IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 17

Court of Appeal / Criminal Motion No 28 of 2023

Between

Xu Yuanchen

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Criminal references]
[Criminal Law — Defamation]
[Constitutional Law — Fundamental liberties — Freedom of expression]

TABLE OF CONTENTS

Xu Yuanchen
v
Public Prosecutor

[2024] SGCA 17

Court of Appeal — Criminal Motion No 28 of 2023
Sundaresh Menon CJ, Tay Yong Kwang JCA and Andrew Phang Boon Leong SJ
26 March 2024

20 May 2024

Andrew Phang Boon Leong SJ (delivering the grounds of decision of the court):

Introduction

1 By their very nature, applications for criminal references ought to be *rare – and*, when made, they *rarely succeed* in obtaining the leave of this court in order that the alleged questions of law of public interest contained therein might be heard. This is not surprising because the applicant would have already exhausted his or her legal right of appeal and, as this court stated in *Mohammad Faizal bin Sabtu and another v Public Prosecutor and another matter* [2013] 2 SLR 141 ("*Mohammad Faizal*") at [21]:

> … To liberally construe s 397 [of the Criminal Procedure Code 2010 (2020 Rev Ed), the provision relating to applications for criminal references] so as to more freely allow a reference to the Court of Appeal would *seriously undermine the system of one-tier appeal. The interests of finality* would strongly militate

> against the grant of such a reference save in very limited circumstances. …
>
> [emphasis added]

Indeed, as this court aptly put it in *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [47]:

> … Finality is also a function of justice. It would be impossible to have a functioning legal system if all legal decisions were open to constant and unceasing challenge, like so many tentative commas appended to the end of an unending sentence. …

2 In addition to the specific principles that we will come to in a moment (see below at [21]), it is apposite to refer to a general – and important – principle which also guides the court in considering such applications: put simply, the court will look to the ***substance*** (and not just the form) of the application itself. As we shall see, this deceptively simple (yet highly relevant) general principle will figure prominently in the analysis that follows. To elaborate, the court concerned will, for example, reject applications that are mere backdoor appeals (and which, if they constitute an abuse of process of the court, might even result in the imposition of adverse costs orders on the applicants concerned (see, *eg*, the decision of this court in *Huang Liping v Public Prosecutor* [2016] 4 SLR 716)). Another example is where what is actually a question of fact is "dressed up" in order to make it look like a question of law. As Tay Yong Kwang J (as he then was) observed, in the Singapore High Court decision of *Ong Boon Kheng v Public Prosecutor* [2008] SGHC 199 at [14]:

> It takes only a little ingenuity to re-cast what is a straightforward, commonsensical application of principles of law to the relevant facts into an apparent legal conundrum which seemingly calls for determination by the highest court of the land. …

And as this court observed in *Public Prosecutor v Teo Chu Ha* [2014] 4 SLR 600 ("*Teo Chu Ha*") at [31], the courts must determine whether there is sufficient generality embedded within a proposition posed by the question concerned which is more than just descriptive and specific to the case at hand (in which case it would relate merely to a question of *fact*) but also contains normative force in order for it to qualify as a question of *law*.

3 Yet another example of (impermissible) "dressing up" is where it is argued that the law is unsettled or that a question of law of public interest has otherwise arisen when the *converse* is in fact the case (see, *eg*, the decision of this court in *Chew Eng Han v Public Prosecutor* [2017] 2 SLR 1130 at [52]−[53]). A yet further example is where the application is sought to be utilised as a platform to argue a point of law that does not arise from the actual case itself.

4 Having regard to the *raison d'être* of such applications as set out briefly at [1] above, it will come as no surprise if such applications are *rejected*.

5 With these general introductory observations, we turn to the application before us. This was an application to refer five questions of law that were argued to be of public interest to this court. We dismissed the application. These are the detailed grounds for our decision.

Factual background

The offence

6 The applicant is the director of The Online Citizen Pte Ltd ("TOC"), a company which runs the socio-political website "www.theonlinecitizen.com" (the "TOC website") (*Xu Yuanchen v Public Prosecutor and another appeal*

[2023] 5 SLR 1210 (the "Judgment") at [3]). On 4 September 2018, he approved the publication of an article (the "Article"), which took the form of a letter purportedly authored by one "Willy Sum" titled "The Take Away From Seah Kian Ping's Facebook Post". The Article read as follows (Judgment at [6]):

> THE TAKE AWAY FROM SEAH KIAN PING'S FACEBOOK POST
>
> by Willy Sum
>
> I refer to Mr Seah Kian Peng and K. Shanmugam's recent outburst against some Singaporean activists meet-up with the sitting Malaysian Prime Minister, both Members of Parliament from the People's Action Party, and I wonder what they have to be afraid of about this meeting?
>
> Besides the cheap gimmick to draw attention to his pathetic Facebook following and amidst all the clamour and relentless hammering from the establishment, one thing in particular stood out to me from Seah's post, which is: 'I'm amazed that Dr Thum and his supporters should proclaim that Singapore is part of Malaysia (or Malaya). Perhaps that is why he thinks it is permissible to ask its current prime minister to interfere in our affairs'.
>
> This is actually not too remote a probability that we should start thinking about, given that the only reason and cause for our independence and continued sustenance is now no longer around to assure our survival as a Nation.
>
> The **present PAP leadership** severely lacks innovation, vision and the drive to take us into the next lap. We have seen multiple policy and foreign screw-ups, tampering of the Constitution, **corruption at the highest echelons** and apparent lack of respect from foreign powers ever since the demise of founding father Lee Kuan Yew. The dishonorable son was also publicly denounced by his whole family, with none but the PAP MPs on his side as highlighted by Mr Low Thia Khiang! The other side is already saying that we have no history, origins, culture and even a sound legal system to begin with.
>
> The continuing saga also reminded me of the lead up to the Budget debate 2018, where Workers' Party MP Sylvia Lim was accused by the same gang against her speech, which she did not accept the 'over characterisation those PAP MPs have put

> on her words and intentions', based on their own interpretation and 'bourne out of overactive imaginations and oversensitivity'.
>
> The one country two systems can perhaps be considered, if and when the day comes where we have to return to Malaysia due to our dwindling population, lack of resources, diminished international stature and over development of our economy and there is no more room to do so.
>
> [emphasis added]

7 By way of context, this letter had originally been composed by the applicant's co-accused, and sent to the TOC team using a Yahoo e-mail account belonging to one Mr Sim Wee Lee without obtaining Mr Sim's authorisation, with the intention that it was to be published on the TOC website (Judgment at [4]).

