1. ADMINISTRATIVE AND CONSTITUTIONAL LAW

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Introduction

1.1 With respect to developments in the field of administrative law in 2003, there was case law which further elaborated when the non-exhaustion of domestic remedies might bar an application for judicial review. The jurisdictional reach of judicial review to non-statutory or private unincorporated associations was also affirmed. Allegations of procedural unfairness were made in an expulsion case and with respect to the conduct of judicial proceedings. More unusually, a decision to terminate the employment of a member of the police force was successfully challenged on the substantive ground of irrationality.

1.2 The main constitutional cases related to the constitutional delimitation of government powers – specifically, the scope of sentencing power and whether this could be cabined by the terms of an extradition order; also, whether ordering the suspension of a sentence was a facet of executive or judicial power. The fundamental liberty of free speech in Part IV of the Constitution was implicated in a challenge against the constitutionality of the Public Entertainments and Meetings Act.

ADMINISTRATIVE LAW

Judicial review

Scope of judicial review

1.3 The formal conceptual justification for judicial review is that this gives effect to the intention of Parliament as embodied in statute, with courts in supervisory capacity policing the decision-making processes of public bodies to ensure that they remain within the derived limits of their power. It is clear that the "source of power" need not be statutory but could derive from prerogative powers at common law as recognised in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 ("the *GCHQ* case"). Furthermore, the courts are not bound to look at the source of power alone but may consider the "nature" of the decision-making power when deciding whether to review a case; English courts have exercised judicial review over

the exercise of "public" powers by private bodies such as unincorporated associations, as in the case of *R v Panel on Take-overs and Mergers, Ex parte Datafin plc* [1987] QB 815.

1.4 The question in *A Kanesananthan v Singapore Ceylon Tamils' Association* [2003] 3 SLR 539 was whether the proceedings of the disciplinary committee of an unincorporated association could be subject to judicial review. In principle, Choo Han Teck J held that this was possible, where the facts so warranted. The judicial role with respect to the conduct of the proceedings of domestic tribunals is a limited supervisory role, which does not extend to a re-hearing of factual issues and finding a correct decision, but is confined to ensuring the correctness of the decision-making process.

Grounds of judicial review

1.5 Within the context of Singapore, following Lord Diplock's threefold classification of grounds of review in the *GCHQ* case (para 1.3 *supra*), as adopted by the Court of Appeal in *Chng Suan Tze v Minister of Home Affairs* [1988] SLR 132, the decision-making process of public bodies may be challenged on the bases of illegality (lack of fidelity to the terms of statute conferring the power), irrationality (derived from common law principles independent of the statute) and procedural impropriety. The suggested fourth heading of "proportionality" has been subsumed as a facet of irrationality rather than an independent ground of review in *Chng Suan Tze*. It was subsequently unsuccessfully raised in cases like *Kang Ngah Wei v Commander of Traffic Police* [2002] 1 SLR 213 at [17].

1.6 In applying these grounds, the court is anxious to confine itself to issues of legality rather than the merits of a decision, though the legality/merits dichotomy can, because of the open-textured nature of tests of "purpose" and "reasonableness", be wafer thin. As asserted by Lai Kew Chai J in *Ng Hock Guan v Attorney-General* [2004] 1 SLR 415 at [5], in recognition of the autonomy of tribunals, the court is in the exercise of judicial review not to re-hear the case, confining itself instead to "the legality, fairness or propriety of the decision making process and not with the evaluation of the relative weight or probative value of the conflicting evidence". This is a facet of the separation of powers principle. Thus, the judicial role in non-precedent fact cases is not to consider the sufficiency of the evidence so long as there is evidence to support the decision. That is, a valid decision must rest on a factual basis, into whose existence the courts may inquire, and this factual basis must reasonably support the decision arrived at: *Re Fong Thin Choo* [1992] 1 SLR 120. Nevertheless, the formulation of the test in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1047 (followed in *Re Fong Thin Choo*) that the court may consider

