Re Caplan Jonathan Michael QC
[2013] SGHC 75

Case Number	: Originating Summons No 44 of 2013
Decision Date	: 08 April 2013
Tribunal/Court	: High Court
Coram	: V K Rajah JA
Counsel Name(s)	: Pateloo Eruthiyanathan Ashokan and Sheryl Cher Ya Li (KhattarWong LLP) for the applicant; Christopher Ong Siu Jin and Joel Chen (Attorney-General's Chambers) for the Public Prosecutor; Aurill Kam Su Cheun, Tan Zhongshan and Jurena Chan (Attorney-General's Chambers) for the Attorney-General; andChristopher Anand Daniel and Harjean Kaur (Advocatus Law LLP) for The Law Society of Singapore.
Parties	: Re Caplan Jonathan Michael QC

LEGAL PROFESSION – Admission – Ad hoc

8 April 2013

V K Rajah JA:

Introduction

1 This application was made pursuant to s 15 of the Legal Profession Act (Cap 161, 2009 Rev Ed) (hereinafter referred to as "the current LPA" to distinguish it from its predecessor versions) for Mr Jonathan Michael Caplan QC ("Mr Caplan QC") to be admitted as an advocate and solicitor of Singapore for the purpose of representing one Chew Eng Han ("the Accused") as his defence counsel in District Arrest Cases Nos 023158 to 023167 of 2012, including any appeals therefrom ("the Criminal Proceedings"). The application was opposed by the Public Prosecutor ("the PP"), the Attorney-General ("the AG") and The Law Society of Singapore ("the LSS"). After hearing the parties' submissions, I dismissed the application and gave brief oral grounds for my decision. I now set out my full grounds.

The facts

Background to the Criminal Proceedings

2 City Harvest Church ("CHC") is a society registered under the Societies Act (Cap 311, 1985 Rev Ed). The Accused was the fund manager of CHC at the material time. On or about 31 May 2010, the Commercial Affairs Department ("the CAD") commenced investigations into CHC and other entities relating to CHC. The Accused was first called in for investigations by the CAD on or about 31 May 2010. The following people from CHC were also involved in the CAD investigations (collectively referred to as "the Co-Accused Persons"):

(a) Reverend Kong Hee ("Reverend Kong"), President of the Management Board of CHC;

(b) Mr Tan Ye Peng ("Mr Tan"), Vice-President of the Management Board of CHC;

(c) Ms Serina Wee Gek Yin ("Ms Wee"), a member of the Management Board of CHC;

(d) Mr Lam Leng Hung ("Mr Lam"), a member of the Management Board of CHC; and

(e) Ms Tan Shao Yuen Sharon ("Ms Tan"), the Finance Manager of CHC.

3 About two years later, the CAD investigations culminated in the Accused being charged in court on or about 27 June 2012 with six charges of criminal breach of trust ("CBT") under s 409 read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) ("the current PC") and four charges of falsification of accounts under s 477A read with s 109 of the current PC. The relevant provisions are reproduced below:

> **Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment**
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> **109**. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.
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> ...
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> **Criminal breach of trust by public servant, or by banker, merchant, or agent**
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> **409**. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, a merchant, a factor, a broker, an attorney or an agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 20 years, and shall also be liable to fine.
>
> ...
>
> **Falsification of accounts**
>
> **477A**. Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud destroys, alters, conceals, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully and with intent to defraud makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in any such book, electronic record, paper, writing, valuable security or account, shall be punished with imprisonment for a term which may extend to 10 years, or with fine, or with both.
>
> ...

4 In the first to third charges, it was alleged that the Accused abetted by engaging in a conspiracy with Reverend Kong, Mr Tan, Ms Wee and Mr Lam to commit CBT by an agent in relation to monies belonging to the CHC Building Fund, and that pursuant to that conspiracy, a total of S$24m belonging to the CHC Building Fund was dishonestly misappropriated for the purposes of funding the music career of Ho Yeow Sun ("Sun Ho"), the wife of Reverend Kong (*vis-à-vis* the first to third charges), and providing funds to one Wahju Hanafi (*vis-à-vis* the third charge), which were not authorised purposes of the CHC Building Fund. The dishonest misappropriation was allegedly made by

way of transferring monies from the CHC Building Fund to third-party companies, namely, Xtron Productions Pte Ltd ("Xtron") (*vis-à-vis* the first and second charges) and PT The First National Glassware ("Firna") (*vis-à-vis* the third charge), under the guise of investments by CHC in bonds issued by Xtron and Firna.

5 In the fourth to sixth charges ("the Round-Tripping Charges"), it was alleged that the Accused abetted by engaging in a conspiracy with Mr Tan, Ms Tan and Ms Wee to commit CBT in respect of the CHC Building Fund (*vis-à-vis* the fourth and sixth charges) and the CHC General Fund (*vis-à-vis* the fifth charge), and that pursuant to that conspiracy, monies from those funds were dishonestly misappropriated by way of transferring monies from the respective funds to AMAC Capital Partners (Pte) Ltd ("AMAC") (*vis-à-vis* the fourth and fifth charges) and Xtron (*vis-à-vis* the sixth charge) to generate the false appearance that certain investments in Firna bonds had been redeemed, which was not an authorised purpose of those funds.

6 In the seventh to tenth charges, it was alleged that the Accused, wilfully and with intent to defraud, abetted by engaging in a conspiracy with Mr Tan, Ms Tan and Ms Wee to falsify the accounts of CHC, and that pursuant to that conspiracy, Ms Tan instigated one Dua Poh Teng (an assistant accountant of CHC) to record false entries in CHC's accounts to create the false appearance that bond investments in Xtron and Firna had been either fully redeemed or set off against advance rental payments.

7 The transactions and/or events that formed the basis of the charges against the Accused are summarised in the table below (collectively referred to as "the Transactions"):

Charge No	**Transaction**
1	Transfer of $10m from the CHC Building Fund to Xtron between 23 August 2007 and 2 January 2008
2	Transfer of $3m from the CHC Building Fund to Xtron on or about 5 March 2008
3	Transfer of $11m from the CHC Building Fund to Firna between 6 October 2008 and 19 June 2009
4	Disbursement of $5.8m from the CHC Building Fund into AMAC's Special Opportunities Fund on or about 2 October 2009
5	Disbursement of $5.6m from the CHC General Fund into AMAC's Special Opportunities Fund on or about 14 October 2009
6	Disbursement of $15,238,936.61 from the CHC Building Fund to Xtron on or about 6 November 2009
7	Entry describing a payment of $5.8m made to AMAC as "Investment-Special Opportunity Fund" under the accounts item "Investment" in CHC's accounts on or about 2 October 2009
8	Entry describing a payment of $5.6m made to AMAC as "Special Opportunity Fund" under the accounts item "Investment" in CHC's accounts on or about 27 October 2009
9	Entry describing a set-off amounting to $21.5m in favour of Xtron as "Redemption of Xtron Bonds" in CHC's accounts on or about 31 October 2009

10	Entry describing a payment of $15,238,936.61 made to Xtron as "Advance Rental with Xtron" under the accounts item "Prepayments" in CHC's accounts on or about 6 November 2009

8 At the time of the hearing of this application, the first tranche of the trial was tentatively scheduled to begin on 6 May 2013 for three weeks, while the second tranche of the trial was tentatively scheduled to begin on 26 August 2013 for four weeks. The trial is fixed to be a joint trial with the Co-Accused Persons, who have been charged with similar offences in relation to the Transactions.

Background to this application

9 Sometime after the CAD investigations commenced, the Accused sought to engage Mr Davinder Singh SC of Drew & Napier LLC to represent him. However, the Accused soon found out that Mr Davinder Singh SC would not be able to act for him and the Co-Accused Persons in the Criminal Proceedings as Drew & Napier LLC had been involved in the drafting of the bond subscription agreements which were likely to feature in those proceedings.

10 When the Accused was charged on or about 27 June 2012, he engaged Mr Lok Vi Ming SC of Rodyk & Davidson LLP to represent him. Although he knew at that time that one of Mr Lok Vi Ming SC's partners was advising the directors of Xtron, he subsequently became uncomfortable with the retainer as Xtron's directors could be potential witnesses in the Criminal Proceedings. The Accused therefore discharged Mr Lok Vi Ming SC. It was not clear when this took place.

11 Subsequently, the Accused engaged the services of Mr Francis Xavier s/o Subramaniam Xavier Augustine SC ("Mr Francis Xavier SC") of Rajah & Tann LLP. At the hearing of this application, the Accused confirmed to the court through his counsel for this application, Mr Pateloo Eruthiyanathan Ashokan ("Mr Ashokan"), that sometime in August 2012, Mr Francis Xavier SC first informed the Accused that he might have to discharge himself due to a conflict of interest arising from Rajah & Tann LLP's involvement in the drafting of the bond subscription agreements which were likely to feature in the Criminal Proceedings. The Accused also informed the court through Mr Ashokan that Mr Francis Xavier SC's subsequent confirmation that he could not continue acting for the Accused was communicated to the Accused sometime in September 2012.