8 The following charge was subsequently brought against the applicant (Judgment at [30]):

> You … are charged that you, on or about 4 September 2018, in Singapore, had defamed members of the Cabinet of Singapore by publishing an imputation concerning members of the Cabinet of Singapore by words intended to be read, to wit, by approving the publication on the website www.theonlinecitizen.com of a letter from 'Willy Sum' titled '*The Take Away From Seah Kian Ping's Facebook Post*' which stated that there was 'corruption at the highest echelons', knowing that such imputation would harm the reputation of members of the Cabinet of Singapore, and you have thereby committed an offence punishable under s 500 of the Penal Code (Cap 224, 2008 Rev Ed).

9 We note that the applicant's co-accused had also been charged and convicted for accessing an e-mail account without authority for the purpose of sending an e-mail, under s 3(1) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed) ("CMA"), in addition to his conviction for criminal defamation. However, as the applicant's co-accused was not a party to the present application, and the questions the applicant sought to refer did not pertain to

s 3(1) of the CMA or his co-accused's conviction thereunder, our remarks will focus solely on the applicant, his conviction under ss 499 and 500 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code"), and the questions arising therefrom.

The trial

10 The judge at first instance (the "trial judge") interpreted the Article as alleging that there had been illegal, fraudulent, or dishonest conduct by members of the Cabinet (*Public Prosecutor v Daniel De Costa Augustin and another* [2022] SGMC 22 at [82]). In arriving at this conclusion, he observed that the allegation of "corruption at the highest echelons" followed others such as "policy and foreign screw-ups" and "tampering with the Constitution", which an ordinary reasonable person would have understood to be decisions directly made by the Cabinet (Judgment at [13]–[14]). The trial judge also noted the temporal proximity of the Article to another article which equated "present PAP leadership" with the Cabinet (Judgment at [15]).

11 The trial judge rejected the applicant's arguments in relation to Articles 12 and 14 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution") (the Judgment at [16]). He found that the applicant had not provided any evidence of bias on the part of the Public Prosecutor ("PP"), and thus held that the applicant could not prove a breach of the right to equality under the law provided for in Article 12(1) of the Constitution. The trial judge also rejected the applicant's argument that ss 499 and 500 of the Penal Code (collectively the "criminal defamation provisions") were inconsistent with the right of freedom of speech and expression under Article 14 of the Constitution, noting that "law" as defined in the Constitution included pre-independence laws such as the Penal Code, and holding that its criminal

defamation provisions did not fall outside the category of permissible restrictions provided for under Article 14(2)(*a*) of the Constitution ("Article 14(2)(*a*)"). He also rejected the argument that a proportionality test ought to apply in assessing the constitutionality of pre-independence laws.

12 Accordingly, having found that the other elements of criminal defamation had also been made out, the trial judge convicted the applicant of the charge of criminal defamation which had been brought against him.

The appeal

13 In determining whether and in what way the Article referred to members of the Cabinet, the High Court Judge hearing the appeal (the "appeal judge") adopted the following analysis. On the question of who or what the phrase "present PAP leadership" referred to, the appeal judge agreed with the trial judge's interpretation of "present PAP leadership" as referring to the Cabinet (Judgment at [37]–[38]), and also found that the applicant knew that this phrase would be construed in this manner (Judgment at [53]). As for the relationship between "the present PAP leadership" and "corruption at the highest echelons", the appeal judge accepted, as the applicant had argued, that the more natural interpretation of the Article was one that alleged that corruption occurring at the highest levels was another instance of failure of action or omission by the Cabinet, whose members were responsible for the emergence of serious and substantial corruption in Singapore by virtue of their incompetence or failures, rather than because they were themselves corrupt (Judgment at [40]–[41]). However, the appeal judge was of the view that the applicant knew that even this interpretation would harm the reputation of members of the Cabinet (Judgment at [58]). Having also found that the applicant could not avail himself of any defence under statute or at common law (Judgment at [59]–[71]), the

appeal judge held that the charge under the criminal defamation provisions had been made out.

14 The appeal judge also considered the applicant's arguments pertaining to the constitutionality of the criminal defamation provisions, which were as follows (Judgment at [72]):

(a) Article 14(2)(*a*) did not apply to pre-independence laws, which include the criminal defamation provisions;

(b) A proportionality analysis should apply to scrutinise the constitutionality of pre-independence laws restricting the rights protected under Article 14(1) of the Constitution;

(c) The criminal defamation provisions were not proportionate to achieving any interest in Article 14(2)(*a*); and

(d) Even if Article 14(2)(*a*) had been applicable, the criminal defamation provisions were unconstitutional as Parliament had not considered them to be necessary or expedient and there was no nexus between them and the purposes enumerated under Article 14(2)(*a*).

15 The appeal judge rejected all of these arguments. First, he held that even though criminal defamation laws, being pre-independence laws, had not been introduced, debated, and enacted by Parliament, they were nonetheless properly considered as having been "imposed" in the sense of being retained amidst continuous assessment, consideration, and review of the Penal Code, and so fell within the scope of permissible restrictions to Article 14 rights provided for under Article 14(2)(*a*) (Judgment at [75]–[77]).

16 Second, the appeal judge held that Parliament had considered the criminal defamation provisions necessary or expedient in the interests of public order (Judgment at [77]). It was not necessary for there to have been explicit recognition of the link between the impugned provision and one of the purposes under Article 14(2)(*a*) – implicit recognition would suffice, and in this case, it was hard to see how Parliament could *not* have considered there to be such a link (Judgment at [78]). The appeal judge also expressed the view that, on a plain reading of Article 14(2)(*a*), the requirement that a restriction be considered by Parliament "necessary and expedient" applied only to those restrictions directed towards securing the security of Singapore or any part thereof, friendly relations with other countries, public order, or morality, and *not* to restrictions designed to provide against contempt of court, defamation, or incitement to any offence (Judgment at [79]).

