

Lee Wei Ling and another v Attorney-General
[2017] SGCA 48

Case Number : Civil Appeal No 149 of 2016
Decision Date : 17 August 2017
Tribunal/Court : Court of Appeal
Coram : Sundaresh Menon CJ; Chao Hick Tin JA; Andrew Phang Boon Leong JA
Counsel Name(s) : Lee Eng Beng SC, Paul Tan and Chew Xiang (Rajah & Tann Singapore LLP) for the appellants; Hui Choon Kuen, Koo Zhi Xuan and Germaine Boey (Attorney-General's Chambers) for the respondent.
Parties : Lee Wei Ling — Lee Hsien Yang — Attorney-General

Contract —Contractual terms

Copyright —Ownership —Succession

[LawNet Editorial Note: The decision from which this appeal arose is reported at [\[2016\] 5 SLR 902.](#)]

17 August 2017

Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 This is an appeal by the executors of the estate of Singapore’s founding Prime Minister, Mr Lee Kuan Yew (“Mr Lee”), against the decision of the High Court judge (“the Judge”) in *Lee Wei Ling and another v Attorney-General* [2016] 5 SLR 902 (“the Judgment”) dismissing their application for certain declarations of rights in tape recordings and transcripts of interviews conducted with Mr Lee in the 1980s. This appeal fundamentally turns on the proper construction of an interview agreement signed by Mr Lee and two Government officials which governs the rights in and the use and administration of these tape recordings and transcripts.

2 After hearing the parties at the appeal, we reserved our judgment. We now furnish our decision, beginning with the background facts.

Background facts

3 Sometime in the early 1980s, the Government embarked on an oral history project to record the recollections of key persons involved in events of historical, political and social significance in Singapore. The oral history project involved interviews with many of the key political appointment-holders at that time, including Mr Lee. The interviews with Mr Lee, which took place between 8 July 1981 and 5 July 1982, were tape-recorded and transcribed by the Archives and Oral History Department of the Ministry of Culture (“Oral History Unit”).The tape recordings and corresponding transcripts of the interviews with Mr Lee are collectively referred to in this judgment as “the Transcripts”.

4 In 1983, Mr Lee signed an agreement setting out the terms and conditions governing the rights in and the use and administration of the Transcripts (“the Interview Agreement”) with Mr Wong Chooi

Sen ("Mr Wong"), who was then the Secretary to the Cabinet ("Cabinet Secretary"), and Mrs Lily Tan, then the Director of the Oral History Unit. It appears that the Interview Agreement was drafted by the Attorney-General at the material time, Mr Tan Boon Teik ("Attorney-General Tan"). As the terms of the Interview Agreement are of central importance in this appeal, we set them out in full:

I, Lee Kuan Yew, do hereby give to the Director, Archives and Oral History Department, Ministry of Culture, and the Secretary to the Cabinet for use and administration, on the terms and conditions hereinafter provided, the tape recordings and transcripts of the interview conducted with me between 8 Jul 1981 – 5 Jul 1982.

2. The use and administration of the recordings and transcripts shall be subject to the following terms and conditions:-

(a) I retain to myself all copyright including literary property rights to the recordings and transcripts until the year two thousand (2000) or 5 years after my death, whichever is later, at which time all copyright including any literary property rights in the recordings and transcripts shall vest in the Government of Singapore;

(b) The recordings and transcripts shall be kept in the custody of the Secretary to the Cabinet until the year two thousand (2000) or 5 years after my death, whichever is later, when it may, at the discretion of the Government, be handed over to the custody of the Director, Archives and Oral History Department;

(c) There shall be no access to, supply of copies of or use of the recordings and transcripts by anyone until the year two thousand (2000) or 5 years after my death, whichever is later, without my express written permission, and subject to such conditions as may be stated therein;

(d) After the year two thousand (2000) or 5 years after my death, whichever is later, the recordings and transcripts may be made available for such research as the Government may approve.

3. Nothing in this agreement precludes any use I may want to make myself of the recordings and transcripts or the information therein. In the event of the publication by me of the transcripts of the interview all copyright including any literary property rights in the recordings and transcripts shall, notwithstanding the provisions of clause 2(a) of this Agreement, continue to be retained by me even after the year two thousand (2000) or 5 years after my death, whichever is later. In such an event the Government shall have the right to make the recordings and transcripts available for research approved by it and such other rights over the recordings and transcripts as I may grant.

4. This agreement may be revised or amended by mutual consent of the parties thereto.

5. The three signatories to the Interview Agreement have all passed away, as has Attorney-General Tan.

6. Mr Lee passed away on 23 March 2015. Prior to his death, a copy of the Transcripts was kept at his residence as he was working on his memoirs. It is not clear how the copy of the Transcripts came to be in his physical possession. After Mr Lee passed away, that copy of the Transcripts was found at his home and a family member passed them to the current Cabinet Secretary, Mr Tan Kee Yong ("Mr Tan"). The executors of Mr Lee's estate, Ms Lee Wei Ling and Mr Lee Hsien Yang

(separately “the 1st Appellant” and “the 2nd Appellant”, and collectively “the Appellants”), apparently only discovered that the Transcripts had been handed over to Mr Tan when they received a letter from him acknowledging receipt of the Transcripts. The Appellants then asked Mr Tan, in May 2015, if they could be allowed to peruse the Transcripts. Mr Tan made arrangements for the 2nd Appellant to do so at the premises of the Ministry of Home Affairs, on the condition that he sign an Undertaking to Safeguard Official Information.

