# *Re* Joseph David QC
# [2011] SGHC 262

**Case Number** : Originating Summons No 853 of 2011

**Decision Date** : 12 December 2011

**Tribunal/Court** : High Court

**Coram** : V K Rajah JA

**Counsel Name(s)** : Chou Sean Yu, Melvin Lum and Daniel Tan (Wong Partnership LLP) for the applicant; Edmund Jerome Kronenburg and Lye Hui Xian (Braddell Brothers LLP) for the respondent; Jeffrey Chan Wah Teck SC (Attorney General's Chambers) for the Attorney General (first non-party); andMatthew Saw (Lee & Lee) for the Law Society of Singapore (second non-party).

**Parties** : Re Joseph David QC

*Legal Profession – Admission – ad hoc*

12 December 2011

**V K Rajah JA:**

1 This application was made pursuant to s 15 of the Legal Profession Act (Cap 161, 2009 Rev Ed) (the "LPA") for Mr David Joseph QC (the "Applicant") to be admitted as an advocate and solicitor of Singapore for the purpose of representing the plaintiffs in Originating Summons ("OS") No 807 of 2010 ("OS 807") and OS No 913 of 2010 ("OS 913"), specifically Registrar's Appeal ("RA") No 278 of 2011 ("RA 278"), RA No 279 of 2011 ("RA 279"), Summons ("SUM") No 4064 of 2011 ("SUM 4064") and SUM No 4065 of 2011 ("SUM 4065") and any further proceedings in relation to these matters (including any appeals thereto). It bears mention that this was the first application for an *ad hoc* admission of a Queen's Counsel since the application in OS No 621 of 2007 filed on 23 April 2007 to admit Mr Gavin James Millar QC was dismissed.

2 The second defendant in OS 807 and OS 913, PT First Media TBK (formerly known as "PT Broadband Multimedia TBK"), was the respondent in this application (the "Respondent"). The Respondent vigorously objected to the *ad hoc* admission of the Applicant on the ground that the proceedings are not of sufficient difficulty and complexity to warrant admission of a Queen's Counsel. However, it is noteworthy that both the Attorney-General and the Law Society of Singapore (the "Law Society") raised no objections in relation to the Applicant's application and agreed that the legal issues in the various proceedings were of sufficient difficulty and complexity to warrant the exercise of judicial discretion in favour of the Applicant's admission (see [58] below). After hearing all parties, I allowed the application. As such applications have been infrequent (and scarcely acceded to) over the course of the last two decades, I think it will assist the Bar if the reasons underpinning my decision are made known lest it be mistakenly thought that the criteria for assessing such applications have been suddenly and radically remodelled without legislative intervention (see also [60] below).

**Background facts**

3 OS 807 and OS 913 involved eight plaintiffs and three defendants who had participated in arbitration proceedings conducted under the auspices of the Singapore International Arbitration Centre ("SIAC") in SIAC Arbitration No 62 of 2008 (the "Arbitration"). Singapore was the seat of the

Arbitration which was conducted pursuant to the third edition of the SIAC Arbitration Rules, 1 July 2007 (the "SIAC Arbitration Rules"). The arbitral tribunal consisted of two retired English Judges (Sir Simon Tuckey and Sir Gordon Langley) and Mr Stewart Boyd QC (the "Tribunal"). The eight plaintiffs nominated Sir Gordon Langley as their arbitrator and the three defendants nominated Mr Stewart Boyd QC as their arbitrator with Sir Simon Tuckey being jointly appointed as the third arbitrator by both parties. The dispute concerned a failed joint venture relating to the supply of satellite-delivered direct-to-home pay television services in Indonesia. It has an extended, complicated and sulphurous history that I need not restate in any detail for the purposes of the present application.

4 The eight plaintiffs were part of the Astro Group, a Malaysian broadcasting and media entity, and comprised of (a) Astro Nusantara International BV; (b) Astro Nusantara Holdings BV; (c) Astro Multimedia Corporation NV; (d) Astro Multimedia NV; (e) Astro Overseas Limited (formerly known as AAAN (Bermuda) Limited); (f) Astro All Asia Networks PLC; (g) Measat Broadcast Networks Systems Sdn Bhd; and (h) All Asia Multimedia Networks FZ-LLC (collectively referred to as the "Plaintiffs").

5 The three defendants were (a) PT Ayunda Prima Mitra (the "first defendant"); (b) the Respondent; and (c) PT Direct Vision (the "third defendant") (collectively referred to as the "Defendants"). The first defendant and the Respondent were part of an Indonesian conglomerate called the "Lippo Group", while the third defendant was the purported joint venture company for the satellite TV venture.

6 The Applicant was instructed by WongPartnership LLP, and was the lead counsel for the Plaintiffs in the Arbitration. Mr Laurence Rabinowitz QC was instructed by Drew & Napier LLC, and was the lead counsel for the first defendant and the Respondent. Mr Davinder Singh SC was joint lead counsel for the first defendant and the Respondent at the preliminary stages of the Arbitration, but did not appear at the final merits hearing. Mr Oommen Mathew of Eversheds LLP appeared for the third defendant.

7 At the Arbitration, the Tribunal unanimously granted five awards in favour of the Plaintiffs, namely (collectively referred to as the "Awards"):

(a) the 7 May 2009 award ("the Preliminary Award");

(b) the 3 October 2009 award;

(c) the 5 February 2010 award;

(d) the 16 February 2010 award; and

(e) the 3 August 2010 award.

8 The Awards comprised of very significant sums in multiple currencies. In summary, the Defendants were found to be jointly and severally liable for at least the aggregate sum of

USD81,865,542.54, GBP940,024.00, RM139,412,160.00 and SGD3,918,049.13. The third defendant was additionally found liable for at least an aggregate sum of USD128,983,939.46 and RM144,889,736.00.

9 Leave to enforce the Awards as judgments of the High Court of Singapore were subsequently sought by the Plaintiffs, pursuant to s 19 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) (the "IAA"), first in OS 807 and subsequently in OS 913. As OS 807 did not include an application for leave to enforce the final award, interests and costs, OS 913 was filed for leave to enforce the same. Leave was granted by Orders of Court on 5 August 2010 (for OS 807) and 3 September 2010 (for OS 913) (referred to henceforth collectively as the "Enforcement Orders").