whether the relevant decision-maker has undertaken a "proper self-direction" as to the facts forming the basis of a decision, is potentially far-reaching, in so far as it may entail an assessment of the correctness of the decision itself. Nevertheless, a fairly high threshold would have to be satisfied as it would have to be shown that a domestic or professional body had "plainly misread the evidence and come to a conclusion which is contrary to the evidence or is otherwise plainly wrong": Godfrey JA in *Tong Pon Wah v Hong Kong Society of Accountants* [1998] 3 HKC 82 at 94, cited in *Ng Hock Guan v Attorney-General* at [60].

Substantive grounds of review: Rationality

1.7 Although considerably rarer than cases where procedural unfairness is alleged, substantive grounds of judicial review have been previously invoked, as in *Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board* [1997] 2 SLR 584 ("*Lines International*"), and *Kang Ngah Wei v Commander of Traffic Police* where Tan Lee Meng J applied the test of *Wednesbury* unreasonableness from the celebrated English case of *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223. In both cases, it was stressed that this ground of review did not entitle the court to act like an appellate court and to substitute its views of how the discretion should be exercised with that actually taken. Judith Prakash J in *Lines International* noted that unreasonableness was to be understood in the "special sense" as explained by Lord Greene MR in *Wednesbury* at 230 and elaborated by Lord Diplock in the *GCHQ* case at 410, referring to a decision "so outrageous in its defiance of logic or of accepted moral standards" such that the decision is "so unreasonable that no reasonable authority could ever have come to it". This had been applied in *Re Yap Lack Tee George* [1992] 1 SLR 488. What the court considers unreasonable is irrelevant.

1.8 These cautions were reiterated in *Ng Hock Guan v Attorney-General* (para 1.6 *supra*) where a decision was challenged for being irrational and the judge was conscious of the importance of firmly holding the line "against judicial activism under the guise of judicial review" (at [74]). This case concerned the conduct of a disciplinary hearing eventuating in the dismissal of a police officer who had allegedly assaulted three Filipino women under arrest for vice activities. He was charged under s 27(1)(c) of the Police Force Act (Cap 235, 1985 Rev Ed) for "conduct to the prejudice of good order and discipline".

1.9 In discussing the meaning of unreasonableness, Lai Kew Chai J noted that Lord Greene MR had differentiated between the "red-haired teacher" meaning of unreasonableness which connoted an absurdity (a novel ground of review), as compared to the idea of considering extraneous matters or

acting in bad faith (whereby unreasonableness would appear to be an umbrella label under which pre-existing common law grounds of review were conveniently grouped). In considering the evidence, the Authorised Officer who conducted the disciplinary hearing was found to have unduly discounted one aspect of it. This was manifested in his grounds of decision which stipulated that he was convinced by the testimonies of the Filipinas who alleged assault, stating that "I have to treat the testimonies of the police witnesses with caution as they will naturally try to help or cover their colleagues". The Authorised Officer also disbelieved all the evidence of the Defence and consequently, Lai J found that he had acted irrationally, there being no justification for his view that there were such proclivities in the defence witnesses. As such, his decision was one "no rational and fair-minded arbiter properly directing himself would have made" (at [64]). Lai J considered that these prejudicial views held by the Authorised Officer that defence witnesses had "a tendency to perjure and cover up for colleagues" (at [67]) seriously impaired the consideration of other defence evidence which was thus not treated fairly and reasonably. Thus, the plaintiff was granted a declaration that his dismissal was *ultra vires*.

