(2024) 25 SAL Ann Rev 1
(Published on e-First 30 April 2025)

1. ADMINISTRATIVE AND CONSTITUTIONAL LAW

THIO Li-ann
BA (Oxford) (Hons), LLM (Harvard Law School), PhD (Cambridge);
Barrister (Gray's Inn, UK);
Professor, Provost's Chair, Faculty of Law, National University of Singapore.

I. Introduction

1.1 In 2024, a modest number of constitutional and administrative law cases were heard. The administrative law cases pertained primarily to remedies and straightforward applications of the *GCHQ* grounds of review, *viz*, illegality, irrationality and procedural impropriety. Arguments invoking substantive legitimate expectations were raised but eventually dropped in *Roslan bin Bakar v Attorney-General*[1] ("*Roslan v AG*").

1.2 Most of the constitutional law cases were related to the constitutionality and application of the Post-appeal Applications in Capital Cases Act 2022[2] ("PACC Act"), which was passed by Parliament on 29 November 2022 and came into effect on 28 June 2024. Significant cases pertained to what the right to counsel entailed under Art 9(3) of the Constitution of the Republic of Singapore[3] ("Singapore Constitution") criminal defamation and free speech under Art 14, the scope of prosecutorial discretion under Art 35(8) in relation to Art 12 equality challenges, and some light was shed on when a law on a statute book would suffice to show a violation of a constitutional right and thus to ground standing.

ADMINISTRATIVE LAW

II. Avoiding satellite litigation and exhausting remedies

1.3 In *Kottakki Srinivas Patnaik v Attorney-General*[4] ("*Patnaik v AG*"), the appellant, Kottakki Srinivas Patnaik ("Patnaik"), unsuccessfully brought an appeal after his application for leave to commence judicial review in relation to corruption charges brought against him in criminal

1 [2024] 2 SLR 433 at [50].
2 Act 41 of 2022.
3 2020 Rev Ed.
4 [2024] 1 SLR 239.

proceedings was dismissed. This was in relation to Patnaik being an alleged bribe-giver in a private sector corruption scheme.

1.4 Article 12 was not found to be breached as Patnaik was not similarly situated with other persons who were not bribe-givers but conduits to facilitate the transmission of bribes, in the same criminal enterprise. Patnaik had argued that his equality rights were violated because others named in connection with the matters that were the subject of the charges against him had not been charged.[5] He further argued that the charges were irrational as they were not grounded in evidence.[6]

1.5 The Court of Appeal held that rather than seeking, through civil proceedings, the intervention of the court to stop the Attorney-General as Public Prosecutor from proceeding with the charges against Patnaik, Patnaik should have raised his objections that the charges were not grounded in evidence at the criminal trial. He should not have applied for prerogative orders, such as quashing and prohibiting orders, to pre-empt and avoid the criminal trial.[7]

1.6 The discouraging of satellite litigation was reflected in O 24 r 2(2) of the Rules of Court 2021 which provided that applications for prerogative orders "must not be made before the applicant has exhausted any right of appeal or other remedy provided under any written law". The "obvious remedy" that had first to be exhausted before applying for prerogative writs was the criminal trial.[8]

1.7 Such satellite litigation in seeking orders from the court in its civil jurisdiction to forestall the criminal trial would cause delay, fragmentation and inefficiency in the criminal proceedings. The Public Prosecutor was not obliged to give Patnaik a preview of its case or its evidence at a preliminary stage, so he could launch a pre-emptive attempt to prevent the prosecution of the charges.[9] It was for the Prosecution to establish its case with the requisite evidence at the criminal trial and "not be inveigled into producing it in order to defeat Mr Patnaik's application".[10] It would not be tenable to allow an applicant to bring repeated applications to require the Public Prosecutor to produce the evidence at a given stage

5 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [35].
6 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [36].
7 "[S]atellite litigation to forestall the trial of a criminal charge is not well received": *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [37].
8 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [37].
9 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [37]–[38].
10 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [38].

of trial, or to enable the Defence to bring such an application to stay criminal proceedings.[11]

III. Remedies: declaration for unlawful disclosure of prisoners' correspondence

1.8 The Court of Appeal in *Syed Suhail bin Syed Zin v Attorney-General*[12] addressed the question of how the unauthorised disclosure of the appellants' correspondence by the Attorney-General's Chambers ("AGC") and Singapore Prison Services ("SPS") would affect the private law remedies available to the appellants. These were 13 people who had at all material times been prisoners in Changi Prison.

1.9 There was no dispute that the disclosure by the SPS to the AGC of the appellants' correspondence was "anything but unlawful".[13] The Court of Appeal in *Gobi a/l Avedian v Attorney-General*[14] ("*Gobi v AG*") had held that there was no legal basis under the Prisons Regulations[15] on which the SPS was permitted to disclose this correspondence and that the AGC should not have sought such correspondence, without first obtaining the consent of the prisoners or a court order.

1.10 Under the general law, there is an expectation of confidentiality in a letter or document shared between private parties.[16] Regulation 127A of the Prisons Regulations[17] modifies this law in relation to prisoners by permitting prison officers to read all correspondence from and to prisoners and to make copies of this, unless they are to or from the prisoner's legal advisor.

1.11 The Court of Appeal expressed preliminary views on what best practice might require in circumstances where the SPS, having read the prisoner's correspondence, may need to seek legal advice to ensure the safety and good order of the prison or public.[18] This would not permit the AGC to act of its own volition to ask for the disclosure of prisoners' correspondence.

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11 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [39].
12 [2024] 2 SLR 588.
13 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588 at [39].
14 [2020] 2 SLR 883 at [35].
15 2002 Rev Ed.
16 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588 at [37].
17 2002 Rev Ed.
18 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588 at [38].

