Goldring Timothy Nicholas and others *v* Public Prosecutor [2013] SGHC 88

Case Number	: Criminal Revision No 17 of 2012
Decision Date	: 25 April 2013
Tribunal/Court	: High Court
Coram	: V K Rajah JA
Counsel Name(s)	: Wendell Wong, Choo Tse Yun and Benedict Eoon Zizhen (Drew & Napier LLC) for the applicants; Luke Tan, Kevin Yong, Nakoorsha bin Abdul Kadir and Jeremy Yeo (Attorney-General's Chambers) for the respondent.
Parties	: Goldring Timothy Nicholas and others — Public Prosecutor

Criminal Procedure and Sentencing – Revision of Proceedings

25 April 2013

V K Rajah JA:

Introduction

1 When law enforcement authorities seize objects in the lawful exercise of their powers of investigation, what effect does such seizure have on pre-existing rights or arrangements in relation to those objects? Are law enforcement authorities required to allow access to these objects to those otherwise entitled to legal custody or control of the items? If so, in what circumstances must access be granted and what is the scope to which this access extends? These were some of the interesting questions which arose in this application.

2 This was an application ("the Application") by Timothy Nicholas Goldring, Geraldine Anthony Thomas and John Andrew Nordmann (collectively, "the Applicants") for criminal revision of the decision of the Senior District Judge ("SDJ") at a criminal case disclosure conference ("CCDC") held on 6 August 2012. At that CCDC, the SDJ had dismissed the Applicants' request for the Prosecution to produce copies of documents which were in the control of the Applicants before they were lawfully seized by the Commercial Affairs Department ("CAD").

3 At the conclusion of the hearing before me on 25 October 2012, I allowed the Application and directed that access should be provided to the Applicants within a reasonable time. On 23 November 2012, the Prosecution filed Criminal Reference No 4 of 2012 to reserve various questions arising from my decision for determination by the Court of Appeal.

4 I now set out the detailed reasons for my decision.

The facts

5 The Applicants were directors of Profitable Plots Pte Ltd ("the Company"). The Applicants were also the accused persons in District Arrest Cases Nos 010468 to 010725 of 2012, which involved 86 charges of abetment by conspiracy to cheat ("the Charges"). The Charges consisted of alleged cheating offences where the Applicants were accused, for example, of knowingly making untrue representations that money invested through an investment scheme offered by the Company would

be used exclusively to finance the purchase of "Boron CLS Bond" products which had purportedly been pre-sold to major corporations. [note: 1]

6 On 11 August 2010, officers from the CAD searched the Company's premises and seized documents pursuant to an order under s 58 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the 1985 CPC"). The CAD seized all working documents, laptops and data storage items from the Company's offices, amongst other documents ("the Seized Documents"). [note: 2] The Seized Documents were the property of the Company. The Applicants estimated that the Seized Documents consisted of a total of 197,240 individual documents (not including documents which were electronically stored). [note: 3] The CAD concurrently issued receipts which only contained brief details of the Seized Documents ("the Receipts"). [note: 4]

7 It is common ground that the CAD did not give the Applicants the opportunity to make copies of any of the Seized Documents before it took the Seized Documents away. The investigating officer in charge of the search, Assistant Superintendent Ho Ban Hsiung ("ASP Ho"), informed the Applicants on the day of the search that if they required any of the Seized Documents, they could write to the CAD to request for them. [note: 5]

8 After the search, the Applicants requested the CAD on several occasions for copies of selected documents amongst the Seized Documents. The CAD acceded to these requests and the Applicants' last successful request was made on 21 February 2012. I pause to note that the CAD consistently acceded to the Applicants' requests for copies of their documents over a period of about one and a half years after the seizure of the Seized Documents in August 2010.

9 On 27 March 2012 (which was about one and a half years after the CAD searched the Company's premises and seized the Seized Documents), the Charges (see above at [5]) were preferred against the Applicants.

10 On 13 April 2012, the first applicant, Timothy Nicholas Goldring, wrote to ASP Ho to request for copies of some Seized Documents ("Schedule A Documents"). On 18 April 2012, ASP Ho rejected this request, stating: [note: 6]

> 3. ... [P]lease note that, if required, [the documents] will be disclosed in due course as part of the Prosecution's disclosure obligations under the criminal case disclosure conference ("CCDC") regime and according to the timelines therein.

11 On 29 May 2012, the Case for the Prosecution was served on the Applicants. The Applicants again requested for copies of the Schedule A Documents on 1 June, 15 June and 25 June 2012. On 26 June 2012, the Prosecution rejected the Applicants' request because it took the position that they had no legal basis for the request.

12 On 17 July 2012, during the second CCDC, the SDJ directed the parties to file written submissions on (a) whether the Applicants were entitled to apply to the CCDC judge for an order for production of the Schedule A Documents, and (b) whether a CCDC judge was empowered to make such an order. On 6 August 2012, the SDJ dismissed the Applicants' application and delivered a brief oral judgment. However, I note that at that time there was a lack of clarity with respect to the legal basis on which the Applicants sought copies of the Seized Documents. The issues mentioned below at [18] only clearly crystallised during oral submissions in the course of the hearings before me.

13 On 13 August 2012, the Applicants filed Criminal Motion No 73 of 2012 ("CM 73/2012"). The

Applicants prayed, *inter alia*, for the following orders:

(a) That the order by the SDJ on 6 August 2012, rejecting the Applicant's request for the Prosecution to produce copies of the Schedule A Documents, be set aside;

(b) That the Prosecution produce copies of the documents listed in the enclosed schedules ("the Materials") to the Applicants prior to the filing of the Case for the Defence under the Criminal Procedure Code (Act 15 of 2010) ("CPC 2010").

For completeness, it bears mentioning that a revised edition of the CPC 2010 was published in 2012.

14 The Materials were estimated by the Applicants to consist of 5,750 individual documents (not including documents which were electronically stored), and the Materials consisted of about 3% of the total number of Seized Documents. [note: 7] Broadly speaking, the Materials could be classified into the following categories: [note: 8]

(a) Records of the accounts of the Company's clients;

(b) Copies of marketing material produced by the Company; and

(c) Personnel files relating to employees of the Company seized from the Company's human resource department.

15 In the course of the hearings before me, the Applicants filed Criminal Revision No 17 of 2012 ("CR 17/2012") and withdrew CM 73/2012 after the Prosecution pointed out that an application to set aside an order made by the SDJ had to be made *via* criminal revision. The Prosecution did not object to this development. The orders and directions which the Applicants sought in CR 17/2012 were similar to those which they sought in CM 73/2012 (see [13] above).

The Applicants' submissions

16 The Applicants' main arguments were as follows: [note: 9]

(a) There is a common law right for owners to obtain copies of documents seized by the police and it would be prejudicial and detrimental to the conduct of a fair trial if copies of the Materials were not produced to the Applicants.

(b) Each and all of the Materials were relevant, necessary and desirable for the purpose of the Applicants' preparation of their defence.

(c) Alternatively, even if the Prosecution has a discretion in deciding whether to allow the Applicants to obtain copies of the Materials, the Prosecution's duty of disclosure (as recognised under *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar 1*")) ought to be followed and developed such that copies of the Materials which are relevant to the matter should be provided during the filing of the Case for the Prosecution.

The Prosecution's submissions

17 The Prosecution's main arguments were as follows: [note: 10]

(a) Under Singapore law, apart from the provisions of the CPC 2010, there is no legal right of

access by accused persons to documents validly obtained and retained by the police in the course of investigations, regardless of whether the documents originated from the accused persons or from third parties.

(b) In other major common law jurisdictions, there is no common law right of access to documents seized in the course of criminal investigations based on ownership or prior possession, though statutory rights of access have been specially created by the legislature in some of those jurisdictions.

(c) On the facts of the Application, there is no basis for the creation of any new "procedure" of access via s 6 of CPC 2010 as this would create a procedure that is inconsistent with the CPC 2010, and in particular, s 166(2)(*a*) of the CPC 2010.

The issues before the court

18 There were four issues before the court:

(a) whether there was a common law right of access to objects seized by law enforcement authorities;

(b) whether, if there was such a common law right, the introduction of the CPC 2010 had affected and/or modified this common law right;

(c) whether, even if there was no such right at common law, it would be in the interests of justice to recognise the existence of such a right; and

(d) whether, on the facts, the Application should be granted.

Issue 1: Whether there was a common law right of access to objects seized by law enforcement authorities

The common law right of access to documents over which an accused had ownership or legal custody or a legal right to control immediately before the lawful seizure

19 In the course of the proceedings, it became clear that there are three broad categories of documents that could be the subject of criminal disclosure: (a) documents over which the Applicants had ownership or legal custody or a legal right to control immediately before the lawful seizure ("Category 1 Documents"); (b) statements made by the Applicants to third parties ("Category 2 Documents"); and (c) documents belonging to third parties which do not fall under Category 1 Documents or Category 2 Documents ("Category 3 Documents").

20 The key issue before me was whether the Applicants have a right to access the Materials (as defined at [13(b)] above) for the purpose of making copies thereof. It was common ground between the Applicants and the Prosecution that prior to the lawful seizure of the Materials by the CAD, the Applicants were entitled to the same rights apropos the Materials as an owner would have been. In short, *this case solely concerned Category 1 Documents*, and not Category 2 Documents or Category 3 Documents. Therefore, I am minded to emphasize that the principles laid down in this case are in relation to the disclosure of Category 1 Documents alone, and should not be applied to Category 2 Documents or Category 3 Documents unless there is clear justification for doing so.