12 By this time, the Co-Accused Persons had engaged the following lawyers from the following law firms to act for them in the Criminal Proceedings:

Co-Accused Person	Lawyers on record	Law firm(s) on record
Reverend Kong	Mr Edwin Tong, Mr Aaron Lee, Mr Jason Chan, Mr Tan Kai Liang, Ms Lee May Ling	Allen & Gledhill LLP
Mr Tan	Mr Chelva Rajah SC, Mr Burton Chen, Mr Chen Chee Yen, Ms Megan Chia	Tan Rajah & Cheah
	Mr N Sreenivasan SC, Mr S Balamurugan	Straits Law Practice LLC
Ms Wee	Mr Andre Maniam SC, Ms Simran Toor, Mr Russell Pereira, Mr Liang Hanting	WongPartnership LLP
Mr Lam	Mr Kenneth Tan SC	Kenneth Tan Partnership

	Mr Nicholas Narayanan	Nicholas & Tan LLP
Ms Tan	Mr Kannan Ramesh SC, Mr Paul Seah, Ms Ho Xin Ling, Ms Cheryl Nah, Ms Tan Jie Xuan	Tan Kok Quan Partnership
	Mr Jeffrey Ong	JLC Advisors LLP

13 At the hearing of this application, the Accused also confirmed to the court through Mr Ashokan the following details surrounding his subsequent personal attempts at engaging a local Senior Counsel to take on his case:

(a) The Accused met Mr Nehal Harpreet Singh SC ("Mr Harpreet Singh SC") (who was then at WongPartnership LLP) twice, once in August 2012 at The Coffee Club in Raffles Place and another time in September 2012 at a food and beverage outlet in East Coast. Mr Harpreet Singh SC eventually declined to take on the case as he had previously been a partner in Drew & Napier LLC and was thus also in a position of potential conflict of interest. It was not made clear what was said between them.

(b) The Accused met Professor Walter Woon SC at his office at the National University of Singapore, Faculty of Law, sometime in August or September 2012. Professor Walter Woon SC purportedly declined the engagement because he was busy.

(c) The Accused met Mr Amarjeet Singh SC of KhattarWong LLP at his office sometime in August or September 2012. Mr Amarjeet Singh SC was said to have declined to take on the case because of his long service on the Bench, and also because he had since chosen to do alternative dispute resolution and consultation work which did not require him to attend court.

14 In addition to these attempts, the Accused also sought to rely on the following efforts that were not made by him and which he had no personal knowledge of. The Accused gave further details of these indirect efforts through Mr Ashokan at the hearing of this application:

(a) Ms Kwa Kim Li of Lee & Lee indicated to Reverend Kong that the firm was unable to take on the Accused's case. It was not known when and how this communication took place.

(b) A friend of the Accused, Mr Kush Chopra, called Mr Michael Sydney Hwang SC ("Mr Michael Hwang SC") of Michael Hwang SC. Mr Michael Hwang SC declined to take on the Accused's case because he had previously acted and was still acting for CHC. It was not known when this call took place and precisely what was said.

15 On 19 October 2012, the Accused's intention to engage a Queen's Counsel was made known to the District Court at a pre-trial conference. Sometime before 31 October 2012, the Accused was able to obtain Mr Caplan QC's confirmation that the latter was willing to act for him in the Criminal Proceedings. On 31 October 2012, Mr Francis Xavier SC officially discharged himself as the Accused's counsel, and the Accused engaged Mr Ashokan on the understanding that Mr Ashokan would assist him in the present application and appear as the instructing solicitor in the Criminal Proceedings. Mr Ashokan took instructions and filed the present application on 14 January 2013. At the hearing, Mr Ashokan explained that he had been unable to file the application earlier as he had been away in December 2012, and that he had been unable to secure an earlier hearing date for this application as the other parties had wanted time to file affidavits in reply.

The issues before the court

16 The issues before the court arising from the present application were as follows:

(a) important procedural practice points to be gleaned from the conduct of this application;

(b) the legal principles governing applications for the *ad hoc* admission of foreign senior counsel ("*ad hoc* admission applications") in criminal cases under the current statutory framework; and

(c) the substantive merits of this application on the facts of this case.

Important procedural practice points in relation to *ad hoc* admission applications

17 Before examining the legal issues and the substantive merits of this application, it is important to highlight a few procedural practice points for solicitors to consider in future *ad hoc* admission applications, particularly since the regime set out for such applications in s 15 of the current LPA is a relatively new regime.

18 The first significant procedural practice point relates to the issue of solicitors affirming affidavits on behalf of their clients. As stated in O 41 r 5(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the ROC"), "[s]ubject to the other provisions of [the ROC], an affidavit may contain *only such facts as the deponent is able of his own knowledge to prove*" [emphasis added]. The underlying reason for this rule is two-fold. First, although it may not happen often in practice, the court may, on the application of any party, order the attendance for cross-examination of a person making an affidavit in connection with an originating summons or summons pursuant to O 38 r 2(2) of the ROC. The second plank of the underlying rationale is the rule against an advocate and solicitor acting as both counsel *and witness* in the same case, as encapsulated now in r 64(2) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("the PCR"), which provides as follows:

> An advocate and solicitor shall discharge himself from representing a client if it becomes apparent to the advocate and solicitor that he is likely to be a witness on a material question of fact.

19 The rationale of the rule against counsel becoming witnesses, encapsulated now in r 64(2) of the PCR, was elucidated upon by G P Selvam JC in *The "Evpo Agsa"* [1992] 1 SLR(R) 662 ("*Evpo Agsa*"). In *Evpo Agsa*, the defendants' case was presented on the basis of affidavits made by counsel in which the latter "made conclusions of facts, arguments, comments, inferences, statements of law, gave expert opinion, relied on hearsay evidence, self-serving documents and generally argued the defendants' case" (at [19]). Selvam JC rejected the contents of those affidavits and highlighted the rationale of the rule against counsel becoming witnesses (at [15]–[16]):

> 15 … [T]he rule was stated more than 400 years ago that counsel and counsel's clerks should not become witnesses in cases in which they are retained: *Breame v Breame* 21 ER 120 and *Lee v Markham* 21 ER 120. In *R v Secretary of State for India in Council, Ex parte Ezekiel* [1941] 2 KB 169, Humphreys J, after the judgments had been delivered, repeated the time-honoured injunction in these words:
>
> > Before the court parts with this case, there is a short observation which the other members of the court desire me to make and with which I agree. It was brought to the attention of the court that, on the hearing at Bow Street police court, junior counsel on one side was called as a witness to prove certain aspects of Indian law and continued thereafter to act as

counsel in the case. No objection was taken to this by counsel on the other side. We think it right to point out that this is irregular and contrary to practice. ***A barrister may be briefed as counsel in a case or he may be a witness in a case. He should not act as counsel and witness in the same case.***

16 Those [words] must equally apply to counsel making affidavits where the facts are in dispute. The reason is plain. ***Advocates are officers of court and, as such, great trust is placed on them. When counsel identify themselves not with the case or the client, they could unconsciously or consciously shape the evidence to favour their case and client. They must not allow themselves to be drawn into a situation where they consciously or unconsciously do just that . Again, it places the court in difficulty.***

[emphasis added in bold italics]

20 In the present application, Mr Ashokan filed two affidavits giving evidence of, amongst other things, the facts set out in [2]–[15] above, which, he admitted at the hearing of this application, he had no personal knowledge of. In fairness to Mr Ashokan, I should mention that he appeared to have made an innocent error in misconstruing s 15(3) of the current LPA, which provides as follows:

Ad hoc admissions

15. …

…

(3) Any person who applies to be admitted under this section shall do so by originating summons *supported by an affidavit of the applicant, or of the advocate and solicitor instructing him*, stating the names of the parties and brief particulars of the case in which the applicant intends to appear.

…

[emphasis added]

Mr Ashokan thought that he should affirm the affidavits filed in support of this application since s 15(3) of the current LPA prescribed that the applicant (*ie*, Mr Caplan QC) or the advocate and solicitor instructing him (*ie*, Mr Ashokan himself) was to do so. I pause to note that the "applicant" in s 15(3) refers for convenience to the foreign senior counsel seeking admission (in the present case, Mr Caplan QC), although, for all intents and purposes, the true applicant is actually the party in the proceedings who seeks to have that foreign senior counsel represent him (in the present case, the Accused). Coming back to the point, there is no reason at all to think that Parliament intended s 15(3) of the current LPA to change the long-standing rule against affirming affidavits containing facts that are not within the deponent's personal knowledge and the related rule against counsel becoming witnesses.