10 The Enforcement Orders provided that in the event that service of the Enforcement Orders was effected on the Defendants outside the jurisdiction of Singapore, the Defendants were allowed to apply to set aside the Enforcement Orders within 21 days after such service. The Enforcement Orders were served on the Defendants in Indonesia, and the Plaintiffs entered judgments in terms of the Awards on 24 March 2011 (the "24 March 2011 Judgments") when the Defendants did not apply to challenge the Enforcement Orders within the stipulated timeframe of 21 days.

11 Subsequently, the Respondent filed SUM No 1911 of 2011 ("SUM 1911") and SUM No 1912 of 2011 ("SUM 1912") on 3 May 2011 to set aside the 24 March 2011 Judgments on the basis that the service of the Enforcement Orders was not valid and seeking leave to apply to set aside the Enforcement Orders within 21 days of the Plaintiffs' service of the Enforcement Orders on the Respondent in accordance with the applicable laws of the Republic of Indonesia governing the service of such documents. On 22 August 2011, an Assistant Registrar ("AR") hearing SUM 1911 and SUM 1912 decided that service of the Enforcement Orders was *not* valid. However, he also concurrently declared that the Respondent was deemed to have been served with the Enforcement Orders on 22 Aug 2011 and granted the Respondent leave to set aside the Enforcement Orders by 12 September 2011 (*ie*, within 21 days from his order).

12 On 5 September 2011, the Plaintiffs filed RA 278 and RA 279, appealing against the AR's orders in SUM 1911 and SUM 1912 respectively. On 12 September 2011, the Respondent, in compliance with the AR's order, filed SUM 4064 and SUM 4065 to set aside the Enforcement Orders.

13 RA 278, RA 279, SUM 4064 and SUM 4065 have been fixed for hearing together before the same High Court Judge, on account of various common issues of law. As regards to the urgency of the hearing of these issues, the Counsel for the Applicant informed me that there was a worldwide Mareva injunction currently in place and ongoing proceedings in foreign jurisdictions, *viz*, (a) a garnishee application in Hong Kong by the Plaintiffs on an alleged creditor of the Respondent and (b) applications in Indonesia by the Plaintiffs for the Indonesian Supreme Court to recognise the other arbitral awards, although the Indonesian Supreme Court has refused to recognise the Preliminary Award (see [38] below).

**The law on *ad hoc* admission of English Queen's Counsel**

14 Section 15(1) of the LPA is identical to the section governing *ad hoc* admissions of Queen's Counsel in the earlier editions of the LPA (*ie*, s 21(1) of the Legal Profession Act (Cap 161, 1997 Rev Ed) and s 21(1) of the Legal Profession Act (Cap 161, 2001 Rev Ed)). Section 15(1) of the LPA provides as follows:

> 15.—(1) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case where the court is satisfied that it is of *sufficient difficulty and complexity* and

having regard to *the circumstances of the case*, admit to practise as an advocate and solicitor any person who —

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

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

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

[emphasis added]

15 In determining an application under s 15(1) of the LPA, the courts have usually applied a three-stage test (see, *eg*, *Re Caplan Jonathan Michael QC* [1997] 3 SLR(R) 412 ("*Caplan QC*") at [12]; *Re Platts-Mills Mark Fortescue QC* [2006] 1 SLR(R) 510 ("*Fortescue QC*") at [6]):

(a) first, whether the case contained issues of fact or law of sufficient difficulty and complexity to justify the admission of a Queen's Counsel (the "first stage");

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

(c) third, whether the applicant was a suitable candidate for admission (the "third stage").

16 With regard to the first stage, the Court of Appeal noted in *Godfrey Gerald QC v UBS AG and others* [2003] 2 SLR(R) 306 ("*Godfrey Gerald*") that the test of "sufficient difficulty and complexity" was *conjunctive* and not disjunctive, *viz*, the issues had to be of sufficient difficulty *and* complexity. Such difficulty and complexity is (see *Price Arthur Leolin v Attorney-General and others* [1992] 3 SLR(R) 113 ("*Price QC*") at [6]):

not limited to questions of law – it is foreseeable that [assistance of Queen's Counsel] will be valuable in cases dealing with complex facts, so as to determine what the actual legal problems are before turning to address those specific problems.

17 It has also been stressed that the absence of direct local precedents is insufficient, in and of itself, to warrant the admission of a Queen's Counsel because decisions from other Commonwealth jurisdictions may be referred to (*Godfrey Gerald* at [21]).

18 At the second stage, the court is balancing two competing interests, *viz* (a) the long-term need to foster a strong and independent local Bar; against (b) the individual justice of each case which might demand the assistance of a Queen's Counsel (*Re Flint Charles John Raffles QC* [2001] 1 SLR(R) 433 ("*Raffles QC*") at [8]). This is consonant with the original purpose of the 1991 amendments to the LPA "to lay the foundation for the development of a strong local Bar by the imposition of more stringent conditions for the admission of Queen's Counsel to appear in our courts" (see *Re Oliver David Keightley Rideal QC* [1992] 1 SLR(R) 961 at [8]; cited in *Fortescue QC* at [14]).

19 At this point, it should be emphasised that the first and second stages of the test are neither clearly demarcated nor ordered lexically. As observed by the Court of Appeal in *Fortescue QC* (at [15]):

The *difficulty and complexity of a case is not in and of itself decisive* of the question whether a Queen's Counsel should be admitted. It has to be *weighed against the availability and calibre of*

*local counsel*. … Where there is a dearth of local expertise in any area, e*ven a moderately difficult or complex case may warrant the admission of a Queen's Counsel*. [emphasis added]

20 The thresholds prescribed by the first and second stages are dependent, in part, upon the competence and maturity of the local Bar. Taking into consideration advancements in legal education, the ever greater exposure of Singapore advocates to increasingly complex areas of law at the frontiers of legal evolution as well as the commendable elevation of standards within the Bar, it has become increasingly difficult to satisfy the Court that the legal issues and/or facts are of sufficient difficulty and complexity to require elucidation and/or argument by a Queen's Counsel (*Fortescue QC* at [15]). Indeed, with the effluxion of time, it appears that local Senior Counsel or experienced lawyers with particular expertise in the respective areas of law will be able to handle competently most legal issues that arise before Singapore courts. As acknowledged by the Court of Appeal in *Fortescue QC* (at [18]), "the standard of the local Bar has increased over the years". The High Court's observations in *Raffles QC* at [9] (affirmed by the Court of Appeal in *Fortescue* at [18]) are also apposite:

> After nearly a decade of the working out of s 21(1) of [the Legal Profession Act (Cap 161, 2001 Rev Ed)], it is in my view fair to say that the local Bar has matured and is acquitting itself commendably. There has been forged and carefully nurtured, particularly over the last ten years, a body of Senior Counsel, potential senior counsel and an impressive group of young advocates and solicitors, both in the public service and in the private sector, with excellent academic credentials and a right attitude.