21 The crux of the Applicants' arguments was that a common law right of access exists for

Category 1 documents seized by law enforcement authorities. The Applicants' primary authority for this proposition was the English Court of Appeal decision of *Arias & Others v Commissioner for the Metropolitan Police & Another* (1984) 128 SJ 784; The Times, 1 August 1984 ("*Arias*"). The facts of *Arias* were as follows. The first and second appellants were the trustees of a trust, while the third appellant was a corporate entity which managed the business of the trust. In March 1984, the premises of the third appellant were searched by the police pursuant to a search warrant. Several documents were seized by the police. Although the appellants did not dispute that the seizure and continued detention of the documents by the police was lawful, they applied to court for an order for delivery up of copies of the documents. The police argued that copies should not be provided to the appellants because this would be injurious to the public interest that criminals should be detected, prosecuted and convicted. The judge at first instance dismissed the appellants' application.

22 The English Court of Appeal allowed the appellants' appeal. It determined that the police should be compelled to provide copies of seized documents belonging to the appellants, unless there were reasonable grounds for believing that disclosure would be contrary to the public interest (*ie*, if the copies were likely to be used to frustrate the ends of justice). May LJ emphatically stated:

> … [I]n all these cases what the court has to do is to conduct the appropriate balancing exercise. I would not wish it to be thought that in every case something more than the mere statement of belief on reasonable grounds on the part of the relevant police officer … is required. Each of these cases, in which this conflict of public interests arises, has to be decided upon its own facts have regard to all the circumstances of the case as they then appear to the court. Doing the *balancing exercise* in the present case … *I am driven to the conclusion that the fact that* ***these documents are the appellants' own documents*** *, and that they are only asking for copies of them to enable the trust business to be carried on*, ***even if they may wish to prepare their defence to any criminal prosecution which may hereafter be instituted, leads to the balance coming down clearly in favour of the appellants*** **.** It is, I agree, a strong thing to say not merely that these officers are entitled to retain the original documents which are potentially exhibits in subsequent criminal proceedings, but also to contend that, at any rate for a substantial period, the owners of those documents shall not even be entitled to look at them or take copies of them. ... [emphasis added in italics and bold italics]

Similarly, Kerr LJ held:

> In this case both parties are at one in saying that the defendants, the police, have all the documents involved in this investigation. They are agreed that they belong to the appellant -- or, at any rate, that he is entitled, subject to the question of public interest, to possession of them.
>
> The issue is solely as to the information contained in those documents, since the appellant only seeks access to them for the purpose of taking copies at his own expense. The issue is therefore whether this is to be denied to the appellant on the ground of the public interest.
>
> *There may well be cases in which the public interest of investigating crime and bringing criminals to trial and conviction would go so far as to justify withholding from suspects, who are the owners of documents in the possession of the police, even copies of them until a prosecution is either brought or it is decided not to prosecute them or some other person.* Some such instances were canvassed in argument and can be imagined. For instance, to give only one obvious kind of illustration, if the documents contain information which would facilitate further crime or alleged crime, or the location, codes or numbers of deposit boxes or other hiding places where incriminating evidence or stolen property might be secreted, it would obviously be against the public interest to make this information available even to the owner of the documents by

giving him unrestricted access to them. ***But the court must be satisfied that in all the circumstances of each case the balance between the public interest and the rights of the plaintiff requires the drastic decision which is sought in the present case, to refuse to the appellant even copies of the documentary evidence in the possession of the police. No case to which we were referred has gone so far, although for my part such cases cannot be ruled out in principle.***

The question is therefore how this balance stands in the present case. I ask myself: what is to be placed in the scale against the appellant's right to have the same information as the police; the information contained in his own documents which the police hold?

In the ultimate analysis, only one factor is placed on behalf of the police against the appellant's claim. That is the fear that if the appellant had copies of his own documents ... he might use the information contained in these documents to fabricate other evidence, in association with others, which would or might destroy or neutralise the incriminating nature ... of the evidence which [the police] have.

I draw attention to three passages in the affidavit evidence of the defendants. ... First, in paragraph 6 of the affidavit which was before [the first instance judge], it is said:

> "I fear that if they are disclosed at this stage of the investigation there is a real danger of my investigations being hampered; and such disclosure would afford an opportunity for any person at present under suspicion, to attempt to fabricate a defence."

Then two passages in paragraph 4 of the further affidavit placed before us which Lord Justice May has already read, but which I repeat to emphasise their speculative nature:

> "If this information were to be made available to the suspects at this stage of the investigation, it would enable them, if so minded, to attempt to cover their tracks by the production of other documents based on the information contained in the documents which I hold."

Finally:

> "I again fear that they would then be in a position to attempt to cover their tracks and thus hamper the completion of the investigation."

All this is no more than speculation and suspicion, and I think there is force in Mr Purnell's submission that similar fears could be expressed in almost any case where the police are in sole possession of documents which they regard as incriminating. *I appreciate -- and wish to make this clear -- that there may well be extreme cases where the circumstances are such that the police cannot reveal their full reasons for wishing to refuse an owner access to his own documents, because the revelation of their reasons would itself destroy the public interest which they are seeking to uphold or, to use the phrase of Lord Justice May, would in effect "give the game away".* So there may be cases where the reasons themselves cannot be fully revealed. But there is no indication that this is such a case, although we gave Mr Hyam a full opportunity of going further, if he could, than the passages to which I have already referred. It is merely a case of fear based on speculation, that evidence might be fabricated with nothing to support it other than the passages which I have already read, and nothing to support it in the learned judge's judgment other than the two paragraphs which Lord Justice May has already read.

In these circumstances, I agree that there is nothing like enough to tilt the balance against the appellant by a refusal of the relatively self-evident right which he claims, and to accord to the police the unusually draconian power which they seek .

[emphasis added in italics, bold italics and underline]

23 Implicit in May and Kerr LJJ's reasoning in coming to the conclusion reached (with which I agreed) was the fundamental premise that a lawful seizure of objects by law enforcement authorities *does not destroy or otherwise extinguish essential proprietary rights that an owner has in his property*. Both as a matter of principle and commonsense this proposition is axiomatic. A seizure of an owner's items is not tantamount to a confiscation or sequestration of proprietary rights in the same. This approach is reflected implicitly as well in s 370 of the CPC 2010 which provides as follows:

Procedure governing seizure of property

370.—(1) If a police officer seizes property which is taken under section 35 or 78, or alleged or suspected to have been stolen, or found under circumstances that lead him to suspect an offence, he must make a report of the seizure to a Magistrate's Court at the earlier of the following times:

(*a*) when the police officer considers that such property is no longer relevant for the purposes of any investigation, inquiry, trial or other proceeding under this Code; or

(*b*) one year from the date of seizure of the property.

(2) Subject to subsection (3), the Magistrate's Court must, upon the receipt of such report referred to in subsection (1), *make such order as it thinks fit respecting the delivery of the property to the person entitled to the possession of it* or, if that person cannot be ascertained, respecting the custody and production of the property.

(3) The Magistrate's Court must not dispose of any property if there is any pending court proceeding under any written law in relation to the property in respect of which the report referred to in subsection (1) is made, or if it is satisfied that such property is relevant for the purposes of any investigation, inquiry, trial or other proceeding under this Code.

[emphasis added]

By providing that the Magistrate's Court must order the delivery of seized property to the person entitled to possession, s 370 of the CPC 2010 recognises and affirms the aforementioned premise that the prior seizure of the said property does not have the effect of extinguishing the proprietary rights of that person *vis-à-vis* the property.

The suspension of possessory and control rights during the lawful seizure and retention of seized property by law enforcement authorities

2 4 *In my view, the lawful seizure and retention of property by law enforcement authorities merely suspends the right to possession or control of the said property during the material period.* This suspension, which constitutes a restriction on the exercise of pre-existing proprietary rights in the said property, is justifiable on the basis that such suspension is necessary in the interest of the administration of criminal justice. As the court in *Arias* perceptively observed, the right of access will only be suspended if there are reasonable concerns that allowing such access would or would be likely

to prejudice the proper administration of justice. But if no such public interest concerns are present, the right of access vested in the lawful owners or those who have a legal right to possess or control the seized objects immediately before the lawful seizure must be respected. I therefore agreed with the Applicants that there exists as a matter of principle, logic and authority a *common law right of access* to Category 1 documents for the purpose of making copies thereof, and that this right would only be trumped in exceptional circumstances where the exercise of the said right would or would be reasonably likely to be contrary to the public interest in ensuring the proper administration of justice.

25 The Canadian cases also support the proposition that a lawful seizure of objects does not destroy proprietary rights but merely detracts from them. In *R v MacKenzie* [1973] 10 CCC (2d) 193 ("*MacKenzie*"), the Saskatchewan Court of Queen's Bench stated at [8] and [15]:

> 8 Search warrants authorize an entry upon the private premises of a citizen and the seizure of certain private property if found therein, *and thus they detract from a citizen's rights at common law to enjoy his lands and personal property without intrusion or interference by any person*. ...
>
> ...
>
> 15 Whenever things are illegally seized a conflict of interests must of necessity arise between, on the one hand, *the right of the individual entitled thereto to posses[s] and enjoy the seized articles*, ***subject only to such being lawfully seized*** and, on the other hand, the interest of the country's justice in locating and obtaining evidence for use at the trial of a person accused of a crime. The interest of the whole community in the administration of justice and in the conviction of perpetrators of crime takes priority over the matter of the temporary loss by an individual of the enjoyment of the possession of the seized articles while they are required by Her Majesty's courts. ...
>
> [original emphasis omitted; emphasis added in italics and bold italics]

While [8] of *MacKenzie* dealt with the effect of search warrants, there is no reason in principle why the principle encapsulated in that paragraph, *viz*, that search warrants merely detract from pre-existing proprietary rights, should not apply more generally regardless of whether the seizure of the relevant objects was made pursuant to search warrants or was otherwise permitted by law. In addition, while [15] of *MacKenzie* dealt with the retention of property which was illegally seized, the court implicitly accepted that the *lawful* seizure of property would merely *affect* (but not destroy or extinguish) rights of possession and control.