Procedural grounds of review: Natural justice in expulsion cases and in the conduct of judicial proceedings

1.10 The plaintiffs in *Mohammed Aziz bin Ibrahim v Pertubohan Kebangsaan Melayu Singapura* [2004] 1 SLR 191 challenged expulsion orders issued against them on 9 June 2003 by the Supreme Council of Pertubohan Kebangsaan Melayu Singapura ("PKMS"), a political party of which they were members. The conduct of the decision-making process which resulted in the termination of the plaintiffs' memberships was challenged on the ground of procedural impropriety as the rules of natural justice had been violated, since they were not accorded a fair hearing. The plaintiffs sought declarations that these expulsion orders were null and void and that they did not cease to be PKMS members on 9 June 2003.

1.11 Tan Lee Meng J held that the rules of natural justice ought to be observed before a member of an association was expelled. While the requirements of a fair hearing before an impartial tribunal is not fixed at common law but moulded to fit case circumstances, this minimally entailed having sufficient information in relation to the charges of misconduct underpinning the decision to terminate membership. Also, the plaintiff must have the opportunity to be heard by an unbiased committee and a reasonable opportunity of presenting his case.

1.12 The decision-making process in this case was rife with procedural defects which precluded a fair hearing as the plaintiffs were not given

sufficient particulars of the serious charges against them and thus were unable to prepare a defence because of inadequate notice; furthermore, they were given insufficient time and thereby deprived of a reasonable opportunity to prepare their defence. In addition, the inquiries conducted by the Supreme Council and Disciplinary Committee were done in the absence of the plaintiffs, over the ignored objections of the plaintiffs' solicitors. Consequently, Tan J found that the expulsions were conducted in a manner which breached natural justice and were thus void.

1.13 With respect to the conduct of judicial proceedings, it was argued in *Teng Cheng Sin v Law Fay Yuen* [2003] 3 SLR 356 which stemmed from an application for a personal protection order by a wife against her husband, that by not giving copies of certain documents for the purposes of cross-examination to the husband, which was a part of all available evidence, the trial was unfair to the husband, entailing a breach of natural justice. Kan Ting Chiu J found that it would be wrong if the documents were not shown to the husband at all; if they had been shown, upon request, the husband should be given enough time to study or make copies of them. However, if the husband had been shown the documents and made no such request, this would erode his allegations of procedural unfairness against him, given his own failure to act accordingly.

The exhaustion of domestic remedies and judicial review

1.14 The High Court considered the effect of an internal remedy clause in the case of *Mathi Alegen s/o Gothendaraman v The Tamils Representative Council Singapore* [2002] SGHC 310 ("*Mathi Alegen*"). This case involved the expulsion of the plaintiff from the management committee of the Tamils Representative Council ("TRC"). The plaintiff sought an order to quash the decision to remove him from his office of TRC's Deputy General Secretary. Under the terms of r 23(1) of the TRC Constitution, the plaintiff was entitled to call for an Extraordinary General Meeting ("EOGM") in the event of a dispute arising amongst members; if the matter was not resolved at the EOGM, members could then resort to judicial settlement. The plaintiff did not avail himself of this provision and hence had not exhausted his domestic remedies.

1.15 Tay Yong Kwang JC (as he then was) held at [130] that the effect of this "salutary" rule was not to oust the jurisdiction of the court but rather to discourage resort to litigation as the first option. In general the courts do not strictly require in all cases that all domestic remedies must be exhausted prior to invoking judicial review, particularly where these domestic remedies would be ineffectual and cause harm to the plaintiff, as in *Chiam See Tong v Singapore Democratic Party* [1994] 1 SLR 278 where a two-year wait till the

convening of the next party conference would have affected the status of the plaintiff's parliamentary seat, after he was ousted from his political party. So too in *Mohammed Aziz bin Ibrahim v Pertubohan Kebangsaan Melayu Singapura* (para 1.10 *supra*), breaches of natural justice resulting in inadequate notice of the relevant charges prevented the plaintiffs from effectively framing an appeal under Art 18(7) of the PKMS Constitution which governed the political party they were expelled from. Thus, the utility of this internal remedy was compromised and hence, Tan J held there was no need in this case for internal remedies to be exhausted before instituting legal proceedings, distinguishing cases where there was a contractual obligation or oath to first exhaust internal remedies before resorting to the courts. Furthermore, Tan J was moved by the unfair imposition of a six-day time limit for filing an appeal before the PKMS bodies, which was not contained in the PKMS Constitution; this informed his holding that non-exhaustion of domestic remedies did not bar an application for judicial review.

