# 1. ADMINISTRATIVE AND CONSTITUTIONAL LAW

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## Introduction

1.1 The main administrative law cases decided in 2007 involved challenges against the non-use or fettering of administrative discretion, and abuses of discretion on grounds of *mala fides*, irrationality and procedural impropriety. The decisions also addressed the intensity and grounds of judicial review to be applied to certain bodies such as the disciplinary committees of private social clubs, and the doctrine of justiciability or reviewability of executive decisions drawing from common law prerogative powers in relation to the conduct of foreign policy. The basis of the supervisory jurisdiction of the High Court was affirmed by the Court of Appeal in *Ng Chye Huey v PP* [2007] 2 SLR 106 as existing "historically at common law" (at [53]), being inherent in nature (at [49]) and remaining "very much a part of our judicial system" (at [53]).

1.2 In relation to constitutional law, the cases addressed the scope of executive and judicial power, the treatment of constitutional issues before the Subordinate Courts and the powers of legislative classification under the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) in various cases where claims were asserted to the effect that Arts 9, 11 and 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) were violated. Other cases related to the components of a right to a fair hearing, drawing from human rights norms, and the importance of developing a localised understanding of the scope of Art 14 free speech rights, in relation to political defamation.

## ADMINISTRATIVE LAW

### Non-use or fettering of discretion

1.3 The rationale for conferring statutory discretion as opposed to a mandatory rule on an administrative official is to afford that official a measure of flexibility in addressing the facts of a particular matter. However, an aspect of the rule of law is that this exercise of discretionary power must not be arbitrary but restrained by the terms of the statutory

object and purpose. It is expected that the official will discharge the statutory responsibility of applying her own mind to the matter, as opposed to following the instructions of another or adopting another's opinions wholesale. Not to exercise discretion, to be unduly influenced by or to simply adopt another administrative actor's views would be grounds for judicial review on the basis that discretion has been fettered or unlawfully delegated to another.

1.4 The issue of whether an administrative official, the Registrar for Vehicles, fettered her discretionary powers conferred under the terms of the Road Traffic (Motor Vehicles, Registration and Licensing) Rules (Cap 276, R 5, 2004 Rev Ed) ("the Rules"), arose in *Komoco Motors Pte Ltd v Registrar of Vehicles* [2007] 4 SLR 145. What was contested was whether the additional registration fee ("ARF") to be paid with respect to 17,448 motor cars was properly determined. The Registrar had been informed by Singapore Customs that in its estimation, Komoco, a car importer, had under-declared the open market value ("OMV") of the cars. The taxes levied on car importers when motor vehicles are registered under the Rules are based on a percentage of the value of the vehicle.

1.5 Subsequently, the Registrar came to the decision that the cars in question had been under-charged. Komoco challenged the Registrar's decisions on two grounds: first, that the Registrar had fettered her discretion; in the alternative, that the Registrar had abrogated her responsibility under r 7(3) of the Rules to determine the OMV of imported cars. Rule 7(3) provides that for the relevant purposes, "the value of a motor vehicle shall be determined by that Registrar after making such enquiries, if any, as he thinks fit, and the decision of the Registrar shall be final". The Registrar had adopted a general policy of using the OMV computed by the Singapore Customs to calculate the ARF (at [26]).

1.6 Komoco contended that "the Registrar depended entirely on Customs' assessment of the OMV and merely adopted the same without making any proper or further enquiries" (at [17]). This was tantamount to a non-exercise of discretion. It was further argued that by refusing to deal with the exceptional circumstances of Komoco's case, the Registrar had fettered her discretion. In both instances, it was alleged that the Registrar had either not exercised her discretion or insufficiently done so, in concluding that there had been an under-declaration.

1.7 The relevant approach towards ascertaining whether discretion had been fettered was to consider "whether a full and fair hearing was afforded to the applicant, and whether the authority thereafter gave proper consideration to the applicant's case" (at [54]).

1.8 Judith Prakash J held on the facts that the Registrar had fettered her discretion in relation to Komoco. However, this finding itself did not invalidate the policy, but only the decision taken in relation to Komoco itself (at [52]).

1.9 This is because the policy in question satisfied the requirements laid out by the learned judge in the earlier case of *Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board* [1997] 2 SLR 584 which stipulated that four conditions have to be satisfied for a general policy adopted by an administrative authority to be valid. This includes the requirement that the policy must be well known; here, it was accepted that the method of how Customs calculated the OMV of a motor vehicle was well known (at [31]). Furthermore, the policy must not violate the *Wednesbury* standard (*Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223) of being "a decision so outrageous in its defiance of logic or accepted moral standards that no sensible person who thought about it could have made such a decision or if no reasonable person could have come to the decision" (at [27]). From the reasons given, it was clear that the Registrar "had both practical and policy reasons for deciding to follow Customs' computation of the OMV" (at [29]), such as the fact that this would lead to consistency between government agencies, which would promote the efficient allocation of public resources. This would enhance public confidence in the administration of Customs and in the Registrar, taking into account the fact that Customs possessed a comprehensive documentary system to compute OMVs (at [28]).

1.10 While an administrative authority is entitled to adopt a general policy to deal with cases coming before it, this could not be applied in so inflexible a manner as to ignore material circumstances which might justify treating an individual case as an exceptional one, in the sense of relaxing or changing policy: *H Lavender and Son Ltd v Minister of Housing and Local Government* [1970] 3 All ER 871 (at 879, [20]) and *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610 (at [21]). Judicial intervention is warranted where the repository of discretionary power failed to exercise this discretion by following the instructions of another actor (at [19]).

1.11 In construing the word "determine" in r 7(3), Prakash J held that this entailed a "deliberative process" (at [22]) or "evaluative exercise" (at [23]) which entailed the exercise of discretion by the Registrar, who was entitled to make such enquiries as she thought fit, rather than her merely having the final say as to the value to be used.

1.12 Prakash J emphasised it was important that the decision-maker should demonstrate preparedness to hear out individual cases and to treat them as exceptional ones where warranted. It was incumbent upon

the authority to "take time to hear an applicant's case so that it may fairly determine whether an exception should be made" (at [32]). While hearings need not be oral hearings, they could not be "merely *pro forma*" (at [32]); at base, the applicant's case should be fully heard out and it must have been genuinely considered in the sense that the authority must not be "resolved to dismiss the applicant's case from the start" (at [32]) nor adopt "a closed mind impervious to suggestion" (at [41]).