7 On 7 July 2015, the Appellants’ solicitors wrote to the Attorney-General’s Chambers (“AGC”), requesting that a copy of the Transcripts be provided to the estate, and seeking confirmation (a) as to whether Mr Lee had, during his lifetime, provided written permission pursuant to Clause 2(c) of the Interview Agreement (“Clause 2(c)”) for any person(s) to be given access to, to be supplied copies of, or to use the Transcripts; and (b) that going forward, such access to the Transcripts would only be granted with the permission of Mr Lee’s estate. The AGC replied on 28 August 2015 declining the request for a copy of the Transcripts to be furnished to the estate and stating that Mr Lee did not contemplate copies being made unless he had personally sanctioned this. The AGC also asserted that in any event, the Transcripts contained confidential information protected by the Official Secrets Act (Cap 213, 2012 Rev Ed) (“OSA”) and any exercise of the right under Clause 2(c) was therefore subject to the application of the OSA. The AGC further maintained that the right to grant access to the Transcripts under Clause 2(c) did not vest in Mr Lee’s estate, but was personal to Mr Lee and had been extinguished with his death. The AGC also declined to provide confirmation as to whether Mr Lee had provided such written permission to any persons under Clause 2(c).

8 On 2 September 2015, the Appellants filed Originating Summons No 816 of 2015 (“OS 816”) seeking declarations that:

- (a) All rights accorded to Mr Lee under the Interview Agreement are vested in Mr Lee’s estate (“Declaration (a)”);
- (b) Mr Lee’s estate is entitled to use and have copies of the Transcripts (“Declaration (b)”);
- (c) There shall be no access to, supply of copies of, or use of the Transcripts by anyone until 23 March 2020 without the express written permission of Mr Lee’s estate (“Declaration (c)”); and
- (d) The Cabinet Secretary, as custodian of the Transcripts, is under a duty to inform Mr Lee’s estate of any request made after the death of Mr Lee for access to, supply of copies of, or use of the Transcripts, and of the grant of any such request without the express written permission of Mr Lee’s estate (“Declaration (d)”).

9 The Attorney-General (“the Respondent”) opposed OS 816 in its entirety, claiming that the OSA applied to the Transcripts and further that the Appellants did not have the right under the Interview Agreement to demand the use or possession of copies of the Transcripts.

The High Court’s decision

10 OS 816 was heard by the Judge on 14 July 2016 and judgment was reserved. On 28 September 2016, the Judge released the Judgment. With regard to the applicability of the OSA, the Judge held that:

- (a) The OSA, as a statute, applies by operation of law and no express reference to it is required (at [26]).

(b) Section 5(1)(e) of the OSA applied to the Transcripts, as they recorded Mr Lee's observations gleaned from his time as the Prime Minister of Singapore and this constituted protected information. The Interview Agreement could not be interpreted based solely on contractual principles (at [26]).

(c) The Parliamentary Debates on the oral history project and the correspondence between Attorney-General Tan and Mr Wong about the drafting of the Interview Agreement supported the Respondent's position that the Transcripts were not created as a personal enterprise to record Mr Lee's observations for his own benefit, but were one of a series of similar recordings that were created as part of the Government's oral history project. The Interview Agreement was intended to further safeguard the confidentiality of the Transcripts given their politically sensitive nature (at [30]-[32]).

11 In relation to the interpretation of the Interview Agreement, the Judge agreed with the Appellants that a plain reading of Clause 2(a) of the Interview Agreement meant that Mr Lee's estate inherited the copyright to the Transcripts for the five-year period after Mr Lee's death. But he held that such copyright comprised a limited bundle of rights and did not entitle the Appellants to Declarations (a), (b) and (c) (at [38]). This was for the following two principal reasons:

(a) First, the Appellants' contractual rights were curtailed by the OSA. As a result, the estate could not grant access to, supply of copies of or use of the Transcripts without the Government's authorisation; otherwise, it would run afoul of s 5(1)(i) of the OSA and commit an offence (at [40]).

(b) Second, as a matter of construction of the Interview Agreement and having regard to the correspondence between Attorney-General Tan and Mr Wong, Mr Lee could not have intended his estate to inherit his rights thereunder, including the right to control or regulate access, use or the supply of copies of the Transcripts. Rather, it appeared that the rights contained in Clause 2(c) were personal to Mr Lee (at [41]-[42]).

12 The Judge found that the copyright vested in Mr Lee's estate was only for the limited purpose of safeguarding the confidentiality of the Transcripts, and it conferred on the estate the right to take steps to ensure that the Government abided by the Interview Agreement (at [48]).

13 The Judge accordingly made the following orders:

(a) That OS 816 be dismissed;

(b) That Mr Lee's estate held the copyright to the Transcripts, but only for the limited purpose of ensuring the Government's compliance with the Interview Agreement;

(c) The Transcripts were to remain in the custody of the Cabinet Secretary;

(d) In relation to Clause 2(c) of the Interview Agreement, the Respondent was to inform the Appellants' solicitors, within two weeks of the judgment, whether Mr Lee had, during his lifetime, granted written permission to anyone for access to, supply of copies of, or use of the Transcripts; and

(e) There be no order as to costs.

The events after the Judgment was released

14 On 26 October 2016, pursuant to the order set out at [13(d)] above (and after seeking and being granted a two-week extension of time), the Respondent duly provided, by way of a letter to the Appellants' solicitors, a list of persons to whom written permission had been granted by Mr Lee to access or use the Transcripts, together with written evidence of this ("the New Documents").

15 On 27 October 2016, the Appellants filed a Notice of Appeal against part of the Judge's decision in OS 816, specifically in relation to the two orders outlined at [13(a)]-[13(b)] above.

The application for leave to adduce further evidence

16 On 5 January 2017, the Appellants filed Summons No 2 of 2017, an application for leave to adduce further evidence in the form of the New Documents. They sought leave to file a further joint affidavit exhibiting the New Documents, a draft of which was annexed to the affidavit in support of the application.