26 Similarly, in *Bartlett v Weir and Others* (3 June 1994, unreported), a decision of the Federal Court of Australia, Beazley J stated:

> The applicant next contends that quite apart from the issue of the lawfulness of the execution of the warrants, the second respondents [*ie*, the police] retained the items seized for an unreasonable period. My finding that the execution of the warrants was unlawful means that the taking and retention of the goods for any period of time was unlawful. However, if I am wrong in that finding, the question arises whether the retention of the goods was for an unreasonable period of time so as to become unlawful.
>
> The goods were seized on 19 March 1992 and were not returned until after the court ordered their return on 15 May 1992. It appears that part of the reason, if not the reason, for this delay was that the second respondents were using the services of an officer of the Tax Office who was

only working on a part time basis. I do not consider that this excuses the retention for in excess of two months. *It must be remembered that seizure of goods constitutes an interference with an individual's proprietary and possessory rights. If the seizure is pursuant to a validly issued and executed warrant it is a lawful interference with those rights, but nonetheless an interference. If it is not intended that the seized goods be retained for evidence, they should be returned as soon as is reasonably practicable to the person who has been deprived of their possession.* It is no answer to say that the goods had not been examined or a decision not made as to whether they should be retained because of a lack of resources, because of the employment conditions of the person undertaking the examination or because the seizing officers have given priority to other matters. This is more particularly so in the case of computer software which could have been copied under appropriately controlled conditions in a very short period of time, assuming of course that the seizure had been valid. In my opinion, therefore the goods were detained for an unreasonable period of time.

[emphasis added]

27 In line with the principles stated in the above cases, the learned authors of Keith Tronc, Cliff Crawford and Doug Smith, *Search and Seizure in Australia and New Zealand* (LBC Information Services, 1996) ("*Tronc, Crawford & Smith*") have similarly observed as follows (at p 21):

> Once evidence has been [lawfully] seized ..., the general common law principle is that the police are then entitled to retain it for as long as is "reasonably necessary", having regard to the interests of justice. In general this will mean that they may retain it until the prosecution and trial of the offence in relation to which it was seized.

28 It could be said that the courts' recognition that there is a right to access seized objects and that seizure does not destroy pre-existing proprietary rights in those objects stems from the fundamental principle that an individual's home and property are inviolable save in exceptional circumstances. This bedrock tenet of the law has been stated with clarity in *Tronc, Crawford & Smith* as follows (at p 1):

> In the history of the common law, the privacy, security and integrity of a citizen's home and possessions have been fundamental rights. A person's home and possessions were not to be violated without compelling reasons.

29 Furthermore, the reason why law enforcement authorities have been conferred powers of search and seizure (and retention) of objects is that this will further the administration of criminal justice by facilitating the effective investigation and prosecution of crimes. One way of achieving this objective in the particular context of powers of search, seizure and retention is by ensuring that relevant evidence is brought into the safekeeping of law enforcement authorities for possible use in court or further investigations. This principle has been recognised in several cases. In *The Queen v Lushington, Ex Parte Otto* [1894] 1 QB 420, Wright J stated (at 423–424):

> In this country I take it that it is undoubted law that it is within the power of, and is the duty of, constables *to retain* ***for use in Court*** *things which may be* ***evidences of crime*** , and which have come into the possession of constables without wrong on their part. I think it is also undoubted law that when articles have once been produced in Court by witnesses it is right and necessary for the Court, or the constable in whose charge they are placed (as is generally the case), to preserve and retain them, so that they may always be ***available for the purposes of justice until the trial is concluded.*** ... [emphasis added in italics and bold italics]

30 In the landmark decision of *Ghani and Others v Jones* [1970] 1 QB 693 ("*Ghani v Jones*"), Lord Denning MR authoritatively declared that (at 706–709):

> ... I take it to be settled law, without citing cases, that the officers are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the crime for which he is arrested or for which they enter. If in the course of their search they come upon any other goods which show him to be implicated in some other crime, they may take them provided they act reasonably *and detain them no longer than is necessary.* ...
>
> ...
>
> ... We have to consider, on the one hand, the freedom of the individual. His privacy and his possessions are not to be invaded except for the most compelling reasons. On the other hand, we have to consider the interest of society at large in finding out wrongdoers and repressing crime. Honest citizens should help the police and not hinder them in their efforts to track down criminals. Balancing these interests, I should have thought that, in order to justify the taking of an article, when no man has been arrested or charged, these requisites must be satisfied:
>
> ...
>
> *Fourth*: The police *must not keep the article, nor prevent its removal, for any longer than is reasonably necessary to complete their investigations or preserve it for evidence.* ***If a copy will suffice, it should be made and the original returned*** *. As soon as the case is over, or it is decided not to go on with it, the article should be returned.*
>
> [emphasis added in italics and bold italics]

This particular statement in *Ghani v Jones* has been cited with approval on various occasions: see, for instance, *Jaroo v Attorney General of Trinidad and Tobago* [2002] 1 AC 871 at [25]–[27], *Peter Settelen, Chakra Productions Limited v The Commissioner of Police of the Metropolis* [2004] EWHC 2171 (Ch) at [39]–[41], and United Kingdom, The Royal Commission on Criminal Procedure, *The Investigation and Prosecution of Criminal Offences in England and Wales: The Law and Procedure* (Cmnd 8092-1, 1981) (Chairman: Sir Cyril Philips) at pp 12–13.

31 The courts in Canada and Australia have also affirmed that the powers of search and seizure of law enforcement authorities are conferred upon them for the effective administration of criminal justice. In the Canadian Supreme Court decision of *The Attorney General of Nova Scotia and Ernest Harold Grainger v Linden MacIntyre (The Attorney General of Canada, the Attorney General for Ontario, the Attorney General of Quebec, the Attorney General for New Brunswick, the Attorney General of British Columbia, the Attorney General for Saskatchewan and the Attorney General for Alberta, and Canadian Civil Liberties Association, interveners)* [1982] 1 RCS 175, Dickson J noted at 179–180:

> Search warrants are part of the investigative pretrial process of the criminal law, often employed early in the investigation and before the identity of all of the suspects is known. *Parliament, in furtherance of the public interest in effective investigation and prosecution of crime, and through the enactment of s. 443 of the Code, has legalized what would otherwise be an illegal entry of premises and illegal seizure of property.* ...
>
> *The search warrant in recent years has become an increasingly important investigatory aid, as*

crime and criminals become increasingly sophisticated and the incidence of corporate white collar crime multiplies. The effectiveness of any search made pursuant to the issuance of a search warrant will depend much upon timing, upon the degree of confidentiality which attends the issuance of the warrant and upon the element of surprise which attends the search.

As is often the case in a free society there are at work two conflicting public interests. The one has to do with civil liberties and the protection of the individual from interference with the enjoyment of his property. There is a clear and important social value in avoidance of arbitrary searches and unlawful seizures. The other, competing, interest lies in the effective detection and proof of crime and the prompt apprehension and conviction of offenders. Public protection, afforded by efficient and effective law enforcement, is enhanced through the proper use of search warrants.

[emphasis added]

32 In *George v Rockett and Another Respondent* [1990] 170 CLR 104, the High Court of Australia observed as follows (at 110–111):

This appeal from the order of the Full Court turns on the construction of s. 679 of the Code. Section 10 of the *Crimes Act 1914* (Cth) and s. 711 of *The Criminal Code* (W.A.) are in substantially the same terms. In reference to the procedure for issuing a search warrant under s. 10 of the *Crimes Act*, Mason J. said in *Baker v. Campbell* …

> "For present purposes the important characteristics of the search warrant procedure are that its foundation is the making of an order by a judicial officer and that the warrant which issues by virtue of the order authorizes the search and seizure of documents in the possession of another for use in the investigation and in any subsequent trial arising out of the investigation."

A search warrant thus authorizes an invasion of premises without the consent of persons in lawful possession or occupation thereof. The validity of such a warrant is necessarily dependent upon the fulfilment of the conditions governing its issue. *In prescribing conditions governing the issue of search warrants, the legislature has sought to balance the need for an effective criminal justice system against the need to protect the individual from arbitrary invasions of his privacy and property. Search warrants facilitate the gathering of evidence against, and the apprehension and conviction of, those who have broken the criminal law. In enacting s. 679, the legislature has given primacy to the public interest in the effective administration of criminal justice over the private right of the individual to enjoy his privacy and property.* ...

[emphasis added]

33 Based on the authorities cited above, it is clear that in the various common law jurisdictions surveyed, the lawful seizure and retention of property by law enforcement authorities *merely suspends* the right to possession or control of the said property during the material period. This common law understanding strikes a balance between the *public interest* of having an effective criminal justice system and the *private interest* of an individual to protect his own property. This common law approach also serves, in the present context, as an important point of reference when considering an accused person's right of access to his Category 1 Documents.

34 It was not (and could not be) disputed by the Applicants that law enforcement authorities had the power to *deny access* even to Category 1 Documents in certain circumstances. Such a power is

ancillary to the powers of search, seizure and retention of objects, because without a power to deny access the latter powers may sometimes be nugatory. For this reason, the *ambit* of the power to deny, withhold, or restrict access to Category 1 Documents must necessarily be moulded and shaped by the public policy objectives which underpin the powers of search, seizure and retention of objects. These powers are essentially intended to facilitate the effective administration of criminal justice (see [29]–[32] above).