17 Third, having found that Article 14(2)(*a*) was applicable to the criminal defamation provisions notwithstanding their status as pre-independence laws, the appeal judge held there was no basis to apply a different test in determining their constitutionality (Judgment at [80]). However, even if this was not the case, the doctrine of proportionality had no place in Singaporean constitutional jurisprudence, as the courts have neither the institutional competence to handle extra-legal issues involving national security, policy, or other polycentric political considerations, nor the democratic mandate to pronounce upon matters requiring the determination and assessment of moral, cultural, and sociopolitical mores (Judgment at [85]).

18 Fourth, despite having expressed doubt as to whether the "necessary or expedient" requirement applied to laws designed to provide against defamation, the appeal judge applied the three-step framework for evaluating restrictions of the right to freedom of speech and expression set out in the decision of this court

in *Wham Kwok Han Jolovan v Public Prosecutor* [2021] 1 SLR 476 ("*Jolovan Wham (CA)*") at [29]–[32]. Finding that the criminal defamation provisions did restrict the right to freedom of speech and expression, that Parliament did consider the provisions necessary or expedient in the interests of public order, and that they did have a clear objective nexus with the preservation of public order, the appeal judge held that they were constitutional under Article 14(2)(*a*) (Judgment at [92]).

19 In view of the above, the appeal judge upheld the applicant's conviction for criminal defamation.

The present application

20 The applicant subsequently filed a Notice of Motion on 5 June 2023, seeking leave to refer the following five questions of law to the Court of Appeal pursuant to s 397 of the Criminal Procedure Code (2020 Rev Ed) ("CPC"):

> **Question 1**
>
> Whether, for a charge of criminal defamation under section 499 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code") and punishable under section 500 of the Penal Code (the "Criminal Defamation Provisions"), the appellate court may convict an accused person of a defamatory meaning not alleged by the Prosecution ("a Different Defamatory Meaning") without calling the accused person to defend himself against the same.
>
> **Question 2**
>
> Whether Parliament can be said to have considered whether or not the Criminal Defamation Provisions are "necessary or expedient" derogations from Article 14(1)(a) of the Constitution imposed by Parliament under Article 14(2)(a) of the Constitution

> when the Criminal Defamation Provisions pre-dated the Constitution.
>
> **Question 3**
>
> Whether the phrase "necessary or expedient" in Article 14(2)(a) applies to laws providing against defamation.
>
> **Question 4**
>
> Whether, if the answers to Questions 2 and 3 are in the affirmative, the Criminal Defamation Provisions are "necessary or expedient" derogations from the constitutional right to freedom of speech and expression protected under Article 14(1)(a) of the Constitution.
>
> **Question 5**
>
> Whether, if Question 2 is answered in the negative, a proportionality analysis can be applied to determine the constitutionality of laws predating the Constitution that restrict the right to freedom of speech and expression.

Applicable principles

21 It is now extremely well-established that an applicant must, in the context of a criminal reference, establish all the following four conditions before leave can be granted pursuant to s 397(1) of the CPC (see, for just a sampling of the many decisions, the decisions of this court in *Mohammad Faizal* at [15]; *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 at [51]; and *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 at [64]):

(a) First, the reference to the Court of Appeal can only be made in relation to a criminal matter decided by the High Court in the exercise of its appellate or revisionary jurisdiction ("Condition 1").

(b) Secondly, the reference must relate to a question of law and that question of law must be a question of law of public interest ("Condition 2").

(c) Thirdly, the question of law must have arisen from the case which was before the High Court ("Condition 3").

(d) Fourthly, the determination of that question of law by the High Court must have affected the outcome of the case ("Condition 4").

22 Condition 2 comprises two sub-requirements, both of which bore great relevance in our decision on the five questions sought to be referred. We thus find it apposite at this juncture to consider in greater detail each of these sub-requirements, and the principles in respect thereof.

23 First, the question sought to be referred must be one of law. In order to be so, as noted above at [2], there must be "sufficient generality embedded within a proposition posed by the question which is more than just descriptive but also contains normative force for it to quality as a question of law; a question which has, at its heart, a proposition which is descriptive and specific to the case at hand is merely a question of fact" (*Teo Chu Ha* at [31]).

24 By way of illustration, *Teo Chu Ha* was concerned with the following questions (at [26]):

(a) For the purposes of s 6 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed), in determining if a transaction was objectively corrupt where consideration was paid for the gratification, must the Prosecution prove that the consideration was inadequate or that the transaction was a sham?

(b) For the purposes of s 6 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed), in determining if a transaction was objectively corrupt, must the Prosecution prove that a reward to an agent

corresponds in time with acts of assistance done or favours shown by the agent in relation to his principal's affairs?

25 The court, in seeking to determine whether these questions were questions of law or merely questions of fact, proceeded to articulate the following test (*Teo Chu Ha* at [32]):

> … The key word in both questions, however, is the imperative "must". The questions seek to test the proposition that the elements stated are iron-clad requirements such that the PP can *never* secure a conviction if these three elements are not shown. In this regard, regardless of the manner in which the question is couched, **one useful way of testing the substance of the question is to consider the arguments in support of an answer to the proposition posed in a particular question**.
>
> [emphasis in original in italics, emphasis added in bold]

26 Applying the above test, the court observed that "the arguments in support of the proposition [were] not targeted at the specific facts of the case but as to *the essential ingredients* before a charge of corruption can be established", and thus held that the two questions were questions of law rather than fact (*Teo Chu Ha* at [32] [emphasis in original]).

27 In contrast, in the decision of this court in *Phang Wah v Public Prosecutor and another matter* [2012] SGCA 60 ("*Phang Wah*"), the court was confronted with a question as to whether the sustainability of a company was to be taken as a factor in deciding whether there was fraud from the initial stages of the company's business. This particular question was found to be "narrowly directed at the way that the High Court Judge had *applied* settled law to *the specific facts* of that case", as the proposition of that question was in substance "that the High Court Judge had taken into account an irrelevant factual consideration in concluding that the legal test for fraudulent intentions was

satisfied" [emphasis in original] (*Teo Chu Ha* at [31]). It was thus a question of fact rather than one of law.

