Re Millar Gavin James QC
[2007] SGHC 178

Case Number : OS 1197/2007

Decision Date : 17 October 2007

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Peter Cuthbert Low (Peter Low Partnership) for the applicant and the defendants; Davinder Singh SC and Jaikanth Shankar (Drew & Napier LLC) for the plaintiffs; Jeffrey Chan and Leonard Goh (Attorney-General's Chambers) for the Attorney-General; Andrew Ong (Rajah and Tann) for the Law Society of Singapore

Parties : —

Legal Profession – Admission – Ad hoc admission of Queen's Counsel – Principle of equality of arms – Three-stage test for admission of Queen's Counsel – Whether case containing issues of fact and/or law of sufficient difficulty and complexity – Whether circumstances of case warranting court's exercise of discretion in favour of admission – Whether Queen's Counsel possessing special qualifications or experience for purpose of case – Section 21 Legal Profession Act (Cap 161, 2001 Rev Ed)

17 October 2007

Tay Yong Kwang J :

Introduction

1 This application is the second one taken out by Mr Gavin James Millar QC ("the QC") to be admitted as an advocate and solicitor of the Supreme Court of Singapore in order to be the leading counsel for Review Publishing Company Limited, a Hong Kong company which publishes the Far Eastern Economic Review ("FEER"), and Mr Hugo Restall, the editor of FEER and author of an article entitled "Singapore's 'Martyr', Chee Soon Juan" in the July/August 2006 issue of the FEER, who are the defendants in two libel suits in the High Court commenced against them by Mr Lee Hsien Loong, the Prime Minister of Singapore, and Mr Lee Kuan Yew, the Minister Mentor of Singapore. The two libel suits are Suit No. 539 of 2006 and Suit No. 540 of 2006. A summary of the two libel suits appears in the judgment of Tan Lee Meng J ("Tan J") in the QC's first application (Originating Summons No. 621 of 2007) reported in *Re Millar Gavin James QC* [2007] 3 SLR 349.

2 The QC's first application for admission was in relation to both the libel suits as well as two appeals before the Court of Appeal concerning the jurisdiction of the High Court to hear the two libel suits. On the jurisdiction appeals, Tan J found that the QC did not satisfy the three-part test for admission under s 21 of the Legal Profession Act (Cap 161, 2001 Rev Ed). In so far as the libel suits were concerned, Tan J was of the view that, while the QC had the requisite expertise in defamation actions, the libel suits did not, on the evidence presented by the defendants, raise sufficiently difficult and complex issues of law and/or fact to warrant the admission of the QC. Tan J also found that the defendants had failed to show that they were unable to have local counsel represent them. He held that a client's preference for a QC was not a factor to be considered when evaluating whether a QC ought to be admitted for a particular case. Accordingly, Tan J dismissed the first application and refused admission.

3 The defendants' appeal against Tan J's decision not to admit the QC was heard and dismissed by the Court of Appeal in July this year. While no written judgment was given by the Court of Appeal, all parties before me agreed that the Court of Appeal was of the view that the first application to admit the QC for the libel suits was premature as the defendants had not even filed their Defences yet and that the Court of Appeal left the door open for the defendants to re-apply after the Defences have been filed.

The present application

4 Since the decision of the Court of Appeal, the defendants have filed their Defences on 10 August 2007 and amended them on 27 August 2007. Each of the Defences contains 33 paragraphs of averments and runs to more than 50 pages but they raise substantially the same issues in both actions. The plaintiffs have filed their Replies without prejudice to their contention that the Defences failed to disclose any defence and without prejudice to their right to apply for summary judgment and/or to strike out the Defences. On 30 August 2007, the plaintiffs filed their applications to determine the natural and ordinary meaning of the words complained of as being defamatory and for summary judgment on the basis that the defendants had no defence to the claims. Alternatively, the plaintiffs sought to strike out substantial portions of the Defences filed. Each of the plaintiffs has filed an affidavit in support of these applications, with the exhibits annexed thereto running to some 400 pages. These applications have been scheduled to be heard on 25 October 2007.