35 If, however, the effective administration of criminal justice would *not* be furthered by the denial of access to Category 1 Documents for the purpose of making copies thereof, the law enforcement authorities *cannot* lawfully deny or withhold the exercise of the subsisting rights of individuals *vis-à-vis* those documents to that limited extent. It was this principle which underpins the decision of the English Court of Appeal in *Arias* (see [21]–[22] above), and constitutes the practical content of the conceptual understanding that the lawful seizure and retention of property by law enforcement authorities *merely suspends* the right to possession or control of the said property by the owner.

The statutory entrenchment of the common law right of access to Category 1 Documents in other jurisdictions

36 I observed that in most common law jurisdictions today, this carefully circumscribed common law right of access to Category 1 Documents has been statutorily entrenched. In England, s 21 of the Police and Criminal Evidence Act 1984 (c 60) (UK) ("PACE") reads:

> **Access and copying.**
>
> **21.**—(1) …
>
> ...
>
> (3) Subject to subsection (8) below, if a request for permission to be granted access to anything which—
>
> (*a*) has been seized by a constable ; and
>
> (*b*) is retained by the police for the purpose of investigating an offence,
>
> is made to the officer in charge of the investigation *by a person who had custody or control of the thing immediately before it was so seized* or by someone acting on behalf of such a person, the officer *shall allow the person who made the request access to it under the supervision of a constable.*
>
> …
>
> (8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has *reasonable grounds for believing that to do so would prejudice*—
>
> (*a*) that investigation;
>
> (*b*) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized ; or
>
> (*c*) any criminal proceedings which may be brought as a result of–

(i) the investigation of which he is in charge ; or

(ii) any such investigation as is mentioned in paragraph (*b*) above.

[emphasis added]

37 As Michael Haley stated in *The Police and Criminal Evidence Act 1984: The Solicitor's Guide* (Law Society's Gazette, 1989) at para 4.06, s 21(3) of PACE provides an owner or a person who has custody or control of the items immediately before their seizure a right of supervised access to those items seized and retained by the police. Such access can be denied pursuant to s 21(8) of PACE only if it is reasonably believed that allowing such access would prejudice the investigation of the offence or another offence or criminal proceedings arising out of investigation of these offences. The present position in England, as contained in ss 21(3) and 21(8) of PACE, is materially similar to the common law principles affirmed in *Arias*.

38 Section 3N of the Crimes Act 1914 (Cth) in Australia also provides that certain persons have a right to obtain copies of seized objects. [note: 11] It states as follows:

Copies of seized things to be provided

(1) Subject to subsection (2), if a constable seizes, under a warrant relating to premises:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied;

the constable must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

(2) Subsection (1) does not apply if:

(a) the thing that has been seized was seized under subsection 3L(1A) or paragraph 3L(2)(b) or 3LAA(4)(b); or

(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

39 Similarly, s 490(15) of the Canadian Criminal Code, RSC 1985, c C-46 reads: [note: 12]

Access to anything seized

(15) Where anything is detained pursuant to subsections (1) to (3.1), a judge of a superior court of criminal jurisdiction, a judge as defined in section 552 or a provincial court judge may, on summary application on behalf of a person who has an interest in what is detained, after three clear days notice to the Attorney General, order that the person by or on whose behalf the application is made be permitted to examine anything so detained.

40 Finally, in Hong Kong, s 32 of the Criminal Procedure Ordinance (Cap 221) states: [note: 13]

Inspection of property, etc.

(1) Either party shall be at liberty to apply to the court or a judge for a rule or order for the inspection, by himself or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the issue; and it shall be lawful for the court or judge, if it or he thinks fit, to make such rule or order, on such terms as to costs and otherwise as the court or judge may direct.

(2) In this section, "court" … includes the District Court and a magistrate.

41 In its submissions, the Prosecution appeared to suggest that the existence of these statutory provisions meant that there was no prior common law right of access to Category 1 Documents. In my view, this argument was a *non sequitur*. In the abstract, the converse argument that the common law right had merely been placed upon a statutory footing could also be forcefully made. The Prosecution did not cite any legislative material from any of these jurisdictions which indicated that those legislatures had taken the position that there was no prior common law right or that a new right was being statutorily created. In any event, such views would not be binding or even persuasive, for the existence of common law rights would be a matter of interpretation of case law by this court.

Conclusion on the common law right of access to Category 1 documents

42 In conclusion, I held that the common law does recognise and protect an individual's right of access in relation to Category 1 Documents, subject only to overriding considerations pertaining to the administration of justice. The onus is on the Prosecution to show that there is a reasonable basis for denying such access. In the next section, I will explain why I decided that the introduction of the 1985 CPC and the CPC 2010 had not affected or modified this common law right.

43 Before I do that, however, I would like to highlight that the existence of a common law right of access to Category 1 Documents appears to have been accepted by the CAD itself, which generally acted in a manner which was consistent with such a right. ASP Ho, who joined the CAD in August 2008, stated that he was not aware of any written guidelines or standard operating procedures in existence in the CAD with regard to the issue of dealing with requests for access to and/or copies of seized documents by the owners of the seized documents or their authorised representatives. [note: 14] However, ASP Ho stated that based on his personal experience and observations, the usual practice in the CAD was as follows: [note: 15]

(a) Where the suspects have not been formally charged in court yet, the CAD will generally follow a three-stage process upon receipt of a request for access to seized documents:

(i) Firstly, the CAD would ascertain the identity of the person making the request. The CAD would generally only entertain requests from the owner of the documents or from a party authorised by the owner of the documents.

(ii) Secondly, the CAD would consider the nature of the documents requested. Access to the following categories of documents would normally be allowed: personal documents such as medical records of the owner of the documents; company documents which are necessary for on-going business; and company records needed for filing of statutory returns and other purposes.

(iii) Thirdly, the CAD would consider whether there were any overriding legal and/or

public interest considerations which would make it necessary to refuse access. Three examples of such considerations would be: (a) if there is a suspicion that the documents may be used to commit further crimes; (b) if there is a risk of tampering with witnesses; or (c) if access may prejudice on-going investigations.

(b) Once the three-stage process is cleared, the CAD would arrange with the person making the request for access to be given at a mutually suitable time and place.

(c) Where the request is made after the suspects have been charged in court, the same three-stage process applies. However, the CAD would also check if allowing access would be contrary to any laws or procedures relating to the criminal process. If, for example, the criminal disclosure regime in the CPC 2010 applies to the case at hand, then the CAD considers itself to be bound to follow the said procedures. Access would only be allowed according to the procedures as stated in the law.

44 It appeared to me, therefore, that the crux of the Prosecution's objections to the Application before me was in relation to the interface between statute (*ie*, the 1985 CPC or the CPC 2010) and the common law right (see [43(c)] above), an issue which I would now address.

Issue 2: Whether the introduction of the CPC 2010 had affected and/or modified the common law right

45 The Prosecution's primary submission against allowing the Applicants access to the Materials was that doing so would contravene Part IX of the CPC 2010 which dealt with pre-trial procedures in the Subordinate Courts. The Prosecution submitted that the Applicants "made the informed decision, with legal advice, to accept the benefits and burdens of the CCDC [regime]" [note: 16] pursuant to s 159 of the CPC 2010 and consequentially must abide by the sequential process of disclosure in Part IX of the CPC 2010. Section 166 of the CPC 2010 reads as follows:

Time for service of other statements and exhibits

166.—(1) Where the Case for the Defence has been served on the prosecution, the prosecution must, within 2 weeks from the date of service, serve on the accused copies of —

(*a*) all other statements given by the accused and recorded by an officer of a law enforcement agency under any law in relation to the charge or charges which the prosecution intends to proceed with at the trial;

(*b*) the documentary exhibits referred to in section 162(*d*); and

(*c*) criminal records, if any, of the accused, upon payment of the prescribed fee.

(2) Where the Case for the Defence has not been served on the prosecution, the prosecution —

(*a*) need not serve on the defence any of the statements, exhibits or records referred to in subsection (1); and

(*b*) may use any such statements, exhibits or records at the trial.

46 The statutory context of s 166 of the CPC 2010 is as follows. Where the criminal disclosure

procedures under the CPC 2010 apply to a particular case and the accused person claims trial, the Prosecution is obliged to serve a Case for the Prosecution which contains the following documents (see s 162 of the CPC 2010):

(a) the charge which the Prosecution intends to proceed with at the trial;

(b) a summary of the facts in support of the charge;

(c) a list of the names of the Prosecution's witnesses;

(d) a list of the exhibits that are intended by the Prosecution to be admitted at the trial; and

(e) any statement made by the accused at any time and recorded by an officer of a law enforcement agency under any law, which the Prosecution intends to adduce in evidence as part of the Case for the Prosecution.

It should be noted that the Case for the Prosecution contains a *list* of Prosecution exhibits and not copies of the actual exhibits. In most cases, the accused person will then file a Case for the Defence which contains, *inter alia*, a summary of his defence to the charge as well as the facts in support of his defence (see s 165 of the CPC 2010). Where the Case for the Defence is served on the Prosecution, the Prosecution must serve the documents specified in s 166(1) of the CPC 2010. For ease of reference, I will refer to the documents specified in s 166(1) of the CPC 2010 as the "supplementary bundle". Section 166(2) of the CPC 2010 deals with the position where the Case for the Defence is not served on the Prosecution.