17 The Appellants' main argument is that the New Documents are inconsistent with the case put forward by the Respondent, which had been accepted by the Judge in OS 816. In particular, the Appellants claim that the New Documents show that (a) there were at least two copies of the Transcripts, one of which was kept in Mr Lee's residence, which must mean that the Government had permitted Mr Lee to have a personal copy of the Transcripts even after he left public office in May 2011; (b) at least some of the reels of the Transcripts relate to Mr Lee's recollection of his personal childhood, education and family life, which clearly could not be covered by the OSA; and (c) Mr Lee had, either personally or through his staff, previously granted permission to at least 16 persons to access the Transcripts between 1982 and 2013. In other words, permission was given by persons other than Mr Lee himself. There was no reason in the circumstances to conclude that Mr Lee would not have intended his lawfully appointed executors to be able to exercise the same rights.

18 The Respondent opposes the application to adduce further evidence, arguing that the Appellants had failed to show that the New Documents could not have been obtained with reasonable diligence in the proceedings before the Judge. Specifically, the Appellants ought to have applied for discovery of these documents, but failed to do so. Further, the New Documents would not have an important influence on the result of this appeal, because they are not relevant to, and are in any event consistent with, the Respondent's case.

19 The law regarding the admissibility of new evidence is well-established. Under s 37(4) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) and O 57 r 13(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), further evidence shall not be admitted in an appeal to the Court of Appeal except with the leave of the court, which will only be granted when there are special grounds. The special grounds that would permit the admission of fresh evidence on appeal are limited and controlled by the rule in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") at 1491 which requires that it be shown that:

- (a) the evidence could not have been obtained with reasonable diligence for use at the hearing;
- (b) the evidence must be such that, if adduced, it would probably have an important (but not necessarily decisive) influence on the result of the case; and
- (c) the evidence must be apparently credible, although it need not be incontrovertible.

20 Limb (c) of the *Ladd v Marshall* test is not disputed in the present case. The focus is on limbs

(a) and (b).

21 After considering the parties' arguments, we dismiss the application to adduce further evidence in the form of the New Documents. This is for two reasons. First, it is not clear to us that the information contained in the New Documents could not have been obtained with reasonable diligence for use at the hearing before the Judge. The only step that the Appellants' solicitors had taken was to write to AGC on 7 July 2015 requesting confirmation as to whether Mr Lee had, during his lifetime, provided written permission to any persons under Clause 2(c). The AGC replied on 28 August 2015 that it was not inclined "to provide the information requested". The Appellants did not pursue the matter by way of a discovery application subsequent to that. In their affidavit supporting the application, the Appellants argue that because of AGC's response, "[i]t therefore appeared that there were no further relevant documents, and accordingly no further discovery application was taken out". We disagree. The AGC declined to provide the specific information requested by the Appellants; but nothing in its response would reasonably have warranted drawing the conclusion that Mr Lee had never provided such written permission or that there were no documents evidencing the granting of such permission. We acknowledge that the Respondent might well have opposed a discovery application taken out by the Appellants. But an attempt at discovery should at least have been made, without which it cannot be said that the Appellants had taken "all reasonable cogent and positive efforts in the pursuit of obtaining the best evidence to prove [their] case": see *Sim Cheng Soon v BT Engineering Pte Ltd and another* [2006] 3 SLR(R) 551 at [10].

22 Second, we do not think that the admission of the New Documents will make a material difference to the outcome of this appeal in any event. Most fundamentally, the New Documents relate to Mr Lee's granting of permission for access to and use of the Transcripts. In other words, they are concerned with the conduct of the parties *after* the Interview Agreement was entered into. Even if we were to admit the New Documents, we would have been reluctant to use evidence of the parties' subsequent conduct in construing the Interview Agreement. In this connection, although in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [132(d)] we declined to lay down an absolute prohibition against the use of such evidence in contractual interpretation, we did observe that this was a "controversial and evolving topic" and that in the normal case, such evidence is likely to be inadmissible. More recently, in *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* [2016] 2 SLR 1083 at [56], we stated clearly that a contract must generally be interpreted "as at the date it was made and in light of the circumstances prevailing on the date". We also cautioned against the "great subjectivity and uncertainty involved in considering post-contractual conduct in the interpretive process".

23 We also note that there is already some suggestion in the existing evidence before us that some parts of the Transcripts contain matters relating to Mr Lee's personal life. For example, a letter from Mr A Sankaran (for Cabinet Secretary) to Mrs Lily Tan regarding the binding of the Transcripts states that the final four reels of the tapes, numbered 108 to 111, deal with "information of a personal nature" and should be marked with the word "Personal". Nonetheless, as we will go on to explain, the fact that some parts of the Transcripts contain personal information is irrelevant as long as it is established that a large portion of the Transcripts contained politically sensitive information which Mr Lee knew was likely to be covered by the OSA, and which he no doubt wished to protect. The New Documents, if anything, only served to confirm that this was the case.

24 Finally, we agree with the Respondent that Mr Lee's staff had only communicated Mr Lee's decisions to grant permission for access to and use of the Transcripts, and had not made those decisions themselves. Contrary to the Appellants' submission, there is no indication from the New Documents or elsewhere that they gave such permission on their own accord.

25 We therefore turn to the substantive appeal without regard to the New Documents.

The substantive appeal

26 The main issue in this appeal pertains to the proper construction of the Interview Agreement. This in turn determines both the nature and scope of the rights accorded to Mr Lee, as well as whether those rights passed to his estate upon his death.

27 The purpose of the interpretive exercise is to give effect to the objectively ascertained expressed intention of the contracting parties as it emerges from the contextual meaning of the relevant contractual language. In other words, both the text and the context must be considered: see *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [30]. We endorsed a contextual approach to contractual interpretation in *Zurich Insurance* at [121] and [133]. In this regard, extrinsic evidence is admissible as long as it relates to a clear and obvious context, is relevant and is reasonably available to all the contracting parties: *Zurich Insurance* at [125] and [129]. It can be used to “clear up any other doubt that may arise in applying the document to the case”: *Zurich Insurance* at [121]. In the present case in particular, we consider it vitally important to construe the Interview Agreement with due regard to its critical context, to which we now turn.