1.12 For declaratory relief to be granted, the conditions in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd*[19] must be satisfied:

> (a) the court has the jurisdiction and power to award the remedy;
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> (b) the matter is justiciable in the court;
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> (c) the declaration is justified by the circumstances of the case (as a discretionary remedy);
>
> (d) the plaintiff has *locus standi* to bring the suit and there is a real controversy for the court to resolve;
>
> (e) any person whose interests might be affected by the declaration is before the court; and
>
> (f) there is some ambiguity or uncertainty about the issue in respect of which the declaration is asked for, so that the court's determination would have the effect of laying such doubt to rest.

1.13 First, the Court of Appeal held that a declaration could be granted, despite the declaration given in *Gobi v AG*. In *Gobi v AG,* the court noted the SPS was authorised to make copies of Gobi's correspondence, but this did not extend to forwarding these copies to the AGC under reg 127A(2) of the Prisons Regulations,[20] made pursuant to s 84(1) of the Prisons Act.[21]

1.14 While *Gobi v AG* dealt with an isolated case of disclosure and found this to be contrary to the Prisons Regulations,[22] this was different qualitatively from the immediate case where the disclosures were unlawful because they were made pursuant to a policy or practice which was itself contrary to the Prisons Regulations.[23] The *Gobi v AG* declaration was thus of a different scope than in the present case, which meant that, as the legal position was not settled as to the legality of such policy, there was a "real controversy"[24] between the parties.

1.15 Second, in assessing whether it was justified to grant a declaration in the case circumstances, given its nature as a discretionary remedy, this would not be granted if the declaration would not give the party "real" relief or if it would not serve a useful or practice purpose.[25]

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19 [2006] 1 SLR(R) 112 at [14]–[25].
20 2002 Rev Ed.
21 Cap 247, 2000 Rev Ed.
22 2002 Rev Ed.
23 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588 at [43].
24 See para 1.12(d) above.
25 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [158].

1.16 Here, the Court of Appeal thought granting a declaration would be of value to the parties and public, to affirm the importance of a prisoner's ownership of his correspondence and his right to maintain the confidentiality and privacy of his communication within the parameters of the law, *ie*, a prisoner's general interest in written communications. The starting point for determining whether this general interest has been wrongfully interfered with is that this right "would not be displaced unless this is necessary for security or operational reasons".[26]

1.17 Regulation 127A(4) which prohibits the copying of prisoners' correspondence with a legal advisor "enshrines the specific importance of prisoners' due process rights"[27] and protects "the proper administration of justice".[28] The practice outlined in the Deputy Attorney-General's affidavit[29] was predicated on the belief of the SPS and Ministry of Home Affairs ("MHA") that the prisoners' correspondence could be shared with the AGC for the purpose of seeking legal advice, even if such documents were confidential or privileged. The Court of Appeal found this to be "bereft of any consciousness of a prisoner's general interest in written communications or of a prisoner's specific interest in written communications with their legal advisor".[30] There was no consideration by the SPS or AGC if anything in the correspondence even required the AGC to give the SPS legal advice. Thus, despite the steps taken by the AGC and SPS to remedy the situation, the lack of appreciation of a prisoner's general interest in written communications supported the court's view of the utility of awarding a declaration.

1.18 Two declarations were issued in relation to the unlawful administrative action: to the effect that the AGC's request for disclosure of prisoners' correspondence without their consent was unlawful, and that the SPS acted unlawfully in disclosing the appellants' correspondence to the AGC, in the absence of legal necessity, the appellants' consent or a court order.[31]

IV. Non-renewal of licence and judicial review on *GCHQ* grounds

1.19 The decision of the Maritime and Port Authority of Singapore ("MPA") not to renew licences relating to bunkering (supply of fuel to

26 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588 at [46].
27 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588 at [46].
28 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588 at [46].
29 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588 at [26].
30 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588 at [46].
31 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588 at [47].

vessels) and bunker craft operating licences ("Licences") was challenged on *GCHQ* grounds of review in *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore*.[32] Between 8 September 2013 and 28 February 2023, these Licences were renewed for eight consecutive times.

1.20 The power to accept or reject applications for fresh licences or for renewal of existing licences resides in reg 64 of the Maritime and Port Authority of Singapore (Port) Regulations,[33] which confers a "wide discretion" on the MPA.[34]

1.21 In January 2018, two employees of Sentek Marine & Trading Pte Ltd ("Sentek"), which supplied bunkers to vessels calling at the Port of Singapore, were charged with involvement in a series of offences relating to the misappropriation of gas oil from Shell's Pulau Bukom facility ("Bukom events"). Sentek terminated their employment that same month. Two vessels operated by Sentek (Sentek 22 and Sentek 26) were also found to be involved in the Bukom events. The then Managing Director Pai was also charged with multiple offences relating to the Bukom events. In September 2022, Sentek was charged with 42 offences under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992[35] for receiving on board Sentek 22 and Sentek 26 gas oil valued at US$56m that was dishonestly misappropriated from Shell, between August 2014 and January 2018.

1.22 The MPA proceeded to conduct its own investigations, distinct from the criminal proceedings, into whether Sentek complied with the terms and conditions of the Licences awarded, being concerned with the potential reputational damage to Singapore as a trusted bunkering hub. MPA obtained access to documents relating to Sentek 22 and Sentek 26 which the Singapore Police Force had seized.

1.23 The Licences were due to expire on 28 February 2023. The Notice to Show Cause ("Show Cause notice") against the proposed rejection of the renewal applications ("Applications"), which referred to multiple breaches of the Licence conditions, was issued on 27 February 2023. The Show Cause notice related to the failure to keep accurate records, such as in relation to bunker deliveries, and the falsification of records. Correspondence between the MPA and Sentek ensued, with the Licences

32 [2025] 3 SLR 688.
33 2000 Rev Ed.
34 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [10].
35 2020 Rev Ed.

being extended on an interim basis pending fresh consideration of the Applications, in February and March 2023. On 1 April 2024, the MPA informed Sentek that the Licences would not be renewed and would expire on 31 May 2024.