47 Similar provisions are made for High Court pre-trial discovery in ss 176, 192, 193, 195 and 196 of the CPC 2010.

48 Turning back to the Prosecution's arguments in this case, it argued that since the Materials fell under the "documentary exhibits" in s 166(1)(*b*) of the CPC 2010 which it intended to admit at the trial, the Materials need not be disclosed to the Applicants unless and until they have submitted their Case for the Defence. Given that s 166(2) of the CPC 2010 does not distinguish between documents originating from the accused *vis-à-vis* other documents in the possession of the police or the Prosecution, the Prosecution submitted that the procedural mechanism as set out in s 166(2) of the CPC 2010 should apply regardless of the origin of the documents. [note: 17] The Prosecution stressed that it was not objecting to the disclosure of the Materials *per se*; rather, its position was that the Applicants must first file their Case for the Defence before they are entitled to the Materials pursuant to Part IX of the CPC 2010. [note: 18] It argued that allowing the Applicants to have access to the Materials without the filing of their Case for the Defence would tamper with and distort the procedures in Part IX of the CPC 2010. [note: 19]

49 Nonetheless, it was conceded by the Prosecution during the hearing on 25 October 2012 that s 166(2) of the CPC 2010 does vest in the Prosecution *a continuing discretion* to allow disclosure of documents which the Prosecution would be relying on, even if the accused person seeking disclosure has not served his Case for the Defence. [note: 20] In my view, this concession was rightly made by the Prosecution given that s 166(2)(*a*) of the CPC 2010 merely provides that the Prosecution "need not serve on the defence" the relevant documents; it does not use the phrase "*shall* not serve on the defence". [note: 21] In the absence of other indications of Parliamentary intention, the wording of s 166(2)(*a*) falls far short of a statutory injunction preventing the Prosecution from disclosing or allowing access to Category 1 Documents. Indeed, the evident purpose of s 166(2), located as it was

in the structure of Part IX of the CPC 2010, was merely to make it clear that the Prosecution is *not compelled* under s 166(1) to serve the supplementary bundle where the Case for the Defence has not been served on the Prosecution.

50 Be that as it may, the continued existence of a discretion to allow or withhold access to seized documents did not decisively resolve the issue before me, which was whether the common law right of access to Category 1 Documents has been modified and/or affected in any way by the criminal disclosure regime in the CPC 2010. There may sometimes be a vast difference in practice between a discretion and a qualified right, particularly if the principles governing the discretion place the onus on the applicant to show why access should be granted. As I have pointed out, at common law the onus was on the law enforcement authorities to show why access should be denied (see [22] above). In my view, the common law right of access to Category 1 Documents has *not* been modified and/or affected by the CPC 2010.

51 A crucial axiom that underlies my reasoning is the fundamental presumption of statutory interpretation that Parliament would not have removed rights pre-existing in common law if there was no express provision or clearly evinced intention to that effect. In F A R Bennion, *Bennion on Statutory Interpretation* (LexisNexis, 5th Ed, 2008) ("*Bennion*"), the learned author stated (at p 812):

> **Section 269. Law should not be subject to casual change**
>
> (1) *It is a principle of legal policy that law should be altered deliberately rather than casually, and that Parliament should not change either common law or statute law by a sidewind, but only by measured and considered provisions. In the case of common law, or Acts embodying common law, the principle is somewhat stronger than in other cases.* It is also stronger the more fundamental the change is.
>
> (2) The court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. The court should therefore strive to avoid adopting a construction which involves accepting that Parliament contravened the principle.
>
> [emphasis added]

As the learned author of *Bennion* explained, the courts' approach is as follows (at p 812):

> *The presumption that Parliament does not intend to make a radical change in existing law by a sidewind arises from the nature of the legislative process. It is, or should be, a serious business. Changes in the basic law, since they seriously affect everybody, are to be carefully worked out. The more fundamental the change, the more thoroughgoing and considered should be the provisions by which it is implemented.* ...
>
> ...
>
> Where these requirements are not met, the suspicion is raised that perhaps, although the words of the enactment seem to point that way, Parliament did not really intend a radical change in existing law. ...
>
> [emphasis added]

52 This principle of statutory interpretation has consistently been accepted and reiterated by the courts both in England and in Singapore. To cite just one example, the Earl of Halsbury observed in *Leach v Rex* [1912] AC 305 ("*Leach*") at 310–311 as follows:

> ... You must consider, when you are dealing with Acts of Parliament, and examining what the effect of your proposed construction is, *whether or not you are dealing with something that it is possible the Legislature might either have passed by definite and specific enactment or have allowed to pass by some ambiguous inference*.
>
> Now, dealing with that question, I should have thought that it would occur not only to a lawyer, but to almost every Englishman, that a wife ought not to be allowed to be called against her husband, and that *those who are under the responsibility of passing Acts of Parliament would recognize a matter of that supreme importance as one to be dealt with specifically and definitely and not to be left to inference*.
>
> I think that observation is true also for this reason: that when you are dealing with a question of this kind you cannot leave out of sight the different enactments that have been passed upon this subject with a sort of nomenclature of their own ; and speaking for myself, as an ordinary person, I should have asked, when it was proposed to call the wife against the husband, "Will you shew me an Act of Parliament that definitely says you may compel her to give evidence? [B]ecause since the foundations of the common law it has been recognized that that is contrary to the course of the law." *If you want to alter the law which has lasted for centuries and which is almost ingrained in the English Constitution*, in the sense that everybody would say, "To call a wife against her husband is a thing that cannot be heard of,"—to suggest that that is to be dealt with by inference, and that you should introduce a new system of law without any specific enactment of it, seems to me to be perfectly monstrous.
>
> [emphasis added]

Lord Atkinson put this point in a slightly different way (at 311):

> ... The principle that a wife is not to be compelled to give evidence against her husband is *deep seated in the common law of this country, and I think if it is to be overturned it must be overturned by a clear, definite, and positive enactment, not by an ambiguous one such as the section relied upon in this case.* [emphasis added]

53 *Leach* was quoted with approval by the High Court in *Zahrin bin Rabu v Ying Tai Plastic & Metal Manufacturing (S) Pte Ltd* [1981–1982] SLR(R) 511 at [19]. Another expression of this principle of statutory interpretation can be found in *National Assistance Board v Wilkinson* [1952] 2 QB 648 at 661, where Devlin J held that it is "*a well-established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion*" [emphasis added]. Devlin J's *dictum* was quoted with approval by the Court of Appeal in *Ying Tai Plastic & Metal Manufacturing (S) Pte Ltd v Zahrin bin Rabu* [1983–1984] SLR(R) 212 at [19], and by Chao Hick Tin JA (dissenting on the facts) in the Court of Appeal in *Ng Boo Tan v Collector of Land Revenue* [2002] 2 SLR(R) 633 at [76]–[79].

54 Given this established statutory principle of interpretation, the burden was on the Prosecution to convince the court that Parliament *had in fact intended* to exclude or restrict an individual's common law right of access to Category 1 Documents when it enacted the CPC 2010. This involved an exercise of purposively interpreting the CPC 2010 and in particular the criminal disclosure provisions contained therein. However, upon perusing the relevant Parliamentary material, I was unable to locate

any indication that this was indeed Parliament's intention. There was no mention in the legislative debates of the common law right of access in relation to Category 1 Documents, let alone an indication as to how this right was intended to be affected by the introduction of the statutory criminal disclosure regime in the CPC 2010. It was telling that the Prosecution did not point to any specific passage or passages in the legislative debates leading up to the CPC 2010 in order to support its argument. Furthermore, there was no specific provision in the CPC 2010 which was expressly inconsistent with the common law right of access to Category 1 Documents. The provision which came the closest to this was s 166(2) of the CPC 2010, and the Prosecution had rightly conceded that it did not prohibit disclosure of Category 1 Documents (see [49] above). In my view, the reality was that Parliament, in enacting the criminal disclosure framework now found in, *inter alia*, Part IX of the CPC 2010, did not intend to curtail this common law right which, as I have indicated (see [21]–[30] above), is founded upon deeply engrained common law principles.

55 Furthermore, not only was I of the view that there was no evidence of Parliamentary intention against the aforesaid presumption, I was also of the view that there were positive signposts indicating why Parliament could not have intended the criminal disclosure regime in the CPC 2010 to apply to Category 1 Documents (as opposed to Category 2 Documents or Category 3 Documents). Properly construed, the sequential process of disclosure as envisaged in, *inter alia*, ss 162, 165 and 166 of the CPC 2010 (see [45]–[46] above), does not indicate that there should be a prohibition on the grant of access to Category 1 Documents which are seized by law enforcement authorities prior to the filing of the Case for the Defence.

56 The purpose of the criminal disclosure regime in CPC 2010, in the words of the Minister for Law, Mr K Shanmugam ("the Law Minister"), was to "introduce greater transparency and consistency to the pre-trial process" (see *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at cols 413–414). The Law Minister explained:

> *Disclosure is familiar to lawyers operating within the common law system. In civil proceedings, the timely disclosure of information has* ***helped parties to prepare for trial and assess their cases more fully.***
>
> *Criminal cases can benefit from the same approach.* However, discovery in the criminal context would need to be tailored to deal with complexities of criminal practice, such as the danger of witnesses being suborned.
>
> To this end, Part IX of the Bill introduces a formalised framework *obliging the prosecution and the defence to* ***exchange relevant information*** *about their respective cases before trial. This will introduce* ***greater transparency*** *and consistency to the pre-trial process.*
>
> After the charge is tendered against an accused, the prosecution is required to provide the defence with a "Case for the Prosecution". This document must include information about the facts, witnesses and evidence supporting the charge, together with the statements of the accused which the prosecution intends to rely on at the trial.
>
> The defence is then required to serve on the prosecution its "Case for the Defence". This document will, in turn, contain information about the facts, evidence and witnesses that the defence will adduce at the trial.
>
> After the "Case for the Defence" is served, the prosecution will then be required to furnish to the defence all other statements made by the accused person, documentary exhibits in the case for the prosecution, as well as the accused person's criminal records, if any.