The context

28 The foremost consideration that must be borne in mind is Mr Lee’s pre-eminent role as the founding and incumbent Prime Minister of Singapore at the time of the interviews, as well as when the Interview Agreement was signed. As the Prime Minister, he had communicated (through Mr Wong) with Attorney-General Tan with regard to the preparation of the Interview Agreement, a point to which we will return shortly. By virtue of his position of leadership within the Government, there can be little doubt that he would have been privy to a large amount of critical and confidential information. In this regard, we find it inconceivable that Mr Lee would have seen the Government’s interests in relation to the safeguarding of the Transcripts as divergent from his own.

29 Second, we note that the interviews with Mr Lee were one of a series of recordings created as part of the Government’s oral history project to “record the experiences of key persons involved in events of historical, political and social significance, particularly during the post-war years”. The recordings contained “first-hand information on important events”: *Singapore Parliamentary Debates, Official Report* (6 March 1981) vol 40 col 311 (Mr Chai Chong Yii, Senior Minister of State for Culture). In other words, the interviews were not *creative* endeavours but an attempt to record the history of a young nation with roots that did not as yet run deep. The oral history project also sparked interest in Parliament, with Mr Lee himself speaking on the subject. Significantly, when one Member of Parliament, Dr Lau Teik Soon, asked whether the Oral History Unit would publish the interviews for the information of the public, Mr Chai Chong Yii responded that the interviewees were likely to “impose restrictions on the use of the documentation of their interviews”: *Singapore Parliamentary Debates, Official Report* (25 March 1981) vol 40 cols 1201-1203. As it turned out, restrictions were in fact imposed on the use of the interview recordings and transcripts by several interviewees, including Mr Lee. We digress to observe that at all times, the focus in the Parliamentary Debates appears to have been on the rights of the individual interviewees to impose conditions rather than on the interest of the State in protecting the confidentiality or secrecy of the material. For the reasons we discuss below, we find this entirely unremarkable because the State’s interests would have been safeguarded by the provisions of the relevant edition of the OSA as it applied at the time, the material terms of which were essentially the same as they are today.

30 Third, while it is true that some parts of the Transcripts pertained to Mr Lee’s personal matters,

most of the Transcripts canvassed material that was, at least potentially, of a politically sensitive nature. This much is evident in particular from the affidavit of Mr Tan, who, after perusing the Transcripts, had said that they largely recorded Mr Lee's personal insights into events in pre-independence Singapore and his accounts of affairs of the State as observed and experienced by him in his capacity as Prime Minister. Mr Tan said that the Transcripts contained "[Mr Lee]'s personal, unedited thoughts on many issues of great sensitivity, in the realm of foreign relations and domestic political and social issues. They [were] a contemporaneous official Government record of his personal thoughts (and in his own personal words) at the time between 8 July 1981 and 5 July 1982 on these affairs of State and matters of national interest as the sitting Prime Minister of Singapore". The Appellants contend that there is no factual basis for finding that the Transcripts covered politically sensitive material because the Transcripts were never placed before the court. We do not accept this argument. On the evidence before us, we see no reason to doubt the accuracy of Mr Tan's summary of the contents of the Transcripts; nor have the Appellants furnished any basis on which the veracity of Mr Tan's account may be questioned. Indeed, the 2nd Appellant had himself perused the Transcripts (see [6] above) and he did not take issue with Mr Tan's description of the material. The sensitive nature of the information contained in the Transcripts is also confirmed by a letter from Mr Wong to Attorney-General Tan sent on 20 August 1982, in which he stated that according to Mr Lee himself, the transcripts retained by the Oral History Unit and those kept in the Cabinet Office (including the Transcripts of Mr Lee) were to be treated differently because of the political sensitivity of the latter.

31 In our judgment, it must also follow, given the awareness of Mr Lee, Attorney-General Tan and Mr Wong of the politically sensitive nature of the information contained in the Transcripts, that they must each have expected that the Transcripts were likely to be subject to the restrictions in the OSA at least as a general matter. This is yet another important aspect of the overall context in which the Interview Agreement should be construed. In this regard, it may be noted that the relevant parts of s 5(1) of the OSA states as follows:

5.—(1) If any person having in his possession or control any secret official code word, countersign or password, or any photograph, drawing, plan, model, article, note, document or information which —

...

(e) *he has obtained, or to which he has had access, owing to his position as a person who holds or has held office under the Government, or as a person who holds, or has held a contract made on behalf of the Government or any specified organisation, or as a person who is or has been employed under a person who holds or has held such an office or contract,*

does any of the following:

(i) communicates directly or indirectly any such information or thing as aforesaid to any foreign Power other than a foreign Power to whom he is duly authorised to communicate it, or to any person other than a person to whom he is authorised to communicate it or to whom it is his duty to communicate it;

...

(ii) retains in his possession or control any such thing as aforesaid when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with all lawful directions issued by lawful authority with regard to the return or disposal thereof;

...

that person shall be guilty of an offence.

[emphasis added]

32 As a preliminary point, we agree with the Judge (at [26] of the Judgment) that the OSA would in principle apply to the Transcripts simply as a legal consequence of the existence of the statute. There was no need for express or implied reference to be made to or incorporation of the OSA in the Interview Agreement because if the materials came within the scope of the OSA, then that Act would apply as a matter of law. No contractual arrangement could displace its operation and in any case, there is nothing in the Interview Agreement that even hints of any desire or intention to exclude the application of the OSA.