1.24 In HC/OA 442/2024, Sentek sought leave to apply for judicial review, seeking various prerogative orders and declaratory relief. This related to a quashing order in respect of the MPA's decision not to renew the Licences, as communicated in the 31 May 2024 decision ("Decision"), a mandatory order for the MPA to consider the application afresh and a prohibitory order to prevent the MPA from rescinding the extension of the Licences. Declarations were sought to the effect that the MPA ought to consider the Applications afresh and that the Licences extended on an interim basis continued to subsist, pending fresh consideration of the Applications. The permission application and substantive merits of the judicial review application were heard together on a "rolled up" basis: leave was granted and the *GCHQ* grounds of review availed. A claim of substantive legal expectations was dropped at the hearing.[36]

A. Relevant considerations

1.25 Sentek contended that MPA in its Decision not to renewal the Licences had taken into account two irrelevant considerations.

1.26 First, that the MPA had considered the Bukom events in deciding not to renew the relevant Licences. While the High Court found that the Bukom events were the impetus for the commencement of MPA investigations into whether the terms and conditions of its Licences had been breached, what was disputed was whether the MPA took into account the Bukom events and gave them undue weight in coming to its Decision.

1.27 On the facts, it was not disputed that the MPA had found breaches of the Licences in the failure to keep accurate records, and was dissatisfied with Sentek's answers in relation to explaining the said breaches; after which the MPA rejected the renewal application.[37] In light of the MPA's role under the Maritime and Port Authority of Singapore Act 1996,[38] it was "not surprising" that its "overarching concern" was

36 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [12].
37 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [28].
38 2020 Rev Ed.

to maintain Singapore's standing as a trusted bunkering hub.[39] Clearly, the latter concern was not the sole concern as non-compliance with the Licence conditions and terms also informed the Decision.

1.28 Second, Sentek contended there was insufficient basis for the "foundational allegation" that "out of the 73 transfers, 45 records were intentionally falsified".[40] This allegation was based on "merely comparing vessel records".[41] The relevant clauses in the bunker supplier licence and craft operator licence essentially stated that the bunker supplier should correctly and accurately record all deliveries and transfers of bunkers and not falsify any records. Forty-two falsified records entailed the breaches of these Licence clauses, evident in that as the bunker delivery notes ("BDNs") bearing the same serial number were carbon copies of each other and copies of the original, they should be identical in contents. For example, there were 40 instances where there were discrepancies between the BDNs and stock movement logbooks.[42]

1.29 Valerie Thean J found that the MPA's assumption that the BDN carbon copies would be identical unless at least one had been deliberately falsified "is entirely logical".[43] In the absence of a sensible explanation, any difference between the various copies would have involved intentional falsification.[44] It was not the foundational allegations that led to the Decision, as the breaches were the starting premise, but Sentek's inability to explain these circumstances and the absence of a cogent answer, that lead to the Decision.[45]

B. Reasonableness

1.30 The High Court held that the Decision satisfied the test of *Associated Provincial Picture Houses, Limited v Wednesbury Corporation*[46] ("*Wednesbury*") unreasonableness, being one that any

39 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [28].
40 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [29].
41 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [29].
42 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [31].
43 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [35].
44 Sentek Marine *& Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [35].
45 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [36] and [38].
46 [1948] 1 KB 223.

reasonable regulator could make. Sentek raised four main arguments alleging unreasonableness.

1.31 First, that the breaches of the relevant terms of the Licences relating to falsification were not severe and that such breaches had to be "sufficiently severe" to be a factor in non-renewal decisions.[47] Sentek argued that the falsification only related to internal transfers rather than transfers from a Sentek vessel to a third party customer, such that no customers were shortchanged of bunkers. The MPA held the view that accurate documents were necessary to prevent malpractices like short delivery, which could negatively affect Singapore's position as a trusted bunkering hub.[48]

1.32 The High Court held that logically, evidence that falsification had taken place in internal transfers did not mean no similar falsification had taken place between Sentek vessels and third party owned vessels – it just meant no such evidence was available.[49] Proper documentation of all transfers increased the likelihood of fraud detection, while improper documentation would enable fraudulent behaviour to go undetected, which would "eventually cause loss to third parties".[50]

1.33 Quantitatively, Sentek argued that even if there had been fraudulent Breaches, these constitute a "very small proportion", estimated at 0.1%–0.125% of the total number of bunker transfers Sentek had conducted in the relevant time period. It argued that this "minute rate of error" rendered irrational the non-renewal Decision.[51]

1.34 Thean J found that it was a mischaracterisation to contend that only 73 discrepancies were found among voluminous records, as the MPA had not conducted an exhaustive review of all the documents in Sentek's vessel over a two-year period but had done a "deep dive" into only two months.[52] In addition, the MPA had conducted random sampling checks within that two-year period, to ensure the Breaches were not isolated occurrences. The issue was whether the Breaches were sufficiently

47 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [43].
48 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [45].
49 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [45].
50 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [45].
51 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [46].
52 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [47].

severe such that Sentek, the licensee which bore the responsibility of maintaining a system of accurate records, would be warranted to provide an explanation for the discrepancies and errors. The question of reasonableness was directed to the Decision made after the Show Cause notice and process.[53]

1.35 Second, Sentek argued that the measures it had put in place were adequate regarding the accuracy of records, which the licensee was required to put in place to ensure compliance with the Licence conditions and terms. While the MPA concluded that the Breaches demonstrate systemic flaws in Sentek's processes, Sentek insisted it had met industry norms.[54] Sentek argued it was disproportionate and irrational not to renew the Licences because two criminal ex-employers had deliberately subverted Sentek's "best efforts", after taking "all reasonable measures".[55]