5 In the present application for admission, the QC sought to represent the defendants in the libel suits for all purposes henceforth. If this was not permitted by the court, he would like at least to represent the defendants in the plaintiffs' applications set out at [4] above.

The defendants' arguments

6 It was accepted that s 21 of the Legal Profession Act contained a three-stage test in which the court considers whether the QC in question:

(a) has demonstrated that the case in which he seeks admission contains issues of fact and/or law of sufficient difficulty and complexity to require elucidation by a QC;

(b) has persuaded the court that the circumstances of the particular case warrant the court's exercise of discretion in favour of admission;

(c) has satisfied the court that he is a suitable candidate for admission in that he possesses special qualifications or experience for the purpose of the case.

As Tan J had already held that the QC had special qualifications or experience for the libel suits, the defendants' submissions centred on the other aspects of the above test.

7 The defendants submitted that there was no requirement that the requisite difficulty and complexity must pertain to the law as opposed to the facts (relying on *Re Godfrey Gerald QC* [2003] 2 SLR 306 at [15]) and that where there was a dearth of local expertise in a given area, even a moderately difficult or complex case may warrant the admission of QC (citing *Re Platts-Mills Mark Fortescue QC* [2006] 1 SLR 510 at [15]). The defendants acknowledged that the second stage of the test involved a balancing exercise, with the ability and availability of local counsel being only one of the factors to be placed on the scales. The court may also consider admitting QC in a case where, on grounds of self-interest or acquaintanceship, in view of the size of our jurisdiction and population, no local counsel ought to or is willing to take the case (*Price Arthur Leolin v AG & Ors* [1992] 2 SLR 972

at 977).

8 The defendants also argued that the court should take into account the need for a level playing field between the parties to the defamation suits. They submitted that Singapore, as a member state of the United Nations, was bound by the United Nations Charter to respect the standards laid down in the Universal Declaration of Human Rights, article 10 of which provides:

> 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 any criminal charge against him.

The principle of equality of arms, it was submitted, was a fundamental part of any fair trial guarantee. In a defamation case of any complexity or difficulty, therefore, it was likely that this principle would be breached where there was disparity between the respective levels of legal representation. Two cases from the European Court of Human Rights were cited in support of this proposition (*De Haes and Gijsels v Belgium* (1997) 25 HRR 1 and *Steel and Morris v United Kingdom* (2005) 41 EHRR 22).

9 The defendants further argued that s 21 of the Legal Profession Act did not allow the court to consider admission for only part of a case. The relevant consideration in the section was whether the case was of sufficient complexity and not whether particular parts of it were so. The admission of QC was for the purpose of any one case and not any part of any one case. Section 21(7) supports this contention because it provides for the registrar to issue a certificate to practise specifying in it "the case" in which the QC is permitted to appear. Section 21(10), which states that "case" includes any interlocutory or appeal proceedings connected with a case, was intended simply to emphasize that admission under s 21(1) would entitle the QC to appear in relevant interlocutory and appeal proceedings in addition to the trial. The selective approach by the Court of Appeal in *Price Arthur Leolin v AG & Ors* (see [7]) could not therefore be reconciled with the plain words of s 21 and would inject inefficiency and unnecessary costs into the proceedings because of the need to repeatedly interrupt the progress of the proceedings with applications for piecemeal *ad hoc* admission of a QC. Recognising that the challenge to the construction given by the Court of Appeal in the said case would have to be pursued before that court, the defendants reserved their right to do so while maintaining their stand that the libel suits fully justified the admission of the QC for the entire case or, if not, at least for the said interlocutory proceedings taken out by the plaintiffs.

10 The factual issues arising on any fact-based interlocutory application by the plaintiffs were liable to be both complex and difficult. A great deal of factual material has been pleaded in the libel suits and the plaintiffs would be seeking to dismiss the Defences in their entirety and to obtain summary judgment. The material would have to be mastered and presented to the court by defence counsel. The factual issues would extend the plaintiffs' pleading and discovery obligations. The plaintiffs' interlocutory applications were therefore significantly more important than most other interlocutory applications.