1.13 On the facts, the learned judge found that a single two-hour hearing held on 10 March 2006 met the requirement of according a full hearing to Komoco who had been given "the opportunity to put forward its arguments to the Registrar for consideration" (at [40]).

1.14 However, Prakash J did not find sufficient evidence to indicate that between the 10 March 2006 hearing and the 18 May 2006 meeting with Komoco, the Registrar had "actually given due consideration to the materials raised before her". Prakash J noted that the mere "passing of time" did not indicate "how the time was used", in rejecting the Registrar's assertion that the matter had been carefully considered, in a series of internal discussions, since it took her two months to issue her decision. What was lacking was the absence of documentation to support the Registrar's claim that several internal meetings had been held between her and her senior officers to discuss Komoco's case and its details (at [44]). There was, in other words, insufficient evidence to disabuse the allegation that the Registrar's discretion had been fettered.

1.15 Given the dearth of evidence, the learned judge had to "draw inferences" from the reasons the Registrar provided as the basis for her eventual decision. Prakash J held it was clear that the Registrar "was strongly influenced at all times" by the fact that adopting Customs' valuation "was due to various policy considerations" (at [46]).

1.16 This was inferred from the minutes of the March 2006 meeting provided by the Registrar which indicated the tenor of the Registrar's response at the meeting with Komoco's representatives which referenced the policy adopted since the 1960s in valuing vehicles (at [45]–[47]). Prakash J considered as an "afterthought" (at [48]) a reason proffered by the Registrar in her affidavit relating to the guidelines on how expenses ought to have been declared in the DOF (declaration of facts), since there was no indication in that affidavit that this particular relevant consideration was considered during her internal meetings (at [48]). The Registrar also failed to respond to an argument in an affidavit submitted on behalf of Komoco arguing that the Customs uplift percentages were unreasonable, such that "she made no comments on its contents as might have been expected" (at [49]). On this evidential basis, Prakash J concluded that the Registrar had entered the discussions with Komoco "with a frame of mind that was predisposed to maintain

the existing policy" Given this finding, the Registrar should have shown that she had undertaken an objective analysis of Komoco's agreements, with reference to the relevant particular, to demonstrate that she was uninfluenced by the views of Customs: "She did not condescend to particulars in this respect" (at [51]). Thus, although the Registrar did hear Komoco's objection, she did not do so with "an open mind" and was not "genuinely prepared" to consider whether an exception was warranted in Komoco's case.

1.17 In considering whether the Registrar had abrogated her powers to Customs in the sense of unlawful delegation of authority, the issue was "whether the authority slavishly adopted the position taken by another authority at all material times during the decision-making process" (at [54]). The judge closely scrutinised the Registrar's determination process and, from the evidence afforded by the Registrar, concluded there was "no step in the procedure at which the Registrar exercise[d] any discretion whatsoever" (at [61]).

1.18 While the Registrar was entitled to apply the policy, adopted since 1968, of adopting Customs' valuation of the OMVs as a basis for assessing the ARFs payable by Komoco, the learned judge scrutinised the evidence to ascertain whether an independent evaluation process had taken place in the Registrar's determination process. The evidence indicated that there was little basis to show that the Registrar was in a position to disagree with Customs' OMV assessment, in so far as it appeared the Registrar did not receive any other information that would enable her to decide if the OMV was incorrect (at [59]). In addition, there was little evidence that the Registrar attempted to conduct an independent evaluation of the figures received from Customs after Customs' post-clearance audit; where there was inconsistency or irregularity in the revised OMVs, the Registrar would countercheck this with Customs but it appeared would simply accept Customs' confirmation of the figures (at [60]). That is, counterchecking figures in the sense of checking for consistency or verifying data did not constitute evidence of an exercise of discretion in so far as the Registrar would have accepted any assertion on the figures made by Customs without more.

1.19 The learned judge found that the Registrar had abrogated her discretion to Customs by examining the nature of the Registrar's response to a letter dated 10 December 2004 which Komoco sent in, disputing the under-declaration of the OMVs and requesting an extension of time until 22 February 2005 to make representations. From affidavit evidence, the Registrar's thinking at that point of time seemed to be that the revised OMVs were correct; an extension of time was given for the payment of additional ARF subject to further advice from Customs, in a letter of 20 December 2004. This indicated to Prakash J

that "the Registrar invested absolute trust in the arrangement in Customs, to the extent that even her review was conditional on further advice from Customs" (at [66]). From the evidence, it appeared the Registrar was not even prepared to ascertain whether there were exceptional or compelling reasons to allow Komoco an extension of time to make representations, in indicating that the Registrar was only prepared to change her stance on the further advice of Customs. The abrogation of her discretion lay in her refusal to consider whether exceptional circumstances applied in Komoco's case so as to justify a departure from her usual policy in relation to the valuation of the OMV.

**Judicial review and disciplinary tribunals**

1.20 The judicial role in relation to exercising supervisory jurisdiction over social clubs, like the Singapore Island Country Club ("SICC"), a society registered under the Societies Act (Cap 311, 1985 Rev Ed), was discussed in *Kay Swee Pin v Singapore Island Country Club* [2007] SGHC 166.

1.21 This case concerned the suspension of the membership of the plaintiff on the basis that she had acted in a manner prejudicial to SICC and its members through a false declaration made in 1992 in her application form. She had declared one Ng Kong Yeam as her spouse and registered him as a spouse member of SICC entitled to use the Club's facilities.

1.22 A disciplinary proceeding as regulated by r 34 of the SICC Rules was called in response to a subsequent complaint made to the General Committee ("GC") concerning the marital status of the plaintiff who was registered as married to another person, Koh Ho Ping, at the Registry of Marriages. Rule 34 authorises the GC to call a meeting to consider the conduct of any member who in the GC's opinion, acted in "any way prejudicial to the interests of the Club" (at [35]). Rule 34 also provides that after considering the recommendations of a Disciplinary Committee ("DC"), the GC may impose sanctions on members who acted in a manner prejudicial to the SICC; notice will be sent to the affected member and "[n]o appeal shall lie from the decision of the [GC] to any other meeting or to any Court of Law".

1.23 The GC referred the issue of the plaintiff's false declaration to the DC for action. Under rr 26(a) and 26(b), the GC is empowered to "decide all questions relating to the management of the Club" and all other questions not covered by any Rules or by-laws; its decisions "shall be final". In other words, it is the final decision-maker in relation to club disciplinary matters.