28 Second, the question of law must also be one of public interest. We have repeatedly stated that even if a question is found to be a question of law, it will not be considered a question of public interest if it is one which can readily be resolved by applying established legal principles (see, *eg*, the decisions of this court in *Public Prosecutor v Takaaki Masui and another and other matters* [2022] 1 SLR 1033 at [36] and *James Raj s/o Arokiasamy v Public Prosecutor* [2014] 3 SLR 750 ("*James Raj*") at [28]). And as we have observed above at [2]–[3], the court will be wary of any attempt to concoct a novel or unsettled question where none in fact exists.

29 Finally, consistent with the rationale set out at [1] above, it should also be noted that the court retains the discretion to refuse leave *even where* these conditions are *satisfied*, although strong and cogent grounds would have to be shown before the court exercises its discretion in this manner (see, *eg*, the decisions of this court in *Mah Kiat Seng v Public Prosecutor* [2011] 3 SLR 859 at [13]; *James Raj* at [15]; and *Lee Siew Boon Winston v Public Prosecutor* [2015] SGCA 67 at [7]).

The parties' submissions

The applicant's submissions

30 Question 1 arose from the appeal judge's view that the interpretation of the Article which he eventually adopted had been argued by the applicant himself. The applicant argues that this was incorrect, and in this connection, he pointed out that the interpretation attributed to him by the appeal judge was that "*corruption occurring at the highest levels was another instance of a failure of*

action or omissions ***by the Cabinet***" [emphasis in applicant's submissions], while his actual submission was rather that the proper interpretation of the Article was that it was a "*generalised accusation about corruption at the highest echelons of society [which was] being made to prove a point about the poor political leadership of the ruling PAP*" [emphasis in applicant's submissions]. In this light, it was never expressly put to him that the case he had to meet was predicated on the interpretation eventually adopted by the appeal judge. The applicant argued that this gave rise to a question of law as to whether the appeal judge's decision to uphold his conviction on a meaning not expressly put to him was a breach of the fundamental rules of natural justice as enshrined in Article 9(1) of the Constitution. He also argued that this was a question of public interest, as it might have had implications for other accused persons in similar cases in the future.

31 In so far as Question 2 was concerned, the applicant argued that there was an apparent conflict of judicial authority on the issue of how Article 162 of the Constitution interacted with Article 14 of the Constitution. He observed that the decision of this court in *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 ("*Review Publishing*") characterised the predecessor provision to Article 162 as not merely an "adjustment" provision but also a "law-enacting provision" (at [250]), while the decision (also of this court) in *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong*") took the view that Article 162 "only directs that all laws be read in conformity with the Constitution as far as this is possible", is "clearly a transitional provision which specifically deals with existing laws", and is intended to "prevent lacunas in the law from arising as a result of the doctrine of implied repeal" and "eliminate the need to re-enact the entire corpus of existing laws when Singapore became an independent republic" (at [58] and

[61]). On the applicant's case, this gave rise to an inconsistency as to whether pre-independence legislation can be said to have been "enacted by Parliament as required by Article 14(2)(*a*) of the Constitution", and by virtue of s 397(6)(*a*) of the CPC, Condition 2 was met. Finally, he argued that Conditions 3 and 4 were satisfied, as Question 2 arose from the appeal judge's holding that Parliament could be deemed to have considered the criminal defamation provisions in the PC "necessary or expedient", and would call into question his conviction if the appeal judge had erred on the constitutionality of those provisions.

32 Question 3, in the applicant's view, was likewise premised on an apparent conflict of judicial authorities. In the decision of this court in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 1 SLR(R) 791 ("*Jeyaretnam Joshua Benjamin*"), the court observed that Article 14(2)(*a*) provided for two categories of restrictions: first, restrictions which Parliament considered necessary and expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order, or morality; and second, restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence (at [56]). Crucially, it was held that only the first and not the second category of restrictions was required to satisfy the test of necessity and expediency in the interest of the various matters specified therein (at [56]). This, the applicant argued, was inconsistent with *Jolovan Wham (CA)* at [29]–[32], whose three-step framework he understood to be applicable to *all* derogations from Article 14, with no distinction having been made between the first and second category of restrictions. This being the case, Condition 2 was met. The applicant argued that Condition 3 was also fulfilled in view of the doubt the appeal judge expressed, albeit in *obiter dicta*, as to whether the test of necessity

or expediency applied to laws providing against defamation. Moreover, even though the appeal judge's comments were *obiter dicta*, they may have made a difference to the outcome of the case if the appeal judge was found to have erred in finding that the test of necessity and expediency did not apply to the criminal defamation provisions in the Penal Code, and in finding that they were necessary and expedient. This being the case, Condition 4 was also met.

33 In so far as Question 4 was concerned, the applicant's case in relation to Condition 2 was simply that, while the common law of *civil* defamation had been held to be a permissible restriction under Article 14(2)(*a*), the courts have not yet had an opportunity to consider whether the *criminal* defamation provisions were consistent with Article 14 of the Constitution. He argued that there might have been some difference in how the three-step framework in *Jolovan Wham* applied to laws enacted prior to the commencement of the Constitution, a question which hitherto had not been considered locally. Given that it also pertained to constitutional rights, it was therefore a question of law of public interest. Condition 3 was satisfied in view of the appeal judge's holding that the criminal defamation provisions are "necessary or expedient", and Condition 4 was satisfied as Question 4 would have affected the outcome of the case if the appeal judge in fact erred in so finding.

34 In so far as Question 5 was concerned, the applicant argued that the question of whether a proportionality test ought to be incorporated into Article 14(2) of the Constitution had never expressly been considered by our courts. Specifically, the decision of this court in *The Online Citizen Pte Ltd v Attorney-General and another appeal and other matters* [2021] 2 SLR 1358 only decided that such a test should not be incorporated into the statutory framework of the Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019), and the High Court's comment in *Chee Siok Chin and*

others v Minister for Home Affairs and another [2006] 1 SLR(R) 582 at [87], that the notion of proportionality was not part of the constitutional law jurisprudence of Singapore, was strictly *obiter dicta*. The applicant cited both foreign jurisprudence and academic commentary in support of the adoption of a proportionality test, and the fact that Question 5 implicated questions of constitutional rights, to demonstrate the public interest inherent in having it answered by the Court of Appeal. Finally, Condition 3 was satisfied as the appeal judge had rejected the use of a proportionality test in upholding the applicant's conviction under s 500 of the PC, and Condition 4 was satisfied as the constitutionality of those provisions would be called into question if the appeal judge was found to have erred in doing so.