21 With regard to the third stage, in determining whether the applicant is a suitable candidate for admission, it should be noted that in *Re Littlemore Stuart QC* [2002] 1 SLR(R) 198 ("*Littlemore QC*"), the court observed that admission was a privilege which required that the applicant display two essential qualities. First, his conduct must satisfy that "he will be responsible, honourable, courteous and respectful of our Judiciary" (*ibid* at [5]). Second, he must be at "the forefront of his area of specialisation so that he can adequately assist our courts in our deliberations and the administration of justice" (*ibid* at [6]).

22 I pause to make an observation about the authorities cited above. It appears that this three-stage approach is not expressly mandated by s 15(1) of the LPA. Having considered the three-stage test in greater detail, I am of the view that the test may be more coherently conceived of as comprising two, *contra* three, stages. This is because the *second stage* (which purports to deal with whether the circumstances of the case warranted the court's exercise of discretion in favour of the applicant) is intrinsically intertwined with the *third stage* (which deals with whether the applicant was a suitable candidate for admission) – it appears, to me, that the applicant's suitability is, in the final analysis, simply *one of the circumstances* to be considered in determining whether the circumstances of the case warranted the court's exercise of discretion to admit the applicant. Indeed, I observe that the second stage is phrased sufficiently broadly to *subsume* the third stage. After all, both stages are intended to address the court's mind to the question of *whether, in all the circumstances of the case, the court should exercise its discretion to admit the applicant*.

23 While it may appear that conceiving of the test as comprising of two rather than three stages is an exercise in semantic hair-splitting, I am of the view that there are *practical benefits* to adopting a two-stage conceptualisation. For instance, approaching the test in two stages avoids the possible misconception that the court's exercise of discretion (in the second stage) is *independent* of the applicant's suitability (in the third stage). It would also allow an applicant's *special* expertise to be taken into consideration as part of a holistic inquiry into whether this is a case in which the court should exercise its discretion to admit the applicant in the context of available local representation.

24 That said, whether the test is approached in two or three stages is immaterial for the present application as it was common ground amongst all the parties, including the Respondent, that the third stage was fulfilled (see [55] and [56] below).

25 I turn now to analyse whether the Applicant should be admitted for the purposes of representing the Plaintiffs in the relevant legal proceedings.

**Application to the present case**

***Whether the issues are of sufficient difficult and complexity***

26 In my opinion, the legal issues in RA 278 and RA 279, if considered in isolation, would not be of sufficient difficult and complexity to merit the exercise of discretion in favour of the Applicant. RA 278 and RA 279 are premised on two relatively clear-cut issues, *viz*, (a) whether service was in fact effected in Indonesia and (b) if so, whether service was legally valid in accordance with Indonesian law. The real merits of this application thus really lay in the significance of the legal issues arising in SUM 4064 and SUM 4065, which related to the setting aside of the Enforcement Orders.

27 With regard to SUM 4064 and SUM 4065, it appears that there are indeed three sufficiently complex and difficult issues of fact and law, which may be summarised as follows:

(a) whether the Defendants are entitled to resist enforcement of the Awards in the country in which the Awards were made when they did not, within the statutorily prescribed period, take any steps to set aside the same ("Issue 1");

(b) whether the Defendants have a right to revive a challenge based on the alleged lack of an arbitration agreement and a misjoinder of the sixth to eighth plaintiffs to the Arbitration well after the Award has been made ("Issue 2"); and

(c) whether the enforcement of an award in Singapore can be affected by a ruling made in another country over the enforcement of the same award ("Issue 3").

28 I will elaborate on each issue in turn. In my view, each of the three issues was of sufficient complexity and difficulty to pass the threshold of the first stage.

*Issue 1*

29 The first issue was whether a party is entitled to resist enforcement of the awards in the country in which the awards were made (in the present case, Singapore) when it did not take any steps to set aside the same within the statutorily prescribed period. An application for setting aside the arbitral awards may not be made after three months have elapsed from the date on which the party making that application had received the award (see Art 34(3) of the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration in the First Schedule to the IAA). On the facts, there is no dispute that the Respondent was out of time as far as any application to set aside the Awards was concerned.

30 However, the Respondent has taken the position that even though it did not apply to set aside the Awards in Singapore, it is still entitled to resist their enforcement in Singapore. In support of its position, the Respondent relies, *inter alia*, on the very recent English Supreme Court decision in *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan* [2011] AC 763 ("*Dallah*") to suggest that even while it chose not to take any step to challenge the

Preliminary Award, it nevertheless has an inalienable right in the enforcement court to resist enforcement on the same basis that it could have challenged the Preliminary Award.

31 By way of background, in *Dallah*, an International Chamber of Commerce Tribunal sitting in Paris (the "Paris Tribunal") determined that it had jurisdiction over the Government of Pakistan although the Government of Pakistan was not a signatory to the relevant arbitration agreement. The English Supreme Court refused to enforce the Paris Tribunal's award against assets of the Government of Pakistan held in England on the grounds that in applying French Law, the Paris Tribunal was wrong to find that the Government of Pakistan was a party to the relevant arbitration agreement. Although the Paris Tribunal had earlier decided on the existence of its own jurisdiction, the English Supreme Court was of the view that the Paris Tribunal's findings of fact and view of the law in determining its jurisdiction did not bind the courts at the place of enforcement. *Dallah* has, it bears mention, been the subject of intense debate amongst academics as well as international arbitration practitioners regarding its effect on the principle of *Kompetenz-Kompetenz* (*ie*, the principle whereby an arbitral tribunal is entitled to rule on its own jurisdiction) and the enforceability of arbitration awards.