1.24 The plaintiff asserted that she had had a customary marriage in Malaysia in 1982 with Ng and obtained a divorce from Koh in 1983. The DC recommended the withdrawal of the charges against the plaintiff, noting it could not confirm whether Singapore law recognised the 1982 customary marriage as the plaintiff's divorce was only finalised in 1984 (at [36]). In so acting, the DC was not making a disciplinary decision.

1.25 The GC referred the DC's report back to the DC to be decided on the basis that Ng was not the plaintiff's spouse and that she had not been divorced from Koh at the date of her application. On a reconsideration of the matter on the GC's instructions, the DC recommended that the plaintiff be required to pay green fees for the number of times Ng had played golf at the club. The GC accepted this and, in addition, decided to suspend the plaintiff's membership for a year.

1.26 Tay Yong Kwong J in the High Court confined the judicial role to ensuring the observance of natural justice and the disciplinary procedure set out in the club's rules, that is, to observe the norms of procedural propriety, following *Singapore Amateur Athletics Association v Haron bin Mundir* [1994] 1 SLR 47 at 59F. The court "does not sit on appeal" from the decisions of social clubs (at [30]). As such, the court refused to consider the plaintiff's contention that the club had interpreted "spouse" incorrectly or to scrutinise the fact-finding process of the DC. This is in recognition of the autonomy disciplinary tribunals enjoy from supervisory jurisdiction in relation to fact-finding and the assumed expertise the SICC committees would possess in their administration of club rules. Nonetheless, Tay J observed that there was nothing erroneous in the legal definition of "spouse" adopted by the GC (at [31]).

1.27 The High Court did review the decision-making process in rejecting the argument that the GC had acted *ultra vires* by rejecting the first recommendation of the DC as, according to the club's rules, the DC's role was to hear evidence on charges referred to it by the GC. The DC was then tasked with submitting a report to the GC, although the rules provide that the GC does not have to accept the DC's recommendations. Tay J also dismissed the argument that the rules of natural justice had not been observed as the plaintiff was convicted without being given an opportunity to be heard before the GC. Natural justice does not require a right to an oral hearing to be given but considers this against the larger issue of what a fair hearing requires on the facts of a case. Here, the only relevant issue was the clarification of the word "spouse" which had already been fully canvassed (at [39]); on this point, the plaintiff had been heard "fully and fairly" by the DC (at [39]).

1.28 Even if the GC could have imposed a less harsh penalty, Tay J noted that "social clubs are not Subordinate Courts, which are subject to the revisionary powers of the High Court" (at [40]). It may be noted that the Court of Appeal found that the club had breached rules of natural justice in not allowing the plaintiff the right to defend herself during committee deliberations ("She took on country club – and won" *The Straits Times* (10 February 2008); *Kay Swee Pin v Singapore Island Country Club* [2008] SGCA 11).

**Judicial review of detention orders under the Criminal Law (Temporary Provisions) Act**

1.29 A detention order issued under the Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) ("CLTPA") was challenged on both procedural and substantive grounds in *Re Wong Sin Yee* [2007] SGHC 147.

1.30 The High Court clarified the legality of detention orders issued under the CLPTA. This does not turn on whether an offence was carried out in Singapore, so long as there is ministerial satisfaction that the detainee was associated with criminal activities and warranted detention in the interests of public safety, peace and good order in Singapore.

***Mala Fides* as a ground of review**

1.31 In *Re Wong Sin Yee*, Tan Lee Meng J cited the Malaysian cases of *Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129 ("*Karam Singh*") and *Yeap Hock Seng v Minister for Home Affairs Malaysia* [1975] 2 MLJ 279 ("*Yeap Hock Seng*") in examining and rejecting the contention that the detention order was vitiated because of mala fides on the part of the detaining authorities. An absence of good faith entails an "absence of care, caution and a proper sense of responsibility. … If it was true that the order came to be made in a casual or cavalier fashion, it cannot properly be said that the Cabinet or the Minister concerned had been 'satisfied'": citing Ong Hock Thye CJ in *Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129 at 141. Furthermore, the onus lies on the applicant to prove *mala fides*, such that a "mere suspicion" of bad faith does not by itself constitute sufficient proof of *mala fides*: at [27], quoting Abdoolcader J in *Yeap Hock Seng v Minister for Home Affairs Malaysia* [1975] 2 MLJ 279 at 284.

1.32 The applicant had alleged *mala fides* on the part of the Central Narcotics Board ("CNB") officers, evident in wrongful allegations made against him, as reported in the press, which might have influenced the Minister (at [28]). However, under s 30 of the CLTPA, the issue is not

whether the police were guilty of *mala fides* but whether the detaining authority lacked *bona fides* in the sense that the Minister had issued the detention order "without applying his mind to the matter or without exercising sufficient care or caution" (at [30]). The applicant had failed to prove this.

1.33 It is worth noting that in the Court of Appeal decision of *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR 568, which concerns an application for leave for an order of *certiorari* and *mandamus*, the court offered some guidelines in relation to making out an allegation of bad faith. The case concerned the compulsory acquisition of land under s 5 of the Land Acquisition Act (Cap 152, 1985 Rev Ed). The appellant argued that the acquisition was made in bad faith because the land had not been redeveloped over a long period of time. The court noted that where a bad faith allegation was "founded on a very substantial period of inaction, an explanation should be given" (at [38]). In the absence of an explanation for "prolonged inaction", this could support an arguable case, on the basis of a *prima facie* case of reasonable suspicion, that when the land was acquired in 1983, it had not been needed for general redevelopment. Citing Lord Griffiths in *Yeap Seok Pen v Government of the State of Kelantan* [1986] 1 MLJ 449 at [39], it is clear mere suspicion alone will not discharge the burden of proving bad faith. Instead, the court should consider "all the evidence before it" (at [39]), including the respondent's explanation for why the land remained undeveloped, which was a matter "known only to the respondent" (at [40]). In the absence of an explanation, the court "could draw an inference from the lack of explanation" (at [39]). Placing the burden on the respondent to give an explanation "in view of the long period of non-development" (at [40]) is consonant with s 108 of the Evidence Act (Cap 97, 1997 Rev Ed) which provides that, "[w]hen any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

### Irrationality as a substantive ground of review

1.34 In finding that the Minister did not act irrationally in issuing a detention order under the CLTPA in *Re Wong Sin Yee* [2007] SGHC 147, Tan Lee Meng J deferred to ministerial discretion in likening the question of ascertaining what is needed in the interests of public safety, peace and good order with that of national security issues. Citing the Court of Appeal in *Chng Suan Tze v Minister of Home Affairs* [1988] SLR 132 at 163, Tan J applied the observation that "the judicial process is unsuitable for reaching decisions on national security" to questions of public safety, peace and good order which arose under the CLTPA. As such, this was considered to be beyond the scope of judicial review; alternatively, to entail only minimalist judicial review. Consequently, he

stated "I am in no position to hold that it has been established that the Minister's exercise of discretion was irrational in the *Wednesbury* sense" (at [46]). This was stated, bearing in mind that the case did not throw up a precedent fact issue which would require the court to be satisfied that the evidence justified the decision reached by the authority (at [12]).