1.16 Notably, in the Malaysian case of *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1, the Federal Court (Kuala Lumpur) held that judicial review is not necessarily barred by the non-exercise of internal appeal procedures. In particular, the court noted that judicial review was appropriate where this would be a speedier process; where the dispute involved questions of law rather than factual disputes and especially where distinct public law principles were implicated, where the case concerned issues of law of public importance which transcended the facts of the immediate case.

1.17 In stating that the plaintiff in *Mathi Alegen* ought to have moved for an EOGM prior to commencing court actions, Tay JC singled out three factors. First, no issue of livelihood was at stake when the plaintiff was expelled from his office which was voluntary in nature and which constituted a service to the Tamil community. Thus, the interest at stake was not particularly grave. Second, the plaintiff appeared to have accepted his expulsion as he took no immediate action between the dates of 1 March 2001 when he was expelled and 19 November 2001 when he issued his letter of demand. Third, the plaintiff had had ample time and opportunity to utilise the domestic remedy available to him, which he should have done, were he serious about his office, Thus, this supports the view that where a domestic remedy is available and effective, it should in principle be resorted to before commencing judicial review proceedings, bearing in mind this is a discretionary remedy with leave requirements which are designed to weed out frivolous cases brought by vexatious litigants.

CONSTITUTIONAL LAW

Constitutional delimitation of powers

The scope of judicial and executive power

1.18 The issue of the constitutional limits of powers arose in two cases, both in relation to the scope of judicial power with respect to sentencing powers. Article 93 of the Singapore Constitution vests judicial power "in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force", although this may be qualified in relation to anti-subversion legislation enacted under the terms of Art 149. Notably in the Malaysian case of *PP v Dato' Yap Peng* [1987] 2 MLJ 311 at 313, it was accepted that "judicial power" in the context of criminal law included the power "to try a person for an offence committed by him and to pass sentence against him if he is found guilty". Sentencing must accord with what is allowed by law.

1.19 The question of whether international instruments could limit the exercise of judicial sentencing discretion arose in the case of *PP v Salwant Singh s/o Amer Singh* [2003] SGDC 146. This case involved an appeal against a sentence of 12 years' preventive detention for various cheating offences under the Penal Code (Cap 224, 1985 Rev Ed), under the authority of s 12(2) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), which allows the ordering of preventive detention for terms ranging between seven to 20 years. The presence of the accused before the court was procured by means of an extradition process, as he had left for India after his cheating of United Overseas Bank Card Centre had been brought to light. What was at issue was whether the terms of the extradition order limited judicial sentencing discretion in so far as this order had conditioned extradition to Singapore from India on the basis that the accused could only be subject to a maximum sentence of seven years.

1.20 This point was summarily treated by District Judge Kow Keng Siong (at [35] to [36] of his judgment), who affirmed the supremacy of domestic law over binding international legal agreements. The terms of the extradition order, negotiated by the executive branch of government, was considered irrelevant as the district judge considered that the contention that sentencing discrimination was "fettered by the views of an organ of a foreign state" offended the international principle of state sovereignty. At international law, of course, it is settled that a state may limit its sovereignty through voluntarily entering into binding international agreements. The very idea of international law implies the notion that international law, as a body of rules of conduct for the international community, including states, binds states regardless of their

internal laws. State sovereignty is not offended when a state, represented at the inter-state level by its executive branch, has consented to a limitation on its domestic law. The Constitution of the Republic of Singapore (1999 Rev Ed) currently does not contain a provision which provides that national sovereign powers may be limited in the interests of international law and co-operation, nor does it explicitly address the hierarchical ordering of international law and domestic law.