11 The libel suits, viewed as a whole, contained legal and/or factual issues that were sufficiently difficult and complex for the purposes of s 21. Besides the usual averments relating to the meaning of the words complained of and the defences of justification, fair comment and qualified privilege, the defendants were also relying on the newly enunciated defences of the *Reynolds* privilege and of neutral reportage. Mr Peter Cuthbert Low (counsel for the defendants and the QC), in his affidavit of 16 August 2007, filed in support of this application to admit the QC, explained these last two defences as follows:

> 22(5) … The publication of the article containing the words complained of served the public interest as a serious contribution to the discussion of Singapore governance and politics,

published reasonably and with editorial and journalistic responsibility ("Reynolds" privilege). This defence was identified by the House of Lords in Reynolds v Times Newspapers Ltd and others [2001] 2 AC 127. In Reynolds the House of Lords recognised the considerable importance of press freedom to publish stories of genuine public interest, in particular on political matters, without being held liable in defamation. … Although their Lordships went on to test this development in the common law of defamation against the relevant United Kingdom and European human rights law, it is clear from their speeches that the doctrine identified in Reynolds was a development of the common law. … In Jameel and others v Wall Street Journal Europe Sprl [2006] 3 WLR 642 the House of Lords has recently restated, and clarified, the principles upon which this defence is based. In essence: The first question is whether the subject-matter of the article was a matter of public interest. In determining this question, the judge must consider the article as a whole and not just the defamatory statement complained of. … If the subject-matter of the article was a matter of public interest, the next question is whether the article as a whole, including the defamatory statement, was in the public interest. In deciding this question, the court must make due allowance for editorial/journalistic judgment. … Assuming the publication passes the public interest test, the defence is made out if the steps taken to gather and publish the information were responsible and fair. …

The particulars in support of the plea of Reynolds privilege emphasise in particular the control which the PAP exercises over the Singapore press and the duty of the regional press to publish information about opposition parties and leaders in Singapore; the public importance of the comments made by Dr Chee and reproduced in the article and of the discussion of political libel cases in Singapore in the article; and

(6) … Neutral reportage. in Roberts v Gable (above) the Court of Appeal explained the elements of this important defence for the media in libel proceedings which has emerged from the case law following Reynolds. … The essence of the defence in these cases is that "… In the context of the whole profile, readers would accept that the matters taken out of context in paragraph 15 of the Statement of Claim were summaries of Dr Chee's long-standing arguments, which were not endorsed or approved by the defendants but rather were presented as Dr Chee's "own theory".

The sentence in italics above is taken from paragraph 30 of the Defences in the libel suits. The case of *Roberts v Gable* [2007] EWCA Civ 721 cited above was a case before the English Court of Appeal which the present QC was involved in. The judgment therein was handed down recently on 12 July 2007.

12 The *Reynolds* defence was rejected by Belinda Ang J in *Lee Hsien Loong v The Singapore Democratic Party and others* [2006] SGHC 220 on the basis that it did not represent the law in Singapore. The defendant in that case was unrepresented. The defendants in the present libel suits would contend that Belinda Ang J was mistaken in her approach to and her characterisation of the *Reynolds* defence (as one based upon Article 10 of the European Convention on Human Rights). In any event, that decision was reached without reference to the clarification of the law represented by the House of Lords' decision in *Jameel* which was handed down only a few weeks before Belinda Ang J's judgment. It was submitted that the applicability of the *Reynolds* defence in Singapore was an issue of law sufficiently difficult and complex to require elucidation and/or argument by a specialist QC. That was the case in England when *Reynolds* and *Jameel* were argued there and there was no reason why Singapore should be any different in this respect. The Singapore courts would also wish to consider the application of these two English decisions in other Commonwealth jurisdictions. The neutral reportage defence in *Roberts v Gable* has not been considered at all in Singapore.