## Procedural impropriety

### *Right to be heard does not have to be an oral hearing*

1.35 One of the issues in *Re Wong Sin Yee* [2007] SGHC 147 was whether the Advisory Committee, constituted under the CLTPA, had acted in a manner which breached procedural propriety by failing to allow the detainee to make oral representations before it. This is a component of a right to a fair hearing, which is a facet of natural justice or common law procedural rights. He had been represented by counsel at the hearing who had tendered written submissions, but the applicant claimed entitlement to make detailed oral argument to support his contention that he was not involved in the alleged criminal activities. Tan Lee Meng J confirmed that the right to be heard does not invariably entail an oral hearing and that, on the facts of the case, the applicant had not been deprived of a fair hearing as his counsel had tendered evidence on his behalf, and the applicant, accordingly, had the opportunity to include anything he wanted to say in his counsel's written submissions (at [38]–[39]).

## Justiciability and judicial review

1.36 Sundaresh Menon JC in *Lee Hsien Loong v Review Publishing Co Ltd* [2007] 2 SLR 453 gave a thorough consideration of the issue of the justiciability of foreign relations related matters, grounding his analysis in an application of the separation of powers principle which is an accepted fundamental principle of public law.

1.37 The respondents, who were the Prime Minister and Minister Mentor of Singapore, considered an article published in the July/August 2006 *Far Eastern Economic Review* ("*Review*") entitled "Singapore's 'Martyr', Chee Soon Juan" to be defamatory of them. The issue concerned the appropriateness of serving a writ out of jurisdiction issued on their behalf against the publisher of the *Review*, a company incorporated in Hong Kong, and whether this constituted an abuse of process. The court did not find this was the case (at [68]). An alternative issue was whether the service of writs was inappropriate because service had not been conducted in accordance with the Treaty on Judicial

Assistance in Civil and Commercial Matters between the Republic of Singapore and the People's Republic of China ("the Treaty").

1.38 The learned Judicial Commissioner considered the issue of whether the Treaty was applicable to Hong Kong. In support of the proposition that it was not, the respondents produced a letter from the Singapore Ministry of Foreign Affairs dated 13 October 2006 ("the MFA letter") to the effect that the Department of Justice of the Hong Kong Special Administrative Region had confirmed that the Treaty was not applicable (at [71]). Hence, the issue of the effect of the MFA letter and how much weight was to be accorded to it was examined.

1.39 Counsel for the respondents argued that on the basis of the separation of powers, the courts ought to accord conclusive weight to the MFA letter as courts "would not in matters of this nature depart from the views of the executive branch of government" (at [75]). This seems to suggest that foreign policy matters are non-justiciable as a matter of constitutional principle. Although the High Court ultimately found that the present appeal did not involve any foreign policy considerations (at [102]), such that the MFA latter was "not decisive of the matter" (at [104]), Menon JC did undertake a useful and insightful analysis of case law from England, Singapore and Australia to distil the relevant principles concerning the judicial review of executive prerogative powers.

1.40 In ascertaining the scope of judicial review over executive powers in relation to foreign relations and policy, the starting point is that the "controlling factor" which determines whether common law prerogative powers are subject to judicial review is "not its source but its subject matter" (quoting Lord Scarman, *Council for the Civil Service Unions v Minister for the Civil Service* [1985] AC 374 ("*GCHQ*") at 407). Thus, Menon JC rejected a "highly rigid and categorical approach" (at [98]) towards determining the province of judicial review and "which cases are not justifiable." This affirms that there is no blanket bar toward the judicial review of prerogative powers but that courts could apply a calibrated approach towards the intensity of judicial review which would "depend upon the contexts in which the issue arises and upon common sense" and which takes into account "the simple fact that there are certain questions in respect of which there can be no expectation that an unelected judiciary will play any role" (at [98]). Nonetheless, it is clear that there are "provinces of executive decision-making" which are immune from judicial review (at [95]), which is a function of "the constitutional doctrine of the separation of powers" (at [95]).

1.41 Menon JC identified four principles he considered "bear noting" (at 491):

(a) Justiciability depends, not on the source of the decision-making power, but on the subject matter that is in question. Where it is the executive that has access to the best materials available to resolve the issue, its views should be regarded as highly persuasive, if not decisive.

(b) Where the decision involves matters of government policy and requires the intricate balancing of various competing policy considerations that judges are ill-equipped to adjudicate because of their limited training, experience and access to materials, the courts should shy away from reviewing its merits.

(c) Where a judicial pronouncement could embarrass some other branch of government or tie its hands in the conduct of affairs traditionally regarded as falling within its purview, the courts should abstain.

(d) In all cases of judicial review, the court should exercise restraint and take cognisance of the fact that our system of government operates within the framework of three co-equal branches. Even though all exercise of power must be within constitutional and legal bounds, there are areas of prerogative power that the democratically elected Executive and Legislature are entrusted to take charge of, and, in this regard, it is to the electorate, and not the Judiciary, that the Executive and Legislature are ultimately accountable.