32 The Singapore courts have not yet fully considered the application of *Dallah*, which, being a decision of the UK Supreme Court, merits careful consideration. Further, an important distinction that may have legal significance is that the present case is, from the perspective of enforcement, different from the matrix that informed the decision in *Dallah*: here, *both* the supervisory and enforcement courts are the very same court in Singapore. This raises thorny questions as to whether the ultimate holding in *Dallah* should apply in a situation where the seat of arbitration and place of enforcement are the same – a question that remains unaddressed by courts in other jurisdictions. The application of *Dallah* in the resolution of this legal conundrum could have important implications for the arbitral and commercial communities here and perhaps elsewhere.

33 Counsel for the Applicant readily agreed that it is *possible* for local counsel to make arguments on these complex and difficult issues of law, but emphasised that it would *greatly assist* the court to have a Queen's Counsel who is an acknowledged authority in international arbitration to appear in the Singapore courts and elucidate on the implications of the decision in *Dallah* and the consequences if it were followed (or not followed, or followed in part as the case may be). [note: 1]

*Issue 2*

34 The second issue was that of whether a party has a right to revive its challenge based on the alleged lack of an arbitration agreement. The Respondent argues in its challenge in SUM 4064 and SUM 4065 that the Enforcement Orders should be set aside because it was never a party to any arbitration agreement with the sixth to eighth plaintiffs and therefore the Tribunal lacked the jurisdiction *ab initio* to have joined the sixth to eighth plaintiffs to the Arbitration.

35 In alleging that it never had an arbitration agreement with the sixth to eighth plaintiffs within the meaning of the IAA, the Respondent's contention was simply based on a reference to the arbitration clause in the underlying contract to which the sixth to eighth plaintiffs were not signatories. It must be noted that the Tribunal had addressed this very issue in the Preliminary Award by recognising the existence of a "separate agreement arising when an existing dispute becomes the subject of a reference to arbitration". [note: 2] In doing so, the Tribunal noted the distinction between an "agreement to refer future disputes to arbitration, and the separate agreement arising when an existing dispute becomes the subject of a reference to arbitration". [note: 3] The Tribunal found in the Preliminary Award that the SIAC Arbitration Rules governed the latter agreement. This distinction is known as the principle of "double-severability", and was explained in *Syska v Vivendi Universal SA &*

*Ors* [2008] 2 Lloyd's Rep 636 ("*Syska*"). In *Syska*, Christopher Clarke J noted (at [93]) that the principle of double-severability "is foreign to most systems of law. But it serves as an example of how the reference can have a life of its own …". Thus far, there has been no pronouncement in Singapore on the appropriateness of such a principle and this is likely to be an issue considered in SUM 4064 and SUM 4065.

36 In resisting the application for the joinder of the sixth to eighth plaintiffs on the basis that they were non-signatories to the arbitration agreement, the Respondent had previously raised before the Tribunal arguments based on "[the] twin doctrines of party consent and confidentiality" which "lie at the foundation of the arbitration process". [note: 4] The Respondent asserted that it did not in fact consent to the said joinder, and that the Tribunal therefore lacked the power to allow the same. It is noted that the Tribunal's decision on the "consent" required for the joinder was made under r 24.1(*b*) of the SIAC Arbitration Rules, which states that the Tribunal shall have the power to "allow other parties to be joined in the arbitration with their express consent, and make a single final award determining all disputes among the parties to the arbitration". Counsel for the Applicant highlighted that r 24.1(*b*) has since been amended in the fourth edition of the SIAC Arbitration Rules, 1 July 2010, to:

> upon the application of a party, allow one or more third parties to be joined in the arbitration, provided that such person is a party to the arbitration agreement, with the written consent of such third party, and thereafter make a single final award or separate awards in respect of all parties …

The issue is further complicated by the Plaintiffs' assertion that the Respondent, by its signing of the Memorandum of Issues (which contains terms confirming, acknowledging and agreeing to the Tribunal's previous finding on jurisdiction) on 31 July 2009 after the publication of the Preliminary Award, has confirmed the independent and separate existence of an agreement to arbitrate.

37 The complexity associated with the joinder of parties to an arbitration lies in determining whether the joinder mechanism can be reconciled with the fundamental arbitration concepts of party consent, autonomy and confidentiality. As recognised by the Tribunal,

> [the] questions of consolidation of arbitral proceedings and of joinder of third parties have been very much debated in the last ten or fifteen years, and that the doctrines of party consent and confidentiality have been at the heart of the debate. [note: 5]

Issue 2 had been and remains a hotly-contested matter, and both counsel for the Applicant and counsel for the Respondent have agreed that there were no judicial authorities directly on point.

*Issue 3*

38 The third issue was whether the enforcement of an award in Singapore is affected by a ruling made in another country over the enforcement of the same award (*ie*, whether the Awards should be enforced in Singapore given that the Indonesian Supreme Court has refused to grant an *exequatur*). The Respondent's position is that the decision of the Indonesian Supreme Court to decline to grant *exequatur* has no bearing on the enforcement of the Awards in Singapore.

39 I agreed with the Applicant that these competing assertions need to be examined by reference to the principles relating to the enforcement of international arbitration awards generally, and then specifically in the situation where a court of another jurisdiction has determined that the award in question is unenforceable in that jurisdiction. In the present case, the fact that the courts in

Indonesia decided not to grant *exequatur* despite Indonesia being a party to the New York Convention may increase the complexity of the issue of law.

40 It also appeared to me that the *facts* involved in this issue are indeed intricately laced. Issues pertaining to the enforcement of the Preliminary Award in Indonesia featured in the course of the Arbitration, and the Applicant – who had overall carriage of the matters in relation to the Indonesian legal proceedings – was able to and did present arguments to the Tribunal on the interplay between the Arbitration and the Indonesian legal proceedings. The fact that Indonesia is a civil law jurisdiction further shaded the complexity of the facts that had to be managed and elucidated upon by the Applicant.

*Conclusion on whether there was sufficient difficulty and complexity*

41 In the final analysis, there can be no gainsaying that the legal and factual issues raised in SUM 4064 and SUM 4065 were indeed sufficiently complex and difficult to satisfy the statutory threshold. That there was little in terms of judicial guidance anywhere on the precise points raised added no small measure of powerful cogency to this application.