13 The presentation of the pleaded defences at trial would involve complex issues of law and fact.

Cross-examination of the plaintiffs would be particularly difficult given the detailed and extensive knowledge which the plaintiffs had of the governance of Singapore over the last fifty years.

14 Singapore courts have recognized in other cases that defamation actions may raise sufficiently difficult and/or complex issues to warrant admission of QC and that there was insufficient experience and expertise at the local bar in such actions. As libel is a highly specialized and technical area of practice, England has a very small specialist bar and a specialist High Court bench in this area of law. There is no comparable specialist bar in Singapore. Therefore, even if the present libel actions were only moderately difficult and complex, it would be appropriate to allow the defendants to engage specialist leading counsel from England.

15 The defendants relied on Mr Peter Cuthbert Low's affidavit filed in support of the QC's first application to address the issue of the dearth of local expertise in defamation law and the defendants' unsuccessful attempts through their Malaysian counsel, Dato Muhammad Shafee, and Mr Peter Cuthbert Low to engage Senior Counsel ("SC") here. They argued that "the skills and experience required to put the pleaded defences now rules out anything less than Senior Counsel who is both specialist and experienced in libel law". The defendants have not been able to identify any such SC after excluding those from Drew & Napier LLC (Mr Davinder Singh's law practice) and those who have acted for the plaintiffs or other PAP politicians or who were connected to such. Mr Peter Cuthbert Low stated modestly that he would not hold himself out as having the necessary expertise and experience to present the defence case properly. No less than 12 out of 15 SC approached by the defendants either declined the brief outright or made clear that they would not run the case in accordance with the defendants' instructions. Three others did not reply.

16 Tan J at [29] to [35] of his judgment discussed the defendants' efforts in approaching three SC and the latter's responses. In his second affidavit filed on 14 September 2007 in the present application, Mr Peter Cuthbert Low stated that the defendants maintained that the correspondence between Dato Shafee and the said SC (tendered to Tan J at the earlier application) indicated that the latter would be reluctant to present the defences now pleaded and that the defendants had no confidence whatsoever in their willingness vigorously to present the said defences. Mr Harry Elias SC declined outright to accept the instructions when he was initially approached. His subsequent comments reported in the media (that since no SC had come forward to represent FEER, he thought it appropriate to offer himself notwithstanding his earlier refusal) have not altered the defendants' view. The defendants therefore had good reason not to instruct any of these three SC.

17 Pursuant to Rule 71 of the Legal Profession (Professional Conduct) Rules, Mr Peter Cuthbert Low extended a draft copy of the said second affidavit to the three SC mentioned for them to include their answers before he deposed to and filed the affidavit. Mr Chelva Rajah SC's letter of 22 August 2007 explained that following receipt of Shafee & Company's letter of 3 August 2006, his law firm replied saying that he was prepared to act for FEER provided it accepted his advice on the merits of the case and paid the firm's fees. Mr Chelva Rajah SC's partner, Mr Imran Khwaja, left an undated attendance note in the case file stating that he returned Dato Shafee's call at a certain Malaysian mobile telephone number, that he told Dato Shafee that they were prepared to act if the clients accepted their advice and discussed with him briefly the issue of costs. Mr Khwaja also wrote that Dato Shafee "will revert". Subsequently, on 1 September 2006, Mr Chelva Rajah SC received another letter from Shafee & Company by fax and by post. That letter asked him to respond urgently on whether he was still prepared to act for FEER "on the assumption that our clients wish to fully defend the suit in a trial". Mr Khwaja responded and called Dato Shafee twice at the same Malaysian mobile telephone number given earlier. The calls were not answered on either occasion. Their answer to Dato Shafee would have been the same as their earlier response. There was no record of further communications between the Malaysian and the Singapore law firms.