1.42 The case at hand did not concern a foreign high policy matter, such as issues relating to the recognition of foreign governments (*Aksionairnoye Obschestvo AM Luther v Sagor & Co* [1921] 3 KB 532 discussed at [77]; *Civil Aeronautics Administration v Singapore Airlines Ltd* [2004] 1 SLR 570, discussed at [79]) or international boundary disputes (at [96]). Such matters fell within the "boundaries of unreviewable executive prerogative" in the absence of "bad faith" (at [90]–[91]). For example, the attempt to seek a definite interpretation of Security Council Resolution 1441 in *R (on the application of Campaign for Nuclear Disarmament) v Prime Minister* [2002] EWHC 2777 (Admin) discussed at [86]–[90] was unreviewable as its purpose was to tie the government's hands in relation to future military policy. This is distinguishable from matters of foreign policy involving an exercise of the executive prerogative such as granting passports, which would be subject to judicial review, particularly as this affects individual rights and their freedom of travel (*R v Foreign Secretary of State for Foreign and Commonwealth Affairs, ex parte Everett* [1989] 1 QB 811 at 820, discussed at [91], *per* Taylor J). The concern here was not with the wisdom of making a treaty, but its effect, such that the MFA's letter essentially expressed its opinion on the effect of the Treaty (at [100]).

1.43 The immediate case also did not implicate matters which the judiciary, as an unelected arm of government, lacked expertise in, such as in relation to national defence policy and nuclear weapons programme: *R (on the application of Marchiori) v Environment Agency* [2002] EWCA Civ 3 at [94], where it would be appropriate for the courts to defer to "the democratic decision-maker" who would be called to account for the wisdom or otherwise of their decisions at the ballot box.

1.44 Neither was it non-justiciable as involving the interpretation of an international treaty which operated solely on the international plane as the case at hand involved the procedures private litigants were to adopt to serve process of the Singapore court on defendants residing in Hong Kong (at [102]). In so far as the court was construing a bilateral treaty in light of international instruments, this was for the purpose of determining "the domestic legal obligations applicable to litigants" seeking to invoke the jurisdiction of the Singapore court (at [103]), a matter which fell "within the proper sphere of judicial inquiry" (at 492).

## CONSTITUTIONAL LAW

### The boundaries of executive prosecutorial power and judicial power

1.45 In *Law Society of Singapore v Tan Guat Neo Phyllis* [2007] SGHC 207, the issue of the scope and nature of prosecutorial powers was discussed. The case itself related to disciplinary proceedings for professional misconduct under the terms of the Legal Profession Act (Cap 161, 2001 Rev Ed) against a lawyer who had apparently offered referral fees to a real estate agent in order to procure conveyancing work.

1.46 The charge against the lawyer was based on entrapment evidence, since the relevant transaction was a product of a sting operation.

1.47 The High Court considered concerns raised by English and Australian courts in relation to the acceptance of entrapment evidence and the implications for human rights and the rule of law. In short, the concern is that judicial integrity would be compromised if the courts acted "on the fruits of manifestly unacceptable practices by law enforcement officers"; it would violate the "principle of inconsistency" where the courts "as guardians of human rights and the rule of law" acted "on evidence obtained by methods which violate human rights and/or the rule of law" (at [72]) (quoting Andrew Ashworth, "Redrawing the Boundaries of Entrapment" (2002) Crim L Rev 161). In

accepting entrapment evidence, the court has to balance the public interest in ensuring those "charged with grave crimes" are tried and the competing public interest "in not conveying the impression that the court will adopt the approach that the end justifies any means" (at [73]) (quoting Lord Steyn in *R v Latif* [1996] 1 WLR 104 at 112–113).

1.48 Within the Singapore context, a prosecution founded upon entrapment evidence is not an abuse of process (at [147]); in addition, even if there was an abuse of prosecutorial powers, the courts could not stay a prosecution as this would be contrary to the separation of powers under the Constitution (at [150]). Nonetheless, if the Attorney-General condoned the "particularly egregious" unlawful conduct of law enforcement officers whose case was founded on entrapment evidence by not prosecuting them as well, "this may constitute discriminatory treatment that may infringe the offender's constitutional rights to equality before the law and equal protection of the law," which is safeguarded under Art 12 of the Constitution (at [147]).

1.49 In delineating the boundaries of executive prosecutorial power and judicial power, the High Court noted that the Constitution, which "establishes a form of parliamentary government (based on the Westminster model)" was "based on the separation of the legislative, executive and judicial powers", that is, a separation of functions (at [143]).

1.50 The separation of judicial power and prosecutorial power is expressly provided for by Arts 93 and 35(8) of the Constitution respectively, which give "equal status" to the judicial and prosecutorial functions (at [144]). It affirms that each government arm "operates independently of the other and each should not interfere with the functions of the other." To keep each government branch within the boundaries of their constitutionally derived powers, it falls to the "judicial power of the court to review the legality of legislative and executive acts and declare them unconstitutional and of no legal effect if they contravene the provisions of the Constitution" (at [143]). The High Court observed that the "modifications to the Constitution" effectuated by the introduction of the elected presidency which has limited negative executive power did not affect this feature of the Constitution.

1.51 Article 35(8) provides that the Attorney-General has the power "to institute, conduct or discontinue any proceedings for any offence." This means that the Attorney-General enjoyed "unfettered discretion" in relation to the exercise of this prosecutorial power (at [145]). As such, it would be "improper" for the court to stay prosecutions and thus prevent the Attorney-General from prosecuting an offender. However, this discretion could be curtailed where it is exercised unconstitutionally.

1.52 In such event, judicial power could circumscribe prosecutorial powers in two ways. Where an accused is brought before a court, the proceedings from that point on are judicial in nature and subject to judicial control: *Goh Cheng Chuan v PP* [1990] SLR 671 (at [146]). In addition, the court can declare the unconstitutionality of a wrongful exercise of prosecutorial power as "under the law, the Attorney-General must act according to law, as his prosecutorial powers are not unfettered" (at [148]).

1.53 The High Court identified two situations where the exercise of discretionary prosecutorial power is subject to judicial review, which relates to the need to observe the rule of law and fundamental liberties. Firstly, prosecutorial powers are "not absolute" and have to be exercised "in good faith" for the intended purpose of convicting and punishing offenders (at [149]). Thus, the Attorney-General may not use his powers in bad faith to serve an extraneous purpose (at [148]) unrelated to the goal of punishing an offender for an offence he has committed. This is a facet of the rule of law and the court approvingly drew from the Court of Appeal's statement of principle in *Chng Suan Tze v Minister of Home Affairs* [1988] SLR 132 at 156 in declaring (in *Law Society of Singapore v Tan Guat Neo Phyllis* [2007] SGHC 207 at [86]) that "all legal powers, even a constitutional power, have legal limits". Thus, the "notion of a subjective or unfettered discretion is contrary to the rule of law" (at [149]). Authority for the proposition that unconstitutional exercises of prosecutorial discretion could be challenged was located in *Teh Cheng Poh v PP* [1979] 1 MLJ 50, which the Singapore Court of Appeal subsequently followed in *Sim Min Teck v PP* [1987] SLR 30 and *Thiruselvam s/o Nagaratnam v PP* [2001] 2 SLR 125.

