may be brought to bear on the explication of the issues in the underlying case. To that extent, I would commend the practice of including a separate addendum (as was done in *Re Fordham*) covering the matters listed in (c) and (d).

45 In the present case, Ms Rogers' affidavit read more like a truncated *curriculum vitae* rather than an affidavit filed in support of *ad hoc* admission. There was no indication — from the supporting affidavit — that thought had been given to the detailed requirements for admission set out in the LPA save for a brief sentence in the final paragraph which read, "I confirm that I have considered the application and all the relevant material… and confirm that I will be able [to] expertly discharge my duties." The practice of including this affirmation stems from the decision of this court in *Re Caplan*:

> 22 … In particular, for the purposes of an *ad hoc* admission application, the foreign senior counsel in question should also *expressly confirm in his affidavit that he has considered the application and all the relevant material in relation to the underlying proceedings, and that he is able to expertly discharge his duties*.
>
> 23 Having clarified *who should file* affidavits in support of ad hoc admission applications, I turn now to another important procedural practice point **pertaining to the details of the contents of such affidavits.** ***It is important for the court to have the fullest possible picture of all the relevant facts*** . … **[S]olicitors** ***should endeavour to ensure that all relevant details are presented to the court*** *and are supported by relevant documentary evidence*.
>
> [emphasis added in italics and bold italics]

46 Paragraph 22 must be read in conjunction with paragraph 23 — the overarching principle is that the supporting affidavits should provide details in order to give the court "the fullest possible picture of the relevant facts". Unless supported by a careful consideration of the underlying issues, the averment found at para 22 is meaningless. The averment was never intended to be a mere formality to be tacked unthinkingly at the end of a supporting affidavit; instead, it should be the capstone of a considered exposition on the legal issues and why they fall within the domain of the applicant's pleaded expertise.

**The Notification Matters**

47 Having found that the requirement in s 15(1)(*c*) had not been satisfied, the question of the court's discretion did not even arise (see [8] above). For completeness, however, I went on to consider the Notification Matters and I concluded that I would not, in any event, have exercised my discretion in the applicant's favour. To explain why, I begin by first setting out the Notification Matters:

> (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.

48 It is well-established that the factors are not set out in any particular order of precedence (see *Re Andrews* at [45]). Instead, they function as "signposts" that point towards the "ultimate question": *viz*, "whether having regard to all the circumstances of the case, it is reasonable to admit the foreign counsel" (see *Re Beloff* at [53]). But what is "reasonable" in this context? In this context, "reasonable" is synonymous with "necessary". To quote again from *Re Beloff* at [42] and [65]:

> 42 … In our judgment, the rationale that directly underlies the 2012 amendments points to a broader proposition which, in the words of the Minister for Law, is that *"ad hoc counsel will only be admitted on the basis of need, and it will not be a free for all".* "Need" connotes a fairly stringent standard which is not satisfied merely by showing that the admission of foreign counsel is desirable or convenient or sought as a matter of choice. It *suggests that the litigant seeking admission of foreign counsel would be prejudiced if his application was not allowed, and that this prejudice is of an appropriately significant degree*.
>
> …
>
> 65 It follows from all we have said that although for analytical purposes, each of the Notifications Matters is to be considered individually, yet they are also inevitably bound to impact each other and so to be considered collectively. We reiterate that the weight accorded to the various factors taken into consideration is very much at the court's discretion, but ***the broad principle in accordance with which the discretion must be exercised is that foreign senior counsel should only be admitted on the basis of "need"*** .
>
> [emphasis added in italics and bold italics]

49 With these points in mind, it is clear that everything must be viewed through the prism of "need". To build on this metaphor, it seems to me that the various Notification Matters present different facets of the same gem: as the court works through the various Notification Matters, it examines the question of necessity from different angles. Needless to say, the circumstances which may disclose such a "need" are manifold and cannot be exhaustively stated. One notable example would be where a litigant would be *inadequately* represented if admission were not granted: *eg*, "there was some chance that the issues in a case would not be properly ventilated or framed without the participation of foreign senior counsel" (see *Re Lord Goldsmith* at [54]). With these points in mind, I turn to the nature of the issues.

***The nature of the issues***

50 As a starting point, I did not think the identified issues were so complex or difficult such that the services of foreign senior counsel are required. It might be true, as Mr Hwang pointed out, that this was the first time a blogger had been sued in defamation by a Prime Minister. However, ultimately, the quantum of damages fell to be decided on the basis of well settled principles applicable in the law of damages. The recent decision of the Court of Appeal in *Koh Sin Chong Freddie v Chan Cheng Wah Bernard and others and another appeal* [2013] 4 SLR 629, provided a comprehensive

statement of the approach to be taken in the assessment of general and aggravated damages in the tort of defamation. These principles are not new and have been applied in many previous cases (see, *eg*, *Arul Chandran v Chew Chin Aik Victor* [2001] 1 SLR(R) 86, *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2009] 1 SLR(R) 642, and *Lim Eng Hock Peter*).