1.36 Thean J held that the Licences required the licensee to set up a system to ensure accurate records and to prevent falsification, that Sentek bore the onus of showing it had put in place a system which would "ordinarily detect employees who had embarked on a frolic of their own".[56] Further, measures that Sentek had taken focused on ensuring the consistency of vessel records (that the records within a given vessel tallied with other records therein), rather than their accuracy.[57] On examining an audit report done by Lloyd's Register Quality Assurance Ltd, Thean J did not find that this pointed to showing Sentek had in place a sound system to ensure record accuracy; and that passing an audit, which functions as a "randomized check", shows "the accuracy of a single sample on one vessel" regarding one transaction, not necessarily that a sound system had been put in place.[58]

1.37 Third, Sentek argued that the MPA failed to give sufficient consideration to its enhanced control measures in making the Decision. These measures included having independent inspectors and a new trading system including inventory management, and adopting "whistle-

53 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [47].
54 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [48].
55 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [49].
56 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [49].
57 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [50].
58 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [52]–[53].

blowing" and anti-corruption policies, for example.[59] However, Sentek had not explained how these measures would prevent future similar breaches,[60] given the MPA's concern with a specific past period, nor had it given assurances that any system would be in place during the period of renewal, so that the licensee could fulfill its contractual obligations. The measures were presumably not robust enough or not directly related to the MPA's concerns with accurate record-keeping. The Decision could not be said to be unreasonable.[61]

1.38 Fourth, Sentek argued the Decision was irrational as the MPA had not considered the possibility of renewing the Licences with appropriate terms and conditions, as distinct from adopting an "all-or-nothing approach" in rejecting Sentek's applications.[62] Thean J held that the MPA had considered this possibility but rejected it due to the severity of the Breaches and Sentek's attitude during the show cause process where it insisted it could not have detected the Breaches and disclaimed any responsibility for how their ex-employees who perpetrated the Breaches acted.[63] The MPA maintained a strict policy in respect of accurate records and had in 2017 revoked similar licences held by Transocean Oil Pte Ltd because of falsified records. Sentek in its responses to the MPA had failed to articulate a robust system to maintain accurate records for the future, such that the MPA considered a gap remained in the systemic structure. As such, it was not unreasonable for the MPA to reject the renewal application, as distinct from mandating specific operational solutions to fix the gap in the system.[64]

C. Procedural fairness

1.39 The High Court found that natural justice had not been breached because Sentek had been sufficiently informed of the allegations against it. In the Show Cause notice, the MPA set out in a tabular format and in detail which transfer was being queried, with a comment explaining

59 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [54].
60 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [60].
61 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [62].
62 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [63].
63 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [61].
64 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [64].

the relevant discrepancy in records and falsification of records.[65] Further, Sentek had been given sufficient time to respond even though it argued that it lacked a sufficient opportunity to meet the case against it, in that it was unable to investigate the Breaches without speaking to its ex-employees. The MPA, in suggesting that Sentek could pose queries to these ex-employees through the MPA, was not insisting that Sentek collect evidence second-hand through it.[66]

1.40 Thean J said this was a "red herring", as it would be convenient if the MPA agreed and deferred all regulatory action until criminal proceedings were concluded.[67] The MPA's chief complaint was there was no effective system that Sentek had put in place to ensure the accuracy of the records pertinent to its Licences, and that Sentek ought to have responded by reference to the relevant system, which ought to have been in place.

CONSTITUTIONAL LAW

1.41 The PACC Act introduced new provisions to the Supreme Court of Judicature Act 1969[68] ("SCJA"), *ie*, ss 60F–60M, which set out the procedure for a post-appeal application in a capital case ("PACC"). A person awaiting capital punishment ("PACP") must first obtain permission from the Court of Appeal to make a PACC application[69] by way of an originating application, though the courts have been lenient with procedural irregularities given the very short time frame before the date of execution.[70]

V. Lack of standing: PACC Act not in force

1.42 The constitutionality of two provisions of the PACC Act was challenged in *Masoud Rahimi bin Mehrzad v Attorney-General*[71] for allegedly violating Arts 9 and 12. These provisions related, firstly, to the statutory identification of a relevant consideration under s 60G(7)(*d*) of the SCJA, under which the Court of Appeal had to assess whether the

65 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [66]–[67].
66 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [70].
67 *Sentek Marine & Trading Pte Ltd v Maritime and Port Authority of Singapore* [2025] 3 SLR 688 at [71].
68 2020 Rev Ed.
69 Supreme Court of Judicature Act 1969 (2020 Rev Ed) s 60G(1).
70 See, *eg*, *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [9].
71 [2024] 1 SLR 414.

PACC application had a reasonable prospect of success; and secondly, to the Court of Appeal's ability under s 60G(8) of the SCJA to summarily deal with an application for PACC permission without an oral hearing.

1.43 The judgement in *Masoud* was delivered in March 2024, whereas the PACC Act did not come into force until June 2024. As the PACC Act had yet to be brought into force by notification in the Gazette, the applicants lacked standing under the three requirements test set out in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* – not least, they could not show a violation of their constitutional rights, which would constitute a violation of their personal rights.[72]

1.44 The Court of Appeal did not find apposite the reliance on *Tan Eng Hong v Attorney-General*[73] ("*Tan Eng Hong*") where the court had stated that in extraordinary cases, standing could be founded based on the existence of an allegedly unconstitutional law on the statute books. The appellants had argued that the PACC Act had specifically targeted PACPs. The Court of Appeal considered that *Tan Eng Hong* was taken out of context.[74] There, the case concerned offence-creating provisions such that "the effect of such a provision could be felt even if the applicant was not yet being prosecuted".[75] Such laws "cast a shadow that affects the conduct of those affected by it",[76] *ie*, they may have a successful deterrent effect, and may found standing in such cases.