1.54 Second, the Attorney-General in the exercise of prosecutorial powers "may not use it so as to contravene constitutional rights" such as equality under the law (at [148]). To avoid violating the equal protection clause, the Attorney-General can prosecute both the offender and the law enforcement officers involved in the entrapment exercise, so as to deter future unlawful conduct (at [148]).

### Scope of judicial power: settlement judge at court dispute resolution conference

1.55 The High Court in *Lock Han Ching Jonathan v Goh Jessiline* [2007] 3 SLR 51 clarified that Art 93 of the Constitution vested power in courts rather than judges (at [14]). Article 93 provides that "[t]he judicial power of Singapore shall be vested in a Supreme Court and in such Subordinate Courts as may be provided by any written law for the time being in force." Aside from the Supreme Court, only the Subordinate Courts as listed in s 3 of the Subordinate Courts Act

(Cap 321, 1999 Rev Ed) possess judicial powers. As such, the primary dispute resolution centre ("PDRC") is not a Subordinate Court vested with judicial power but "it merely forms *part* of the Subordination Courts *organization*," a centre administered by the Subordinate Courts; hence District Judges who sat as settlement judges in these mediation sessions were not endowed with judicial powers to issue orders of court (at [19]). The Court of Appeal affirmed that a PDRC was not a court of law: *Lock Han Ching Jonathan (Jonathan Luo Hancheng) v Goh Jessiline* [2007] SGCA 56 at [25].

**Constitutional law before the Subordinate Courts**

1.56 A series of cases variously alleging breaches of Arts 9 (right to personal liberty), 11 (prohibition against retrospective punishment) and 12 (equality under the law) arose before the Subordinate Courts in 2007. These related to the scheduling of subutex as a controlled and specified drug under the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("MDA"), which made subutex abuses liable under s 33A(1) of the MDA and the enhanced penalties it provided. These included the following cases: *PP v Ahmad bin Kidam* [2007] SGDC 113; *PP v Zulkarnean bin Selamat* [2007] SGDC 97; *PP v Yusran bin Yusoff* [2007] SGDC 96; *PP v Johari bin Kanadi* [2007] SGDC 90; and *PP v Andi Ashwar bin Salihin* [2007] SGDC 196.

1.57 Under s 56A of the Subordinate Courts Act (Cap 321, 2007 Rev Ed), Subordinate Courts may stay proceedings "on such terms as may be just to await the decision of the question on the reference to the High Court." However, a s 56A reference is not mandatory but discretionary and a Subordinate Court judge while having to consider the merits of the case in exercising his discretion may choose not to make a reference where the constitutional points raised are "not shown to be new or difficult points of law or were not of sufficient importance": [2007] SGDC 97 at [12]. Toh Yung Cheong DCJ in *Yusran* and *Zulkarnean bin Selamat* approvingly cited Justice MPH Rubin in *Ang Cheng Hai v PP* [1995] SGHC 97 where he dismissed such an application on the basis that there was no question of law of unusual or exceptional difficulty to merit a transfer. Thus, a District Court is not precluded from hearing a case where counsel had raised constitutional points.

**Article 9**

1.58 The issue of personal liberty as guaranteed under Art 9(1) of the Constitution was raised before the District Court in *PP v Zulkarnean bin Selamat* [2007] SGDC 97. The same submissions were made in *PP v Yusran bin Yusoff* [2007] SGDC 96 and both cases were dealt with

together. Similar arguments were raised in *PP v Johari bin Kanadi* [2007] SGDC 90.

1.59 Article 9 provides that a person may be deprived of life or liberty "in accordance with law". The argument raised was that it was unconstitutional to sentence subutex consumers to enhanced punishment under s 33A of the Misuse of Drugs Act as subutex was legally consumable in Singapore since at least 2002 right up to 14 August 2006 when it was declared a controlled drug and listed as a Class "A" drug since 1 October 2006 (at [14]). Law was defined in positivist fashion in so far as the court held that there was no evidence to suggest that listing the relevant drug as a controlled one on 14 August 2006 and a specified drug on 1 October 2006 "was procedurally flawed or irregular", such that the present sentence accorded with "valid written law" (at [19]). In *PP v Ahmad bin Kidam* [2007] SGDC 113, the District Judge noted that counsel had not shown how any fundamental rules of natural justice, as recognised in *Ong Ah Chuan v PP* [1980–81] SLR 48 as affirmed in *Nguyen Tuong Van v PP* [2005] 1 SLR 103 had been infringed by the MDA amendment to make subutex a specified drug (at [21]–[22]).

1.60 Counsel also raised an argument to the effect that to treat the accused as a repeat offender when charged for being a first time consumer of subutex "runs contrary to legitimate expectations, a principle which is enshrined in article 9(1)" (at [17]). This vague appeal to unfairness is unrelated to the concept of legitimate expectations at administrative law, which arises from a consistent course of conduct or promise made by a government official to an aggrieved person.

1.61 The argument raised was that there was some sort of "legitimate expectation" that made it unfair to prosecute the accused, as subutex had previously been made available to heroin addicts to help addicts terminate their addiction such that they were left in the lurch when it was made a controlled and specified drug by the Minister. However, the District Judge pointed out that subutex abusers were not left without help as the Institute of Mental Health had from 21 August to 31 October 2006 set up the Subutex Voluntary Rehabilitation Programme which the accused had in effect attended. Thus, by providing a rehabilitation programme and amnesty for subutex abusers, the authorities had taken active measures to avoid prejudicing affected persons: *PP v Johari bin Kanadi* [2007] SGDC 90 at [47]. Thus, there could be no "legitimate expectation" as the accused was well aware that if he returned to abusing drugs, he would be arrested and prosecuted; thus the accused could not claim that their persecution under s 33A was contrary to any "legitimate expectation": *PP v Johari bin Kanadi* [2007] SGDC 90 (at [48d]).