> The framework has a number of safeguards to try and prevent abuse. *The sequential nature of the process protects the interests of prosecution and defence.* The onus is on the prosecution to set out its case first, with the accused's statements that it is relying upon. *The provision of all statements after the defence case is filed cuts down on opportunities to tailor evidence*.
>
> [emphasis added in italics and bold italics]

57 The Law Minister's explanation provides the rationale behind the sequential nature of the process of disclosure as envisaged in ss 162, 165 and 166 of the CPC 2010 (see [45]–[46] above). Part IX of the CPC 2010 was intentionally designed to avoid a situation where an accused person was given information before he had put his defence on record thereby enabling *him to tailor his evidence* to fit the facts. This provides a coherent explanation as to why an accused person is only entitled to obtain the supplementary bundle from the Prosecution pursuant to s 166(1) of the CPC 2010 after he has served his Case for the Defence.

58 The key distinction between (a) Category 1 Documents, and (b) Category 2 Documents and Category 3 Documents, is that Category 1 Documents comprise documents which were *originally* in the rightful possession or control of an accused person prior to the lawful seizure of the said documents by law enforcement authorities. But for the seizure of Category 1 Documents, these documents could *ex hypothesi* have been accessed whenever the accused person wanted to do so and for whatever purpose he wished, including for example, the preparation of his defence to charges or pending charges. He could use any or all these documents as evidence in his defence. If he suspected that the law enforcement authorities would soon arrive at his doorstep to seize documents, he could, depending on the remaining time available to him, proceed to make copies of any or all of the documents using photocopiers, cameras, scanners or various other devices. If the relevant documents were stored electronically, such copying could even be done with the click of a button, for example, the accused person may send the documents by e-mail to another e-mail account or to another person, or he may upload such documents onto the Internet. Furthermore, given the evidence before the court on the CAD's practice *vis-à-vis* seized documents (see [43] above), accused persons could obtain copies of Category 1 Documents as they wished from the CAD which would usually accede to such requests *prior* to formal charges being preferred. Given the nature of Category 1 Documents *vis-à-vis* the accused person, it is not conceptually or practically meaningful for the accused person to be denied access to Category 1 Documents before serving his Case for the Defence on the basis that doing so would allow him to "tailor his evidence".

59 Moreover, Parliament had also intended the changes to the CPC 2010 to "introduce *greater transparency* and consistency to the pre-trial process" [emphasis added] (see [56] above), yet Category 1 Documents are, by definition, documents to which the accused person had unfettered access prior to seizure. It is thus difficult to see how the pre-trial *disclosure of Category 1 Documents* could be said to lead to "greater transparency". By contrast, it is perfectly understandable why there would be "greater transparency" in respect of the disclosure of Category 2 Documents and Category 3 Documents, because these types of documents would usually contain information (a) which is unknown to the accused person, and/or (b) which could not have been accessed by the accused person prior to the seizure. Thus, while the language of s 166(1)(*b*) (read with s 162(*d*)) of the CPC 2010 provides that the Prosecution must disclose as part of the supplementary bundle the exhibits that are intended by the Prosecution to be admitted at the trial, this should be read in a purposive manner to exclude Category 1 Documents. As Chan Sek Keong CJ (as he then was) recently reiterated in *Adnan bin Kadir v Public Prosecutor* [2013] SLR 276 at [52], "[t]he courts must always consider the purpose of the law and not simply the letter of the law".

60 Furthermore, I was of the opinion that interpreting the pre-trial disclosure regime such that the

common law right of access to Category 1 Documents was not restricted or excluded would still leave room for the sequential criminal disclosure process to operate in respect of Category 2 Documents and Category 3 Documents. Pursuant to s 166(1) of the CPC 2010, the Prosecution is only compelled to disclose these documents (if they fall within the specified categories under s 166(1)) to the accused person after he has filed his Case for the Defence. Thus, the mere existence of the pre-trial disclosure provisions in the CPC 2010 did not *necessarily* mean that the above-mentioned presumption had been rebutted, or that this was evidence of Parliament's intention to include Category 1 Documents in the pre-trial disclosure provisions.

61 At this juncture, it is apposite to deal with the Prosecution's argument (which it raised in oral argument at the hearing on 25 October 2012) based on *Public Prosecutor v Lo Ah Eng* [1965] 1 MLJ 241 ("*Lo Ah Eng*") that the CPC 2010 had impliedly repealed the common law right of access encapsulated in *Arias* (see [21]–[22] above). *Lo Ah Eng* was a decision of the Malaysian Federal Court on a criminal reference from the High Court of Kuching. The question which was referred was whether, under the Evidence Ordinance of Sarawak, a witness who, in the opinion of the trial judge, proved adverse to the party calling him may be cross-examined by such party. The Federal Court answered this question in the negative. Wylie CJ stated as follows in *Lo Ah Eng* (at 243):

> Apart from the question whether there is an implied repeal of all common law principles of evidence, where the ordinance has dealt with a particular subject, that must clearly lead to the conclusion that the provisions of the Ordinance on that subject are to replace the common law principles on the same subject and so have impliedly repealed the latter.

62 In my view, this passage in *Lo Ah Eng* did not provide any assistance to the Prosecution's argument on the facts of this case. The critical issue before me was whether the CPC 2010 had "dealt with" the particular issue before me, *viz*, the circumstances in which access to seized objects could be had. While I did not disagree with the statement of general principle in *Lo Ah Eng*, *viz*, that where a statute has dealt with a particular subject then the common law principles which pertain to the same subject are impliedly repealed, the court's reference to "particular subject" should not be read too widely. Much would depend on the level of generality with which the term "subject" is viewed. At the highest level of abstraction, it could be said that since the CPC 2010 or the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") deal with the subjects of criminal procedure and evidence, *all* common law rules of criminal procedure and evidence are thereby impliedly repealed. However, to adopt this approach would be to ascribe omniscience to Parliament. This would sometimes be an unreasonable assumption. The case law is replete with examples of the common law providing interstitial support or rules in the interests of justice where the statutory language or purpose is silent: see, for instance, *Kadar 1*. Indeed, the language of the CPC 2010 and the EA indicated that Parliament did not intend that such an abstract approach to characterisation should be adopted. Section 2(2) of the EA states:

> All rules of evidence not contained in any written law, *so far as such rules are inconsistent with any of the provisions of this Act*, are repealed. [emphasis added]

Similarly, s 6 of the CPC 2010 provides as follows:

> **Where no procedure is provided**
>
> **6**. As regards matters of criminal procedure *for which no special provision has been made by this Code or by any other law* for the time being in force, *such procedure as the justice of the case may require, and which is not inconsistent with this Code or such other law, may be adopted.*

[emphasis added]

63 These provisions indicate that a more nuanced and specific inquiry must be conducted in every case in order to determine whether a particular common law rule is inconsistent with the CPC 2010 or the EA. It is plainly insufficient to characterise a common law rule as being one of "evidence" or "criminal procedure" in order to establish that the rule had been impliedly repealed or excluded by Parliament.

64 As I have explained (see [51]–[60] above), there is no evidence to rebut the presumption that Parliament did not intend to exclude or restrict the pre-existing common law right of access to Category 1 Documents. Furthermore, what evidence there is of Parliamentary intention indicates that the sequential disclosure regime in Part IX of the CPC 2010 was not intended to apply to Category 1 Documents (*ie*, to impose any restrictions or conditions upon the disclosure of Category 1 Documents). In the circumstances, there was no basis for me to conclude that the common law right of access to Category 1 Documents was *inconsistent* with the CPC 2010.

65 For the sake of completeness, I should point out that the authors of *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Jennifer Marie & Mohamed Faizal gen eds) (Academy Publishing, 2012) ("*CPC Commentary*") have suggested that the Court of Appeal decision in *Kadar 1* had adopted an overly narrow interpretation of the phrase "no special provision" in s 6 of the CPC 2010. The authors of *CPC Commentary* stated as follows (at para 01.052):

> ... In [*Kadar 1*], the court ruled that given the Code (and indeed, the old CPC) made "no special provision" for the disclosure of unused material that is *prima facie* credible and relevant, it permitted the court to incorporate a duty on the Prosecution to disclose a limited amount of unused material. In coming to such a conclusion, it could be argued that the court in [*Kadar 1*] was ascribing a relatively narrow interpretation to the phrase "no special provision" since it could be plausibly argued that the provisions found in Part IX (Subordinate Courts) and sections 176 to 196 (High Court) of the Code are ***intended to delineate the duties on the part of both the Prosecution and the Defence.*** Therefore, ***by implication, given that there is a legislative framework for the disclosure of certain documents, one plausible viewpoint is that "no special provision" was provided for in the Code in relation to the disclosure of unused material ... precisely because no such legal duty was intended to be ascribed to regulate the disclosure of such unused material.*** Put another way, applying the maxim of statutory interpretation of *expressio unius est exclusio alterius* ..., one plausible argument might be that because the Legislature would have expressly ascribed a statutory discovery obligation on the Prosecution to disclose exculpatory evidence if it intended to do so, ***the absence of*** such a statutory obligation may be ***grounds for implying its intended exclusion.*** [emphasis in original in italics; emphasis added in bold italics and underline]

The merits of this criticism of *Kadar 1* were not before the court. Nonetheless, in so far as this criticism suggested an alternative way of interpreting s 6 of the CPC 2010, it was relevant to the issues before me in the Application. In my view, the approach of the authors of *CPC Commentary* was incorrect. Section 6 of the CPC 2010 appears to prescribe a two-stage test: (a) has special provision been made for a matter of criminal procedure? and (b) if not, is the proposed procedure to be adopted inconsistent with the CPC 2010 or any other law? Where the first stage is concerned, it is only the *absence* of a provision on a particular, specific issue which will indicate that "no special provision has been made" for that particular issue. Silence cannot, *ex hypothesi*, mean that special provision has been made. It is only where a provision expressly dealing with that particular issue *exists* that "special provision *has been made*" [emphasis added].