1.21 District Judge Kow asserted that domestic law prevails over the terms of Singapore's international agreement with a foreign state in the event of conflict, given that Art 4 of the Constitution declares the supremacy of the Constitution and the nullity of inconsistent legislation. This is a significant judicial statement affirming the prevailing dualistic approach towards the relationship between international law and Singapore domestic law, which rejects the notion of self-executing treaties or international instruments. Rather, an international agreement must be formally incorporated into the *corpus* of Singapore law to be given effect within the domestic legal order, approving the UK position in *J H Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418. Even a treaty signed between the Singapore and Indian governments stipulating a maximum sentence would not be judicially enforceable as "matters relating to sentencing [are] constitutionally vested in the Judiciary, not the Executive: Art 93 of the Constitution" (at [36]). This does not preclude the possibility that Singapore may incur international responsibility and liability under international law for breaching an international agreement by failing to ensure it is given domestic effect. Nevertheless, the current orthodoxy is that constitutional law is supreme and takes precedence over unincorporated international agreements and as such, sentencing powers, as an aspect of judicial power conferred by Art 93, prevail over the terms of extradition agreements.

1.22 On the Public Prosecutor's appeal to the High Court against the sentence, the period of preventive detention was in fact increased to 20 years (see [2003] 4 SLR 305).

1.23 With respect to the boundaries of judicial-executive power in relation to the sentencing process, the issue of which office had the power to suspend the execution of a sentence arose in *Lwee Kwi Ling Mary v PP* [2003] 2 SLR 151. Specifically, the question was whether the court was empowered by the terms of s 223 of the Criminal Procedure Code ("CPC") to suspend a sentence imposed on Mary Lwee by the High Court on charges of criminal intimidation. This section provides that certain imprisonment sentences are to take effect on the dates these sentences were passed, "unless the court passing the sentence or when there has been an appeal the appellate court otherwise directs". Yong Pung How CJ noted that s 223 only conferred upon

the court the power to direct the commencement of such sentence on a date other than the date it was passed; as such, where a person had already starting serving his sentence, this power could not be exercised. The learned Chief Justice noted that s 8(1) of the Republic of Singapore Independence Act (1985 Rev Ed) ("RSIA") provides that the President, upon the advice of the Cabinet, may, in the terms of sub-ss (b) and (c) grant to convicted offenders "any reprieve or respite … of the execution of any sentence pronounced on such offender" or "remit the whole or any part of such sentence or of any penalty or forfeiture imposed by law". Section 8 of the RSIA, a constitutional document which made provision for the powers of the Singapore government upon independence from Malaysia, was enacted verbatim as Art 22P of the Constitution in 1991. No reference to Art 22P was made in this case.

1.24 Reading s 8(1) of the RSIA with s 237(1) CPC, which expressly provides that the President may suspend the execution of a person's sentence in accordance with the terms of the former, Yong CJ found that these two provisions effectively conferred exclusive power on the President to suspend the execution of a sentence. In delimiting the scope of judicial powers in relation to sentencing issues, Yong CJ stated at [9] that as a matter of constitutional law, "the suspension of sentences are not part of the court's functions and the court cannot usurp the prerogative of the President conferred by statute". This was consistent with the finding in the case of *Jabar v PP* [1995] 1 SLR 617 where on an interpretation of s 8(1) of the RSIA with respect to the power to order a stay of execution of a death sentence, the High Court found that this power did not inhere in the courts but in the President, as an executive power. As noted by Yong CJ at 631, [59] of *Jabar*, "once sentence is passed and the judicial process is concluded, the jurisdiction of the court ends". Hence, the power to suspend the execution of a sentence is an executive power and it remained open to Mary Lwee to seek the route of directly petitioning the President under s 8(1) RSIA.