1.62 A general appeal was made in *PP v Ahmad bin Kidam* [2007] SGDC 113 ("*Ahmad bin Kidam*") to the effect that an "unfair procedure" was resorted to to deprive a person of persona liberty, as it was "unfair of the Minister" (at [23]) under the MDA to make subutex a specified drug while overlooking that fact that subutex was legally available for consumption and touted as a panacea for heroin addicts (at [23]). Counsel invoked the Malaysian case of *Tan Teck Seng v Suruhanjaya Perhidmatan Pendidikan* [1996] 1 MLJ 261 where the Court of Appeal held that legislation which contravened the Malaysian equivalent of Singapore's Art 9(1) might be struck down "if an unfair procedure is resorted to in the deprivation of a person's life or liberty" (*PP v Ahmad bin Kidam* [2007] SGDC 113 at [23]). In that case, Gopal Sri Ram JCA went so far as to hold that when the Malaysian equivalent of Singapore's Art 9(1) and Art 12(1) clauses were read together, this went towards ensuring both a fair procedure for each case on its own facts and also to ensure a "fair and just punishment" applied on the case facts (*PP v Ahmad bin Kidam* [2007] SGDC 113 at [25]).

1.63 District Judge Tan Boon Heng in *PP v Ahmad bin Kidam* [2007] SGDC 113 invoked *Jabar v PP* [1995] 1 SLR 617 to hold it was not open for Singapore courts to consider if punishment mandated by Parliament "is unfair or otherwise or if it infringes article 9(1)" (*PP v Ahmad bin Kidam* [2007] SGDC 113 at [26]). District Judge Tan quoted the Court of Appeal in *Jabar v PP*, which may be considered a high point for positivism in Singapore courts in declaring "[a]ny law which provides for the deprivation of a person's life or personal liberty, is valid and binding so long as it is validly passed by Parliament. The court is not concerned with whether it is also fair, just and reasonable as well" (*PP v Ahmad bin Kidam* [2007] SGDC 113 at [27]). District Judge Tan demonstrated his awareness that the interpretation of Art 9(1) in *Jabar v PP* "has attracted some academic attention querying the Court of Appeal's decision" and made reference to two academic articles (Hor, "The Death Penalty in Singapore and International Law" (2004) 8 SYBIL 105 at 115; Thio, "Pragmatism and Realism do not mean Abdication: A Critical and Empirical Inquiry into Singapore's Engagement with International Human Rights Law" [2004] 8 SYBIL 41 at 59) but stated that unless "expressly overruled" he was bound by precedent (*PP v Ahmad bin Kidam* [2007] SGDC 113 at [28]).

### Article 11

1.64 It was argued in *PP v Zulkarnean bin Selamat* [2007] SGDC 97 that the accused, a subutex abuser, had been subjected to retrospective aggravated punishment when the drug he consumed was made a specified drug listed in the Fourth Schedule of the Misuse of Drugs Act. This allegedly violated Art 11(1) which prohibits retrospective criminal

laws and retrospective aggravation for offences. The argument was that s 33A MDA made the accused liable to suffer enhanced punishment when it was their first conviction for subutex consumption: *PP v Ahmad bin Kidam* [2007] SGDC 113 at [7]. Case law is clear in identifying the relevant date for determining the sentence as being the date the offence was committed, not the date of the conviction: *PP v Mohamed Ismail* [1984] 2 MLJ 219.]

1.65 On the facts, the offence was committed on 31 January 2007, while the relevant drug is a specified Fourth Schedule drug under s 33A(2) which was already in force (*PP v Zulkarnean bin Selamat* [2007] SGDC 97 at [21]). The district courts rejected an argument based on a different interpretation of the *nullum* principle enshrined in Art 11(1) which "necessitated a review of the scope of Article 11(1)": *PP v Johari bin Kanadi* [2007] SGDC 90 at [92]. The English case of *R v Offen* [2001] 1 Cr App R 372 was cited and rejected. This case concerned s 2 of the Crime (Sentences) Act 1997 (UK) which provides for the imposition of a life sentence on a person convicted of a statutorily defined serious offence committed after the commencement of that section if such person was 18 or over at the time of committing the offence and had previously been convicted for another serious offence in any part of the UK, in the absence of exceptional circumstances (*PP v Zulkarnean bin Selamat* [2007] SGDC 97 at [30]). Offen had argued that since his first serious offence was committed before s 2 was enacted, Art 7 of the European Convention on Human Rights (right to be protected from retrospective laws and punishment) would be breached if s 2 applied to their subsequent offences. The District Judge found this argument to be wholly misplaced as the English Court of Appeal found that Art 7 of the Convention had not been breached and that s 2 was applicable even though the first serious offence was committed before s 2 was enacted.

1.66 District Judge Kow Keng Siong in *PP v Johari Bin Kanadi* [2007] SGDC 90 noted that where the relevant principles had been articulated by the Singapore High Court, Subordinate Courts "should be slow in referring to English authorities for guidance" in applying Art 11(1) (at [36]). He underscored the "significant differences in both the relevant provisions and the constitutional framework between Singapore and the United Kingdom" (at [37]). English public law jurisprudence had been shaped by its membership of the European Community such as to be inappropriate to import into Singapore (at [37]). This was especially so where local courts had "amply dealt with the retrospective aggravation of penalties in analogous cases" such as *PP v Tan Teck Hin* [1992] 1 SLR 841; *Teo Kwee Chuan v PP* [1993] 3 SLR 908; and *PP v Ahmad bin Kidam* at [42]. District Judge Tan Boon Heng in *PP v Ahmad bin Kidam* reviewed cases from Singapore, the UK and the US and found that on the basis of these authorities, the

contention that the accused person suffered greater punishment for an offence that was prescribed by law at the time it was committed must be rejected (at [45]).

1.67 Similar arguments in relation to Art 11(1) and reliance on *R v Offen* [2001] 1 Cr App R 372 were raised and rejected in *PP v Andi Ashwar bin Salihin* [2007] SGDC 196.

**Article 12**

1.68 The District Court applied the rational nexus test articulated in *Taw Cheng Kong v PP* [1988] 1 SLR 943 in *PP v Zulkarnean bin Selamat* [2007] SGDC 97. In *PP v Ahmad bin Kidam* [2007] SGDC 113, District Judge Tan Boon Heng affirmed the "two-step reasonable classification" test to test the validity of differentiating measures under Art 12(1) (at [32]). This was that the classification has to be based on an intelligible differentia and that this differentia has to bear a reasonable relation to the object sought to be achieved by the relevant law.