18 Mr Michael Hwang SC, in his letter dated 22 August 2007, informed Mr Peter Cuthbert Low that he had just returned from overseas and was currently engaged in a court case and did not have the time to review the Defence in detail. The SC was therefore not able to say whether or not he would have been prepared to plead the Defence in the same way in which it was drafted.

19 Mr Harry Elias SC, in his letter dated 21 August 2007, stated that he had already addressed Mr Peter Cuthbert Low's points in his letter of 7 May 2007 and that his position remained unchanged. The contents of the SC's letter of 7 May 2007 can be found in Tan J's judgment at [33] and [34].

20 The defendants criticised Tan J's approach relating to their attempts at engaging the SC. They argued that the gist of his judgment on this issue was that the defendants had not proved consistent refusal or inability to act amongst this group of SC and/or that they were somehow being unreasonable in discounting the three SC and submitted that this approach was at odds with the case authorities. In the light of their experiences, the defendants did not consider that there was an available SC who ability and integrity they were comfortable with and they were justified in taking this position. It would be extremely difficult for any SC "vigorously to make the required attacks on the very legal and PAP governmental system in which s/he practises". The defendants argued that this was surely true in Mr Harry Elias SC's case as he had represented the Prime Minister's predecessor in high profile libel proceedings against the International Herald Tribune in 1995 in respect of an article on which the plaintiffs also sued.

21 The QC was familiar with the case as he had advised the defendants on a number of aspects and drafted a number of court documents in it already. If he were to take over from Mr Peter Cuthbert Low, there would be no delay in the progress of the case.

The plaintiffs' arguments

22 The plaintiffs submitted that QC would not be admitted for interlocutory matters because advocacy in such matters was confined to affidavit evidence and the presentation of legal arguments which could be easily handled by local lawyers. The defendants should not have taken out this application at this stage but ought to have waited for the final disposal of the plaintiffs' applications for summary judgment or striking out because until those applications were determined, it would be impossible to say what the issues at trial would be. If the plaintiffs succeed in their applications, the only issue would be that of damages. The pending interlocutory applications were routine matters which did not justify admission of QC in any event.

23 The two libel suits did not raise any issue outside the core issues in every defamation action. Case law and legal writing on issues in defamation law abound and would be more than sufficient for the determination of the merits of the libel suits. Local lawyers have handled defamation trials requiring cross-examination of the parties and their witnesses on various occasions. The matters which the defendants said they needed a QC to cross-examine on were wholly irrelevant ones anyway and it was the quality of the issues that mattered, not quantity. The fact that there was no local decision on a particular issue did not necessarily turn that issue into a complex or difficult one - novelty is not equal to complexity or difficulty. Local lawyers are competent to study and analyse the developments in case law in other jurisdictions and make the necessary submissions to the court. In England, QC were frequently engaged even for straightforward matters and the fact that *Reynolds* and *Jameel* were argued by QC could not mean that the two libel suits here should also be conducted by QC. Admission of QC under s 21 of the Legal Profession Act has always been case-specific.

25 The defendants were represented by able and experienced local counsel and had the opportunity to engage SC but chose not to do so. Instead, they cast aspersions on the integrity of

the three SC mentioned earlier, whose "conditions" on their retainer did not indicate unwillingness to represent the defendants but merely meant that they would represent within the bounds of propriety and in accordance with the law and practice in Singapore. In any event, there are many talented members of the local bar who are not SC who could handle the libel suits for the defendants. Ten years ago, Mr Peter Cuthbert Low himself was counsel for a defendant in a defamation suit by the former Prime Minister of Singapore (*Goh Chok Tong v Tang Liang Hong* [1997] 2 SLR 641). Even if assistance from QC was required, the QC could easily communicate his advice to local counsel by email or other means.

26 The question whether the *Reynolds* and neutral reportage defences (the second being an offshoot of the first) should be applied in Singapore was one best left to local counsel to submit on since consideration of this question involved an understanding of local political and social conditions. It was accepted by Lord Steyn in *Reynolds* that there were at stake powerful competing arguments of policy and that cultural differences played a role in deciding the balance to be struck between freedom of expression and protection of reputation. A QC's suitability for admission could not be considered without this in mind. On this score, the QC was plainly not a suitable candidate for the libel suits here in spite of his expertise in defamation law. He was not an appropriate person to address the court on the peculiar social and political situation in Singapore.