Fundamental liberties (Part IV of the Constitution)

1.25 The issue as to whether licensing regulations under the Public Entertainments and Meetings Act (Cap 257, 2001 Rev Ed) ("PEMA") violated the freedom of speech, constitutionally guaranteed under Art 14, arose before the High Court in the case of *Chee Soon Juan v PP* [2003] 2 SLR 445. It is to be noted that the Art 14 guarantee is qualified and may be limited by laws passed by Parliament as it considers "necessary or expedient" pursuant to eight stipulated grounds, including public order and morality and Singapore's security interests.

1.26 The facts of the case are these. Dr Chee Soon Juan, an opposition politician and Secretary-General of the Singapore Democratic Party, applied

for a licence to hold a rally at the Istana on 1 May 2002, or Labour Day. Under s 3 of PEMA, it is provided that no public entertainment which, as provided by s 2(m) of the Schedule, includes "any lecture, talk, address, debate or discussion", shall take place except in an approved place with a duly issued licence. As noted by Chan Sek Keong J (as he was then) in *Jeyaretnam JB v PP* [1989] SLR 978, the statutory meaning of "public entertainment" has a broader ambit beyond its ordinary dictionary sense, ranging, as specified in the Schedule, from serious political speeches to puppet shows. Section 2 of the Schedule further provides that this public entertainment must occur "in any place to which the public or any class of the public has access whether gratuitously or otherwise".

1.27 Chee's application was denied, on the ground of the "potential disruption to public order" (at [4]) but through press releases, Chee publicised his intention to proceed with the rally nonetheless. He later testified that his intent was to speak on labour issues. Chee declined to request reasons for the refusal of the licence in writing, as entitled to by s 13 of PEMA, nor did he avail himself of the statutory provision for ministerial appeal.

1.28 On 1 May 2002, despite police warnings delivered to Chee who was at the entrance of the Istana grounds, Chee refused to leave. He was subsequently arrested, charged and convicted of wilful trespass on government property under s 21(1) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) as well as attempting to provide public entertainment without a licence, an offence under PEMA and s 511 of the Penal Code. Police testimony stated that Chee's arrest was necessary to prevent a "law and order situation", given there were 5,300 people on Istana grounds at the time. Chee was fined $4,000 for the latter offence, which would disqualify him from membership in Parliament for a five-year period as Art 45(1)(e) of the Constitution lists being convicted for an offence by a Singapore court and being fined a minimum of $2,000 as grounds for disqualification.

1.29 In appealing against the latter offence before the High Court, for which he was fined $4,000, Chee made two arguments. First, he argued that PEMA was unconstitutional as it infringed the constitutional right to free speech and association as guaranteed in Art 14(1)(a). Second, he argued that it had been applied in a discriminatory, unfair manner against him, as evidenced in the rejection of his licence application. No evidence was produced to substantiate the second argument.

1.30 Yong Pung How CJ stated that an objective test was to be applied, on a consideration of the facts of each case, to ascertain whether any activity fell within the scope of PEMA; such activity was to be directed at the public "in

the sense of procuring their involvement whether actively or passively" (at [13]). To Yong CJ, the relevant issue was whether Chee's attempt to hold a rally without a licence issued by the Public Entertainments Licensing Unit fell within the statutory meaning of "public entertainment" and if so, he would be guilty of an offence under s 19(1)(a) of PEMA which provides that any person providing or assisting in the provision of any public entertainment without a licence issued under the Act could be fined up to $10,000. He found that Chee's actions constituted an "address" under s 2(m).

1.31 In evaluating the constitutionality of the PEMA, Yong CJ noted that the right to free speech in Art 14, as in any democratic society, is not absolute. That is something universally accepted, even in Constitutions such as the US First Amendment, where the right to free speech is framed in absolute terms. As such, the individual's interest in free speech as an aspect of personal liberty has to be balanced against "[b]roader societal concerns such as public peace and order" (at [20]).