1.45 Whether there is standing rests on a "fact sensitive inquiry" whose "true nature" is "whether and how the law being challenged *has actually affected the applicant*" [emphasis in original].[77] The present case was not concerned with offences, but "procedural provisions" that regulate the making of certain applications, which would only be "possibly relevant if one is constrained to abide by those procedures".[78]

1.46 On the case facts, there was nothing in the PACC Act to prevent the appellants from bringing any application they wished to, and indeed the PACC Act would apply prospectively when it was brought into force.[79] The appellants therefore lacked standing as they are not and would not be

72 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [3].
73 [2012] 4 SLR 476 at [94].
74 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [4].
75 *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [110]; *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [5].
76 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [5].
77 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [5].
78 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [5].
79 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [6].

affected by the impugned provisions which are not in force.[80] It would be a purely theoretical matter for the court to consider how the appellant's rights may at an "undefined point in future" be potentially affected when the PACC Act provisions are in force.[81] The present application was thus an abuse of court process.

1.47 The Court of Appeal offered some *obiter* observations that would be relevant in any future constitutional challenge to the PACC Act or its provisions. These would be pertinent to Art 9 which provides that the deprivation of life and personal liberty must be "in accordance with law", where "law" embodies fundamental rules of natural justice.

1.48 The degree of due process which might be expected for a PACP who had exhausted all his avenues of appeal was "very likely to be different" compared to "the very different situation of an accused person who is being tried for the first time".[82] Two points in particular were raised: First, that the PACC procedure concerned only "a very limited category of applications", brought by PACPs who had already had their case ventilated at trial and on appeal.[83] Second, from parliamentary debates, it was clear that the PACC procedure was designed to cover situations where new material, which could not be brought up earlier, could be raised, rather than to re-open the general case merits.[84]

1.49 In relation to the latter point, the absence of any new material which could show a miscarriage of justice in *Sulaiman bin Jumari v Public Prosecutor*[85] also justified the view that the PACC application had no reasonable prospect of success and as such, no order for a stay of execution of the death penalty was granted.

1.50 Indeed, the PACC procedure had not prevented the applicant from bringing any application between the date his appeal was dismissed on 2 December 2020, and the date the PACC Act came into operation. A constitutional challenge to the PACC procedure would not affect a review application under s 394H of the Criminal Procedure Code 2010[86] ("CPC") as both were governed by separate regimes.[87]

80 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [7].
81 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [8].
82 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [13].
83 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [11].
84 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [12].
85 [2024] SGCA 40.
86 2020 Rev Ed.
87 *Sulaiman bin Jumari v Public Prosecutor* [2024] SGCA 40 at [30].

1.51 This is significant as the practice is that the scheduling of a PACP takes place where there are no relevant pending proceedings which require the carrying out of capital punishment to be held in abeyance in the form of an order to stay the execution.

1.52 Thus, the outcome in HC/OA 972/2024, a civil proceeding to which the appellant was a party challenging PACC Act provisions for being inconsistent with Arts 9 and 12 of the Singapore Constitution, would have no bearing and was not a relevant proceeding, whether in relation to an intended PACC application or CPC review application under s 394H of the CPC.[88]

1.53 An example of a "relevant proceeding" for which a stay of execution had been granted to the applicant was HC/OA 306/2024 ("OA 306"). This pertained to a challenge against the policy of the Legal Assistance Scheme for Capital Offences ("LASCO") Assignment Panel not to assign LASCO counsel for the purposes of post-appeal applications. If OA 306 was decided in the applicant's favour, then conceivably the applicant could apply for LASCO assistance to help him file his intended review application; thus it was relevant for the applicant to await the outcome of OA 306.[89] Here, the applicant had accepted the Court of Appeal's decision since no fresh material had arisen which would show a miscarriage of justice, since his appeal against conviction and sentence was dismissed in CA/CCA 11/2019. There was thus no basis for the court to stay his execution to await the outcome in HC/OA 972/2024.

VI. PACC applications and reduced notice period: Arts 9 and 12

1.54 In *Roslan v AG*, Roslan was sentenced to the death penalty for drug trafficking in 2010. Both his appeal (17 March 2011) and application for re-sentencing under s 33B of the Misuse of Drugs Act[90] failed. His appeal to the President for clemency was rejected in September 2019. On 25 October 2024, the President issued the order for execution, pursuant to s 313(1)(*f*) of the CPC.

1.55 Roslan made a PACC application the day before he was scheduled for execution on 15 November 2024, under s 60G(1) of the SCJA. Section 60G(7) of the SCJA sets out the applicable matters for the Court of Appeal to consider in deciding whether to grant the PACC

88 *Sulaiman bin Jumari v Public Prosecutor* [2024] SGCA 40 at [27]; *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [17]–[18]; *Masoud Rahimi bin Mehrzad v Attorney-General* [2024] 1 SLR 414 at [11].

89 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [20].

90 Cap 185, 2008 Rev Ed.

application. Five matters were raised, of which two potentially implicated constitutional rights.

1.56 Roslan had written a letter to the President to seek a respite order, as he wished to make a fresh clemency application and needed proper legal advice.[91] On 11 October 2024, the Court of Appeal allowed an appeal in part in relation to an application where the Court of Appeal granted declarations that the AGC and SPS had acted unlawfully by requesting and disclosing the appellants' correspondence, acting in breach of confidence for which nominal damages were awarded.[92] Roslan's application for a respite order was made on the basis that the Court of Appeal had found the AGC and SPS to have violated his legal and constitutional rights.[93]

1.57 First, the reduced notice period ("RNP") (four days) relating to the date of execution (instead of the usual seven days) was not found to operate arbitrarily so as to violate Roslan's Arts 9 and 12 rights in impeding the ability to properly bring an application for a stay of execution. A related argument had been raised in *Mohammad Azwan bin Bohari v Public Prosecutor*[94] that the reduced renotification period would be unfair as other inmates may have more time to seek clarification with respect to an MHA note which sought to explain certain changes introduced by the PACC Act. The reduced notice period applied to PACPs who had been previously scheduled for execution but whose executions were subsequently re-scheduled; this policy had been consistently applied since the MHA revised its policy in this respect. On the facts, the court found that Azwan had had the opportunity to seek clarification of the changes the PACC Act brought.[95]