The respondent's submissions

35 The respondent's position on Question 1 was that it was neither a question of law nor one of public interest. It was for the court to make its own finding as to the natural and ordinary meaning of the allegedly defamatory words, and it was irrelevant what meaning was intended by the defendant or what meaning was understood by the plaintiff. Moreover, once the court had made a determination on this issue, it could not possibly be required to consult parties once again on that very same issue, even in the context of criminal as opposed to civil defamation. This being the case, under settled legal principles, the appeal judge had been perfectly entitled to adopt a different meaning from the trial judge and uphold the applicant's conviction on the basis of that different meaning.

36 The respondent also argued that the applicant had not been prejudiced by the appeal judge's adoption of a different meaning and reasoning from the trial judge. These differences had not warranted an alteration of the charge under

s 390(4) of the CPC, or the calling of the applicant to offer new defences under s 390(6) of the CPC. The applicant had availed himself of every opportunity to address the different planks of the appeal judge's reasoning, and the appeal judge's final interpretation had differed from the respondent's only in so far as it incorporated the meaning submitted by the applicant himself on the sub-issue of what exactly it was that the phrase "corruption at the highest echelons" was imputing about the entity to which the Article was referring. Moreover, as the applicant's defence at trial on the issue of *mens rea* had simply been that he had not believed the Article referred to the Cabinet at all *regardless* of what it might have alleged, it was clear from his own submissions that, short of changing his evidence on appeal, nothing in his defence could (or would) have changed regardless of the court's finding on that issue. The appeal judge's decision had been squarely premised on the positions taken and evidence led by the parties during the proceedings.

37 In so far as Question 3 was concerned, the respondent argued that it was settled law that the phrase "necessary or expedient" in Article 14(2)(*a*) did not apply to laws providing against defamation. The respondent relied on the case of *Jeyaretnam Joshua Benjamin* at [56], as well as *Attorney-General v Wham Kwok Han Jolovan and another matte*r [2020] 3 SLR 446 ("*Jolovan Wham (HC)*") at [21]. It pointed out that the three-step test laid out in *Jolovan Wham (CA)*, and, specifically, the second step which entails determining whether the restriction is "necessary or expedient", was set out in respect of restrictions falling under Article 14(2)(*b*) of the Constitution, which pertains to freedom of assembly rather than speech and expression. Much like the first category of restrictions under Article 14(2)(*a*), and unlike the second category which includes laws providing against defamation, *all* restrictions under Article 14(2)(*b*) are expressly required to be considered necessary or expedient to

achieving the ends set out thereunder. While *Jolovan Wham (CA)*'s three-step test remained relevant to the second category of restrictions, the second step should not apply as a matter of logic. Finally, given that other laws pertaining to defamation have been found constitutional, there was no basis to suggest otherwise in respect of the criminal defamation provisions in the Penal Code.

38 The respondent next argued that, if Question 3 was answered in the negative, then Questions 2 and 4 could not stand, as it would be pointless to ask whether Parliament had considered the defamation provisions necessary or expedient, or whether they were in fact so. Given that Question 3 had to be answered in the negative, it followed that permission to refer Questions 2 and 4 ought not to be granted.

39 Specifically in respect of Question 2, the respondent also observed that versions of the Penal Code were enacted in 1970, 1985, and 2008, *ie*, after the commencement of the Constitution. Moreover, as held in *Review Publishing* at [250], Article 162 of the Constitution functioned as a law-enacting provision in respect of all existing laws at the time. Accordingly, there was no basis to argue that Parliament did not impose, enact, or consider necessary or expedient any given law or provision, simply by virtue of the fact that it had been in force prior to the commencement of the Constitution.

40 Finally, in so far as Question 5 was concerned, the respondent argued that it was settled law that the doctrine of proportionality did not apply in Singapore's constitutional jurisprudence, as such a doctrine would entail judicial consideration of extra-legal issues and offend against the principle of the separation of powers. In support of this, it cited numerous local cases which had rejected the application of a proportionality test, and highlighted the fact that the applicant had not cited any cases in which the opposite conclusion had

been reached. It also pointed out that foreign constitutional jurisprudence has consistently been regarded by our courts as of at best limited utility in interpreting the Singapore Constitution.

Our decision

Question 1

41 Turning first to *Question 1*, we reproduce it again, for convenience of reference, as follows (see also above at [20]):

> **Question 1**
>
> Whether, for a charge of criminal defamation under section 499 of the Penal Code (Cap 224, 2008 Rev Ed) (the "Penal Code") and punishable under section 500 of the Penal Code (the "Criminal Defamation Provisions"), the appellate court may convict an accused person of a defamatory meaning not alleged by the Prosecution ("a Different Defamatory Meaning") without calling the accused person to defend himself against the same.

42 As we explained to counsel for the applicant, Mr Choo Zheng Xi ("Mr Choo"), during the oral hearing, this particular question was, in our view, centrally a question of *fact* as to whether the applicant's rights had been compromised. To the extent that Question 1 turned on whether there had been a breach of the fair hearing rule and the degree of prejudice caused to the applicant, as the applicant himself suggested, this conclusion should not have been particularly surprising. As observed in the decision of the General Division of the High Court in *Wee Teong Boo v Singapore Medical Council (Attorney-General, intervener)* [2023] 3 SLR 705 at [124], what would suffice to comport with a party's right to a fair hearing turns on the particular circumstances of the case. Similarly, in *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR 695 at [98], this court held that:

> In our judgment, in determining whether a party had been denied his right to a fair hearing by the tribunal's conduct of the proceedings, the proper approach a court should take is to ask itself if what the tribunal did (or decided not to do) falls within the range of what a reasonable and fair-minded tribunal in those circumstances might have done. **This inquiry will necessarily be a fact-sensitive one, and much will depend on the precise circumstances of each case** ([*Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* [2015] 1 SLR 114] at [65]).
>
> [emphasis added]