42 In coming to this finding, I was aware that the requirement of sufficient difficulty and complexity had in recent years been notoriously difficult to satisfy. The complexity and difficulty of legal issues must be comparable to those raised in *Re Sher Jules QC* [2002] 2 SLR(R) 377 ("*Sher Jules QC*") at [16], where the legal issues spanning the law of restitution and constitutional law were not just novel and not yet previously tried in any jurisdiction in the world, but were undoubtedly considered at that point in the legal development of the common law to be "seminal issues". Indeed, as Prof Tan Yock Lin incisively observed in the Singapore Academy of Law, *Annual Review of Singapore Cases (3, 2002)* at para 18.7, the result of *Sher Jules QC* showed that:

> *Where the developing law discloses a diversity of approaches and arguments, indicating that several choices are viable, each choice reflecting a particular trade-off between justice and certainty*, and where the context of its intended application is delicate, involving as it does relationships between a regulator, a commercial operator and potentially the tax authorities, this is also where justice might better be done through a comparative understanding of the issues such as *a suitably qualified QC might bring to the case*. [emphasis added]

43 The issues relating to arbitration law in the present application are undeniably of no small significance to the development of the international arbitration law jurisprudence in Singapore. The determination of these issues would involve the consideration of difficult aspects of arbitration law, and would undoubtedly require careful and detailed argument and, thereafter, considered judicial determination.

***Whether the circumstances of the case warranted the court's exercise of discretion in favour of the Applicant***

44 With regard to the court's exercise of its discretion in determining if the Applicant should be admitted, counsel for the Respondent strenuously argued that the Applicant should not be admitted because the issues raised in the case can be competently handled by Singapore counsel willing and available to act on behalf of the Plaintiffs. [note: 6] Counsel for the Applicant pointed out that the High Court had previously decided that the availability and ability of local counsel is but just one of the factors to be considered, and is not *per se* an absolute bar to admission of a Queen's Counsel (see *Caplan QC* at [17]; *Re Beloff Michael Jacob QC* [2000] 1 SLR(R) 943 ("*Beloff QC*") at [13]). The Respondent, in response, relied on dicta in the Court of Appeal's decision in *Fortescue QC* to support

its proposition that (see *Fortescue QC* at [15]):

> a Queen's Counsel ought not to be admitted no matter how difficult and complex a case is *unless no local counsel is able and willing to take the case. …*
>
> …
>
> It is our opinion that it will only be in the *most exceptional circumstances* that a case is so difficult and complex that no local counsel in Singapore is able and willing to take the case.
>
> [emphasis added]

45 I acknowledged that both *Caplan QC* and *Beloff QC* were decisions of the High Court (*per* Yong Pung How CJ). Accordingly, *Fortescue QC* – which was a *subsequent* decision of the Court of Appeal (presided over by Yong CJ) – should take precedence.

46 Nonetheless, I was of the opinion that the stance taken by the Court of Appeal in *Fortescue QC* at [15] had to be construed contextually. There are at least four reasons which suggest that the Court of Appeal probably did not intend to lay down an iron rule of law dictating that the admission of Queen's Counsel would only be permissible where *absolutely no* local counsel was able and willing to take up the case.

47 First, it seems odd that if the Court of Appeal intended to depart from an earlier stance consistently taken by the High Court, no reference was made to this and a change in practice was mutely introduced by way of a sidewind. I would further note that the Court of Appeal had previously stated (in *Price QC* at [8]):

> Queen's Counsel *will not be admitted for the routine and the ordinary cases* which require *no special experience or knowledge* and which can be *competently handled by Singapore lawyers*. The salutary effect of s 21(1) therefore is that litigants are *assured of the specialised services of Queen's Counsel in cases of genuine complexity and difficulty*, while the opportunities for specialisation among Singapore lawyers are gradually developed. [emphasis added]

This observation, while making reference to the expertise of the local Bar, falls short of the rather more strongly phrased statement in *Fortescue QC* at [15].

48 Second, the Court of Appeal's observation in [15] must be read against the factual backdrop of the facts in *Fortescue QC.* The Court of Appeal felt that the intellectual property issues that arose in that case were not of sufficient difficulty and complexity, and that local counsel was "well able" to address those issues (*Fortescue QC* at [20]). In forming such an opinion, the Court of Appeal considered that of the two allegedly complex issues that arose, the first had previously been decided by the UK courts and a whole body of case law existed in that area (*ibid* at [16]), whereas the second – albeit not adjudicated upon anywhere in the world – had already been competently dealt with by local counsel at the trial below without assistance of foreign counsel (*ibid* at [17]).

49 Third, it should be noted that the Law Society objected to the admission of the applicant in *Fortescue QC*. In the Law Society's view, other than the fact that the issues lacked a sufficient degree of difficulty and complexity, the central issue on appeal was one which was more appropriately dealt with by technical experts and/or patent attorneys rather than *via* submissions by Queen's Counsel. [note: 7] Although these views were not expressly mentioned by the Court of Appeal in its written judgment, the fact that the Law Society objected to the admission was in all probability a not

insignificant factor taken into consideration by the Court of Appeal. This is so especially because, as mentioned in [18] above, the development of the local Bar (the interests of which is represented by the Law Society) is an important factor in the balance sought at the second stage of the test.

50 Fourth, and perhaps most importantly, in interpreting the decision in *Fortescue QC*, consideration must be given to the context in which the relevant legislative framework was enacted. The intention of Parliament in enacting stringent Queen's Counsel admissibility provisions in the LPA was to prevent abuse by parties seeking to admit Queen's Counsel for uncomplicated cases as well as to give the Bar time to acquire specialised expertise in advocacy. The intention was *not* to exclude the services of Queen's Counsel altogether, or to restrict the admission of Queen's Counsel to the *most complex of cases* where there is a *total absence* of local counsel willing and able to handle the case at hand. This is manifestly evident from a careful perusal of Hansard which, for clarity, I discuss at length in the following sub-paragraphs:

(a) Prior to the amendments to the LPA in 1991, s 21(1) of the LPA provided that Queen's Counsel could be admitted on an *ad hoc* basis where the applicant had "special qualifications or experience for the purpose of the case". There was no explicit requirement that the case had to be of "sufficient difficulty and complexity". In the absence of such an explicit requirement, the Minister for Law noted that "the system of admission of QCs has gone in a direction which might have not been intended by the legislature and that they are being admitted for the *simple, routine and ordinary cases*" [emphasis added] (*Singapore Parliamentary Debates, Official Report* (20 March 1990) vol 55 at col 535 (Prof S Jayakumar, Minister for Law)). The discussion in *Singapore Parliamentary Debates, Official Report* (20 March 1990) vol 55 at cols 535–536 (Prof S Jayakumar, Minister for Law) appositely highlights this point:

> The specific provision in the Legal Profession Act says that QCs can be admitted on an ad hoc basis where "he has special qualifications or experience for the purpose of the case". So the legislative policy is very clear. They are obviously to be admitted for cases of complexity or difficulty where the needed skills or experience or the specialist knowledge is not readily available here. To put it in a different way, *Parliament never envisaged or contemplated that they should be admitted for the routine or the ordinary or the simple case which can easily be handled by Singapore lawyers*. It is for this reason, I believe that the scheme for the provisions of QCs also allows for the Law Society, in addition to the Attorney-General, to specifically put their views on each application of a QC to the court. So if they have objections, they can and should register the objections with the court, because then the court taking note of all views expressed before it can make a decision.
>
> I too have had feedback from lawyers expressing the same concern of the three colleagues that *the system of admission of QCs has gone in a direction which might have not been intended by the legislature and that they are being admitted for the simple, routine and ordinary cases*. Such a trend not only was never contemplated or envisaged by Parliament, but I agree with the Members that one unhealthy consequence of this would be that it will stultify the growth of a specialist bar in Singapore. It will impede the growth of a core of good litigation lawyers in Singapore.
>
> [emphasis added]

(b) The Minister for Law also recognised that the continued admission of Queen's Counsel was necessary in the public interest and national interest, especially given that Singapore was (and is) endeavouring to be a leading financial and commercial centre. See *Singapore Parliamentary Debates, Official Report* (20 March 1990) vol 55 at cols 534–535 (Prof S Jayakumar, Minister for

Law):

> It is worthwhile recalling that QCs are allowed to come in because we the Government and Parliament specifically have so provided for in the Legal Profession Act. The reason why we allow QCs to come in is really public interest and national interest, ie, *it is a recognition of the fact that there are cases or there can be cases of such complexity or difficulty that* ***there may not be the local expertise here or there may not be enough of the local expertise here to provide that kind of skills to handle cases of such complexity and difficulty*** *.*
>
> If that is the reason why QCs were allowed in and why the Legal Profession Act provided for it, I would say that reason continues to exist. With Singapore trying to be a leading financial and commercial centre, we will have this need for expertise to handle difficult and complex cases.
>
> [emphasis added in italics and bold italics]

(c) It is also relevant that the Minister for Law had noted, in his Parliamentary speech, the Malaysian provision for *ad hoc* admission of Queen's Counsel. The Malaysian provision expressly provided that a Queen's Counsel could only be admitted if the applicant had "special qualifications or experience of a nature *not available amongst advocates and solicitors in Malaysia*" [emphasis added] (*Singapore Parliamentary Debates, Official Report* (20 March 1990) vol 55 at col 536 (Prof S Jayakumar, Minister for Law)). Had Parliament intended to limit the admission of Queen's Counsel to cases that *absolutely no local counsel* could handle, it stands to reason that the relevant admission provision would be phrased in a manner more akin to the Malaysian provision than the present s 15 of the LPA.

(d) It follows from points made above that the requirement of "sufficient difficulty and complexity" was included to prevent the admission of Queen's Counsel for *simple, routine and ordinary cases*, rather than to limit admission to cases that *absolutely no local counsel* could handle. Furthermore, in introducing the requirement of "sufficient difficulty and complexity" into the then s 21 of the Legal Profession Act, the Minister for Law emphasised at the Second Reading of the Legal Profession (Amendment) Bill in 1991 that one of the Government's policies behind the wording of the then s 21 of the Legal Profession Act was to allow Queen's Counsel to be admitted for cases involving important sectors of Singapore's economy (*Singapore Parliamentary Debates, Official Report* (14 January 1991) vol 56 at cols 798 and 805 (Prof S Jayakumar, Minister for Law)):

> We have taken some time to craft this amendment because Government considers *QCs to perform a useful role in our efforts to be the leading commercial and financial sector*. A study done for me by two members of the academic staff of the Faculty of Law of the National University of Singapore on admission of QCs for the period 1985 to 1989 showed that commercial law cases formed the majority, some 60%, of cases where QCs were admitted. *It is desirable that they continue to perform this role*. Therefore, any amendment which we craft to ensure that there is *no abuse* and that *QCs are not admitted for the very simple, routine or uncomplicated cases, must not shut the door to admission of QCs in those areas where solicitors are especially needed, particularly in banking and commercial law sectors*.
>
> Obviously, it will take some time to develop a significant pool of local litigation lawyers who can service the requirements of Singapore as an international financial and commercial

centre. When we will achieve that is difficult to predict. In the meantime, however, *we should not deprive our financial and commercial centre of the assistance of QCs*. *The proposed amendment will allow the Courts to continue to liberally admit QCs for the important and complex commercial and banking cases*.

…

Let us not forget that very few countries in the world have a policy of allowing QCs whereby lawyers outside the legal system could come in and practise. We are one of the very few countries and we do it because *we consider it is useful in our national interest, particularly in our efforts to develop Singapore as a banking and financial centre*. But they must be admitted not for any routine simple case, because we have our own legal profession.

[emphasis added]

(e) I acknowledge that in a Parliamentary speech in 1996, the Minister for Law espoused the view that Queen's Counsel should only be admitted where, *inter alia*, local counsel is unable or unavailable to provide the necessary knowledge or experience. However, the Minister's views must be read in the context of the rest of his speech. Indeed, the Minister immediately went on to emphasise the intention to favour the admission of Queen's Counsel in banking and commercial cases (*Singapore Parliamentary Debates, Official Report* (10 October 1996) vol 66 at col 633 (Prof S Jayakumar, Minister for Law)):

Sir, the provision relating to the admission of Queen's Counsels was last amended in 1991 to add an additional condition for allowing them to appear in our courts. That condition is that the court must be satisfied that the case is of "sufficient difficulty and complexity" to warrant a QC to be admitted. At that time in this House I had made it clear that the Government's policy was that *QCs should only be admitted for complex and difficult cases where the necessary knowledge or experience was not available from or could not be provided by local counsel*. I also stressed then that the intention was to *favour the admission of QCs particularly in banking and commercial cases*. [emphasis added]

51 In view of the clear Parliamentary intention, I did not think that the Court of Appeal in *Fortescue QC* can or should be interpreted literally to have laid down a stringent rule of law denying the admission of Queen's Counsel except where "no local counsel was able and willing to take the case" (*Fortescue* at [15]). In any case, the statement just quoted is strictly speaking *obiter dicta*. Finally, *I am also minded to observe that such a requirement would be rather impractical as it would require the party seeking the admission of Queen's Counsel to have been declined representation by each and every single Senior Counsel in Singapore (regardless of his or her expertise) before leave for admission might be allowed.* I do not think that it can be inferred from the history of the relevant statutory scheme that such an onerous entry barrier had ever been contemplated by Parliament.