21 Mr Ashokan also explained to me in chambers after the hearing that he was influenced by the fact that the solicitor in *Re Andrews Geraldine Mary QC* [2013] 1 SLR 872 ("*Re Geraldine Andrews*"), Mr Narayanan Vijya Kumar ("Mr Vijya"), had filed the first affidavit in support of the *ad hoc* admission application, and I had granted Mr Vijya leave to file a supplementary affidavit setting out the factual, legal, procedural and evidential issues that were in issue in the civil suit in respect of which the *ad hoc* admission of the foreign senior counsel concerned, Ms Geraldine Mary Andrews QC, was sought

(see *Re Geraldine Andrews* at [49]). For the avoidance of doubt, *Re Geraldine Andrews* should not be taken as authority for the general proposition that solicitors should affirm the affidavits filed in support of *ad hoc* admission applications. The situation in *Re Geraldine Andrews* was rather different from that in the present case as the solicitor in that case (*ie*, Mr Vijya) had direct and personal knowledge of the relevant facts, including the facts surrounding his client's attempts to engage local Senior Counsel with commensurate experience in commercial disputes.

22 In *ad hoc* admission applications, solicitors should confine the contents of the affidavits that they affirm to: (a) the names of the parties and brief particulars of the case in which the foreign senior counsel concerned intends to appear (see s 15(3) of the current LPA); (b) a summary of the material facts; (c) specific reference to the legal and factual issues involved in the underlying case that are said to justify the admission of a foreign senior counsel (see *Re Geraldine Andrews* at [49]); and (d) facts that are within their personal knowledge. When it comes to facts not within a solicitor's personal knowledge, the appropriate person to affirm the affidavit would be the person who has personal knowledge of those facts. Thus, when it comes to, for example, the efforts made by a client in seeking an appropriate local counsel *before* he engaged a solicitor to make an *ad hoc* admission application, it should be the client, and not the solicitor, who affirms those efforts in an affidavit, since the solicitor would have no personal knowledge of what transpired before he came on board. In a similar vein, when it comes to the applicant's "special qualifications or experience for the purpose of the case" pursuant to s 15(1)(*c*) of the current LPA, it is preferably the applicant, and not the solicitor or the client, who affirms this in an affidavit. 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. In particular, the full details of the party's efforts in securing local counsel should be presented to the court for the purposes of facilitating the court's consideration of: (a) the necessity for the services of a foreign senior counsel; and (b) the availability of local Senior Counsel or other local advocate and solicitor with appropriate experience (see [66]–[68] below). The details to be provided should include the nature of the contact between the party and the local counsel who was approached (whether personally or through a third party), the mode of contact (whether in writing, orally over the telephone or in person), the date(s) and duration(s) of the call(s) and/or meeting(s), the venue(s) of the meeting(s), as well as a summary of the discussion(s) held. In addition, the date of the local counsel's refusal to take on the party's case and the reasons given should also be set out in detail. This list is by no means exhaustive, and solicitors should endeavour to ensure that all relevant details are presented to the court and are supported by relevant documentary evidence.

24 In the present case, some of these important details, in particular, those set out at [11], [13] and [14] above, were only provided to the court after I stood the hearing down for Mr Ashokan to take the Accused's further instructions as to these details. In future *ad hoc* admission applications, solicitors should bear in mind all the procedural practice points elaborated above. This will better assist both the court and the other interested parties in assessing the merits of such applications.

The legal principles governing *ad hoc* admission applications

The relevant statutory provisions

25 The legal issues in this application revolve around the interpretation of the statutory framework

set out in ss 15(1), 15(2) and 15(6A) of the current LPA. The said provisions read:

> **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 —
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> (*a*) holds —
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> (i) Her Majesty's Patent as Queen's Counsel; or
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> (ii) any appointment of equivalent distinction of any jurisdiction;
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> (*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
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> (*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.
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> …
>
> (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.
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> …
>
> [emphasis added in bold italics]

I should point out here that prior to 1 April 2012, only Queen's Counsel, as opposed to other foreign senior counsel holding "any appointment of equivalent distinction of any jurisdiction" (see s 15(1)(*a*)(ii) of the current LPA), could be granted *ad hoc* admission under the predecessor provisions of s 15 of the current LPA. The term "foreign senior counsel" when used hereafter in relation to the law prior to 1 April 2012 should thus be understood as referring to Queen's Counsel only.

26 Pursuant to r 32(1) of the Legal Profession (Admission) Rules 2011 (S 244/2011) ("the Admission Rules"), the areas of legal practice referred to in s 15(2) of the current LPA are criminal law, family law, and constitutional and administrative law. These are now the so-called "three restricted areas of law" for the purposes of s 15 of the current LPA, and they have been statutorily ring-fenced apparently because of their critical domestic content and because they have features peculiar to Singapore.

27 In addition to the specific provisions in s 15 of the current LPA, para 3 of the Legal Profession (Ad Hoc Admissions) Notification 2012 (S 132/2012) ("the Notification") issued pursuant to s 15(6A) of the current LPA is also relevant to the statutory framework. That paragraph lists certain matters that the court may consider in deciding whether to admit a foreign senior counsel for the purpose of a case ("the Notification matters"), namely:

> **Matters specified under section 15(6A) of Act**

3. For the purposes of section 15(6A) of the Act, the court may consider the following matters, in addition to the matters specified in section 15(1) and (2) of the Act, when deciding whether to admit a person under section 15 of the Act for the purpose of any one case:

(*a*) the nature of the factual and legal issues involved in the case;

(*b*) the necessity for the services of a foreign senior counsel;

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

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

28 In the present case, there are two related legal issues to be decided, namely:

(a) the statutory framework for the *ad hoc* admission of foreign senior counsel in cases involving the three restricted areas of law; and

(b) the meaning of "special reason" in s 15(2) of the current LPA.

The parties' arguments

29 I will firstly set out the parties' arguments to provide the context of the two legal issues in dispute.

The statutory framework for the ad hoc admission of foreign senior counsel in cases involving the three restricted areas of law

30 There was some uncertainty among counsel as to the statutory framework for the *ad hoc* admission of foreign senior counsel in cases involving the three restricted areas of law, in particular, the relationship between s 15(2) of the current LPA and the Notification matters. Counsel for the applicant (and also for the Accused), Mr Ashokan, urged this court to take a holistic approach towards the requirements set out in the statutory framework such that no one particular factor in s 15(2) of the current LPA and the Notification should be decisive.

31 In response, counsel for the PP, Mr Christopher Ong Siu Jin ("Mr Ong"), agreed with the submissions of counsel for the AG, Ms Aurill Kam Su Cheun ("Ms Kam"), that the "special reason" test in s 15(2) was a threshold test in the sense that it was a prior mandatory requirement to meet. Counsel for the LSS, Mr Christopher Anand Daniel ("Mr Daniel"), took the position that a "twin key" approach should be taken such that the "special reason" test in s 15(2) of the current LPA was a mandatory requirement that had to be fulfilled in cases involving the three restricted areas of law, but not necessarily a prior threshold one. Later on in her oral submissions, Ms Kam agreed with Mr Daniel's "twin key" approach.

The meaning of "special reason" in s 15(2) of the current LPA

32 As for the meaning of "special reason" in s 15(2) of the current LPA, Mr Ashokan relied on Hong Kong authorities such as *Re Flesch QC & Another* [1999] 1 HKLRD 506 ("*Re Flesch*") and *Re an application of Gerald James Kay Cole, QC for admission as a barrister* [1985] HKLR 480 ("*Re Coles*") for the proposition that *matters of public interest* would suffice to show that a "special reason"

existed. Mr Ashokan further relied on *Re an application of Charles Gray for admission as a barrister* [1984] HKLR 367 ("*Re Gray*") for the proposition that the need for the Accused to be given the best legal representation in his criminal defence was a matter of public interest since the Accused had (allegedly) been unable to engage the services of competent local counsel. Mr Ashokan further submitted that the (allegedly) novel and unique issues of law arising in this case were a matter of public interest that would constitute a "special reason".

33 In response, Mr Ong agreed with Ms Kam's argument that Mr Ashokan's submissions ought to be rejected because: (a) the Hong Kong authorities were of no relevance since Hong Kong's statutory framework for the *ad hoc* admission of foreign senior counsel was very different from ours; (b) the facts did not show that the Accused had been unable to engage the services of competent local counsel; and (c) there were no novel and/or unique issues of law arising in this case. Ms Kam further submitted that the test constituted by the phrase "special reason" in s 15(2) of the current LPA was not the same as the old test of "sufficient difficulty and complexity" under the predecessors of this provision.