43 Moreover, in considering the specific question of whether a court may find a different less defamatory meaning than that originally pleaded, the court in *Review Publishing* commented that (at [131]):

> … Although, as Kirby J observed in [*Chakravarti v Advertiser Newspapers Ltd* (1998) 193 CLR 519] at [139], a more serious allegation would usually include a less serious one, with the result that the court may find a less defamatory meaning than that originally pleaded, this principle does not apply without qualification for **there may come a point** where a less serious allegation amounts to a substantially different allegation from that originally pleaded; **in such circumstances**, the plaintiff should amend his pleadings to expressly plead the less defamatory meaning.
>
> [emphasis added]

44 What may be gleaned from the above observation in the preceding paragraph is that whether a defendant or accused person must be given explicit notice of a defamatory meaning not originally pleaded or put to him ultimately depends on the degree to which that defamatory meaning differs from that original meaning. This is a conclusion which can only be reached by comparing the originally pleaded meaning and the final adopted meaning, and in cases such as the present, by considering not only which components of the final adopted meaning were advanced by which party, but also the nature of the arguments run in respect of each of these components and each element of the offence. These are all clearly questions which can only be answered with reference to

the facts of the specific case, making Question 1 a question of *fact* rather than law. Mr Choo also sought to rely on the decision of this court in *Goh Chin Soon v Public Prosecutor* [2021] 2 SLR 308 ("*Goh Chin Soon*") at [49] to the effect that every litigant has a general right to bring all evidence that is relevant to his or her case to the attention of the court. This was a very general and, in our view, obvious point, but one so abstract and general that it did not in fact relate specifically to Question 1 to begin with.

45 In any event, in so far as that issue was concerned, we were unable to see how it could be said that there had been any prejudice at all to the applicant. As can be seen from the appeal judge's analysis as outlined above at [13], the interpretation of the Article which he adopted comprised two elements: *who* the "present PAP leadership" refers to, and *what* was being imputed about them in so far as "corruption at the highest echelons" is concerned. In so far as the former was concerned, the applicant *did* have the opportunity to make his case that the phrase "present PAP leadership" referred to the political leadership of the PAP rather than the Cabinet; this argument was simply rejected by the appeal judge. As for *what* exactly was being alleged, the applicant had argued that the disputed phrase in the Article was a "generalised accusation about corruption at the highest echelons of society" which was "made to prove a point about the poor political leadership of the ruling PAP", and a "blunderbuss rant about the state of Singapore at large, as a consequence of what the author believes to be the PAP's political failings". In other words, putting aside the identity of the precise entity to which it was referring, it was the applicant's *own* case that the proper interpretation of the Article was that that entity was responsible for corruption at the highest echelons of society by virtue of its failings, omissions, or ineptitude, which was essentially the meaning adopted by the appeal judge. Thus, while it is technically (and literally) true that the

applicant was not called to mount his defence in respect of the precise interpretation upon which his conviction was upheld, this interpretation was ultimately a composite of (a) the prosecution's interpretation of the entity to which the Article was referring, which the applicant had every chance to address, and (b) the applicant's own interpretation of what exactly was being said about the entity. Indeed, as we pointed out to Mr Choo during the oral hearing, this stands in marked contrast to *Goh Chin Soon*, which concerned the *substantive* amendment of a charge to one under an entirely *different* statutory provision, rather than a situation relating to minor factual or legal details on which parties had every chance to address the court. In this light, not only was the question of prejudice an inherently factual one, but it was difficult to see what prejudice the applicant had suffered.

Question 3

46 We turn next to *Question 3* (see also above at [20]). To recapitulate, it reads as follows:

> **Question 3**
>
> Whether the phrase "necessary or expedient" in Article 14(2)(a) applies to laws providing against defamation.

47 Where the law is settled and established, there can, *ex hypothesi*, be no question of law of public interest. Indeed, in *Mohammad Faizal* at [19], this court approved of the following approach articulated by the Malaysian Federal Court in *A Ragunathan v Pendakwa Raya* [1982] 1 MLJ 139 at 141:

> We think that the proper test for determining whether a question of law raised in the course of the appeal is of public interest would be whether it directly and substantially affects the rights of the parties and if so *whether it is an open question in the sense that it is* ***not finally settled by this court*** *… or is* ***not free from difficulty or calls for discussion of alternate views****. If the question is* ***settled by the highest court*** *or the*

> ***general principles in determining the question are well settled*** *and it is a mere question of applying those principles to the facts of the case the question would* ***not*** *be a question of law of public interest.*
>
> [emphasis added in italics and bold italics]

48 It will be recalled, however, that the applicant had argued in these proceedings that there was an apparent conflict of judicial authority. However, as we explained to Mr Choo at the oral hearing, there was in fact *no* conflict of judicial authority. Indeed, this particular question had been *settled* more than 30 years ago by this court (which is the highest appellate court in Singapore) in *Jeyaretnam Joshua Benjamin* at [56], where the court stated very clearly (particularly when regard is had to the original emphasis in that paragraph itself) as follows:

> … [T]he right of free speech and expression under cl 1(*a*) of Art 14 is expressly subject to cl 2(*a*) of the same article, and the latter provides that Parliament may by law impose on the rights of free speech and expression conferred by cl 1(*a*) two categories of restrictions: first, such restrictions as it considers *necessary and expedient* in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality; and second, *restrictions designed* to protect the privileges of Parliament or *to provide against* contempt of court, *defamation* or incitement to any offence. While the first category of restrictions must satisfy the test of necessity and expediency in the interest of the various matters specified therein, the second category of restrictions is not required to satisfy any such test. Thus, Parliament is empowered to make laws to impose on the right of free speech restriction designed to provide against defamation. As for Art 10 of the European Convention on Human Rights, it is true that the wording in para 1 thereof is similar to cl 1(*a*) of Art 14. However, para 2 of Art 10 is in no way similar to cl (2) of Art 14: para 2 provides that the exercise of the freedom under para 1 is subject to "restrictions or penalties as are prescribed by law and are *necessary* in a democratic society … for the protection of the reputation or rights of others …". Clearly, the terms allowing restrictions to be imposed under Art 10(2) are not as wide as those under Art 14(2).
>
> [emphasis in original]