51 That being said, the absence of complexity alone is not determinative. In *Re Andrews* at [48], Rajah JA held that if a decision on the underlying issues can have significant precedential value or there is significant public interest in the outcome, the absence of complexity would not necessarily operate as an absolute barrier to admission. To that end, Mr Hwang submitted that S 569/2014 disclosed legal issues of sufficient importance that their treatment necessitated the expertise of foreign senior counsel. He identified three: [note: 15]

(a) This was a novel case as it was the first time that a blogger has been sued by a Prime Minister.

(b) Whether Mr Ngerng should be penalised for third party publication of the defamatory material.

(c) Whether the creation of an internet hyperlink to the defamatory material constituted "publication" of the material for the purpose of defamation law. On this issue, Mr Hwang pointed to the decision of the Supreme Court of Canada in *Crookes v Newton* [2011] 3 RCS 269 ("*Crookes*"), wherein it was held that the publication of a hyperlink, by itself, should never be seen to be the publication of the content to which it refers.

52 I did not see how the first point assisted Mr Hwang anywhere. Just as novelty is not to be confused with complexity, matters which attract *popular interest* must not be mistaken for matters which are *in the public interest*. I did not see how the present case was of significant precedential value. The fact that this was the first time that a blogger has been sued by a public leader might invite significant media attention, but that did not mean that the decision was of significant legal import. This was also not the first time that this court had to consider liability for defamatory material published on the internet. For example, in *Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another* [2015] 2 SLR 751 ("*Golden Season*"), this court found that the defendant was liable for defamatory material which had been posted on his personal "Facebook" page.

53 I also did not see how the second question — third party publication — was controversial. It is well settled that the tortfeasor is liable where the republication was the natural and probable result of the original publication (see the decision of the Court of Appeal in *Low Tuck Kwong v Sukamto Sia* [2014] 1 SLR 639 at [38], citing *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1997] 3 SLR(R) 46 at [127]).

54 The third issue — whether the *mere reference* to defamatory material through the creation of a hyperlink *alone* constitutes publication — did not arise on the facts of this case. The holding in *Crookes* was that the *mere act* of making reference to the existence of defamatory material by the creation of a hyperlink does not, *without more*, constitute the publication of that content such that liability in defamation lies (see *Crookes* at [42], per Abella J). However, that holding had no application to our facts since Mr Ngerng was the *author* of the defamatory article, which he published on his blog, and it was on this basis that his liability was established. Thereafter, each instance in which the article was accessed or viewed by an individual constituted a separate publication (see *Golden Season* at [55]). It was not the case that Mr Ngerng merely hyperlinked an article written by someone else. Mr Ngerng's act of creating hyperlinks to promote the existence of *his* article only contributed to its spread.

***The necessity for foreign counsel and the pool of suitable local counsel***

55 The second and third Notification Matters require this court to consider if there had been any "reasonably conscientious efforts to secure the services of competent local counsel" (see *Re Caplan* at [69]). It is important to understand why this inquiry is important. Under the present framework for *ad hoc* admission, the focus is not so much on the development of the local bar *per se* (though that is still a factor to consider), but the overarching question of whether there is a *need* for the litigant to be represented by foreign senior counsel (see *Re Andrews* at [36(a)]). It is obvious that if there has not been a genuine search for local counsel, it will be difficult to persuade this court that there is any necessity for foreign senior counsel to be admitted. Conversely, the presence of available local senior counsel ("SC") is not invariably a bar to the admission of foreign counsel, though it would be difficult to persuade the court that the requisite element of need is present. When understood in this light, it makes sense that the second and third Notification Matters (the necessity for foreign counsel and the availability of local counsel with suitable experience) should be considered together (see *Re Caplan* at [66]).

56 On this issue, Mr Hwang raised two broad points:

(a) First, the available pool of suitable local counsel was limited, given that there were only 31 active SCs who had the requisite expertise to take on this case. Compounding the difficulty was the fact that, given the exigencies of time, it was very unlikely that any of them would be able to take the case on short notice. [note: 16] Mr Hwang deposed that he had contacted seven SCs (at the average rate of one a week over the course of six weeks), all of whom either indicated that they were not able to take conduct of the case or did not reply.

