# Re Eder Henry Bernard QC
# [2004] SGHC 239

**Case Number** : OM 39/2004

**Decision Date** : 29 October 2004

**Tribunal/Court** : High Court

**Coram** : Tan Lee Meng J

**Counsel Name(s)** : Lawrence Teh Kee Wee and Loh Jen Wei (Rodyk and Davidson) for applicant; Sarjit Singh Gill SC (Shook Lin and Bok), Matthew Saw and Mervyn Foo (Lee and Lee) for respondent in Civil Appeals Nos 57 and 73 of 2004; Lim Yew Jin (State Counsel) for Attorney-General; Pradeep Kumar Gobind (K S Chia Gurdeep and Param) for Law Society of Singapore

**Parties** : —

*Legal Profession – Admission – Ad hoc – Admission of Queen's Counsel – Whether issues raised in appeals sufficiently difficult or complex to warrant admission of Queen's Counsel – Section 21(1) Legal Profession Act (Cap 161, 2001 Rev Ed).*

29 October 2004

**Tan Lee Meng J:**

1 This Originating Motion concerns an application under s 21 of the Legal Profession Act (Cap 161, 2001 Rev Ed) for the admission of Mr Henry Bernard Eder, a Queen's Counsel, on an *ad hoc* basis to enable him to appear as counsel for Credit Lyonnais ("CL") in Civil Appeals Nos 57 and 73 of 2004 (the "appeals"). I dismissed the application and now give the reasons for my decision.

**Background**

2 The appeals, which were filed by CL, relate to Suit No 1175 of 2002, which was commenced by RBG Resources plc ("RBG"), an English company that was placed in compulsory liquidation. That suit was instituted pursuant to orders made in earlier interpleader proceedings for the resolution of competing proprietary and possessory claims between RBG and seven other companies, including CL, with respect to a cargo of metal in a warehouse in Singapore (the "warehouse"). Before the trial commenced, RBG reached a settlement with all defendants except the fourth defendant, who did not file a defence, and CL. As judgment in default of defence was entered against the fourth defendant, CL was the only defendant with whom RBG had to contend at the trial.

3 CL's case was that a large quantity of nickel cathodes, copper cathodes and tin ingots that it purchased from RBG in a series of transactions, formed part of the bulk of metal goods lying in the warehouse. However, RBG denied that the goods in the warehouse included any of the goods sold to CL. RBG also complained that CL had wrongfully removed 300mt of nickel briquettes from the warehouse on 9 May 2002. As such, a question arose as to whether any part of the metal goods in the warehouse could be ascertained as CL's goods. For this purpose, CL relied on, *inter alia*, s 20A of the Sale of Goods Act (Cap 393, 1999 Rev Ed), a relatively new statutory provision that concerns undivided shares in goods that form part of a bulk.

4 In the main, the trial judge, Woo Bih Li J, found in favour of RBG (see *RBG Resources plc v Banque Cantonale Vaudoise* [2004] 3 SLR 421). He ruled that RBG remained the legal and beneficial owner of the metal goods in the warehouse save for one drum of nickel that could be identified as CL's goods. CL was also ordered to pay damages to RBG for conversion of the nickel briquettes that it

had taken from the warehouse on 9 May 2002. In Civil Appeals Nos 57 and 73 of 2004, CL appealed against the substantive decision of the trial judge and his reserved judgment on interest and costs and in the present proceedings, the *ad hoc* admission of Mr Eder QC was sought for the purpose of arguing these appeals.

**Section 21 of the Legal Profession Act**

5 Section 21(1) of the Legal Profession Act, which governs the admission of a Queen's Counsel, provides as follows:

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

6 In *Re Caplan Jonathan Michael QC (No 2)* [1998] 1 SLR 440, Yong Pung How CJ explained the ambit of s 21 of the Legal Profession Act in the following succinct terms, at [11]:

> The requirements of the above provision were considered at length by the Court of Appeal in *Price Arthur Leolin v A-G & Ors* [1992] 2 SLR 972. In its judgment, the court articulated a three-stage test for admission under s 21(1). At the first stage, the applicant must demonstrate that the case in which he seeks to appear contains issues of law and/or fact of sufficient difficulty and complexity to require elucidation and/or argument by a Queen's Counsel. Such difficulty or complexity is not of itself a guarantee of admission, for the decision to admit is still a matter for the court's discretion. At the second stage, therefore, the applicant must persuade the court that the circumstances of the particular case warrant the court exercising its discretion in favour of his admission. Finally, he has to satisfy the court of his suitability for admission.

7 According to CL, the issues arising in their appeals are "difficult and complex and potentially far-reaching". It was pointed out that the case involved the concept of ascertainment of goods and the operation of s 20A of the Sale of Goods Act and that these issues, as well as collateral issues of fraud and insolvency, are sufficiently difficult and complex to warrant the admission of a Queen's Counsel to assist the Court of Appeal in considering the formulation of principles that would provide commercial certainty to the local and international banking and commercial community.