33 We turn to consider whether on balance, it is likely that the OSA applies to the Transcripts. In our judgment, the Transcripts probably do fall within s 5(1)(e) of the OSA, insofar as they are documents or information that Mr Lee had obtained owing to his position as a person who held office under the Government at that time; indeed, he gave the interviews in that capacity, as a Government office-holder as part of a Government oral history project, as described above. Given the likely political sensitivity of the contents of the Transcripts, as set out at [30] above, we have no difficulty in finding that Mr Lee, Attorney-General Tan and Mr Wong:

(a) would have viewed the Transcripts with awareness of the existence and operation of s 5(1)(e) of the Official Secrets Act (Cap 233, 1970 Rev Ed) ("OSA 1970") (which is identical to s 5(1)(e) of the current OSA) at the time of the Interview Agreement;

(b) would have viewed a substantial portion of the material contained within the Transcripts as likely falling within the ambit of s 5(1)(e) of the OSA 1970. This also follows naturally from Mr Lee's instructions that these materials be housed in the Cabinet Office because of their "political sensitivity"; and

(c) would have been alive to the fact that it would be an offence to communicate information that fell within the OSA 1970.

34 We therefore reject the Appellants' contention that the Judge had no factual basis to find that s 5(1)(e) of the OSA applied to the contents of the Transcripts because they were never placed before him. While it is of course true that the Transcripts were not placed before the Judge, this does not provide sufficient basis to fault the Judge's finding that s 5(1)(e) of the OSA applied to the Transcripts, for the reasons set out above. Furthermore, having regard to the nature of the material that was likely covered in the Transcripts, we find it impossible to conclude that the Interview Agreement should be construed, as the Appellants appeared to suggest, without regard to the relevant provisions of the OSA.

35 Indeed, Mr Lee's specific concern over safeguarding the confidentiality of the politically sensitive Transcripts is further reinforced by the correspondence that was exchanged between Mr Lee (through Mr Wong) and Attorney-General Tan. In the first letter from Mr Wong to Attorney-General Tan dated 6 July 1982, Mr Wong said Mr Lee thought that some of the attached draft interview agreements were "scanty and inadequate and contain[ed] many loopholes and problems". Mr Lee observed that "the drafts [might] be all right for the average interviewees but they [would] not do for key participants". It cannot be doubted that Mr Lee rightly regarded himself as falling within the latter category.

36 In his reply on 14 August 1982, Attorney-General Tan noted that persons interviewed might wish to place "restrictions on the access and use of the recordings and transcripts". He attached various draft interview agreements obtained from the Bancroft Library at the University of California, Berkeley ("Berkeley Library") and the John F. Kennedy Library ("Kennedy Library"), which contained provisions to address such concerns. He further noted that the restrictions suggested in the drafts were not exhaustive and could be drafted to suit the specific requirements imposed by the interviewee.

37 The letters from these libraries that were annexed to Attorney-General Tan's letter are also instructive. In response to a query about the protections that could be offered to interviewees, the Berkeley Library stated that it offered "seal privileges"; in other words, the interview would be placed in a sealed packet to be opened only at a certain future date. In response to an inquiry regarding the problem of "assurances of confidentiality to interviewees", the Kennedy Library acknowledged that politicians had become increasingly aware that "their candid reflections of today may not be their preferred thoughts of tomorrow" and that they often wished to avoid the potential embarrassment of having to explain the divergence. The letter also discussed how the source material should be protected.

38 After Mr Lee had perused the drafts collated by Attorney-General Tan, he sent instructions by way of a letter dated 20 August 1982 for the latter to draft the interview agreements for the President, Prime Minister, 1st Deputy Prime Minister, 2nd Deputy Prime Minister, Minister for Law and Mrs Lee Kuan Yew, in terms that closely mirrored the Kennedy Library draft as well as the final version of Mr Lee's Interview Agreement (see [4] above). Specifically, Mr Lee required that the following terms be included:

(a) The interview tapes and transcripts "shall not be made available to anyone without interviewee's express written permission" [underline in original] until the year 2000 or the interviewee's death whichever was later.

(b) The interview tapes and transcripts were to remain in the custody of the Cabinet Secretary until the year 2000 or the interviewee's death, whichever was later, after which it might, at the discretion of the Government, be handed over to the Director of the Oral History Unit.

(c) Even after that period, the interview tapes and transcripts could be made available for "approved authorised research only with the approval of the [G]overnment".

(d) The interviewee reserved all copyright and literary property rights to the interview tapes and transcripts but only until the year 2000 or the interviewee's death, whichever was later, at which time those rights vested in the Government.

39 The concern over safeguarding access to the Transcripts is also evident from Attorney-General Tan's position in relation to one of the earlier drafts of the Interview Agreement. Under the provisions of this earlier draft, the Director of the Oral History Unit had "full right and liberty at her discretion and without reference to [the interviewee]" to grant access to, supply copies of and use the recordings and transcripts in publication or broadcasting, and "generally, to do anything in relation to the recordings and transcripts as the owner thereof might do". When sending Mr Lee a revised draft, Attorney-General Tan specifically stated that "[he had] not given the Director [of the Oral History Unit] the wide powers originally envisaged in the earlier draft. *Strict control over access to the recordings is envisaged*" [emphasis added].

40 Having regard to this context, we are satisfied that among the key concerns operating on the minds of the parties, including Mr Lee in particular, was the need to ensure that the Interview Agreement provided a sufficient assurance of confidentiality and security against unwarranted disclosure or circulation of the material to anyone else before a suitable time had passed; and even then, only with the permission of the Government. Mr Lee plainly anticipated that the Government would act in the best interests of Singapore in making these decisions after his death. Bearing in mind this critical context, we turn to the construction of the Interview Agreement itself.

The clauses of the Interview Agreement

41 We analyse each of the material clauses of the Interview Agreement but in doing so, we also consider the document as a whole and, where relevant, make the necessary cross-references. We also have regard to both the text of the clauses as well as the critical context that we have explained in the preceding section of the judgment. We further note that the Interview Agreement does not differentiate between the portions of the Transcripts that deal with Mr Lee's personal matters and those that deal with politically sensitive issues. On the contrary, the Transcripts were treated as a single composite item.

Clause 1

42 Clause 1 of the Interview Agreement is reproduced below for convenience:

I, Lee Kuan Yew, do hereby give to the Director, Archives and Oral History Department, Ministry of Culture, and the Secretary to the Cabinet for use and administration, on the terms and conditions hereinafter provided, the tape recordings and transcripts of the interview conducted with me between 8 Jul 1981 – 5 Jul 1982.