(b) Second, the possibility of an "inequality of arms" weighed heavily in favour of admitting Ms Rogers. Mr Hwang argued that Mr Singh is an experienced senior counsel with a team of associates at his disposal and that, consequently, Mr Ngerng would be prejudiced in the conduct of his defence if he were not represented by a lawyer of similar stature. In that regard, he pointed out that Ms Rogers had also been working on the case for several weeks now and was familiar with the issues. [note: 17]

*The unavailability of local senior counsel*

57 It is well established that the size of the pool of suitable local counsel depends on the evaluation of the nature of the issues. The more difficult and/or novel the issues are, the smaller the pool of suitable local counsel and *vice versa* (see *Re Fordham* at [75]). Given that the issues were not esoteric, unusual or complex, I agreed with the respondents that there was a large body of local practitioners who could competently represent Mr Ngerng. That being the case, it was disappointing that *no* attempt had been made to approach any member of the local bar who was not an SC. As I commented in *Re Fordham* at [88], there "cannot be a natural gravitation towards local SCs *only*" [emphasis in original]. In the circumstances, I could only conclude that there had not been a "reasonably conscientious" search for local counsel.

58 Furthermore, this omission was particularly striking considering that Mr Ngerng had hitherto been content to be represented by local counsel who were not SCs: Mr M Ravi and Mr Eugene Thuraisingam, who had conduct of the matter during the liability hearing. In response to my question whether the liability or assessment stage of the proceedings was more complex, Mr Hwang candidly admitted that it was the former. Yet, Mr Ngerng was content to allow Mr Ravi to represent him. Given that Mr Ravi was suitable at the more complex liability stage, I failed to see why local non-SC would

not be suitable at the less complex assessment stage (unless the argument was that Mr Ravi was *the only* non-SC who could have represented Mr Ngerng, which was not the position taken before me). During the course of the hearing, Mr Hwang attempted to withdraw his earlier concession by suggesting that the liability hearing was not as complex since Mr Ngerng had admitted that the offending article was defamatory. I rejected this belated *volte-face*. At the end of the day, Mr Ngerng elected to contest the application for summary judgment on the basis that he had a triable defence (see [4] above) and he was represented by Mr Ravi and Mr Thuraisingam at that time.

59 I must emphasise that the search for local counsel should not start too late because the choice lawyers are likely to have court commitments. Therefore, if litigants tarry for too long, they must accept the possibility that they may not be represented by the lawyer of their choice. Litigants should not be allowed to rely on their own delay to create a situation of need and, on that basis, seek to have foreign senior counsel admitted to argue their case. In this case, the search for local SC only began on 1 April 2015, some five months after liability had already been determined and nearly a year after the commencement of the suit. I appreciate that Mr Ngerng had been represented by Mr Ravi until 22 February 2015 but it seems to me that if Mr Ngerng genuinely believed that the present case required the expertise of local SC, the search ought to have begun much earlier.

*Inequality of arms*

60 Further, I also rejected Mr Hwang's submission that this court should admit Ms Rogers to ensure an "equality of arms" and avoid a "David and Goliath" scenario. [note: 18] The touchstone of admission is "need", not "equality". As stated by this court in *Re Andrews* at [61]:

> … *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. … [original emphasis omitted; emphasis added in italics]

61 The "end" is the prevention of substantial prejudice to the litigant seeking to have the foreign senior counsel admitted (see [48] above). Unless the disparity in representation would lead to inadequate or under-representation, the quality of the legal representation on the opposing side is not, without more, a reason for this court to admit foreign senior counsel, particularly where the underlying issues are not particularly complex. It cannot be the case that a litigant is entitled to be represented by a foreign senior counsel simply because the opposing party is represented by a senior counsel. Such a situation would lead, in the words of Tay Yong Kwang J in *Re Millar Gavin James QC* [2008] 1 SLR(R) 297 at [41], to "absurd consequences".

62 I agreed with Mr Daniel that the case of *Re Andrews*, where the "equality of arms" argument was accepted, was a world apart from the instant case. In *Re Andrews*, the plaintiff initiated his suit in May 2009. The defendant thereafter applied for the statement of claim ("SOC") to be struck out and prevailed both at first instance (in July 2009) and before the Court of Appeal (in May 2010). The plaintiff attempted to reformulate his pleadings but was once against opposed by the defendant, who succeeded before the Assistant Registrar and in the High Court. It was only in November 2011, when the Court of Appeal heard the matter, that it was accepted that the plaintiff's reformulated pleadings (which were drafted with the assistance of Ms Geraldine Andrews QC, the applicant seeking admission) disclosed a viable cause of action. Along the way, the plaintiff was represented by no less than four sets of local counsel: the first of which the plaintiff discharged (Mr Peter Low), the second withdrew from the conduct of the case (Mr Roderick Martin, who was subsequently appointed SC), the third was unable to commit to representing him for the duration of the matter (Prof Tan Cheng Han SC); while the fourth was only retained as his solicitor to instruct counsel to represent him in

court (Mr Narayanan Vijya Kumar).