34 Ms Kam submitted that the "special reason" test imposed a formidable threshold hurdle which would only be met when there were considerations of a macro nature (*ie*, considerations which transcended the specifics of any individual case) and of fundamental importance. In this regard, she relied on *Re Caplan Jonathan Michael QC* [1997] 3 SLR(R) 404 ("*Re Caplan*") and *Re Seed Nigel John QC* [2003] 3 SLR(R) 407 ("*Re Nigel*"), as well as the statements made by the then Minister for Law, Professor S Jayakumar ("Minister Jayakumar"), during the second reading of the Legal Profession (Amendment) Bill 1996 (Bill 31 of 1996) ("the 1996 Amendment Bill"), which was the Bill that introduced the "special reason" requirement for the *ad hoc* admission of foreign senior counsel in criminal cases (see *Singapore Parliamentary Debates*, *Official Report* (10 October 1996) vol 66 ("the 1996 Parliamentary Debates") at cols 633–634 and 643–644). Minister Jayakumar's statements were referred to by the court in both *Re Caplan* and *Re Nigel*. In *Re Caplan*, Yong Pung How CJ stated (at [14]–[16]):

> 14 The reasons for imposing stricter criteria for admission in criminal cases were explained by the Minister for Law during the second reading of [the 1996 Amendment Bill] in Parliament. The Minister pointed out, in particular, that since English criminal law and procedure differed quite substantially from ours, Queen's Counsel would not usually be familiar with our criminal justice system. Asked to define what he thought might be "special reasons" for admitting Queen's Counsel in criminal cases, he stated that he thought it better for such definitions to be left to the courts. He did add, however, that if he were pressed "to indicate an example" of such "special reasons",
>
> > … there could be a criminal case where an important constitutional law issue arises as to whether some constitutional rights have been breached, or [where] the regulations or the Act under which the person is being charged raises the question of conformity with some provisions of the Constitution. ***So it then becomes not just a criminal case on the particular set of facts, but broader and more fundamental questions may be raised, and one can argue that this could be a 'special reason'.***
>
> 15 An example of the sort of case the Minister might have been referring to can be found in *Re How William Glen* [1994] 2 SLR(R) 357. This application was heard before the introduction of s 21(1A) [*ie*, s 21(1A) of the Legal Profession Act (Cap 161, 1994 Rev Ed), the provision laying down the "special reason" requirement for the *ad hoc* admission of foreign senior counsel in criminal cases], but its facts are still instructive. The applicant in this case sought admission for the purpose of appearing on behalf of four appellants in their appeal to the High Court against

convictions sustained in the Magistrate's Court under ss 3 and 4(2) of the Undesirable Publications Act (Cap 338). The appellants had been fined for these convictions. They intended to challenge on appeal the validity of the ministerial order made under the Act: in particular, they intended to argue that the order violated the right to religion enshrined in Art 15 of the Constitution. The application for admission was allowed by the judge who felt that ***far more was at stake in the appeal than "the fines imposed by a magistrate"*** (at [21]):

> What is at issue is the validity of governmental action in making Order No 123 – a judicial review of the order in a broad sense of the term on the ground that it is *ultra vires* the Constitution. Questions relating to fundamental rights enshrined in the Constitution inevitably will be brought up in the appeal.

16 Examples of "special reasons" are of course not confined to cases with constitutional implications. ***There may well be other cases where the verdict holds significant repercussions not just for the individual accused but also for the way in which an entire section of the population orders their daily lives or the conduct of their business.*** An example of this sort of case can be found in the case of *Re Allan David Green QC* [1996] SGHC 166. Again, the application here was actually heard before the introduction of s 21(1A), but as with *Re How William Glen*, I think the facts are nevertheless instructive. In this case the applicant sought admission for the purpose of appearing in an appeal by the appellant, a local lawyer, against his conviction in the District Court on a charge under s 5(*a*)(i) of the Prevention of Corruption Act (Cap 241). The charge alleged that the appellant had acted in conjunction with a condemned prisoner ("A") in corruptly soliciting for A's family a gratification of $100,000 from the son of his former co-accused ("B"), on account of A making a signed statement to the effect that B had been innocent of the drug trafficking charge of which they had both been convicted. It was contended that the appeal raised difficult questions of construction of the relevant provisions of the Prevention of Corruption Act. It was also contended that this was an unusual case because it did not involve the normal situation of an accused demanding payment in return for a favour: the appellant in this case had received no moneys himself and claimed that he had merely acted in the capacity of A's lawyer by passing on a message. The appellant asserted that, viewed in such a context, his conduct could not be seen as being "corrupt" within the meaning of s 5 of the Act. The application for admission was allowed by the judge who held that the issues raised as to the construction of the relevant statutory provisions were sufficiently difficult and complex to warrant the appearance of Queen's Counsel. ***The judge also felt that determination of the issues raised by the appellant "could have far reaching implications for the legal profession of which the appellant is a member".***

[emphasis added in bold italics]

And in *Re Nigel*, which involved an application for the *ad hoc* admission of a foreign senior counsel to represent a Roman Catholic priest who had been charged with CBT under s 409 of the then equivalent of the current PC (*viz*, the Penal Code (Cap 224, 1985 Rev Ed) ("the 1985 PC")), Tay Yong Kwang J held as follows (at [33]):

> The circumstances of the case must show a "special reason" for admission. I accept that the criminal trial will probably attract more than a fair bit of attention among the Catholic clergy and laity as well as non-Catholics locally and probably outside Singapore as well. It is also true that the integrity of the priest will be tested publicly. However, these factors by themselves do not persuade me that the circumstances of the case warrant the admission of QC. There are many competent local lawyers, whether Catholic or not, who would be able to give the case the serious attention it deserves. These factors fall short of being "special reasons" for admission. ***There is***

also no evidence that *Catholic priests are in confusion as to what they can or cannot do with church funds and that* ***this case will therefore have repercussions beyond the facts circumscribing it.*** [emphasis added in italics and bold italics]

35 For completeness, I should add that Mr Daniel agreed with Ms Kam's submissions on the meaning of "special reason" in s 15(2) of the current LPA.

The historical evolution

36 To address the two legal issues set out in [28] above, it is first necessary to set out the historical evolution of the statutory framework for the *ad hoc* admission of foreign senior counsel in criminal cases. The statutory framework *vis-à-vis* criminal cases actually shared the same history as that *vis-à-vis* civil cases until certain amendments came into effect in 1997. I will highlight the salient points of this shared history in [37]–[39] below before turning to the divergence of the statutory framework in relation to criminal cases. For a more complete picture of this shared history, see [21]–[28] of *Re Geraldine Andrews*, where the history of the *ad hoc* admission scheme is set out in detail in the context of civil cases.

37 Briefly, the originating statutory provision on *ad hoc* admission applications was s 7A of the Advocates and Solicitors Ordinance (Cap 188, 1955 Rev Ed) ("the ASO"), which was inserted by s 3 of the Advocates and Solicitors (Amendment) Ordinance 1962 (No 22 of 1962). Section 7A of the ASO provided as follows:

> **7A.**—(1) Notwithstanding anything to the contrary contained in this Ordinance the Supreme Court may *for one or more* ***special reasons in the public interest*** *and for the purpose of any one case* admit to practise as an advocate and solicitor any person —
>
> (*a*) who holds Her Majesty's patent as Queen's Counsel;
>
> (*b*) who does not ordinarily reside in Malaya but who has come or intends to come to Singapore for the purpose of appearing in such case; and
>
> (*c*) who has special qualifications or experience for the purpose of such case.
>
> …
>
> [emphasis added in italics and bold italics]

Section 7A of the ASO was substantially retained in its successor provision, s 18 of the Legal Profession Act 1966 (Act 57 of 1966) ("the 1966 LPA"), which read as follows:

> **18.**—(1) Notwithstanding anything to the contrary contained in this Act the court may *for one or more* ***special reasons*** and for the purpose of any one case admit to practise as an advocate and solicitor any person —
>
> (*a*) who holds Her Majesty's Patent as Queen's Counsel;
>
> (*b*) who does not ordinarily reside in Singapore or Malaysia but who has come or intends to come to Singapore for the purpose of appearing in such case; and
>
> (*c*) who has special qualifications or experience for the purpose of such case.

…

[emphasis added in italics and bold italics]

38 The admission criteria in s 18(1) of the 1966 LPA were liberalised when the phrase "for one or more special reasons and" was deleted pursuant to s 4 of the Legal Profession (Amendment) Act 1970 (Act 16 of 1970). The relevant provision was thus amended to read as follows:

> **18.**—(1) Notwithstanding anything to the contrary contained in this Act the court may ***for one or more special reasons and for the purpose of any one case*** admit to practise as an advocate and solicitor any person … [emphasis added in bold italics; deleted words indicated by strikethrough]

39 Thereafter, the admission criteria became stricter when the test of "sufficient difficulty and complexity" was added to s 21(1) of the Legal Profession Act (Cap 161, 1990 Rev Ed) ("the 1990 LPA") pursuant to the Legal Profession (Amendment) Act 1991 (Act 10 of 1991) ("the 1991 Amendment Act"). Section 21(1) of the 1990 LPA in its amended form provided as follows:

> **21.**—(1) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case where the court is satisfied that it is of ***sufficient difficulty and complexity*** and having regard to the circumstances of the case, admit to practise as an advocate and solicitor any person who … [emphasis added in bold italics]

The amended version of s 21(1) of the 1990 LPA (as set out above) retained its form in s 21(1) of the Legal Profession Act (Cap 161, 1994 Rev Ed) ("the 1994 LPA").