43 The Appellants' position is that on a true construction of Clause 1, Mr Lee is the owner of the Transcripts as chattels, whereas the Government is a mere custodian of them. In other words, only physical possession of the Transcripts was transferred, but not rights of ownership. This interpretation, the Appellants contend, is clear from the opening words of Clause 1, by which Mr Lee "gives" the Transcripts to the Government; Mr Lee could only have given what he owned. The Respondent, on the other hand, asserts that the Government owns the Transcripts as they are official Government documents and that this interpretation comports with the Transcripts being created as a result of a Government oral history project.

44 In our judgment, Clause 1 clearly recognises that the ownership of the physical Transcripts vests in the Government. All parties were aware that the Transcripts were produced as part of a Government oral history project and the relevant agreement was drafted by the incumbent Attorney-General acting on the instructions of Mr Lee, who was then the Prime Minister. The project itself was debated in Parliament and undertaken with public resources. It is inconceivable in these circumstances to view the project (and the Transcripts prepared thereunder) as a personal enterprise of Mr Lee. Further, a plain reading of Clause 1 does not support the Appellants' contention that when Mr Lee gave the Transcripts to the Government, this merely involved a custodial arrangement and the transfer of physical possession without any alienation of ownership. Such a limited purpose would be consistent neither with the word "give" that was used, since that connotes an alienation of ownership rather than of mere possession, nor with the other provisions of the Interview Agreement which made it clear that the Government had continuing and final rights over the Transcripts. Instead, Mr Lee plainly recognised that save as provided in the rest of the Interview Agreement, he retained no rights or interests in the material that was generated.

45 It is true that the other clauses in the Interview Agreement set out the terms and conditions governing the use and administration of the Transcripts. This was because Mr Lee contemplated that the Government's ownership of the physical Transcripts would not be unfettered; instead, it owed certain duties and responsibilities to Mr Lee, the interviewee, primarily to protect the latter's desire for confidentiality of the Transcripts (as described in the previous section of this judgment); and secondarily to ensure that any use of the Transcripts after Mr Lee's death, when his personal interest in the confidentiality of the material would subside, would be dealt with by the Government as a matter of its prerogative. As we have already noted, this is to be seen in the light of the entirely reasonable expectation that this prerogative would be exercised by the Government in good faith in the interests of Singapore.

Clause 2(a)

46 We turn to Clause 2(a) of the Interview Agreement, which reads:

2. The use and administration of the recordings and transcripts shall be subject to the following terms and conditions:-

(a) I retain to myself all copyright including literary property rights to the recordings and transcripts until the year two thousand (2000) or 5 years after my death, whichever is later, at which time all copyright including any literary property rights in the recordings and transcripts shall vest in the Government of Singapore;

47 Clause 2(a) expressly states that Mr Lee "retain[s]" copyright in the Transcript for a specified period. This is consistent with our interpretation of Clause 1, which vested ownership of the physical Transcripts in the Government. Read together, Clauses 1 and 2(a) make it clear that although the Government possessed rights of ownership over the physical Transcripts, it did not possess copyright over its contents, such copyright having been "retain[ed]" by Mr Lee. In fact, the parties are in agreement that Clause 2(a) vests the copyright in the Transcripts in Mr Lee and the point seems indisputable given the clear and unambiguous wording of Clause 2(a). Turning to the reservation of copyright to Mr Lee, it should first be noted that copyright protects the *expression* of an author. It does not protect ideas, facts or data: see *Global Yellow Pages Ltd v Promedia Directories Pte Ltd and another matter* [2017] 2 SLR 185 at [15]. Hence, the interest that vested in Mr Lee pertained to the manner in which he expressed the information contained in the Transcripts. As copyright owner, Mr Lee had the right (among other things) to reproduce, publish, communicate and adapt the Transcripts (see s 1(2) of the Copyright Act 1911 (Cap 46) ("the Copyright Act 1911"); see also s 26(1)(a) and s 82 of the Copyright Act (Cap 63, 2006 Rev Ed) ("the Copyright Act")), for the limited period until the year 2000 or five years after his death (whichever was later) ("the critical time"), after which the copyright in the Transcripts would vest in the Government.

48 In this regard, we make two observations. First, Clause 2(a) is important because it represents an agreement between the parties to depart from the default position under s 18 of the Copyright Act 1911 (which is, in material terms, retained in s 197 of the Copyright Act) that copyright in a work published under the direction or control of any Government department vested in the Government. We note that in one of the earlier drafts of the Interview Agreement (with which Mr Lee expressed dissatisfaction), the ownership of the copyright was stated to belong to the Ministry of Culture. When enclosing a revised version of the Interview Agreement, Attorney-General Tan stated that "...it [is] specifically provided...that copyright should *remain with the author* until such time as instructed" [emphasis added].

49 Our second observation is that when Clauses 1 and 2(a) of the Interview Agreement are read together, it becomes clear that the parties intended that the ownership of the *physical Transcripts* and the ownership of the *copyright* in them would be bifurcated. In order for Mr Lee, as the copyright owner, to exercise his rights in the Transcripts (namely, to reproduce, publish, communicate and/or adapt them), he needed to have access to the physical documents. However, because the ownership of the physical Transcripts vested in the Government, Mr Lee's rights could not meaningfully have been exercised unless the Government consented to his having access to the physical Transcripts. In fact, as will be seen shortly, express provision was made in Clause 3 to overcome this difficulty. Similarly, although the Government owned the physical Transcripts, it would not be entitled to exercise any of the rights of a copyright owner (such as making a copy of the Transcripts) without Mr Lee's consent. There was thus a system of dual controls under which no single party had complete control over the Transcripts, and neither party acting alone could apply the Transcripts in any way that it wished. This furthered the objective of safeguarding the confidentiality of the Transcripts.