1.58 The RNP serves to enable the PACP to attend to any final matters prior to execution. The RNP thus had a "rational relation to the object of giving advance notice" to the PACP to enable these final matters to be dealt with.[96] In practice, PACPs continued to receive at least seven days to settle their affairs and they know execution is imminent once their rights to appeal have been exhausted and their clemency petition have been denied.[97] Roslan's clemency petition was rejected on 13 September

91 *Roslan bin Bakar v Attorney-General* [2024] 2 SLR 433 at [24].
92 *Syed Suhail bin Syed Zin v Attorney-General* [2024] 2 SLR 588.
93 *Roslan bin Bakar v Attorney-General* [2024] 2 SLR 433 at [24].
94 [2024] 1 SLR 1271.
95 *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271 at [23].
96 *Roslan bin Bakar v Attorney-General* [2024] 2 SLR 433 at [48].
97 *Roslan bin Bakar v Attorney-General* [2024] 2 SLR 433 at [48].

2019. This was delayed as Roslan challenged his conviction and sentence directly or indirectly on many occasions.[98]

1.59 Second, in relation to Art 12, Roslan argued his complaint against his counsel was a "relevant pending proceeding" and that his execution should be stayed until the final disposition of those disciplinary proceedings.[99] Not all pending legal proceedings related to a PACP automatically attracted Art 12(1) protection, as the Court of Appeal noted in *Attorney-General v Datchinamurthy a/l Kataiahat*.[100] If such proceedings were not "relevant" in relation to the due scheduling of a prisoner's execution following conviction for a capital offence, a prisoner with a pending proceeding would be equally situated as another without such proceedings. Whether a proceeding was "relevant" was a fact-centric inquiry turning on "the precise facts and circumstances concerned".[101]

1.60 The Court of Appeal had noted in *Syed Suhail bin Syed Zin v Attorney-General*[102] that most relevant pending proceedings would be disposal or forfeiture proceedings, as distinct from eleventh-hour applications lacking merit in law or facts, sparking the inference that these were not meant to seek relief but to serve as a stopgap measure to delay the implementation of the sentence. The latter would be an abuse of process.

VII. Articles 9(1) and 9(3)

1.61 The question of whether the way the LASCO was implemented violated the Art 9(1) right to life and personal liberty and the Art 9(3) right to counsel arose in *Iskandar bin Rahmat v Attorney-General*,[103] which was brought by 36 PACPs. It raises important issues relating to the constitutional interpretation of Pt 4 fundamental liberties and the scope of a substantive right.

1.62 The applicants here were PACPs. They argued that Art 9 was violated by the policy not to provide LASCO counsel for post-appeal applications, as distinct from trial and appeal. The principle of finality was to be applied in a less unyielding manner where criminal cases were concerned, as distinct from civil cases, given "the cost of error in the

98 *Roslan bin Bakar v Attorney-General* [2024] 2 SLR 433 at [50].
99 *Roslan bin Bakar v Attorney-General* [2024] 2 SLR 433 at [51].
100 [2022] SGCA 46 at [40].
101 *Attorney-General v Datchinamurthy a/l Kataiah* [2022] SGCA 46 at [40].
102 [2021] 1 SLR 809.
103 [2024] 5 SLR 1290.

criminal process is measured in terms of liberty, and sometimes, even the life of an individual".[104]

1.63 A post-appeal application is not available as of right, unlike an appeal, but is a matter of discretion, to avoid miscarriages of justice.[105]

1.64 Article 9(3) provides that an arrested person "shall be allowed to consult and be defended by a legal practitioner of his choice". This entails that counsel is willing and able to represent the arrested person and this right is "not an unqualified right".[106]

1.65 It was argued that unconditional legal aid was needed in capital cases, but Dedar Gill Singh J held that the "plain wording" of Art 9(3) did not contain any such right.[107] Indeed, Art 9(3) did not entail a right to be provided with counsel (at no cost) or legal aid,[108] and the fact that capital punishment was being faced "does not allow the court to read additional rights into the Constitution which do not exist on its face".[109] The LASCO policy did not breach Art 9(3) and LASCO was "perfectly entitled" to adopt or change its policy regarding legal aid.[110]

1.66 Singh J speculated that the policy could have been adopted to prioritise new accused persons who had yet to undergo a trial or appeal and possibly, to prevent the abuse of the system through unmeritorious claims seeking to delay the execution of sentences.[111] Once the process of review or appeal had run its course, the legal process was to be backgrounded, with attention shifting to "the search for repose".[112]

1.67 It was further argued that the term "law" under Art 9(1) referred to the fundamental rules of natural justice at common law,[113] and that this included a right of access to justice. As such, the LASCO policy which denied counsel for post-appeal applications derogated from this "alleged common law right of access to justice".[114] Access to justice was deployed in the restrictive sense of meaning "ready access to counsel".[115]

104 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [10].
105 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [11].
106 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [17].
107 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [18]–[19].
108 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [20].
109 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [24].
110 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [21].
111 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [21].
112 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [21], citing *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [50].
113 *Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710.
114 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [26].
115 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [29].

1.68 Singh J identified two major difficulties with this line of argument. First, Sing J was unable to see how not providing LASCO counsel for post-appeal applications deprived a person of life or personal liberty, which, under Art 9(1) was not to be deprived "save in accordance with law". The applicants had received the death sentence after their cases were heard at both the trial and appellate stage, therefore, the LASCO policy did not deprive them of their right to life and personal liberty.[116]

1.69 Second, a person is not deprived of a right of access to justice by not being provided with free legal representation since the said person retained the right "to obtain the representation of legal counsel on his own accord".[117]

1.70 This narrow reading of what the right to counsel entails under Art 9(3) and what access to justice might entail in relation to access to counsel is consistent with the modest approach towards construing Art 9 rights and precedent that does not recognise that Art 9 imposes any positive duty on the State to undertake affirmative measures to facilitate or promote a person's enjoyment of his life or personal liberty.[118] A positive duty might involve providing free legal representation for all available applications beyond the trial and appeal.