49 However, as noted above at [32], Mr Choo sought to argue that the holding as embodied in the paragraph from *Jeyaretnam Joshua Benjamin* (reproduced in the preceding paragraph), that of the two categories of restrictions in Article 14(2)(*a*) of the Constitution of the Republic of Singapore (2020 Rev Ed) ("the Constitution") on the rights of free speech and expression conferred by Article 14(1)(*a*) of the same, only the first category (and not the second) must satisfy the test of necessity and expediency in the interest of the various matters specified therein, was nevertheless inconsistent with the decision of this court in *Jolovan Wham (CA)*. This argument was, with respect, entirely without merit. In particular, *Jolovan Wham (CA)* had been concerned with a *completely different issue* that centred on the interpretation of Article 14(2)***(b)*** of the Constitution (and ***not***, as is the case here, with Article 14(2)(*a*)), in relation to the question as to whether s 16(1)(*a*) of the Public Order Act (Cap 257A, 2012 Rev Ed (now the Public Order Act 2009 (2020 Rev Ed)) was a constitutionally valid derogation from Article 14(1) of the Constitution. Put simply, nothing in *Jolovan Wham (CA)* touched on the issue which the applicant sought to raise in Question 3 in the present proceedings as set out above (at [46]). The law as set out in [56] of *Jeyaretnam Joshua Benjamin* (above at [48]) therefore represented the established and settled legal position in Singapore and there has been *no* contrary authority since then. There was therefore *no* question of law of public interest.

50 *In any event*, as we also put to Mr Choo, we were of the view that the court in *Jeyaretnam Joshua Benjamin* was correct in its interpretation of Article 14(2)(*a*). Let us elaborate.

51 Before proceeding, however, to elaborate on the proper interpretation of Article 14(2)(*a*) in relation to Question 3 in the context of the present proceedings, it is important to note – in a more general, yet highly relevant vein

– the very pertinent observation by the late Lord Denning MR that "[w]ords are the lawyer's tools of trade" (see Lord Denning, *The Discipline of Law* (Butterworths, London, 1979) at p 5). And the learned Master of the Rolls proceeded to observe further as follows (at p 5):

> The reason why words are so important is because words are the vehicle of thought. When you are working out a problem on your own – at your desk or walking home – you think in words, not in symbols or numbers. When you are advising your client – in writing or by word of mouth – you must use words. There is no other means available.

52 To the observations just quoted may be added the importance of *grammar, syntax, as well as context*. Indeed, to ignore grammar and syntax is to seek to think without a proper vehicle and, as a result, to court incoherence as well as possible distortion in thought instead. And to ignore context would result similarly in distortion as well – leading one away (instead of towards) the correct answer to the legal issue at hand. In so far as grammar is concerned, we are here concerned not simply about bad grammar and syntax if the meaning and sense sought to be conveyed are still communicated successfully. We are concerned, instead, about the use (or, rather, abuse) of grammar and syntax that leads to either *incoherence* and/or a *completely different* meaning compared to that which is sought to be conveyed. Such an approach must be assiduously avoided, particularly in the context of the discipline of law where, as we have just noted, words are so fundamentally important. So, for example, even in the context of private law in general and the law relating to the severance of promises within restraint of trade clauses in the law of contract in particular, it has in fact been observed thus (see Andrew B L Phang and Goh Yihan, *Contract Law in Singapore* (Kluwer Law International, 2nd Ed, 2021) at para 1165):

> … The general principle is this: in order to apply the doctrine, the court must be able to run a 'blue pencil' through the offending words in the covenant *without altering the meaning of the covenant itself and without 'butchering' the clause to the*

> *point where it does not make any sense, grammatically or otherwise*. Thus, this test is popularly referred to as the 'blue pencil test'.
>
> [emphasis added]

53 It would, in fact, be even worse if one ignored grammar, syntax, and/or context in order to arrive at a preconceived as well as biased conclusion. Put simply, the ends do not justify the means. As this court has previously cautioned in *PT Bakrie Investindo v Global Distressed Alpha Fund 1 Ltd Partnership* [2013] 4 SLR 1116 at [2], one must avoid the approach of Humpty Dumpty in Lewis Carroll's *Through the Looking-Glass* (Macmillan & Co, London, 1871) (which is a sequel to the same author's equally famous book, *Alice's Adventures in Wonderland* (Macmillan & Co, London, 1865)). Put simply, neither counsel nor the court can make words mean what *they* choose them to mean. Once again, the following observations by Lord Denning (albeit from another book, *The Closing Chapter* (Butterworths, London, 1983) at p 58) are apposite:

> So in the allegory Humpty Dumpty makes the word mean just what *he* chooses it to mean. When he does that, he is riding for a fall. He does fall and is broken in pieces. We all know the nursery rhyme …
>
> [emphasis in original]

54 The observations just quoted in the preceding paragraph apply, *a fortiori*, to the interpretation not merely of a word but of the words of (as is the case here) part of an article of the Constitution. At this juncture, it might be apposite to emphasise the fact that in addition to the importance of grammar, syntax is as (and, on occasion, may be more) important. This is because, as noted, for example, in *The Concise Oxford Dictionary of Current English* (Oxford University Press, 8th Ed, 1990) at p 1238), "syntax" refers to "the grammatical arrangement of words, showing their connection and relation". Syntax, therefore, is crucial to *the maintenance of coherence in, as well as the*

facilitation of, the conveyance or communication of meaning; it is not merely form but *the very pith and marrow* of the conveyance or communication of meaning itself.