1.69 Counsel argued that the operation of s 33A(2) and the Fourth Schedule of the Misuse of Drugs Act was discriminatory in that it subjected the accused to enhanced punishment by treating first time subutex abusers as repeat offenders and subject to enhanced punishment. Similar arguments were raised in *PP v Johari bin Kanadi* [2007] SGDC 90.

1.70 In applying a formal equality test under Art 12(1), it is only necessary to compare like with like and the accused was treated in the same way as all other accused persons who took subutex after it was made a specified drugs, and who had previous convictions punishable under s 33A(1) of the MDA: *PP v Ahmad bin Kidam* [2007] SGDC 113 at [11]. Applying the Privy Council's approach in *Ong Ah Chuan v PP* [1980–1981] SLR 48 at [39], the District Judge underscored that Art 12 of the Constitution was not concerned with "[e]qual punitive treatment for equal moral blameworthiness; it is concerned with equal punitive treatment for similar legal guilt." District Judge Tan in *PP v Ahmad bin Kidam* expressly rejected the approach towards equality adopted by the Malaysian Court of Appeal in *Tan Teck Seng v Suruhanjaya Perhidmatan Pendidikan* [1996] 1 MLJ 261 which counsel sought to invoke, affirming the doctrine of reasonable or rational classification as adopted by local authorities (*PP v Ahmad bin Kidam* [2007] SGDC 113 at [35]–[36]).

1.71 The District Judge in applying the reasonable classification test in *PP v Zulkarnean bin Selamat* [2007] SGDC 97 ("*Zulkarnean*") found that the classification which treated a person convicted of consuming subutex for the first time as a repeat offender because he had prior

convictions for consuming other types of drugs was "clearly necessary to further the objective of the Act" (*PP v Zulkarnean bin Selamat* [2007] SGDC 97 at [36]); this legitimate objective was "to deter drug abusers from consuming dangerous and addictive drugs". In other words, there was a rational nexus between the classification and the legislative objective, and the classification sufficiently furthered the legislative objective. This deference to Parliament in matters of social policy is consistent with the presumption of constitutionality which informs Art 12 jurisprudence. In addition, the District Judge in *PP v Johari* noted that counsel had adduced no evidence to show that the relevant legal rule had been enacted arbitrarily or operated arbitrarily, applying *PP v Taw Cheng Kong* [1998] 2 SLR 410 at [60], [79] and [80]: *PP v Johari* [2007] SGDC 90 at [42]. District Judge Kow considered that classifying the relevant drugs as controlled and specified drugs was "a carefully considered and reasonable one" (*PP v Johari* [2007] SGDC 90 at [43]) as subutex was not a harmless drug and that the legislation aimed at curbing subutex abuse was effective in meeting "the object of the executive action" (*PP v Johari* [2007] SGDC 90 at [49]).

**Miscellaneous: fair trial and Article 14**

1.72 It is worth noting that there is increasing resort to human rights law to ground a legal argument, as in *Re Millar Gavin James QC* [2008] 1 SLR 297. The principle of equality of arms as "a fundamental part of any fair trial guarantee" was put forth and Art 10 of the Universal Declaration of Human Rights ("UDHR") invoked in support. "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." It was argued it would not be fair if the defendants did not have the services of a Queen's Counsel, since the plaintiffs had retained the services of one of Singapore's most revered litigators. The defendants argued that they had failed to get a Senior Counsel to represent them. In addition, Singapore as a United Nations member was bound by the United Nations Charter "to respect the standards" laid down in the UDHR. This is inaccurate in so far as the UN Charter does not contain any self-executing human rights provisions. The UDHR itself, as a General Assembly Resolution, was at its conception considered to be a set of moral or normative aspirations which are not legally binding, though many of its provisions are considered to have become customary international law, which is universally binding. Notably, the Singapore Constitution does not contain a specific fair trial guarantee, though it is recognised that references to "law" in the Constitution should comport with minimal fundamental rules of natural justice (see *Ong Ah Chuan v PP* [1980–1981] SLR 48 at 61–62) and the rule of law.

1.73 As the defendants were seeking to rely on novel defences of privilege and neutral reportage derived from the English cases of *Reynolds v Times Newspaper Ltd* [2001] 2 AC 127 and *Roberts v Gable* [2007] EWCA Civ 721, it was argued that there was a need for a defamation law expert to equalise the playing field between the parties to the defamation suit. Although Belinda Ang Saw Ean J in *Lee Hsien Loong v Singapore Democratic Party* [2007] 1 SLR 675 had rejected the *Reynolds* defence on the basis that it did not represent the law in Singapore, the defendants in the present libel suit sought to argue that the learned judge was mistaken in her approach and "her characterization of the *Reynolds* defence (as one based upon Art 10 of the European Convention on Human Rights)" (*Re Millar Gavin James QC* [2008] 1 SLR 297 at [12]). Tay J in *Re Millar Gavin James QC*, however, rejected the argument that the applicability of the *Reynolds* defence in Singapore is a sufficiently difficult and complex issue which required the elucidation of a specialist Queen's Counsel. Novel legal developments do not necessarily connote complexity (at [38]) and Tay J considered that local lawyers can handle the legal and factual issues in the libel suits "competently" (at [40]). The issue of whether the *Reynolds* defence "should be modified to suit local circumstances" (at [44]), Tay J considered, "could be performed equally well by local lawyers" (at [44]).

**Miscellaneous: a constitutional basis for pension rights?**

1.74 The attempt to argue that Arts 112, 113 and 115 of the Singapore Constitution grounded a constitutional right to a pension, which was regulated by the terms of the Pensions Act (Cap 225, 2004 Rev Ed), failed in *Tee Soon Kay v AG* [2007] 3 SLR 133. This was because s 8(1) of the Act does not afford a legal right to a pension as the provision clearly provides that "no public officer has an absolute right to a pension." Even if the right to pension were a legal right, no constitutional provision conferred constitutional protection or status upon "pension rights". In so concluding, the Court of Appeal carefully examined the rationale underlying the constitutional provisions invoked. Articles 112 and 115(1) are not the source of a constitutional right to a pension but, rather, a safeguard to ensure that the terms of service of existing civil servants at the time Singapore attained self-governance would not be prejudiced by future legislation (at [98]–[99]).