VIII. Judicial review of prosecutorial discretion: Arts 35(8) and 12

1.71 It was argued in *Patnaik v AG* that the Attorney-General as Public Prosecutor had violated Art 12 in relation to how he exercised his prosecutorial discretion under Art 35(8). He had charged Patnaik with corruption as an alleged bribe-giver but had not charged others named in connection with matters that were the subject of the charges made against Patnaik, that is, the corruption scheme.

1.72 Patnaik sought various prerogative writs and a declaration arguing that the charges were in breach of Art 35(8) of the Singapore Constitution. Essentially, this was an attempt to bring about a summary end to the criminal proceedings brought against Patnaik, through civil proceedings.[119]

1.73 The Court of Appeal found there was no *prima facie* case of a reasonable suspicion that Art 12(1) had been breached, as only Patnaik

116 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [30].
117 *Iskandar bin Rahmat v Attorney-General* [2024] 5 SLR 1290 at [31].
118 See *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [14].
119 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [19].

was in the position of being a bribe-giver, as opposed to being a conduit to facilitate such bribes.

1.74 The Court of Appeal noted that the prosecutorial power under Art 35(8) was a "constitutional power with legal limits".[120] There was a presumption that prosecutorial decisions undertaken by the Attorney-General as Public Prosecutor were presumptively lawful, unless there was reason to think otherwise. This flowed from two factors: first, this presumption was a consequence of the "high constitutional office" held by the Attorney-General and second, the "co-equal status of the prosecutorial powers and the judicial power enshrined in Arts 35(8) and 93 of the Constitution respectively".[121]

1.75 However, this presumption may be rebutted. It falls to the courts to decide on challenges against prosecutorial power, which involves the State and its subjects.[122]

1.76 The balance is struck between seemingly competing pulls of co-equal constitutional offices by requiring the Public Prosecutor to justify the exercises of his Art 35(8) power only after the appellant has raised "a *prima facie* case of a reasonable suspicion that Art 12(1) of the Constitution has been breached".[123] In other words, the challenger to the Attorney-General's power must make a *prima facie* case, such as by showing that the discretion was exercised arbitrarily, for improper purposes, bad faith or bias. Article 12 requires that like cases be treated alike.[124]

1.77 This presumption may be rebutted and the Court of Appeal referred to various observations made in *Muhammad Ridzuan bin Mohd Ali v Attorney-General*[125] in relation to an application to commence judicial review proceedings to challenge the exercise of prosecutorial discretion: first, given the difficulties involved, it was not necessary for the applicant to produce direct evidence of the grounds for judicial review. Second, the applicant could discharge his evidentiary burden by proving a *prima facie* case of a reasonable suspicion that the Public Prosecutor's power was exercised arbitrarily. Third, a reasonable suspicion may be raised that the grounds of judicial review existed by showing that others in the same situation were treated differently with no evident basis to justify it.

120 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [19].
121 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [20].
122 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [20].
123 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [20].
124 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [21].
125 [2015] 5 SLR 1222 at [22].

Fourth, the applicant may rely on inferences drawn from objective facts pointing to an unlawful exercise of discretion.

1.78 A threshold requirement for showing that there was reasonable suspicion that the Public Prosecutor was arbitrary in his decision-making was to first show that there were comparable persons situated virtually identically with the applicant.[126] If this could be shown, it provided a "springboard" for inferring that in relation to a crime involving various people, the Public Prosecutor had unlawfully discriminated against the accused as compared to the others by not charging them.[127] However, this itself would not suffice as the Public Prosecutor was entitled to consider a broad range of factors in making charging decisions, including whether there was sufficient evidence to make the case, the personal circumstances of the offender and co-offender, their willingness to testify and other policy factors. Prosecutorial discretion extended to when the Public Prosecutor chose to bring a charge against any co-accused person, and in what sequence.[128]

1.79 In the absence of evidence, the inference was that when two persons involved in the same crime were charged differently, this differentiation was based on "relevant considerations".[129] Such evidence may be found from inferences drawn where "virtually identical situations" were "treated differently without any evident basis".[130] The court will draw such an inference only where this is the "only logical one" open to it based on the material before the court.[131] Patnaik on the facts failed to establish a reasonable suspicion that he was treated differently from the others who were in a similar situation so as to give rise to a "reasonable basis for thinking" that this flowed from an improper exercise of discretion, thereby breaching Art 12.[132] Drawing from the cases of *Ramalingam Ravinthran v Attorney-General*,[133] *Nazeri bin Lajim v Attorney-General*,[134] *Quek Hock Lye v Public Prosecutor*,[135] it is clear that the appellant must raise evidence or arguments to show different treatment of similarly situated persons, and that the Prosecutor is entitled to consider a range of other factors, in differentiating person committing the same crime.

126 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [23].
127 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [23].
128 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [23].
129 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [24].
130 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [24].
131 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [24].
132 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [28].
133 [2012] 2 SLR 49.
134 [2022] 2 SLR 964.
135 [2012] 2 SLR 1012.

1.80 Article 12 was not breached on the facts as Patnaik was a bribe giver while the other actors were intermediaries through which the bribes were channeled.[136] In other words, the relevant parties were not similarly situated.

IX. Criminal defamation: the scope of Art 14

1.81 The question of whether criminal defamation provisions were constitutional arose in the case of *Xu Yuanchen v Public Prosecutor*,[137] in relation to an application for leave to refer questions of law to the Court of Appeal, which are of public interest, under s 397 of the CPC.