1.32 Without engaging into an analysis of whether the terms of the PEMA were necessary in a democratic society, Yong CJ merely stated that the enactment of PEMA fell within the scope of legislative power as provided in Art 14(2)(a). Consequently, he found at [20] that nothing in PEMA was "in any way contrary to our Constitution". This formalistic approach refused an evaluation of whether these administrative restrictions on a constitutional right were "reasonable" or "fair". This would entail considering the competing concerns of public order and the importance of political speech at two levels: as a fundamental liberty and as a facet of the public interest in contributing towards full and free debate in a democratic society. Notably, Yong CJ found "remarkable" Chee's "sheer arrogance" in purporting to speak on behalf of Singaporeans, in "asking for their right to free speech to be returned to them", particularly since he was not a member of Parliament and lacked a mandate to speak for the people. In finding that the sentence was not manifestly excessive, given that this was Chee's fourth offence under PEMA, Yong CJ found that Chee's "cavalier attitude towards the legal system" was "offensive" in his characterisation of a breach of the law as an assertion of his constitutional rights.

1.33 The judicial approach in this case is consistent with past jurisprudence which tends to treat legislative or executive determinations as conclusive, without further engaging into a consideration of the importance of individual liberties. It was sufficient that PEMA was a duly enacted law and the court refrained from engaging upon a balancing exercise with respect to individual rights and societal concerns, which would entail evaluating the legislative provisions against judicially developed constitutional standards. By treating as determinative the legislation assessment of what was necessary in

the interests of public order, as embodied in PEMA, the court deferred to legislative judgment and declined to adopt or develop a robust guardianship role with respect to affording Part IV liberties a generous interpretation, as advocated in *Ong Ah Chuan v PP* [1980–1981] SLR 48.

Miscellaneous

1.34 It may be worth noting that various constitutional issues were raised in a tangential fashion in various cases, though these did not inform the substantive arguments at stake or were not analysed at any length or substantive depth. These include the constitutionality of the mandatory death penalty under the Misuse of Drugs Act (Cap 185, 2001 Rev Ed), raised indirectly in relation to a request for admission of a Queen's Counsel: *Re Lasry Lex QC* [2004] 1 SLR 68. Another application for admission of a QC well versed in canon law was rejected in *Re Seed Nigel John QC* [2003] 3 SLR 407. Tay Yong Kwang J found that no constitutional issue relating to religious freedom under Art 15 of the Constitution was present on the case facts, involving charges against a Roman Catholic priest for criminal breach of trust under the Penal Code. Furthermore, it was clarified at [34] that the Art 9(3) rights of an accused person "to consult and be defended by a legal practitioner of his choice" does not negate the need that legal counsel must be properly admitted under the terms of the Legal Profession Act (Cap 161, 2001 Rev Ed). Article 9(3) does not connote a right that the court is obliged to admit any Queen's Counsel chosen by the defendant.

1.35 In terms of the judicial evolution of a custodial sentencing norm in cases where police officers are subjected to criminal force, to reflect the public interest in ensuring their fullest protection against abuse, it was held in *Koh Boo Ching v PP* [2003] SGMC 37 that unarmed Housing and Development Board parking enforcement officers facing criminal force should enjoy similar protection through applying this same sentencing approach in their cases. This was considered a facet of the equal protection of the law as safeguarded in Art 12(1) of the Constitution and thus equality rights were invoked to justify the similar treatment of two categories of public officials to allow them to discharge their public duties, in terms of adopting similar sentencing guidelines for those using criminal force against these public officials.

1.36 Finally, the court noted in passing in *Ho Yean Theng Jill v PP* [2003] SGMC 25 at [144] that it was constitutional for the police to record confessions, on the basis of "a long line of common law and statute" as well as the fact that such practice has existed "as long as the Constitution has existed". The Magistrate's Appeal of this case, which did not deal with the constitutionality point, is now reported at [2004] 1 SLR 254.