40 In 1997, the statutory framework for the *ad hoc* admission of foreign senior counsel in criminal cases diverged from that in relation to civil cases when the Legal Profession (Amendment) Act 1996 (Act 40 of 1996) ("the 1996 Amendment Act") came into effect to insert (via s 3 of that Act) a new subsection (1A) in s 21 of the 1994 LPA. In its amended form, s 21 of the 1994 LPA read as follows:

> **21.**—(1) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case *where the court is satisfied that it is of* ***sufficient difficulty and complexity*** *and having regard to the circumstances of the case*, admit to practise as an advocate and solicitor any person who …
>
> (*1A*) *The court shall not admit a person under this section in any* ***criminal case*** *unless the court is satisfied that there is a* ***special reason*** *to do so.*
>
> …
>
> [emphasis added in italics and bold italics]

41 The rationale for the further restriction of the admission criteria for criminal cases was explained by Minister Jayakumar during the second reading of the 1996 Amendment Bill as follows (see the 1996 Parliamentary Debates at cols 633–634):

> ***Admission of QCs in criminal cases***
>
> Let me turn to the admission of Queen's Counsels in criminal cases. 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.

The general policy of allowing QCs to appear in our courts remains unchanged. ***However, there should be less need for QCs in criminal cases with the growth of the Criminal Bar in the last five years, not only in terms of numbers, but also in terms of advocacy skills, experience and expertise.*** Since 1991, only 10 QCs have been admitted to appear in criminal cases in Singapore and I am told that out of the nine cases dealt with by QCs, only two cases were successful. Presently, there are 89 criminal lawyers who are designated as senior counsel and 125 criminal lawyers who are designated as junior counsel for the purposes of the Assignment List of the High Court for capital cases. ***There is no shortage therefore of criminal lawyers in the local Bar who have the confidence to undertake all criminal cases without having to rely on Queen's Counsels.***

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

Eventually, we should do away with representation by Queen's Counsels in criminal cases. But this should be looked at again when we have an adequate number of Senior Counsel practising at the Criminal Bar. …

…

The present amendments will restrict the admission of QCs [in criminal cases] unless the applicant can show that there is any special reason for the need for a QC. It will be for the court to determine what a special reason is for this purpose. This amendment is provided for in the new section 21(1A) (clause 3 [of the 1996 Amendment Bill]). I should add that the amendment does not affect the existing provision for admission of QCs in civil cases.

[emphasis added in bold italics]

42 The position in s 21 of the 1994 LPA (as amended by the 1996 Amendment Act) remained the same in all its successor provisions until the amendments made pursuant to the Legal Profession (Amendment) Act 2012 (Act 3 of 2012) ("the 2012 amendments") came into effect on 1 April 2012. Pursuant to the 2012 amendments, s 15 of the current LPA now provides as follows:

Ad hoc admissions

15.—(1) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case ~~***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 —

(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*** *.*

…

[emphasis added in italics and bold italics; deletion made pursuant to the 2012 amendments indicated by strikethrough]

43 The 2012 amendments are particularly significant in two material aspects. First, the test of "sufficient difficulty and complexity" in s 21(1) of the 1990 LPA (as amended by the 1991 Amendment Act) and its equivalent successor provisions was removed from s 15 of the current LPA (*ie*, the pre-1 April 2012 version of this provision) for both civil cases and criminal cases. The matters to be considered under the Notification issued pursuant to s 15(6A) (reproduced at [27] above) became the governing framework to aid the court in the exercise of its discretion as to whether or not to allow an *ad hoc* admission application. Second, the additional "special reason" criterion for criminal cases in s 21(1A) of the 1994 LPA (inserted pursuant to the 1996 Amendment Act) was extended to cases involving two other areas of law, namely, family law and constitutional and administrative law, pursuant to s 15(2) of the current LPA read with r 32(1) of the Admission Rules (see [26] above).

44 From the speech of the Minister for Law, Mr K Shanmugam ("Minister Shanmugam"), during the second reading of the Legal Profession (Amendment) Bill 2012 (Bill 1 of 2012) (see *Singapore Parliamentary Debates, Official Report* (14 February 2012) vol 88 ("the 2012 Parliamentary Debates")), it is plain that Parliament intended to liberalise the legal sector only with respect to commercial cases. Parliament evinced no similar intention to liberalise the legal sector with respect to the three restricted areas of law identified by s 15(2) of the current LPA read with r 32(1) of the Admission Rules. In particular, Minister Shanmugam noted in the 2012 Parliamentary Debates that there was a distinction between civil cases and criminal cases:

[W]e will see immediately why a distinction can be drawn between criminal cases and civil cases, because in criminal cases, we do not have that problem [of litigants being unable to engage the local Senior Counsel whom they wish to engage]. *There is no difficulty for any top SC accepting*

a brief in a criminal, constitutional, or public case because there is no real issue of conflict. Or even if there is no direct conflict, it is not as if the law firm is on a retainer which prevents any particular SC from taking up a case on a public or constitutional criminal matter. [emphasis added]

45 Having set out the historical developments leading to the statutory framework presently in force today under s 15 of the current LPA, I will now turn to address the two legal issues in dispute set out in [28] above.

My analysis

The statutory framework for the ad hoc admission of foreign senior counsel in cases involving the three restricted areas of law

46 The first legal issue – *viz*, the statutory framework for the *ad hoc* admission of foreign senior counsel in cases involving the three restricted areas of law – is directed, in particular, at the relationship between s 15(2) of the current LPA and the Notification matters. This issue can be broken down into two sub-issues, namely:

(a) Is the "special reason" requirement in s 15(2) a mandatory requirement?

(b) If it is, is it a *prior* mandatory threshold requirement that must be satisfied *before* the Notification matters can come into play?

47 Since s 15(2) of the current LPA expressly provides that the court "*shall not admit* a [foreign senior counsel] in any case involving any area of legal practice prescribed under section 10 … *unless* [it] is satisfied that there is a special reason to do so" [emphasis added], it is clear that this provision envisages that a "special reason" *must* be distinctly established. To put it another way, the language of s 15(2) evinces Parliament's intention that it is *mandatory* for the "special reason" criterion to be made out in cases involving the three restricted areas of law. I therefore rejected Mr Ashokan's argument (see [30] above) that a holistic approach should be taken and that no one particular factor in s 15(2) of the current LPA and the Notification should be decisive.

48 Having disposed of the first sub-issue, I turn to the next sub-issue of whether the "special reason" requirement in s 15(2) of the current LPA is a *prior* mandatory threshold requirement (as was initially suggested by Ms Kam), or whether it is simply a mandatory threshold requirement but not necessarily a prior one (as was suggested by Mr Daniel in his submissions on the "twin key" approach, which approach was subsequently accepted by Ms Kam). In my view, the latter "twin key" interpretation is correct; *ie*, s 15(2) of the current LPA is not a prior threshold provision, but should instead be read harmoniously with the Notification matters. My reasons for so deciding are as follows. First, the case law prior to the 2012 amendments does not suggest in any way that the "special reason" criterion is a prior threshold requirement. Second, there is also no evidence that Parliament intended the 2012 amendments to change the statutory framework for *ad hoc* admission in criminal cases, given that those amendments were aimed at liberalising the criteria for *ad hoc* admission in civil cases (see [44] above). If Parliament had the intention of making "special reason" a prior threshold requirement, it would have expressly stated this. The present architecture of s 15 of the current LPA also hints at such a "twin key" approach since para 3 of the Notification expressly states that the court may consider the Notification matters "*in addition to*" [emphasis added] the matters specified in ss 15(1) and 15(2) of the current LPA. This indicates that while the "special reason" requirement in s 15(2) *must* be satisfied, it does *not* necessarily have to be satisfied *before* the Notification matters can come into play.

49 To sum up, a foreign senior counsel seeking *ad hoc* admission in a criminal case (and, by extension, in any case involving the other two restricted areas of law) must show that the "special reason" criterion in s 15(2) of the current LPA is met *in addition to* satisfying the court that it is appropriate to admit him having regard to the Notification matters. In the final analysis, it seems to me that nothing really turns on whether the "special reason" criterion in s 15(2) is a prior or a concurrent requirement to be satisfied for the purposes of an *ad hoc* admission application. Ordinarily, there would be some degree of overlap in the considerations which the court takes into account when evaluating, respectively, the "special reason" criterion and the Notification matters. Furthermore, depending on the facts and circumstances of the particular *ad hoc* admission application in question, the Notification matters could well constitute "special reason" for the purposes of s 15(2).