The Attorney-General's ("AG") arguments

27 The AG objected to the admission of the QC. He did not think the two libel suits here satisfied the first stage of the test in s 21 of the Legal Profession Act. The facts pleaded in the Defences concerned historical events in Singapore and there was nothing difficult or complex about those. Where the *Reynolds* and neutral reportage defences were concerned, the AG maintained his stand taken in the first application that it would be more helpful for local lawyers, who would be familiar with the local context, to argue these matters. The main issue concerned the meaning of the alleged defamatory words.

28 Where the second stage of the test was concerned, the AG stated that the defendants did not appear to have approached Mr Chelva Rajah SC and Mr Michael Hwang SC again after the appeal in the first application was dismissed by the Court of Appeal. It was therefore unclear whether any SC was willing to act for the defendants. However, even if no SC was prepared to act for the defendants here, there were still more than 3,000 local lawyers available, with a significant proportion being competent and experienced in court work.

29 The AG accepted, as he also did in the first application, that the QC had expertise in defamation law.

The Law Society's arguments

30 The Law Society also objected to the admission of the QC on the ground that the first two stages of the test in s 21 of the Legal Profession Act had not been satisfied. The Law Society accepted that the QC was suitably qualified to address the court on the issues raised in the libel suits.

31 It was submitted that the test in s 21 was concerned about difficulty and complexity, not novelty. The defendants had not explained why the neutral reportage defence was of the requisite difficulty and complexity to warrant the admission of QC. Their decision to challenge the correctness of the High Court's decision in *Lee Hsien Loong v The Singapore Democratic Party and others* (see [12] above) which rejected the *Reynolds* defence did not, by itself, elevate the issue to that level of

difficulty and complexity. Local lawyers were quite capable of dealing with issues touching on the interpretation of Article 14 of our Constitution (on freedom of expression) and with case authorities post-*Reynolds* such as *Jameel*.

32 While cross-examination in a complex defamation case would require the skill and tenacity of a highly experienced litigator, that was not sufficient in itself to justify the admission of QC. Local SC have had ample experience in complex defamation cases.

33 As pointed out by the Court of Appeal in the appeal in the first application, there have been only two instances of QC being admitted after 2001. One was in Originating Motion No. 600039 of 2001 in which Jules Sher QC was admitted in July 2002 as counsel for Singtel in a case involving restitution. In the other case (Originating Motion No. 38 of 2007), Jonathan Caplan QC was admitted for the purpose of taking evidence in our Subordinate Courts in order to assist the Hong Kong High Court in a criminal trial which was pending there. The three SC approached by the defendants earlier were eminently qualified to conduct the libel suits here. Despite the findings by Tan J in the first application, the defendants did not appear to have discussed the issue of representation further with any of the three SC. It has not been shown, therefore, that there was no local counsel able and willing to act in the libel suits.

The decision of the court

34 The case law concerning s 21 of the Legal Profession Act is well known and most of it is not really in dispute among the parties before me. Many of the pertinent principles in these cases appear in the judgment of Tan J in the first admission application and I need not set them out here again.

35 As in all defamation suits, where issues of law are concerned, the court hearing the libel suits will first have to determine the natural and ordinary meaning of the words complained of. It will then have to decide whether or not the said words defame the plaintiffs and, if so, whether or not the defendants can avail themselves of any of their pleaded defences. The principles governing all this are well established even if they are refined from time to time.

36 The libel suits here are premised on the publication of the words complained of in Singapore only. Accordingly, the court will have to decide what meaning is conveyed to an ordinary, reasonable reader here using his general knowledge and common sense. The test involved is an objective one. Similarly, the test whether the words are defamatory is an objective one. A reasonably competent local lawyer, whether SC or not, who is familiar with the English language (and all local lawyers can speak and write in English) should have absolutely no difficulty in assisting the court in this exercise.