52 In the light of the above, I did not accept the following arguments from the Respondent contending that this court should not exercise its discretion to admit the Applicant:

(a) *First, the Respondent claimed that WongPartnership LLP is sufficiently familiar with the Arbitration to conduct the hearing without the Applicant.* However, while WongPartnership LLP was involved in the Arbitration, it should be highlighted that the Applicant was the overall lead counsel taking charge of all aspects of the matter. He conducted all oral arguments on behalf of the Plaintiffs in the Arbitration, cross-examined the witnesses in the Arbitration, prepared the written submission and reviewed the voluminous evidence. Although the Respondent rightly

pointed out that the lawyers from WongPartnership LLP were present at the Arbitration hearings, it is undeniable that the Applicant would be much better placed to address the court in the legal issues that arise here in light of his familiarity with the complex issues involved, his legal expertise in the field of international arbitration as well as his advocacy skills and his not inconsequential ability to elucidate on the current(and perhaps desirable) legal position on these issues.

(b) *Second, the Respondent suggested that the Plaintiffs could obtain the services of Senior Counsel (including, but not limited to, the four Senior Counsel in WongPartnership LLP)*. However, as I have pointed out earlier, I do not think that there is an iron rule of law that the availability and ability of local counsel is *per se* an absolute bar to admission of a Queen's Counsel. Indeed, I noted that courts have even gone on to state that there is no general rule that prohibits a litigant from engaging *both* a Queen's Counsel and a local Senior Counsel to argue his case if the circumstances of the case justify such admission (*Beloff QC* at [13]). It should be noted that in *Beloff QC*, a Queen's Counsel was admitted even though the party was already represented by a local Senior Counsel.

53 Returning to the facts of the present case, I had earlier mentioned (at [41]) that the legal and factual issues were sufficiently difficult and complex to satisfy the statutory litmus test. In assessing whether this court should exercise its discretion to allow the Applicant's application for admission, I was of the view that there are a number of factors that clearly favour the admission of the Applicant.

54 First, and quite notably, this appears to be the first instance where the lead counsel in prior arbitration proceedings is applying for *ad hoc* admission to appear in a Singapore court on matters immediately arising from the very same arbitration proceedings. Although *Price QC* dealt with an application to admit Mr Arthur Leolin Price QC to represent the appellant in an application for leave to appeal from an interim award made in an arbitration proceeding, Mr Price QC was not the lead counsel in the prior arbitration proceedings. *Price QC* at [10] also involved a premature application and the Court of Appeal felt that the application should have only been made *after* the application for leave to appeal from the arbitration award had been decided in favour of granting leave. Furthermore, the application was only for admission to argue leave to appeal and not the actual appeal proceedings itself, thus the legal issues in *Price QC* were plainly not of a "sufficient difficulty or complexity". In contrast, the proceedings in RA 278, RA 279, SUM 4064 and SUM 4065 concern the sequel to arbitration proceedings, that has singular significance for the parties – that is to say, the recovery of the fruits of the Awards. I was of the view that this area of international arbitration is indeed a complex area of law which justified the admission of Queen's Counsel in this case. *It is undisputed that the Applicant was the Plaintiffs' lead counsel throughout the lengthy and complex Arbitration and has intimate knowledge of what has transpired. It is significant that the legal issues to be canvassed in the High Court are inextricably linked to the arbitration proceedings where he had made extensive and substantive submissions on issues which will inevitably arise again in RA 278, RA 279, SUM 4064 and SUM 4065.* Counsel for the Applicant quite rightly pointed out that Issue 2 had already been fully canvassed before the Tribunal by the Applicant himself and he would be best placed to assist in addressing any of the court's queries in relation to the Tribunal's decision on this issue. It is also undisputed that the Applicant presently oversees all matters in *all jurisdictions* pertaining to underlying dispute between the Plaintiffs and the Defendants and the enforcement of the Awards.

55 Second, the Applicant has special expertise in respect of the issues that arise in RA 278, RA 279, SUM 4064 and SUM 4065. Over and above his undoubted familiarity with the facts and legal issues involved in the case (see above at [54]), the qualifications of the Applicant in the field of international arbitration are also unquestioned by all parties to this Application. That is neither a surprising nor a charitable concession on the part of the Respondent. The Applicant has been consistently acknowledged by established international legal directories and legal practice references

as a leading Queen's Counsel in the field of international arbitration. Further, he appears particularly suited to address the issues arising in this case (see [26] above) because he is the author of *Jurisdiction and Arbitration Agreements and their Enforcement* (Sweet & Maxwell, 2005) and (Sweet & Maxwell, 2nd Ed, 2010), which is now widely considered to be a leading reference text in the complex field of arbitration law. This book has also been referred to by the Singapore courts as an authority for various legal propositions or views: see *Evergreat Construction Co Pte Ltd v Presscrete Engineering Pte Ltd* [2006] 1 SLR(R) 634 at [38], *The "Duden"* [2008] 4 SLR(R) 984 at [11], *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] 1 SLR(R) 23 at [21], *Insigma Technology Co Ltd v Alstom Technology Ltd* [2009] 3 SLR(R) 936 at [33] and *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] SGCA 33 at [36]).

56 Third, it should be pointed out that there is neither evidence nor contention that the Applicant will be any less than "responsible, honourable, courteous and respectful of our Judiciary" (see *Littlemore QC* at [5]).