66 It could be argued by the Prosecution, relying on the comments in *CPC Commentary*, that the maxim *expressio unius est exclusio alterius* (*ie*, to express one thing is to exclude another), should be applied in this case to support its argument that the CPC 2010 had excluded and/or repealed the common law right of access to Category 1 Documents. In my view, any such argument would be misguided. It must be remembered that the touchstone of statutory interpretation in Singapore is that of purposive interpretation, pursuant to s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed). The aforesaid maxim of statutory interpretation was merely an aid in the process of discerning legislative intention. The relevance of this maxim would depend on the facts of a particular case and "operates only where not outweighed by other interpretative factors" (*Bennion* at p 1251). As mentioned above (at [54]), in the context of the issues in this particular case, what was more relevant in my view was the presumption that Parliament had not intended to exclude or restrict pre-existing common law rights. In any event, I would add that the maxim *expressio unius est exclusio alterius* should not be uncritically applied to any given case because what is crucial is to first determine what it is that has been expressed, and this determination will have to be made purposively. As I have indicated, the pre-trial disclosure provisions in the CPC 2010, properly construed, do not apply to Category 1 Documents.

67 If I had agreed with the Prosecution's interpretation of the applicability of the criminal disclosure regime in the CPC 2010, it is not inconceivable that the following state of affairs could possibly occur in the future. When investigating a white-collar crime, the CAD may seize *all* of a suspect's documents, and if the suspect does not subsequently opt out of the criminal disclosure regime pursuant to s 159(2) of the CPC 2010, the Prosecution may then rely on s 166(2) of the CPC 2010 to compel the accused to state his Case for the Defence before his solicitors can even have sight of their client's own documents which will be used against him. Such a state of affairs would be quite inappropriate bearing in mind the *raison d'être* of the criminal disclosure regime in the CPC 2010, which was intended to "introduce greater transparency and consistency to the pre-trial process" (see [56] above). The criminal disclosure regime in the CPC 2010 was clearly envisioned for defence counsel to operate in a more level playing field; and it is hard to see how this vision is consistent with a situation where defence counsel are required to draft the Case for the Defence *without* having sight of documents which were in the rightful possession, custody or control of their clients prior to seizure. Interpreting the CPC 2010 regime as restricting or excluding the common law right of access to Category 1 Documents (which is itself not an unqualified right) could therefore undermine the purpose of the amendments to the CPC 2010 by reducing transparency in the criminal justice process, and it would in effect create an unreasonable *disincentive* for accused persons to opt in the criminal disclosure regime *unless they have made copies of all their documents prior to them being charged*. Accordingly, the courts should not hold that the language of the CPC 2010 requires this questionable result in the absence of clear evidence of Parliamentary intention to the contrary. In any event, as I have pointed out, the language of the CPC 2010 does not purport to have this effect (see [49] above).

68 To summarise, the position on criminal disclosure *as far as Category 1 Documents* are concerned is as follows: the common law right of access of an accused person in relation to Category 1 Documents remains in existence and exists alongside the present criminal disclosure regime in the CPC 2010.

Issue 3: Whether, even if there was no such right at common law, it would be in the interests of justice to recognise the existence of such a right

69 For the sake of completeness, I would also add that even if there was no common law right vested in the Applicants to access or to make copies of the Materials, I would have directed that pursuant to s 6 of the CPC 2010, the justice of the case would require the Materials to be made

available to the Applicants in the light of the document-intensive nature of the pending criminal proceedings against them. Section 6 of the CPC 2010 provides as follows:

> **Where no procedure is provided**
>
> **6**. As regards matters of criminal procedure for which *no special provision has been made by this Code or by any other law for the time being in force*, such procedure as the justice of the case may require, and *which is not inconsistent with this Code or such other law, may be adopted.*
>
> [emphasis added]

70 Section 6 of the CPC 2010 is the successor to s 5 of the 1985 CPC. Section 5 of the 1985 CPC provided as follows:

> **Laws of England, when applicable.**
>
> **5**. As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force in Singapore the law relating to criminal procedure for the time being in force in England shall be applied so far as the procedure does not conflict or is not inconsistent with this Code and can be made auxiliary thereto.

71 In this regard, it was clear that section 6 of the CPC 2010 is a much broader section as compared to its predecessor both in terms of the areas of law which the courts are allowed to consider, as well as in terms of the courts' discretion whether to apply those principles in Singapore. The authors of *CPC Commentary* correctly stated as follows (at para 01.051):

> ... With this amendment, the courts are no longer bound to consider, and apply, the procedural laws of England whenever there exists a lacuna in the criminal procedure [of Singapore].

Where previously *only* English criminal procedure laws could be considered whenever a lacuna in criminal procedure was encountered, the courts can now adopt "such procedure as the justice of the case may require, and which is not inconsistent with [the CPC 2010]", expressly providing for the possible contemplation of the interests of justice beyond merely the black-letter criminal procedure laws originating in England. The touchstone was to adopt a procedure that would allow the court to do *justice* in the case.

72 In *Kadar 1*, the Court of Appeal had the opportunity to consider s 6 of the CPC 2010 and observed (at [105]) that the reference to what "the justice of the case may require", "must include procedures that uphold established notions of a fair trial in an adversarial setting where not already part of the written law".

73 As to what notions of a fair trial embody, I found it helpful to refer to the statement made by Lord Widgery CJ in *Regina v Her Majesty's Coroner at Hammersmith, Ex parte Peach (Nos 1 and 2)* [1980] 1 QB 211 at 219 that "[i]t is elementary that, if a charge is being made against a person, he must be given a fair chance of meeting it. *That often means he must be given documents necessary for the purpose*" [emphasis added]. More importantly, it has been perceptively observed in John Arnold Epp, *Building on the decade of disclosure in criminal procedure* (Cavendish Publishing Limited, 2001) at p 33 that "[t]he interpretation of the concept of a fair trial has changed over time … *the modern common law has concluded that an [accused person's] right to disclosure is an inseparable part of his right to a fair trial*." [emphasis added]

74 In my view, allowing access by an accused person to Category 1 Documents is entirely consistent with notions of a fair trial. It would be inimical to one's sense of justice to prevent any right of access, whether supervised or not, to an accused person of documents he had previously *owned* or to which he had a legal right to *possess* or *control* before they were seized from him by law enforcement authorities, if there was no reasonable likelihood of a threat to the countervailing public interest of upholding the administration of criminal justice. Giving an accused person access to Category 1 Documents would, *inter alia*, allow him to better prepare his case, with the benefit of material which he would have had access to but for the seizure and in sufficient time, so that he may better put forward his defence against the charges preferred against him at the trial. Bearing in mind the fundamental point that it was Category 1 Documents (and not Category 2 Documents or Category 3 Documents) which were in issue, it was only by allowing such access that basic principles of due process could be adequately observed.

75 The crux of the Application before me was not one of giving an advantage to the Defence to the detriment of the Prosecution but rather one of striking a fair balance between the Defence and the Prosecution by upholding basic principles of fair play while, as I have explained (see [61]–[67] above), remaining within the legitimate margin of appreciation left by Parliament to the courts. If the Prosecution reasonably believes that, on the facts of any given case, the grant of access to Category 1 Documents would be contrary to the public interest, it may always justify its position by reference to cogent evidence (see [22] above). It would then be for the courts to decide, in disputed cases, whether access should be granted at all or on terms.

76 *Given the immense public importance of criminal proceedings and of a correct verdict (be it a conviction or an acquittal), the preparation of the parties' respective cases ought not to morph into a contest of memories especially where complex and/or document-intensive commercial operations and transactions are or may potentially be in issue.* As this case illustrated, with about two years having elapsed since the search by the CAD to date, the voluminous nature of the documents involved (the Seized Documents being estimated to comprise of 197,240 individual documents), as well as the brevity of the Receipts provided by the CAD, the Applicants were only able to make an "educated guess" as to the contents of the documents seized from them and the relevance of these documents to the criminal proceedings. [note: 22] Clearly then, given the immense number of documents that might be potentially relevant in white-collar crime cases, it would not serve the cause of justice for the Applicants to be asked to commit themselves, based on their mere "educated guess" to a particular position without any access to Category 1 Documents, but to rely purely on memory and whatever documents they had managed to gain access to prior to being charged with the Charges to construct a Case for the Defence which they would eventually stand or fall by. While I noted the Prosecution's submission that the trial court would be unlikely to draw an adverse inference against the Applicants if they put forward a case at trial which "[differed] from or [was] otherwise inconsistent" with the Case for the Defence (see s 169(1)(*c*) of the CPC 2010) given that they did not have sight of Category 1 Documents (if the request for the Materials was denied), in my view, there was still a possibility of injustice being occasioned to the Applicants, and there was no reason why they should be put at risk of this possibility crystallising. More fundamentally, it was difficult to see why, as suggested by the Prosecution, it would be in the interests of justice for accused persons to put forward an incomplete and/or inaccurate case initially and then subsequently to change that case based on Category 1 Documents disclosed in the supplementary bundle (even if such a shift in position did not lead to substantive consequences). Not only would this lead to a considerable waste of time and effort for defence counsel, the Prosecution and the courts, it would also bring little credit to our criminal justice process.