The meaning of "special reason" in s 15(2) of the current LPA

50 I turn now to the second legal issue of the meaning of "special reason" in s 15(2) of the current LPA (see [28(b)] above). First and foremost, it was undisputed that the phrase "special reason" was not defined anywhere in the current LPA or in any of its predecessor Acts. Parliament made it clear when it introduced the "special reason" criterion for criminal cases via the 1996 Amendment Act that the phrase was deliberately left statutorily undefined for the courts to determine. In the 1996 Parliamentary Debates, Minister Jayakumar said (at cols 643–644):

> … First, … the definition of "special reason". There are two ways in which we could have handled this. One is for Parliament itself to have spelt out in the provisions in an exhaustive way all the possible special reasons. ***But our preference was to draft it in such a way that we would leave it to the courts to decide what the special reasons would be.*** I think that is the better approach just as the existing provision in respect of QCs leaves the discretion to the court when it says, as a general criterion, "if the court is satisfied that [the case] is of sufficient difficulty [and] complexity and having regard to the circumstances of the case." That is the general criterion.
>
> **From the general criterion, when we come to the specific matter of criminal cases**, ***there will now be a further criterion for criminal cases*** **that the court is satisfied that there is a special reason to [allow the *ad hoc* admission of foreign senior counsel]**. Between the two approaches, ***I think it is better to take this approach and leave it to the court.*** *If he* [*ie*, Dr Ker Sin Tze, the then Chairman of the Government Parliamentary Committee for Law] *were to press me to indicate an example of a criminal case which I think would constitute a special reason, there could be a criminal case where an important constitutional law issue arises as to whether some constitutional rights have been or have not been breached, or [where] the regulations or the Act under which the person is being charged raises the question of conformity with some provisions of the Constitution. So it then becomes not just a criminal case on the particular set of facts, but broader and more fundamental questions may be raised, and one can argue that this could be a "special reason". I give this as an indicative example.* ***But I think it is better to leave it to the courts. The courts have had experience in handling such applications and I am sure we can leave it to their wisdom to decide what are the special reasons.***
>
> [emphasis added in italics, in bold and in bold italics]

51 The phrase "special reason" is an etymological chameleon that takes colour from its context. In Singapore, this phrase is used in no less than 20 instances spanning across no less than eight different statutes. The case law on this phrase is of no assistance in the present case as the interpretation of this phrase depends on the particular context in which it is used (see, for example,

the High Court's interpretation of the phrase "special reason" in s 49(11) of the Arbitration Act (Cap 10, 2002 Rev Ed) in *Ng Chin Siau and others v How Kim Chuan* [2007] 2 SLR(R) 789 at [34], and of the phrase "special reasons" in s 67(2) of the Road Traffic Act (Cap 276, 1997 Rev Ed) in *Sivakumar s/o Rajoo v Public Prosecutor* [2002] 1 SLR(R) 265 at [13]–[14]).

52 In the specific context of s 15(2) of the current LPA, I agreed with Ms Kam's submission (see [33] above) that the "special reason" test is certainly not the same as the old "sufficient difficulty and complexity" test in s 21(1) of the 1990 LPA (as amended by the 1991 Amendment Act) and its successor provisions. After the 1996 Amendment Act was passed, both the "special reason" and the "sufficient difficulty and complexity" tests concurrently applied to *ad hoc* admission applications pertaining to criminal cases, and it was evident from case law that the "special reason" test in s 21(1A) of the 1994 LPA (and its successor provisions) was distinct from the "sufficient difficulty and complexity" test in s 21(1) (see generally *Re Caplan* and *Re Nigel*). Furthermore, although Parliament evinced no discernible intention to liberalise the legal sector with respect to criminal law when it passed the 2012 amendments (see [44] above), it expressly (but, perhaps unintentionally) removed the phrase "sufficient difficulty and complexity" in relation to *both* civil matters *and* criminal matters. I was therefore certain that it would not be appropriate to read the old requirement of "sufficient difficulty and complexity" into the phrase "special reason" in s 15(2) of the current LPA.

53 While I agreed with Ms Kam's position as to what does *not* constitute a "special reason" for the purposes of s 15(2) of the current LPA, I did not agree with her positive case as to what *would* exclusively constitute a special reason. The cases that Ms Kam relied on in support of her positive case that "special reason" in s 15(2) of the current LPA must invariably raise significant matters of a macro nature, namely, *Re Caplan* and *Re Nigel* (see [34] above), were of limited assistance. This was because the interpretation of "special reason" in those cases was made in the context of the old statutory scheme in the amended version of s 21 of the 1994 LPA (and its successor provisions) under which: (a) an applicant had to satisfy the "sufficient difficulty and complexity" test in s 21(1) in addition to the "special reason" test in s 21(1A) in criminal cases; and (b) the "special reason" test applied only to criminal cases. As set out in [42]–[43] above, the statutory framework has since changed in these two aspects pursuant to the 2012 amendments. In particular, the example of "a criminal case where an important constitutional law issue arises" cited by Minister Jayakumar in the 1996 Parliamentary Debates (at col 643), which was in turn cited by Yong CJ in *Re Caplan* at [14] (see [34] above), is today of little assistance in the interpretation of "special reason" in s 15(2) of the current LPA as constitutional law has now been specifically identified as one of the three restricted areas of law. In other words, the fact that a criminal case involves an important constitutional law issue is now no longer sufficient in itself to constitute a "special reason" for allowing the *ad hoc* admission of foreign senior counsel. For the same reason, the other portions of the High Court's judgments in *Re Caplan* and *Re Nigel* that Ms Kam sought to rely on (see [34] above) are likewise of little assistance.

54 In my view, the phrase "special reason" in s 15(2) of the current LPA envisages an exceptional case. What is exceptional should be decided based on the facts and circumstances of each case. Ms Kam's position was that a case must invariably raise significant matters of a macro nature before it can be considered exceptional. While Ms Kam's suggested approach is likely to be the norm in practice, I would go further. There could well be cases where the interests of an individual or issues pertaining solely to that individual are so out of the ordinary that they require special consideration and, hence, qualify as a "special reason". For example, an individual may be able to establish that his case is exceptional if he can prove that despite all reasonable efforts conscientiously made, he cannot find any competent local counsel to represent him. Ms Kam accepted that this example might suffice as a "special reason", but attempted to persuade me to find that such an example could still hew to her approach from the viewpoint that the right to representation was so fundamental that it

could be regarded as an issue of a macro nature. However, I was of the view that this might be too much of a stretch. There is no sound policy reason to limit the court's discretion to only cases of a macro nature. It would be preferable for the court to simply decide, based on the facts and circumstances of each case, whether the case before it is exceptional. In these exceptional cases, there could very well be some overlap between the Notification matters and the "special reason" requirement in s 15(2) of the current LPA.

55 Lastly, I rejected both limbs of Mr Ashokan's argument (see [32] above) that:

(a) matters of public interest would suffice to show the existence of a "special reason"; and

(b) there were matters of public interest in this case arising from: (i) the need for the Accused to be given the best legal representation in his criminal defence since the Accused had (allegedly) been unable to engage the services of competent local counsel; and (ii) the (allegedly) novel and unique issues of law involved.

I agreed with the submissions of Ms Kam that the Hong Kong authorities which Mr Ashokan cited, namely, *Re Flesch*, *Re Coles* and *Re Gray*, were of absolutely no relevance to the local context since the phrase "special reason" does not even appear in s 27(2) of the Legal Practitioners Ordinance (Cap 159) (HK), which is the governing statutory provision for the *ad hoc* admission of foreign senior counsel in Hong Kong. It was also significant that unlike s 7A(1) of the ASO (reproduced in [37] above), which made specific reference to "one or more special reasons *in the public interest*" [emphasis added], s 15(2) of the current LPA only refers to "special reason". Parliament's decision not to revert to the wording of s 7A(1) of the ASO strongly suggests that it did not intend the phrase "special reason" in s 15(2) of the current LPA to apply in the same way that it did in the ASO. The first limb of Mr Ashokan's argument (*viz*, that matters of public interest would suffice as a "special reason"), and consequently, his whole argument on the "special reason" criterion (which was premised on the first limb) therefore failed. In any event, I should add for good measure that even if a large number of persons might be closely following a case, it does not necessarily mean that legal matters of a public interest arise. Interest manifested by the public in a matter is not equivalent to a legal matter of public interest arising. It was not clear to me whether Mr Ashokan appreciated this distinction when he vaguely invoked the concept of public interest. I should also add here for completeness that in relation to the second limb of Mr Ashokan's argument (*viz*, that there were matters of public interest in this case), the factors relied on by Mr Ashokan were not made out: it could not reasonably be said that the Accused was unable to engage the services of competent local counsel (see [66]–[70] below), and there were no novel and unique issues of law arising in this case (see [64] below).

56 Having clarified the two disputed legal issues set out in [28] above, I will now turn to the substantive merits of this application.