57 Fourth, the Respondent argued that the admission of the Applicant would result in prejudice to the Respondent because there would be "further delay" [note: 8] in the hearing of RA 278, RA 279, SUM 4064 and SUM 4065, and furthermore delays may adversely impact on garnishee proceedings that were to take place in Hong Kong. In my view, the Respondent's contention that the Applicant's availability (or lack thereof) may result in further delay was entirely speculative – there is presently no hearing date fixed for RA 278, RA 279, SUM 4064 and SUM 4065. In any case, I note that in *Beloff QC*, Yong CJ noted that a delay of three months pursuant to the admission of a Queen's Counsel was not of such magnitude that substantial injustice would be caused. I also think that the existence of pending Hong Kong garnishee proceedings provides *even greater reason* that a Singapore court, as the supervisory court, should set well-considered directions.

58 Finally, I noted that in the present case (and unlike in *Fortescue QC*), *both* the Attorney-General and the Law Society, as objective non-parties to the proceedings in RA 278, RA 279, SUM 4064 and SUM 4065, supported the application for the Applicant's admission. Indeed, the strong support of the Attorney-General is evident from the written submissions tendered, where it was stated that: [note: 9]

> [The Attorney-General] does not see any reason, from the point of view of the Public Interest, to object to the Applicant being admitted on an a*d hoc basis* for *the* forthcoming hearing. Indeed, *admitting the Applicant for this purpose will be consistent with the many amendments that have been made to our laws in order to enhance the attractiveness of Singapore as a venue for international commercial arbitrations*. It is an assurance to Parties who arbitrate in Singapore that their lead counsel in the arbitration proceeding can, provided he has sufficient expertise and experience to assist a Singapore Court, appear on their behalf when the same matter or matters arising therefrom is subsequently considered by a Court in Singapore. [emphasis added]

59 It was earlier noted (at [50(d)] and [50(e)] above) that the legislative intent was for courts to "continue to *liberally* admit QCs for the important and *complex commercial* and banking cases" [emphasis added], and to "*favour* the admission of QCs *particularly* in banking and *commercial cases*" [emphasis added]. In this regard, the Minister for Law has recently emphasised that Singapore is presently the leading regional arbitration hub, with a commitment to "update our laws to reflect best practices" and to ensure that "*[i]nternational best practices are adopted and investors as well as lawyers who advise them can easily understand our system, and work within it*" [emphasis added] (*Singapore Parliamentary Debates, Official Report* (9 March 2011) vol 87 (K Shanmugam, Minister for Law)). Even more recently, the Minister for Law emphasised the need to "continue to promote Singapore as a venue of choice for international dispute resolution … [and] that the arbitration

infrastructure in Singapore … remains world-class, is continually improved and keeps ahead of international developments" (*Singapore Parliamentary Debates, Official Report* (10 October 2011) vol 88 at col 71 (K Shanmugam, Minister for Law)). In view of the strong emphasis on developing international arbitration law in Singapore, it would be very much in line with the wider public interests to admit the Applicant in relation to the pending matters before the High Court. It must, however, be stressed that this does not mean that in future every application involving the same Queen's Counsel who has been the lead counsel in the arbitration proceedings below will be favourably viewed. Not only must the legal issues be of sufficient difficulty and complexity, the Court must also be convinced that the issues argued are inextricably linked to the arbitration proceedings and that there will be a real benefit in having the same counsel assist the Court. A matter centric approach that pays particular attention to the sufficiency of complexity and difficulty of the issues raised will have to be adopted.

**Observation**

60 My decision to admit the Applicant was premised on the rather special and compelling facts of this matter that have been elaborated upon earlier (see [53]–[59]).The pending proceedings are an intricately tangled sequel to an international arbitration involving two well established foreign commercial conglomerates. That arbitration had Singapore as its seat. Apart from the international dimension of the underlying dispute and the large financial stakes the parties have in the outcome of the pending proceedings, the potentially multi-jurisdictional implications that any determination of the Singapore courts might have, had also to be considered. I saw absolutely no reason why in such a matter, which plainly ticks off all the statutory admission requirements, the application should not be acceded to. This decision, however, ought not to be interpreted as signalling that the Court is presently disposed to liberally reinterpret the existing statutory constrictions governing the *ad hoc* admission of Queen's Counsel. This would not be permissible as case law emanating from the Court of Appeal has authoritatively determined that *ad hoc* admissions in ordinary circumstances under the current legislative architecture will be rare. The fact that no Queen's Counsel has been permitted to appear here since leave was granted in Originating Motion No 38 of 2004, some seven years ago, says it all. Given the settled nature of such caselaw and its provenance, legislative intervention will be necessary should it now be considered that the public interests require a reappraisal of the current tightly restricted position.

**Conclusion**

61 This matter has a fearsomely convoluted history that cannot be simply painted onto a legal canvas with a few brush strokes. The Applicant's intimate and singular knowledge of the Arbitration (with all its factual complexities and legal creases) and his peculiar expertise in the area of international arbitration law and practice would allow him to illuminate "the true shades of the law and fact" (*Re Gyles QC* [1996] 1 SLR(R) 871 at [5]). Pertinently, neither the Attorney-General (representing the Public Interest) nor the Law Society (representing *the in*terests of the Bar) objected to the application. In the final analysis, bearing in mind that several of the legal issues that will a*rise in* the pending proceedings are still being animatedly debated within the wider arbitral community and remain unsettled in most jurisdictions, the circumstances of this case plainly warranted the exercise of discretion in favour of admission of the Applicant. I accordingly allowed the application with no order as to costs.

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[note: 1] Applicant's Written Submissions dated 10 November 2011, para 25.

[note: 2] Affidavit of Tan Zi Yan Daniel filed 27 September 2011 for the Applicant, exhibit marked

"TZYD-1", p 66, para 96.

[note: 3] *Ibid*.

[note: 4] Affidavit of Tan Zi Yan Daniel filed 27 September 2011 for the Applicant, exhibit marked "TZYD-7", 1st and 2nd Respondent's Submissions on Preliminary Issues, p 379, para 74 (this 1st Respondent refers to the 1st Defendant in the present application).

[note: 5] Affidavit of Tan Zi Yan Daniel filed 27 September 2011 for the Applicant, exhibit marked "TZYD-1", p 69, para 103.

[note: 6] Respondent's Written Submissions dated 10 November 2011, para 8.

[note: 7] See the Law Society of Singapore's Submissions dated 21 October 2005, paras 5-9.

[note: 8] Affidavit of Lye Hui Xian filed 28 October 2011 for the Respondent, p 16, para 40(b).

[note: 9] Attorney-General's Written Submissions dated 15 November 2011, para 15.