37 It can hardly be said that the other stages of the inquiry into the pleaded defences present a mountain that only an experienced QC could scale. The road that defences in defamation cases take is well trodden and the way is reasonably clear. Occasional potholes or bumps that appear along that road can be easily filled up or smoothened by the malleability of the common law. The real contention in this case appears to be that the case law on the *Reynolds* and the neutral reportage defences have created such a detour or diversion in the usual route that local lawyers would be completely befuddled and lose their way.

38 While the *Reynolds* and neutral reportage defences may be new developments in the law, it has been said that novelty does not equate difficulty and complexity. While QC involved in the English cases dealing with these defences would have more intimate knowledge of the developments, there is really no reason why reasonably intelligent and diligent local lawyers (and there are many who surpass this modest standard even if they are not, or have not yet been, conferred the status of SC) cannot

read up on these cases and use their research and analytical skills to assist the court. In any event, even if the guiding light of QC is required to illuminate the way in properly analysing and applying these cases, the modern methods of communication would overcome any problems caused by his physical absence. As acknowledged in this application, the QC has indeed been closely involved in the advice and drafting of documents in the libel suits (see [21] above). Even without admission to the local bar, his presence can be keenly felt in the court documents and written submissions should the defendants' local lawyer(s) decide to play a subsidiary role of being the mouthpiece only.

39 The defendants asserted that the factual matrix was complex and, correspondingly, the cross-examination of the plaintiffs on the facts would be an arduous task. Many matters have been pleaded in support of the defences raised. In the same way that the QC could still be intimately involved in the libel suits without being physically present, there is also no impediment to him providing a framework of the facts to be established and listing the questions to be asked at the trial, for the guidance of the local lawyer(s) concerned. Many of the pleaded matters relate to Singapore and it is difficult to understand why local lawyers would find it too challenging a task to master the pleaded facts and to muster the evidence in support thereof.

40 Accordingly, it is my view that neither the legal nor the factual issues in the libel suits are of such degree of difficulty and complexity that local lawyers would be incapable of handling them competently.

41 I have already indicated that the libel suits here need not necessarily be defended by SC. Nevertheless, where the three SC who had been approached were concerned, I agree with Tan J's observation (at [32] of his judgment) that "[h]ad the defendants been more serious about having a SC represent them, they would have had further discussions with either Mr Rajah or Mr Hwang". The communication between Dato Shafee and the two SC in question did not indicate any general reluctance on the part of those SC to undertake the defence with full vigour even if one of them would advise against taking a certain line of defence. Where Mr Harry Elias SC was concerned, he had explained his stance adequately in his letter and he also stated therein that the defendants had approached him a second time knowing that he had represented certain PAP Ministers or Members of Parliament previously. In my opinion, there was no ground for the defendants to entertain any doubt about the ability and integrity of all three SC. If they now decline to represent the defendants after what has been said about them, the defendants will have only themselves to blame.

42 The submissions on equality of arms or about a level playing field can be disposed of by the following extract from the Court of Appeal's judgment in *Godfrey Gerald QC v UBS AG* [2003] 2 SLR 306 at [33] and [34]:

> 33 Without the assistance of a QC, Mr Wee would have it that he would be embroiled in a battle of "David and Goliath" proportions because UBS was represented by Mr Davinder Singh SC, "arguably Singapore's foremost litigator" with the backing of the "vast resources of Drew and Napier". In support of his contention that the courts should admit a QC to level the playing field, Mr Wee seized upon the case of *Re Beloff Michael Jacob QC* [2000] 2 SLR 782, where the High Court permitted the defendant, who was already represented by a SC, to hire a QC in order to "ensure a level playing field" against the plaintiff, who was already represented by a QC.
>
> 34 We were of the view that *Re Beloff Michael Jacob QC* does not stand for the general principle that the circumstances warrant the admission by a QC when the opposing side is represented by a SC. The High Court's reference to the principle of a level playing field must be read in the context where the court had already decided that the factual and legal matrix of the case was sufficiently complex and difficult to warrant the admission of a QC on the plaintiff's

behalf. It would seem perverse in those circumstances, therefore, to deny the application by the defendant's QC.