The substantive merits of this application

The requirements under ss 15(1)(a)–15(1)(c) of the current LPA

57 As a preliminary point, it was undisputed that Mr Caplan QC met the requirements under ss 15(1)(*a*)–15(1)(*c*) of the current LPA in that he: (a) holds Her Majesty's Patent as Queen's Counsel; (b) does not ordinarily reside in Singapore or Malaysia but intends to come to Singapore for the purpose of appearing in the Criminal Proceedings; and (c) has special qualifications or experience for the purpose of the Criminal Proceedings. Mr Ong fairly conceded that Mr Caplan QC's familiarity and expertise with the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the new CPC"), which is the

governing version of the Criminal Procedure Code in the Criminal Proceedings, were not in issue as: (a) Mr Caplan QC had previously been admitted in Singapore to represent, both at the trial and on appeal, an accused person who had been charged with conspiracy to commit CBT under s 405 read with s 109 of the 1985 PC (see *Cheam Tat Pang and another v Public Prosecutor* [1996] 1 SLR(R) 161) ("*Cheam Tat Pang*")), and is thus familiar with the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the old CPC"); and (b) the differences between the old CPC and the new CPC are not material in this case as they relate mainly to the Criminal Case Disclosure Conference (which the Accused and the Co-Accused Persons have all opted out of) and community sentencing (which is not relevant in the present case). Mr Ong also fairly conceded that Mr Caplan QC's familiarity and expertise with the current PC were not in issue since: (a) Mr Caplan QC has experience with the local law on conspiracy to commit CBT after handling *Cheam Tat Pang*; (b) the law on conspiracy to commit CBT under the 1985 PC is the same as the corresponding law under the current PC; and (c) the legal principles which apply to all the charges against the Accused are very well established.

The Notification matters and s 15(2) of the current LPA

58 Although the ss 15(1)(*a*)–15(1)(*c*) requirements were not in dispute, the rest of the requirements under the statutory framework were. Applying the "twin key" approach laid down in [48] above, the merits of this application must be assessed having regard to the Notification matters *and* the "special reason" criterion in s 15(2) of the current LPA. Specifically in relation to the Notification matters, the principles laid down by this court in *Re Geraldine Andrews* (at [44]–[45]) on the relationship between each of these matters bear reiterating:

> 44 In my view, the architecture of the 2012 [a]mendment[s] and the Notification plainly indicates that the courts are under a duty to consider all the matters listed in para 3 of the Notification. *The 2012 [a]mendment[s] [are] not intended to lead to a "free for all", and in assessing applications for* ad hoc *admission, the courts are required to conduct a judicious balancing of the competing interests in the particular case at hand within the framework of the matters specified in para 3 of the Notification.* Interpreting para 3 of the Notification to mean that the courts are obliged to consider all the matters set out therein also ensures consistency in assessing future applications for the *ad hoc* admission of foreign senior counsel. In turn, this consistency in approach will lend some predictability and certainty for both the Bar and litigants who intend or are considering whether to apply for the *ad hoc* admission of foreign senior counsel. At the same time, however, it bears emphasis that the matters set out in para 3 of the Notification, and in particular, para 3(*d*), have been judiciously designed to be sufficiently flexible to allow for the inclusion of other situational considerations which may carry significant weight in a particular case.
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> 45 The four criteria in para 3 of the Notification are schematically set out in a mode that does not indicate any particular precedence or that all four of the listed criteria must be identically satisfied in every application for *ad hoc* admission. No particular weight has been assigned to any of the matters identified as being relevant in assessing the merits of an application. Paragraph 3 of the Notification does not set out a new rigid four-stage test that replaces the earlier test in s 21 of the 1990 LPA of "sufficient difficulty and complexity and having regard to the circumstances of the case". ***Additionally, the court is not obliged to invariably accord equal weight to each of the matters listed in para 3 of the Notification … It would be inappropriate, and, indeed, unprincipled, to give equal emphasis to the four matters identified in para 3 of the Notification, given that the application of these matters to the facts is necessarily fact-dependent. What the court is obliged to do in considering an application for the* ad hoc *admission of foreign senior counsel is to*** *carefully evaluate* ***these matters in the exercise of its discretion to grant or reject the application. Having***

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

[emphasis in original in italics; emphasis added in bold italics]

59 With the applicable framework in mind, I will now turn to address each of the Notification matters and the "special reason" criterion in s 15(2) of the current LPA *in seriatim*.

Para 3(a) of the Notification: Nature of the factual and legal issues involved in the case

60 On the basis of the documents placed before me, I agreed with Mr Ong that the sustainability of the charges against the Accused essentially pivoted on the correct "characterisation" of the Transactions – was there window-dressing, or were the Transactions genuine? The charges are essentially fact-sensitive and will therefore turn predominantly on the construction of the various relevant documents. Mr Ong also clarified that the Prosecution was not conceding that the factual issues in this case were complex when it mentioned in its "Explanatory Statement regarding charges against individuals involved in [CHC] case" dated 27 June 2012 that the Round-Tripping Charges "centre on a series of *complex* transactions" [note: 1] [emphasis added] and that CHC's funds "were circulated through a *complicated* series of transactions engineered to create the false appearance that the purported sham bond investments had been redeemed" [note: 2] [emphasis added]. Mr Ong explained that it was the way in which the aforesaid transactions were elaborately interlinked and weaved together as part of a scheme that made it difficult for persons *who were not privy to the scheme* to appreciate its overall purpose at first sight, and that these transactions were in and of themselves not complicated.

61 I agreed with the position taken by Mr Ong. The Transactions – namely, bond subscriptions, bond redemptions, rental advances, loans, set-offs and book entry accounting – could not conceivably be viewed as being so convoluted or esoteric as to be beyond the comprehension of competent local counsel. Furthermore, the relevant documents, although voluminous, are not so factually complex as to be beyond the management of any competent local counsel. These factors carry even greater weight in this case since the Accused did not dispute his intimate involvement with the relevant documents in his capacity as the fund manager of CHC and should therefore be familiar with them.

62 As for the legal issues in this case, Mr Ashokan submitted at the hearing of this application that the two key legal issues which were (allegedly) complex were as follows:

(a) whether a fund manager should be held criminally liable for a failure in corporate governance in the company whose funds he managed, in particular, for the lack of disclosure by the company's board of directors; and

(b) whether there could be CBT where a charity or the board of a charity employed the funds of the charity to fulfil the objectives of the charity.

63 In respect of the first allegedly complex legal issue identified by Mr Ashokan, Mr Ong replied that this issue would not even arise as the Prosecution was not imputing to the Accused any knowledge of the CHC Management Board's failure in corporate governance and lack of disclosure, but was in fact proceeding on the basis that the Accused had, as a matter of fact, knowingly engaged in

a criminal conspiracy with the requisite intention to use CHC's funds for unauthorised purposes. In response to the second allegedly complex legal issue raised by Mr Ashokan, Mr Ong stated that the Prosecution's case turned on whether the specific use of the misappropriated funds was authorised. The consistency of such use with the overarching objectives of CHC was not relevant.

64 Mr Ong also rejected Mr Ashokan's argument that the religious dimension in the Criminal Proceedings presented a novel and unique point of law. Mr Ong pointed out that issues of ecclesiastical law or of the legally permissible ways in which a religious institution could spread its teachings would not arise in the Criminal Proceedings. The Prosecution had informed all defence counsel that it was not taking issue with how CHC chose to utilise its funds as an evangelical tool; rather, the Prosecution's case was that the manner in which CHC's funds were being used to fund Sun Ho's music career amounted, in the circumstances of the present case, to CBT. Ms Kam also pointed out in her submissions that in *Re Nigel* (where the foreign senior counsel sought to be admitted was, if admitted, to act for a Roman Catholic priest charged with CBT), the High Court did not accept that the Code of Canon Law 1983 promulgated by the Vatican, which the accused had to abide by, was sufficient to meet the old "sufficient difficulty and complexity" test since the rules of the Roman Catholic church merely formed the backdrop of the offences in question. Ms Kam argued that the religious dimension in the present case (*viz*, the fact that the misappropriated funds were the funds of a church) would *a fortiori* not suffice to justify the *ad hoc* admission of Mr Caplan QC since it had not been contended that the Accused did the acts in question under some ecclesiastical law. Mr Daniel agreed with the position taken by Mr Ong and Ms Kam.

65 On the basis of the evidence before me and for the reasons submitted by Mr Ong and Ms Kam, which I accepted, I found that the factual and legal issues involved in this case were not so complex as to justify the *ad hoc* admission of a foreign senior counsel. That said, this finding was not necessarily fatal to this application because, as pointed out in [58] above, it is not mandatory to establish every single factor listed in para 3 of the Notification, although I must add that that the failure to establish any one of these factors would certainly not assist in assessing positively the overall merits of the application.