63 It was this unique trinity of factors — (a) 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 proceedings)" (see *Re Andrews* at [86]); (b) the trenchant resistance put up by the defendants at every stage of the interlocutory proceedings (see *Re Andrews* at [13]); and (c) the fact that the plaintiff only succeeded in *pleading* a viable cause of action with the assistance of the applicant — that persuaded Rajah JA that "[t]he imbalance in the quality of legal representation is… a pertinent factor for the court to consider… [and that 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" (see *Re Andrews* at [80]). In the instant case, I did not think such a situation existed. Not only were the issues comparatively simple, it was also clear that Mr Ngerng had been competently represented by local non-SC and (more importantly) *had been content* to be represented by local non-SC.

64 In summary, I saw no reason for this court to exercise its discretion in favour of admission. It could not be said that Mr Ngerng would face significant prejudice if Ms Rogers were not admitted to represent him in the assessment of damages in S 569/2014.

**Conclusion**

65 In conclusion, the application was dismissed for two independently sufficient reasons. First, the applicant had not succeeded in proving that she had "special qualifications and experience for the purpose of *the present* case", which is a mandatory statutory requirement for admission under s 15(1)(*c*) of the LPA. Second, the applicant had not succeeded in demonstrating that, in light of all the circumstances of the case, there was good and sufficient reason for the court to exercise its discretion in favour of admission.

**Costs**

66 As the application had been dismissed for want of compliance with s 15(1)(*c*), costs should follow the event and Mr Hwang agreed. Mr Singh sought to persuade me, following *Re De Lacy Richard QC* [2003] 4 SLR(R) 23, that even though the application was taken out in the name of Ms Rogers, the "true party" who stood to benefit from this application (and who therefore should bear the costs of the application) was Mr Ngerng. Mr Hwang very fairly agreed that this ought to be the case.

67 I accepted this submission. The comments of the Court of Appeal in *Price Arthur Leolin v Attorney-General and others* [1992] 3 SLR(R) 113 at [15] are apposite:

> *The process for the admission of a Queen's Counsel is technically a separate matter from the action he seeks to appear in*; accordingly, no purely interlocutory costs order such as "costs in the cause" may be made. This is also because the party to the main action who seeks the representation of the Queen's Counsel is not also party to the proceedings for admission. In practice, however, the brunt or benefit of the costs of such an application is actually ultimately sustained by that party. In our opinion, therefore, it is desirable that ***the principles of costs awards in such applications should approximate as closely as is practicable to what they would be if such applications were technically interlocutory chapters in the main action*** . [emphasis added in italics and bold italics]

68 Applying this approach, I exercised my discretion under O 59 r 2 of the ROC to order that the

costs of this application, which I fixed at $6,000 (inclusive of disbursements), be borne personally by Mr Ngerng, who was to pay the costs to Mr Lee forthwith.

69 I thank counsel for their able assistance.

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[note: 1] Minute sheet of Lee Seiu Kin J dated 23 February 2015.

[note: 2] Affidavit of George Bonaventure Hwang Chor Chee dated 28 May 2015 ("Mr Hwang's affidavit") at paras 1, 2, and 20.

[note: 3] Applicant's Written Submissions at paras 26–31.

[note: 4] Plaintiff's Submissions for Originating Summons No 532 of 2015 ("Plaintiff's submissions") at paras 35–49.

[note: 5] Plaintiff's submissions at paras 123–140.

[note: 6] Written Submissions of the Law Society of Singapore ("LSS's submissions") at paras 19 and 20; The Attorney-General's Written Submissions ("AG's submissions") at para 13.

[note: 7] LSS's submissions at paras 28–34; AG's submissions at paras 16–19.

[note: 8] LSS's submissions at paras 43 and 44; AG's submissions at paras 29–33.

[note: 9] Mr Hwang's affidavit at para 6.

[note: 10] Plaintiff's submissions at para 5; Affidavit of Lee Hsien Loong dated 4 May 2015 ("Plaintiff's affidavit") at paras 18–24.

[note: 11] Plaintiff's submissions at paras 35, 39, 45, and 49.

[note: 12] Notes of Evidence of Steven Chong J in HC/OS 532/2015 dated 9 June 2015, p 1, line 40 to p 2, line 2.

[note: 13] Mr Hwang's affidavit at para 13.

[note: 14] Plaintiff's Further and Better Particulars in S 569/2014 dated 25 June 2014.

[note: 15] Applicant's submissions at para 10.

[note: 16] Applicant's submissions at paras 13–15; Mr Hwang's affidavit at paras 15–19.

[note: 17] Applicant's submissions at para 29.

[note: 18] Applicant's submissions at paras 29 and 32.