55 Turning now to the actual language of Article 14(2)(*a*), the Article itself reads as follows:

> **Freedom of speech, assembly and association**
>
> **14.**—…
>
> (2) Parliament may by law impose —
>
> > (*a*) 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*;
>
> [emphasis added in underlined bold, italics, bold italics and underlined bold italics]

56 The principal argument proffered by the applicant was that the phrase "necessary or expedient" in Article 14(2)(*a*) applies to *every* category enunciated therein (including laws providing against defamation). A straightforward and, indeed, commonsensical reading of the plain language of Article 14(2)(*a*) would reveal that there are, as was clearly articulated in *Jeyaretnam Joshua Benjamin* at [56] (reproduced above at [48]), two categories of restrictions in Article 14(2)(*a*) (which are demarcated by the word "and" in underlined bold italics in the text of Article 14(2)(*a*) reproduced in the preceding paragraph). Such a reading would also reveal that the phrase "necessary or expedient" qualifies only the *first (and former)* set of restrictions (see also the placement of the word "restrictions" in underlined bold in the text of Article 14(2)(*a*), again reproduced in the preceding paragraph). As we

pointed out to Mr Choo during the oral hearing, this last-mentioned interpretation is wholly consistent with the overall *syntax* of the article itself. To read, instead, the phrase "necessary or expedient" as qualifying *all* the categories of subject matter in Article 14(2)(*a*) would be not only ungrammatical, but would also be irreconcilable with the overall syntax of Article 14(2)(*a*) itself.

57 We also note that the appropriate grammatical as well as syntactical approach set out above is *wholly consistent with* the *actual content as well as sense* of the article itself. To elaborate, the first set of restrictions (to which it is undisputed that the phrase "necessary or expedient" applies) refers to a more *general* category of situations whereas the second set of restrictions refers to more *specific* situations that are the subject of *specific* laws (including *the common law*). Indeed (and even *more* specifically), it is immediately clear that the requirement embodied in the phrase "necessary or expedient" is ***wholly inappropriate*** in the context of ***the common law*** (for example, the common law relating to defamation, to which Article 14 has been held to apply in the decision of this court in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1990] 1 SLR(R) 337 at [5]). Put simply, it makes no sense to require *the courts* to specify each time (and expressly) that the rules and principles that it lays down are "necessary or expedient" – it would, in fact, be *assumed* that they *must be so*.

58 Indeed, as we pointed out to Mr Choo during the oral hearing, the specific laws that constitute the subject matter of the second set of restrictions are, by their *very (and specific) nature*, *necessary* in so far as their respective roles in the Singapore legal system are concerned. For example, no reasonable person would argue against "restrictions designed *to protect the privileges of Parliament*" or "restrictions … *to provide against contempt of court, defamation or incitement to any offence*". We also observe that it would appear odd (and

perhaps even inappropriate) to impose the requirement of "expedience" (as opposed to "necessity") in so far as this second set of restrictions is concerned and, as just mentioned, the requirement of "necessity" is, in any event, already an inherent part of these restrictions. In contrast, the phrase "necessary and expedient" is, in our view, entirely apposite in the context of the *first* set of restrictions, having regard to their subject matter.

59 Mr Choo did observe, during the course of the oral hearing, that, in *his* view, it was not "necessary or expedient" to have laws that provided against *criminal* defamation although he was prepared to accept that it was "necessary or expedient" to have laws that provided against *civil* defamation. Such an argument was, with respect, simply a *personal* view as to what the law *ought* to be. It did *not* address the *actual language* of Article 14(2)(*a*) itself. Individual dissatisfaction with the present state of the law is often grist for the legal academic's mill, and might also serve as the catalyst for actual law reform. However, such dissatisfaction does not render the law unsettled or in need of clarification, and was thus *wholly irrelevant* in the context of an application for leave to bring a criminal reference (as was the case in these proceedings).

60 Indeed (and in any event), any reform in the law of criminal defamation is not within the purview of the courts – it is, if at all, a matter for *Parliament*. A parallel may here be drawn in relation to the law against contempt of court (which also happens to be part of the subject matter of Article 14(2)(*a*)). In the decision of this court in *Au Wai Pang v Attorney-General* [2016] 1 SLR 992 ("*Au Wai Pang*"), it was, *inter alia*, argued that the Singapore courts should depart from the existing Singapore law and adopt the approach in the Privy Council decision of *Dhooharika v Director of Public Prosecutions (Commonwealth Lawyers' Association intervening)* [2014] 3 WLR 1081 ("*Dhooharika*") instead. The court in *Au Wai Pang* was of the view that the

approach in *Dhooharika* was effectively similar to the then-established Singapore law and that, *even if it were not*, the approach in *Dhooharika* should *not* be followed as that would amount to upsetting the balance in a manner that would compromise the courts' ability to safeguard public confidence in the administration of justice. Indeed, it is significant, particularly in the context of the present proceedings, to note that even the then-existing Singapore law was *subsequently amended* (and, indeed, the entire law relating to contempt of court restated) – albeit not by the courts but by *Parliament* (see now the Administration of Justice (Protection) Act 2016 (2020 Rev Ed)).

The remaining Questions

61 In the circumstances, therefore, it was clear that Question 3 was *not* a question of law of public interest. This then also disposed of *Question 2* (as to which, see above at [20]), which as we also explained to Mr Choo during the oral hearing, only got off the ground if there was a basis for holding that the laws on criminal defamation, and more generally the Penal Code as a whole, had to be separately passed by Parliament independent of the operation of Article 162 of the Constitution ("Article 162"). *Furthermore*, the particular issue embodied in Question 2 had, in any event, been *settled* by the decision of this court in *Review Publishing*, and we saw nothing plainly erroneous in that particular holding. Whilst Mr Choo sought to argue that *Review Publishing* was in apparent conflict with the decision of this court in *Tan Eng Hong*, it was clear that there was *no* such conflict. In particular, the characterisation in *Review Publishing* of the predecessor provision to Article 162 (at [250]) as a "law-enacting provision" was not inconsistent with the characterisation in *Tan Eng Hong* of the same (at [61]) as a "transitional provision which specifically deals with existing laws". Put simply, as a matter of both practical as well as historical

reality, Parliament chose to deal with existing laws during the transitional period by simply re-enacting them *en masse* by operation of Article 162.

62 Once Questions 2 and 3 were disposed of (for the reasons set out above), the remaining questions (*viz*, Questions 4 and 5, as to which see above at [20]), as Mr Choo accepted during the oral hearing, then fell away as well.

Conclusion

63 For the reasons set out above, none of the questions proffered by the applicant was a question of law of public interest, and we therefore dismissed the application.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Andrew Phang Boon Leong
Senior Judge

Choo Zheng Xi (RCL Chambers Law Corporation) for the applicant;
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