8 The Attorney-General objected to the application for the *ad hoc* admission of Mr Eder QC "for the reason that the case is not one of sufficient difficulty and complexity such as to require the assistance of a Queen's Counsel to elucidate on and argue it before the Court of Appeal or that local counsel have any less expertise in". It was pointed out that the issues raised in the appeals were canvassed during a long trial by local counsel and there has been no suggestion that any of them, and especially counsel for the appellant, lacked expertise during the trial or is inadequate for the purpose of arguing the appeals before the Court of Appeal.

9 The Law Society of Singapore agreed with the Attorney-General that the case was not of

sufficient difficulty and complexity to require the admission of a Queen's Counsel. This view was echoed by Mr Sarjit Singh SC, the respondent's counsel in the appeals in question. He said that he had been instructed very late in the day to take charge of his client's case in the trial before Woo J, and that it had only taken him less than a week to prepare for the trial. This, he declared, showed that the case was not very difficult or complex.

**The decision**

10 A judge who is exercising his discretion to admit or deny the admission of a Queen's Counsel will find the following elucidation of the applicable principles by Yong Pung How CJ in *Price Arthur Leolin v AG* [1992] 2 SLR 972 at 976–977, [11] to be very useful:

> Section 21 appears to refer to the usual general principles of judicial discretion, without the operation of any presumptions. Without intending to set down here an exhaustive list of relevant considerations affecting that discretion, we think the following matters will usually be material to a court. The court has to balance the long-term need to foster a strong and independent Bar in our own jurisdiction against the individual justice of each case which may demand that a particularly specialized and skilled Queen's Counsel be permitted to assist the court. Some factors relevant to proving or disproving this may include the length of the hearing in which the Queen's Counsel seeks to appear, whether it is to be in chambers or open court, and the specific issues to be decided in those proceedings. Another consideration may be the desirability of admitting foreign counsel in a case where on grounds of self-interest or acquaintanceship, in view of the size of our jurisdiction and population, no local counsel ought to or is willing to take the case.

11 I agree that the issues in the appeals are not sufficiently difficult or complex to warrant the admission of a Queen's Counsel. There is nothing to prevent CL's local counsel from seeking the views and assistance of a Queen's Counsel for the preparation of the papers and arguments for the appeal. Mr Lawrence Teh, who argued the case for the admission of Mr Eder QC, said that with his experience and knowledge, the latter would be able to put his client's case more eloquently and forcefully to the Court of Appeal. However, eloquence is, by itself, not a criteria envisaged in s 21 of the Legal Profession Act and it is worth noting that in *Re Flint Charles John Raffles QC* [2001] 2 SLR 276 at [9], Lai Kew Chai J issued a timely reminder that the local Bar has matured and that there

> … has been forged and carefully nurtured … a body of Senior Counsel, potential senior counsel and an impressive group of young advocates and solicitors, … with excellent academic credentials and a right attitude.

12 As for CL's assertion that a Queen's Counsel ought to be admitted to explain to the Court of Appeal the ramifications of s 20A of the Sale of Goods Act, which is a relatively new provision that has not been interpreted by the High Court or the Court of Appeal, in *Re Howe Martin Russell Thomas QC* [2001] 3 SLR 575, Yong Pung How CJ put the matter in its proper perspective when he said as follows, at [14]:

> [T]he mere fact that there is no local decision interpreting a provision of a statute does not *per se* turn that into a complex or difficult issue of law. If it were so, it means that whenever a fresh statute is enacted and becomes the subject of dispute as to its applicability, s 21 of the [Legal Profession Act] will warrant the admission of a Queen's Counsel. That cannot be right.

13 It should not be overlooked that when RBG sought costs for two counsel after the trial, CL, which had been quite content to have Mr Lawrence Teh handle their case, objected to the application and submitted that RBG had over-manned the litigation team by having two senior

lawyers, Mr Quek Mong Hua and Mr Sarjit Singh SC, who are from different law firms, on the case. Having taken that position, it is rather surprising that CL should now seek to strengthen their team by bringing on board a Queen's Counsel for the preparation of the appeals. Woo J, who refused to certify that two counsel were required by RBG for the trial, explained his decision in his further judgment on costs and interest (see *RBG Resources plc v Banque Cantonale Vaudoise (No 2)* [2004] SGHC 167 at [34] and [35]) in the following terms:

> As regards the question of a certification of costs for two counsel, I recalled that Mr Quek had informed me that Mr Gill SC was instructed to be lead counsel because the other defendants who had reached a settlement with RBG had wanted this. There was no suggestion then that the case was so novel or complex that only two counsel could represent RBG.
>
> I was of the view that while the scenario was initially complicated by the claims of other defendants, it had become a relatively straightforward battle between RBG and CL after the other defendants dropped out. The s 20A issue was novel but not particularly complex.

14 As I had no doubt that CL's appeals against the decisions of Woo J did not involve issues of sufficient difficulty or complexity to warrant the admission of a Queen's Counsel, it was not necessary for me to take into account other factors for the purpose of considering whether Mr Eder QC should be admitted on an *ad hoc* basis for the purpose of arguing the appeals in question. The application to admit Mr Eder QC was thus dismissed with costs.