Clauses 2(b) and 2(c)

50 Clauses 2(b) and 2(c) provide:

(b) The recordings and transcripts shall be kept in the custody of the Secretary to the Cabinet until the year two thousand (2000) or 5 years after my death, whichever is later, when it may, at the discretion of the Government, be handed over to the custody of the Director, Archives and Oral History Department;

(c) There shall be no access to, supply of copies of or use of the recordings and transcripts by anyone until the year two thousand (2000) or 5 years after my death, whichever is later, without my express written permission, and subject to such conditions as may be stated therein;

51 Clauses 2(b) and 2(c) make specific provisions for access to and handling of the physical Transcripts. Clause 2(b) deals with the *custodian* of the Transcripts. It states that the Transcripts shall be kept in the custody of the Cabinet Secretary up to the critical time. This directly addressed Mr Lee's concerns as expressed to Attorney-General Tan over the need to safeguard the politically sensitive information contained in the Transcripts (see [30] above). In fact, Mr Lee contemplated and explicitly provided that for at least five years *after* his death (or until the year 2000, whichever was the later), the Transcripts had to remain in the possession of the Cabinet Secretary. It was only after this critical time that the Transcripts could, *at the discretion of the Government*, be handed over to the custody of the Director of the Oral History Unit. It is clear to us that in making such provision, Mr Lee placed his trust in the good judgment of the Government to determine, in the exercise of its discretion, whether this would be an appropriate arrangement having regard to the political sensitivity of the Transcripts at the relevant point in time.

52 Clause 2(c) restricts access to, and copying or use of the Transcripts until the year 2000 or five years after Mr Lee's death, whichever is the later. This period can, for ease of analysis, be separated into two shorter periods: first, the period up to Mr Lee's death; and second, the five-year period from his death ("the latter period"). In respect of both these periods, Clause 2(c) provides that there shall be *no* access to, copying or use of the Transcripts except with Mr Lee's prior written permission and subject to any conditions he might impose. This reserves a degree of flexibility for further and more nuanced control of any access to, supply of copies and use of the Transcripts as might be permitted depending on the individual request, and it dovetails with the parties' overriding desire to protect the security and confidentiality of that information. However, it should be emphasised that this was a permissive rather than a mandatory provision. Clause 2(c) contemplated that Mr Lee may grant permission to access, copy or use the Transcripts subject to conditions *he*

might impose; but it does not go further to mandate or oblige the Government, as the owner of the physical documents, to grant such access in order to permit copies or use to be made if it did not consider this appropriate in all the circumstances. This follows from the effect of a system of dual controls envisaged in Clauses 1 and 2(a) as we have explained above.

53 Aside from this, there remains a further question as to whether in the latter period (that is, the period following Mr Lee's death), Mr Lee's right to give express written permission for access to, supply of copies of or use of the Transcripts passed to his estate. We return to this at [65] below.

Clause 2(d)

54 Clause 2(d) of the Interview Agreement reads:

(d) After the year two thousand (2000) or 5 years after my death, whichever is later, the recordings and transcripts may be made available for such research as the Government may approve.

55 The parties agree that this provision deals with the period after the critical time. In that period, the Government will own the Transcripts (including the copyright) and can make the Transcripts available to persons, but such access is only allowed for the purposes of such research as the Government may approve. This, in our judgment, demonstrates that the Government retains the right to withhold any access to the Transcripts even after Mr Lee's death.

Clause 3

56 Clause 3 states:

Nothing in this agreement precludes any use I may want to make myself of the recordings and transcripts or the information therein. In the event of the publication by me of the transcripts of the interview all copyright including any literary property rights in the recordings and transcripts shall, notwithstanding the provisions of clause 2(a) of this Agreement, continue to be retained by me even after the year two thousand (2000) or 5 years after my death, whichever is later. In such an event the Government shall have the right to make the recordings and transcripts available for research approved by it and such other rights over the recordings and transcripts as I may grant.

57 In our judgment, Clause 3 has two effects. First, it retains to Mr Lee the right to use and access the Transcripts himself. This is not disputed by either party. While Mr Lee was keen to guard the material in the Transcripts from *anyone else* (see Clauses 2(b) and 2(c) above), his *own* right to use and access the documents was unsurprisingly not affected for the simple reason that the information in the Transcripts emanated from him; simply put, there was nothing he needed to protect from himself. This also dealt with the possible conundrum that might have arisen by the bifurcation of ownership of the documents and of the copyright as noted at [49] above, at least as far as Mr Lee himself was concerned. It is clear that this right was entirely personal to Mr Lee as evident from the words "as I may want to make *myself*" [emphasis added].

58 Second, Clause 3 makes provision for the potential unravelling of the rights and obligations concerning the use and administration of the Transcripts, as set out in Clause 2. If Mr Lee were to publish the Transcripts, this being an exercise of his rights as the holder of the copyright (which was, of course, subject to the strictures of the OSA), the limitation in the duration for which the copyright would be retained by him under Clause 2(a) of the Interview Agreement would be lifted and the

copyright in the Transcripts would vest in Mr Lee even *after* the critical time. In such an event, the restrictions in Clauses 2(b) and 2(c) would also no longer apply. Instead, the Government would, immediately upon publication, acquire the right to make the Transcripts available for research approved by it – a right that originally only accrued *after* the critical time under Clause 2(d). This follows from the fact that if the Transcripts were published lawfully, then to that extent, the information would be in the public domain and there would be no further need to maintain its confidentiality. As things turned out, the Transcripts were never published by Mr Lee; thus (a) the limitation in copyright duration under Clause 2(a) still applies; and (b) the full range of obligations under Clause 2 of the Interview Agreement remains in force.

Do Mr Lee's rights under the Interview Agreement pass to his estate?

59 The question that arises for consideration at this juncture is whether the rights accorded to Mr Lee under the Interview Agreement passed to his estate such that the declarations sought by the Appellants can be granted.