77 As I have mentioned (see [67] above), the logical implication of the position adopted by the

Prosecution would mean that where law enforcement authorities lawfully seize *all* of a suspect's documents, and if the suspect does not opt out of the criminal disclosure regime in the CPC 2010, the Prosecution could then rely on s 166(2) of the CPC 2010 to deny access to Category 1 Documents until the accused states his Case for the Defence. The practical consequence of accepting the Prosecution's position as correct would undoubtedly see accused persons making a beeline to frantically copy all Category 1 Documents (or to request for access from the CAD for the purpose of making copies thereof) before they were formally charged by the Prosecution in order to ensure that they would have copies available when preparing their Defence subsequently (see [58] above). Such an exercise would to a large extent result in an unnecessary waste of resources and much inefficiency.

78 For the above reasons, I was of the view that had there not been a common law right of access in relation to Category 1 Documents, it would have clearly been in the interests of justice to recognise, pursuant to s 6 of the CPC 2010, the existence of such a right of access to Category 1 Documents by an accused person for the purpose of making copies thereof, and that such right would be curtailed only where there was a reasonable basis for believing that such access would be inimical to the public interest (see above at [34]). For the reasons which I set out earlier (see [54]–[60] above), such a right would not be inconsistent with the CPC 2010.

Issue 4: Whether, on the facts, the Application should be granted

79 Before I explain why I decided that the Application should be granted, it would be convenient at this juncture to first recapitulate the applicable principles. I have held that at common law, there is a common law right of access to Category 1 Documents which can be curtailed only to the extent that there are reasonable grounds for believing that such access would be prejudicial to the public interest. This common law right of access is not inconsistent with the CPC 2010, and therefore remains in existence in Singapore today. Even if there was no such right at common law, it would still be in the interests of justice and would not be inconsistent with the CPC 2010 to create such a right pursuant to s 6 of the CPC 2010.

80 It is important to remember, however, that the threshold for lawful denial of access, or for the imposition of restrictions on access, is an objective threshold. A purely subjective belief on the part of the law enforcement authorities and/or the Prosecution would not suffice. In this way, the common law right of access to Category 1 Documents would not be rendered wholly illusory. This view was echoed in David Feldman, *The Law Relating to Entry, Search and Seizure* (Butterworths, 1986) at para 11.23:

> [The balance struck in *Arias*], or a similar [one], has been adopted by Parliament in [s 21(3) of PACE]. ... *As at common law*, the reasonable grounds requirement for withholding access [in s 21(8) of PACE] is an objective criterion, not lightly to be satisfied. ... It will not be enough that investigations may be slightly delayed or officers inconvenienced. The very success of the investigation, or the fairness of criminal proceedings, must be brought into *serious doubt* before it will be permissible to deny access to a person otherwise entitled to it. [emphasis added]

81 Furthermore, in assessing whether such reasonable grounds have been made out, the courts should in most cases be slow to find that such grounds exist without cogent evidence to that effect. In *Arias* (cited at [21] above), May LJ observed as follows:

> It is ... a strong thing to say not merely that ... officers are entitled to retain the original documents which are potentially exhibits in subsequent criminal proceedings, but also to contend that, at any rate for a substantial period, the owners of those documents shall not even be

entitled to look at them or take copies of them. In my judgment, to make good that claim would require substantially more cogent evidence than is available in the affidavits sworn by the detective constable in the instant case.

I agreed with this formulation of the balancing test. The burden lies firmly on the Prosecution to show cogent evidence that there was a reasonable prospect of harm to the public interest in the administration of criminal justice before law enforcement authorities could lawfully deny or restrict access to Category 1 Documents. In cases of doubt, the Prosecution could apply to the Subordinate Courts (or the High Court, depending on where the accused person was charged) for a declaration that the proposed denial or restriction of access was lawful in the circumstances. The person applying for access would naturally have a right to be heard at this hearing.

82 Having said that, however, I would hasten to add that the precise scope and ambit of this right (whether pre-existing at common law or created through s 6 of the CPC 2010) will necessarily be subject to further development and/or reconsideration in line with the best traditions of the common law. To paraphrase what the Court of Appeal stated in *Kadar 1* at [113], there is still ample scope for the development of the fine details in subsequent cases or by legislative intervention.

83 On the present facts, there was no cogent evidence showing that the public interest in the due administration of criminal justice (in terms of avoiding the tampering or tailoring of evidence and the interference with police investigations) would be harmed if the Applicants were allowed to access the Category 1 Documents they had requested for in their Application (*ie*, the Materials as defined at [13(b)] above). As the Applicants rightly explained in their submissions, "[t]he originals of the Materials would reside in the Police/Prosecution's possession, and there would be no danger of tampering with any evidence as the Police/Prosecution would have the originals of every copy of the Materials provided to the Applicants". [note: 23] Indeed, if the copies were taken by the Applicants under supervision by the CAD, the risk of interference and/or tampering with the originals would be low or even negligible. The Applicants added that "[t]here [would] also [be] no danger of the Applicants tailoring their Defence as the contents of the Materials [were already] known, [was previously] produced and still [belonged] to the Applicants". [note: 24] In the absence of any submission or affidavits by the Prosecution and/or the CAD to show a reasonable belief that the effective administration of criminal justice would be thwarted or undermined and the basis of such belief (save for one submission which I will set out at [84] below), there was no reason for me not to grant the Application.

84 The Prosecution objected in its written submissions to the Applicants having access to the human resource files of various employees (see Schedule A of the Application, documents (y) to (ss)) ("the HR files"), because it feared that the personal information of the Prosecution's witnesses contained in the HR files could easily be used for an inappropriate purpose such as interfering with witnesses. [note: 25] The Prosecution argued that, as a matter of principle, the Applicants should not have access to such personal information without showing why the information was relevant, necessary and desirable for the preparation of their Case for the Defence, and that allowing such access would set a "dangerous precedent". [note: 26] I therefore offered an opportunity to the Prosecution to explain in greater detail the public interest considerations and the factual bases thereof in support of their position that access should not be given to the HR files. At the hearing on 25 October 2012, I accordingly granted leave to the Prosecution to file an affidavit by 31 October 2012, stating its objections against access to the HR files for purposes of making copies of them, failing which these had to be disclosed to the Applicants. [note: 27] I noted that in a letter dated 31 October 2012, the Prosecution stated that upon a review of the contents of the HR files it did not think that there were any reasons for treating them differently from the rest of the Materials, and

that it would therefore not be filing any affidavit to resist access to the HR files.

85 While I noted that the Prosecution expressed doubts as to whether some of the Materials were truly relevant to the Applicants' preparation of their defence against the Charges, I was of the opinion that relevance was not an element of the test to determine whether access to Category 1 Documents should be denied to the Applicants. As emphasised above (at [79]), it is only where there is cogent evidence of prejudice to the effective administration of criminal justice that the Applicants' *prima facie* right of access to Category 1 Documents could be denied.

Conclusion

86 For the reasons above, I held in favour of the Applicants and allowed their application.

[note: 1] Applicants' submissions dated 28 Aug 2012 at Tab A.

[note: 2] Affidavit of Timothy Nicholas Goldring dated 13 Aug 2012 at para 9.

[note: 3] Affidavit of Timothy Nicholas Goldring dated 5 Oct 2012 at paras 9 and 11.

[note: 4] Affidavit of Timothy Nicholas Goldring dated 5 Oct 2012 at para 7.

[note: 5] Affidavit of Timothy Nicholas Goldring dated 13 Aug 2012 at para 11.

[note: 6] Affidavit of Timothy Nicholas Goldring dated 13 Aug 2012 at p 56.

[note: 7] Affidavit of Timothy Nicholas Goldring dated 5 Oct 2012 at para 19.

[note: 8] Affidavit of Timothy Nicholas Goldring dated 5 Oct 2012 at para 22.

[note: 9] Applicants' submissions dated 5 Oct 2012 at [5]-[7].

[note: 10] Prosecution's submissions dated 5 Oct 2012 at [8].

[note: 11] Prosecution's submissions dated 5 Oct 2012 at [38].

[note: 12] Prosecution's submissions dated 5 Oct 2012 at [48].

[note: 13] Prosecution's submissions dated 5 Oct 2012 at [41].

[note: 14] Affidavit of Ho Ban Hsiung dated 4 Oct 2012 at paras 4-5.

[note: 15] Affidavit of Ho Ban Hsiung dated 4 Oct 2012 at paras 6-13.

[note: 16] Prosecution's submissions dated 3 Sept 2012 at [20].

[note: 17] Prosecution's submissions dated 5 Oct 2012 at [13] and [77].

[note: 18] Prosecution's submissions dated 5 Oct at [86].

[note: 19] Prosecution's submissions dated 5 Oct at [86].

[note: 20] Notes of Evidence, 25 Oct 2012, at pp 12, 15-16.

[note: 21] Applicants' submissions dated 12 Oct 2012 at [86].

[note: 22] Affidavit of Timothy Nicholas Goldring dated 5 Oct 2012 at paras 8-9.

[note: 23] Applicants' submission dated 5 Oct 2012 at [52].

[note: 24] *Ibid*.

[note: 25] Prosecution's submissions dated 12 Oct 2012 at [47].

[note: 26] Prosecution's submissions dated 12 Oct 2012 at [47].

[note: 27] Oral Judgment delivered by V K Rajah JA on 25 Oct 2012, at [6].