In the result, the Court of Appeal there dismissed the appeal against the High Court's refusal to admit the QC in question. If the defendants' arguments on equality of arms are correct, every case in court will need opposing lawyers of the same or nearly the same stature and seniority. That, in my opinion, would lead to absurd consequences.

43 I am therefore of the view that the circumstances of this case do not call for the court's discretion to be exercised in the defendants' favour.

44 In respect of the QC's qualifications and experience, I note the plaintiffs' contention that they should be considered in the light of the issues to be determined in the proceedings and that the QC lacked the local perspective in so far as the *Reynolds* and the neutral reportage defences were concerned. Even if so, there is no reason to doubt that the QC, with his vast knowledge and experience in the law of defamation, would be able to assist the court in deciding whether those defences ought to be universally accepted or whether and, if so, to what extent they should be modified to suit local circumstances. However, as I have indicated earlier, this task could be performed equally well by local lawyers. I therefore accept that the QC satisfied the third stage of the test in s 21 of the Legal Profession Act in that he has special qualifications or experience for the purpose of the case.

45 I now state my views on the other issues raised in the course of argument. Section 21(10) of the Legal Profession Act widens the definition of "case" in that section to include "any interlocutory or appeal proceedings connected with a case". It is therefore technically possible for QC to be admitted for limited purposes within a case, although such applications would be rare. For instance, he could be admitted only for the purpose of appearing in summary judgment proceedings, or only for the open court trial or only in appeal proceedings after the trial in a case has concluded. The certificate which the Registrar of the Supreme Court is to issue to QC pursuant to s 21(7) could be suitably modified to accommodate such situations. Even if QC is admitted without any limitation, he could ask the court that he be excused from attending certain stages of the trial or decide not to take an active role in the cross-examination of some witnesses, as SC sometimes do.

46 I disagree with the plaintiffs' contention that the application to admit QC here was premature. As the plaintiffs have acknowledged, if their applications for summary judgment succeed, there would be no trial and the only issue left would be damages. Such a possible outcome makes it all the more imperative that an application to admit QC be made promptly, if the case meets the requirements in s 21. If the case is important enough for QC to be involved from its inception, there is no legal impediment against him applying for admission immediately and appearing in what may be perceived to be routine applications.

47 The last time that QC was admitted in a defamation matter was about a decade ago (to appear before the Court of Appeal in *Goh Chok Tong v Jeyaretnam Joshua Benjamin and anor* [1998] 3 SLR 337). Cases on s 21 of the Legal Profession Act decided before 1997, when no SC had been appointed from the local bar, should be read with that context in mind. Section 21 of the Legal Profession Act will look increasingly incongruous in our statute books as the local bar continues to mature and the number of SC increases. As submitted by Mr Davinder Singh SC, this provision is transitional and is not meant to be a permanent part of our law. We are steadily progressing towards the day when this provision can and should be deleted, just like Parliament repealed the Judicial Committee Act more than a decade ago.

48 For the reasons stated above, I refused to admit the QC for the purpose of appearing in the two libel suits, whether without limitation or with the qualification that it would only be for the pending applications taken out by the plaintiffs, and dismissed the application. I also ordered that the costs of this application be taxed or agreed and be paid by the defendants to the plaintiffs.

49 On a lighter note, should Mr Peter Cuthbert Low feel, like Mr Wee did in *Godfrey Gerald QC v UBS AG* (see [42] above), that he would be embroiled in a battle of 'David and Goliath' proportions, perhaps he could take comfort in the fact that the little shepherd boy armed with only a sling and stones emerged the victor against the gigantic seasoned soldier wielding a shield, a sword and a spear.