1.82 The law on criminal defamation was in effect before Singapore became an independent republic in 1965 and Art 14(2)(*a*) did apply to pre-independence laws, by dint of Art 162 of the Constitution of the Republic of Singapore,[138] which was a law-enacting provision.[139] The appeal judge held that even though Parliament had not introduced, debated or enacted the criminal defamation laws, they were considered to have been "imposed" by dint of "being retained amidst continuous assessment, consideration and review of the Penal Code", falling within the scope of permissible restrictions under Art 14(2)(*a*).[140] The historical and practical reality was that Parliament chose to deal with pre-independence laws during the transitional period by "re-enacting them *en masse* by operation of Art 162".[141]

1.83 The applicant, Terry Xu ("Xu"), was director of the socio-political website, the Online Citizen, who had approved the publication of an article entitled "The Take Away from Seah Kian Ping's Facebook Post", which made allegations against the "present PAP leadership" relating to "corruption at the highest echelons."[142] Xu was convicted by a District Court who found the meaning of the words defamatory, which was upheld by the General Division of the High Court on appeal. Xu unsuccessfully sought leave to refer questions of law of public interest to the Court of Appeal, in particular, the question he wanted to raise was to allege the unconstitutionality of the criminal defamation provisions under which Xu had been charged and convicted.

136 *Kottakki Srinivas Patnaik v Attorney-General* [2024] 1 SLR 239 at [30].
137 [2024] 1 SLR 635.
138 1985 Rev Ed, 1999 Reprint.
139 *Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52 at [250].
140 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [15].
141 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [61].
142 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [6].

1.84 The central question related to the construction of Art 14(2)(*a*) of the Singapore Constitution which reads that Parliament may impose on freedom of speech:

> … on the rights conferred by clause (1)(*a*), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence.

1.85 The question was whether the phrase "necessary or expedient" applied to the second category of restrictions on freedom of speech and expression under Art 14(2)(*a*). This second category related to parliamentary privileges, contempt of court, defamation and incitement to any offence.

1.86 No question of public interest was found as the question had been authoritatively decided in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew*[143] ("*Jeyaretnam*"). This held that the first and not second category of restrictions were required to satisfy the test of necessity and expediency in the interest of the specified matters.[144]

1.87 Indeed, Andrew Phang Boon Leong SJ, in taking the text seriously in interpretation, underscored that it would be ungrammatical and irreconcilable with the overall syntax of Art 14(2)(*a*) to read the phrase "necessary or expedient" as qualifying both categories of restrictions. To ignore grammar and syntax could bring about "incoherence and/or a completely different meaning compared to that which is sought to be conveyed",[145] citing Lord Denning who observed that words were a lawyer's tools of trade, as vehicles of thought.[146] To ignore words would cause a "possible distortion in thought",[147] and ignoring grammar, syntax and context to arrive at a preconceived, biased conclusion was not permissible as "the ends do not justify the means".[148] Words could not be made to mean what counsel or the court chooses them to mean and syntax, which refers to "the grammatical arrangement of words, showing their connection and relation" was crucial to maintaining coherence in communicating meaning.[149]

143 [1992] 1 SLR(R) 791.
144 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [32].
145 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [52].
146 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [51].
147 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [52].
148 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [53].
149 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [54].

1.88 A common-sense reading of the plain language of Art 14(2)(*a*) reveals there are two categories of restrictions in Art 14(2)(*a*) as the Court of Appeal had articulated in *Jeyaretnam*. This was demarcated by the word "and", such that the phrase "necessary or expedient" qualifies only the first set of restrictions.[150] This interpretation was "wholly consistent with the overall syntax of the article itself".[151]

1.89 The first set of restrictions to which "necessary or expedient" applied was a more general category of situations than the second set of restrictions, which related to more specific situations which were subject to specific laws, whether statute or common law.[152] It would be "wholly inappropriate" to apply the phrase "necessary or expedient" to the common law such as defamation. This is because it "makes no sense" to require the courts to expressly specify that the rules and principles it laid down were "necessary or expedient", when this would be the assumption.[153]

1.90 Phang SJ also noted that the specific laws relating to the second set of restrictions, such as parliamentary privileges, were necessary given "their respective roles in the Singapore legal system".[154] It was "odd" to apply the term "expedience" to the second set of restrictions, and "necessity" was an inherent part of these restrictions. In contrast, given the nature of the subject matter of the first set of restrictions, it was "entirely apposite" that the phrase "necessary and expedient" should apply, to matters relating to national security and public order.[155] The counsel's view that it was not "necessary or expedient" to have criminal defamation laws, as distinct from civil defamation, was merely a "*personal view* as to what the law *ought* to be" and was irrelevant.[156] Any reform of the law was a matter for Parliament.[157]

1.91 It was argued that this approach towards construing Art 14 was inconsistent with the three-step approach adopted by the Court of Appeal in *Wham Kwok Han Jolovan v Public Prosecutor*[158] ("*Wham*"), which the applicant understood to apply to all Art 14 derogations.[159] This approach enquires into whether (a) the liberty has been restricted; (b) whether Parliament thought it was necessary or expedient to do so in

150 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [56].
151 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [56].
152 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [57].
153 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [57].
154 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [58].
155 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [58].
156 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [59].
157 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [60].
158 [2021] 1 SLR 476.
159 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [32].

relation to one of the eight permitted grounds of derogation in Art 14(2); and (c) whether there was a nexus between the legislative purpose and recognised ground of derogation.

1.92 However, the Court of Appeal held that *Jeyaretnam* was concerned with Art 14(2)(*a*), *ie*, the right to free speech, whereas *Wham* was concerned with Art 14(2)(*b*), *ie*, the right to freedom of assembly, which involved a "completely different issue".[160] As such there was no conflict of judicial authority giving rise to any question of law of public interest.[161]

160 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [49].
161 *Xu Yuanchen v Public Prosecutor* [2024] 1 SLR 635 at [49].