Paras 3(b) and 3(c) of the Notification: Necessity for the services of a foreign senior counsel and the availability of any local Senior Counsel or other local advocate and solicitor with appropriate experience

66 Since there is a substantial overlap between the second and third factors listed in para 3 of the Notification (namely: (a) the necessity for the services of a foreign senior counsel (para 3(*b*)); and (b) the availability of any local Senior Counsel or other local advocate and solicitor with appropriate experience (para 3(*c*))), I will address them concurrently. The principles governing the court's assessment of these two factors were laid down in *Re Geraldine Andrews* at [55] and [57]:

> 55 ***A litigant must take reasonable steps to ascertain the availability of Senior Counsel or other local counsel with appropriate experience.*** As the Law Minister [*viz*, Minister Shanmugam] reiterated during the 2012 [P]arliamentary [D]ebates, "ad hoc counsel will only be admitted on the basis of need, and it will not be a free for all". ***This does not, however, mean that the litigant must take steps to contact all Senior Counsel or even a significant number of them. The scope of inquiry which a litigant is reasonably expected to undertake will depend*** , **inter alia** ***, on the nature of the issues being contested as well as the developments in the case.*** …
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> …

5 7 *In deciding whether the litigant concerned has in fact taken reasonable steps to secure Senior Counsel or other local counsel with appropriate experience, the court should consider*, **inter alia** ***, the number of Senior Counsel or other local counsel who have the appropriate experience to deal with the issues in the underlying case, the steps taken (if any) by the litigant to instruct such Senior Counsel or local counsel and the reasons (if any) why those steps were unsuccessful.*** Where a litigant has taken reasonable steps to instruct Senior Counsel or other local counsel with appropriate experience, this will generally be a factor in his favour for the court to consider. Where a litigant has in fact previously instructed Senior Counsel or other local counsel with appropriate experience at an earlier stage of the same proceedings but where the counsel instructed has since ceased to act for the litigant, this may *a fortiori* count as a factor in the litigant's favour. I should caution here, in respect to this scenario, that the reasons why the counsel instructed ceased to act for the litigant could also be relevant. A litigant who has conducted himself unreasonably, thereby leading to his instructed counsel discharging himself, should not have his application for the *ad hoc* admission of foreign senior counsel assessed more favourably. Where, however, a litigant who has previously engaged Senior Counsel or other experienced local counsel has lost confidence in the counsel instructed for legitimate reason(s) and subsequently seeks the assistance of foreign senior counsel, this may assist in justifying the application for *ad hoc* admission.

[emphasis added in italics and bold italics]

67 There are two steps in the assessment of the factors listed in paras 3(*b*) and 3(*c*) of the Notification. The first step involves ascertaining the relevant pool of local counsel to consider. Mr Ashokan took the position that: (a) the lawyers who were already acting for the Co-Accused Persons (see [12] above); and (b) the other lawyers in the law firms of these lawyers should not be included in the pool of available local counsel for consideration since they would be in a position of potential conflict of interest. Ms Kam disagreed and pointed out that there was no evidence that the defences of the Co-Accused Persons would not be aligned with the defence of the Accused. She also submitted that any potential conflict of interest could be managed through a disclosure framework which could be worked out between the lawyers involved, the Co-Accused Persons and the Accused. Mr Daniel, agreeing with Mr Ashokan and disagreeing with Ms Kam, was of the view that it would not be pragmatic for a law firm to act for more than one accused person because of the potential conflict of interest. Having considered the arguments before me, I agreed with the position taken by Mr Ashokan and Mr Daniel. Given the generally unpredictable nature of the trial process and the dire prejudice that would arise if a potential conflict of interest were to morph into an actual conflict of interest at a late stage in the Criminal Proceedings, I accepted that the reasonable steps to be taken by the Accused did not include approaching the lawyers acting for the Co-Accused Persons and the other lawyers in their law firms.

68 That said, I agreed with the submissions of Ms Kam and Mr Daniel that the relevant pool of local counsel to consider, as envisaged by the phrase "the availability of any Senior Counsel *or other advocate and solicitor with appropriate experience*" [emphasis added] in para 3(*c*) of the Notification, includes not just local Senior Counsel, but also other local counsel with experience in commercial and/or criminal matters. While several of the best counsel in Singapore have been appointed as Senior Counsel, it cannot be said that there are no other highly able counsel outside their ranks. From my experience, both at the Bar and through my interaction with counsel on the Bench, I can state with confidence that there remains available in several areas of practice (including commercial law and criminal law) a number of highly able practising counsel who are not Senior Counsel.

69 Having ascertained the relevant pool of local counsel to consider, the next step in the assessment involves determining whether the Accused made reasonably conscientious efforts to

secure the services of local counsel in that pool. As set out in [13]–[14] above, the Accused asserted that five different counsel and/or law firms declined to act for him for a variety of reasons after Mr Francis Xavier SC from Rajah & Tann LLP first indicated sometime in August 2012 that he might be in a position of conflict. However, at least two out of the five counsel approached, namely, Professor Walter Woon SC and Mr Amarjeet Singh SC, either have not appeared in our courts as defence counsel in criminal matters for considerable periods of time or no longer do court work, and thus cannot be regarded as having "appropriate experience" for the purposes of para 3(*c*) of the Notification. Furthermore, Lee & Lee and Michael Hwang SC (see [14] above) were not even approached by the Accused directly. I also noted that most of the law firms which were approached (whether directly or indirectly) did not appear to have criminal or corporate crime counsel who are still in active practice. While the law does not require the Accused to contact the entire pool of competent local counsel or even a significant number of them (see *Re Geraldine Andrews* at [55], reproduced in [66] above), it is clear that on a quantitative *and* qualitative assessment, the Accused did not make reasonably conscientious efforts to secure the services of competent local counsel from the available pool. On this basis, I was satisfied that there remained to be tapped a substantial number of more than competent local counsel and Senior Counsel to represent the Accused in the Criminal Proceedings.

70 I should also mention that it subsequently came to my knowledge at a hearing in chambers that the Accused had not ruled out engaging the services of Mr Ashokan and/or other lawyers in his firm, KhattarWong LLP. As I noted during that hearing, Mr Ashokan and/or these other lawyers are perfectly capable of handling the Accused's defence, and this revelation fortified my decision to find against the Accused apropos paras 3(*b*) and 3(*c*) of the Notification.

Para 3(d) of the Notification: Whether, having regard to the circumstances of the case, it is reasonable to admit a foreign senior counsel

71 The last factor set out in para 3 of the Notification is a catch-all provision to allow the court to consider other relevant matters not caught by the first three limbs of that paragraph. This court had previously refrained from attempting to define "reasonableness" under this limb (see *Re Geraldine Andrews* at [58]), but noted that equality of arms, or the notion that there should be a level playing field between the opposing parties, could be a relevant factor after the 2012 amendments (see *Re Geraldine Andrews* at [60]).

72 Mr Ashokan acknowledged that the principle of equality of arms applied in relation to adversaries, and that this principle would not apply in this case *vis-à-vis* the Prosecution since none of the members on the Prosecution's team were Senior Counsel. Mr Ashokan nevertheless urged this court to extend the principle of equality of arms to also include the consideration of the playing field as between fellow co-accused persons. Ms Kam and Mr Daniel opposed such an extension, and I agreed with them that there was no reason to extend this principle on the facts of this case. The criminal trial is an accusatory and adversarial process, and the onus of proving each element of the offence according to the criminal standard of beyond reasonable doubt is on the Prosecution. As was recognised in *Re Geraldine Andrews* at [61], equality of arms "is but a means to an end". The "end" is the client's success, which, in the context of this case, would be the acquittal of the Accused *vis-à-vis* the Prosecution. Mr Ashokan's proposed extension of the principle of equality of arms was not a means to this end as there was no evidence put before this court that the defence of the Accused was not aligned with that of the Co-Accused Persons. If there was evidence before this court that the defences of the Accused and the Co-Accused Persons were adverse to each other's cases, then this could be a relevant, although by no means decisive, consideration.

73 Mr Ashokan also urged this court to consider that if this application were to be dismissed, the

Accused would have to spend time and effort to look afresh for suitable counsel, and that could cause further delay to the Criminal Proceedings, which were, at the time of the hearing of this application, fixed for early May 2013. I did not accept this reason since the Accused was the sole author of this predicament, having failed to make reasonably conscientious efforts to secure the services of competent local counsel from the available pool (see [69] above). Neither did I think that the amounts involved in the Transactions, the severe potential penalties in the event of a conviction and the identity of the Accused and the other parties implicated were factors that made it reasonable for a foreign senior counsel to be admitted.

74 Having considered all the circumstances of this case, it was evident that the Accused did not succeed in establishing that any of the factors listed in para 3 of the Notification were made out. One of the two "keys" in the "twin key" approach therefore could not be engaged.

The "special reason" criterion in s 15(2) of the current LPA

75 As explained in [54] above, the "special reason" criterion in s 15(2) of the current LPA envisages an exceptional case, and there could very well be an overlap between this criterion and the Notification matters. In the light of my findings and after considering all the circumstances of this case, I was of the view that no exceptional circumstances had been identified. The other "key" in the "twin key" approach therefore also could not be turned.

Conclusion

76 For the aforementioned reasons, this was not an appropriate case for the *ad hoc* admission of foreign senior counsel. The application was therefore dismissed with the usual consequential orders.

[note: 1] See Mr Ashokan's first affidavit dated 14 January 2013 at p 77.

[note: 2] *Id* at p 78.