The copyright

60 We begin with the copyright which vested in Mr Lee under Clause 2(a) of the Interview Agreement. The Respondent concedes that copyright passed to Mr Lee's estate, but conceives of that copyright *purely* as a "*negative right* to prevent others from making copies or publishing copyrighted material without permission" [emphasis added].

61 We do not accept this characterisation of copyright. In our judgment, copyright comprises an entire bundle of legally enforceable exclusive rights which includes, but is certainly not limited to, a negative right to prevent unauthorised use of a work. Copyright might once have been conceived as being primarily concerned with protecting works from being copied; but over time, the scope of copyright has expanded in terms of the range of rights conferred on the copyright owner: George Wei, *The Law of Copyright in Singapore* (SNP Editions, 2nd Ed, 2000) at para 1.1. In our judgment, the modern conception of copyright extends to *positive* rights, that enable the owner "*to do and to authorise others to do* certain exclusive acts" [emphasis added]: Susanna H S Leong, *Intellectual Property Law of Singapore* (Academy Publishing, 2013) at para 2.010. This is put beyond any doubt by the provisions of the Copyright Act itself. For instance, s 26(1)(a) of the Copyright Act, which concerns literary, dramatic and musical works, expressly provides that "copyright, in relation to a work, is the exclusive right ... to do all of any of the following acts..." The provision thereafter sets out a list of positive acts such as the reproduction, publication, performance and communication of the work. These are the very acts that the copyright owner is also entitled, in exercising his negative rights, to *prevent* unauthorised persons from doing.

62 We are satisfied that the entire bundle of copyright which vested in Mr Lee passed to his estate. But although the *positive* rights of Mr Lee as the copyright owner therefore also accrue to Mr Lee's estate upon his death, these rights do not take the estate very far in terms of the declarations that it seeks. As we have noted at [49] above, the bifurcation of the ownership of the physical Transcripts on the one hand and the copyright on the other means that leaving aside Clause 3 for the moment, the copyright owner (Mr Lee) is not in a position to exercise any of the positive rights without the consent of the owner of the physical Transcripts (the Government) to grant access to the Transcripts. In this regard, it is helpful to consider the early English case of *In Re Dickens, Dickens v Hawksley* [1935] Ch 267. In that case, the well-known writer Charles Dickens ("Dickens"), by his will, left "all [his] private papers whatsoever and wheresoever" to his sister-in-law, Ms Georgina Hogarth ("Ms Hogarth"). He then disposed of his residuary "real and personal estate (including [his] copyrights)" to the trustees of his residuary estate. One of his properties was the manuscript of an

unpublished work, *The Life of Christ*, which was sold to a publisher after Dickens' death. The question in the originating summons was whether the rights in the manuscript passed to Ms Hogarth or to the trustees of his residuary estate, and consequently, which party was entitled to the monies obtained under the publishing contract. The Court of Appeal decided that the bequest of "private papers" (to Ms Hogarth) passed only the property in the *physical manuscript* of *The Life of Christ*, but not the copyright in it, while the bequest of his "personal estate" (to the trustees of his residuary estate) passed the *copyright* in the work (at 295-296). The consent of both parties was required before the manuscript of *The Life of Christ* could practicably be published. Ms Hogarth could not have published from the original manuscript in her possession without the consent of the trustees as copyright owners (at 307). At the same time, the trustees of the residuary estate could not have realised the copyright belonging to them by means of publication without reference or access to the original (physical) manuscript (at 290 and 296). If the trustees and Ms Hogarth could not agree, there would be a deadlock. The court therefore ordered that the monies received from the publisher be divided equally between the estate of Ms Hogarth and the trustees of Dickens' residuary estate (at 290 and 309).

63 In Mr Lee's case, he carved out a right *for himself* in Clause 3 to ensure that his positive rights as the owner of the copyright could be practically exercised, but as noted at [57] above and [66] below, we are satisfied that this was a right that was entirely personal to Mr Lee and did not pass to his estate. As we have noted earlier, Mr Lee's overriding concern at the time of the Interview Agreement was to maintain strict control over the Transcripts which evidently contain his unvarnished accounts of matters of political sensitivity. Any other view would be inimical to his desire to *personally* protect the information in the Transcripts from disclosure, except as and when he himself deemed fit. In this regard, when the Interview Agreement was signed in 1983, Mr Lee could not have anticipated who his executors were going to be because he did not have a known will at that time. Accordingly, it is implausible in our judgment that he would have intended the rights he had carved out for himself under the Interview Agreement to be passed to as-yet unnamed and unknown executors who would potentially be able to wield considerable control over the politically sensitive Transcripts. Consequently, even though the positive rights of the copyright technically passed to Mr Lee's estate, they cannot be meaningfully exercised without the consent and cooperation of the Government, as owner of the physical Transcripts. As we have already observed, such consent and cooperation are matters that are left to the Government's discretion, to be exercised according to what it deems to be in the national interest.

64 The limits imposed by the Interview Agreement do not affect the *negative* rights of copyright which likewise pass to and are held by the estate until the critical time. The estate held these rights not only (as the Judge held) for the purposes of ensuring the Government's compliance with the terms of the Interview Agreement, but also for the purposes of allowing it to bring any infringement actions against third parties in enforcement of the copyright. This is simply an incident of the Appellants' rights as executors: see *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (John Ross Martyn and Nicholas Caddick gen eds) (Sweet & Maxwell, 20th Ed, 2013) at para 45-49. These negative rights are also consistent with Mr Lee's desire to guard against the disclosure of such information before the critical time.

The right to grant permission for access to, supply of copies of or use of the Transcripts

65 We return to the point we alluded to at [53] above. For largely the same reasons outlined in [63] above, we are similarly satisfied that Mr Lee did not intend to pass on to his estate the right to grant permission for access to, supply of copies of, or use of the Transcripts under Clause 2(c) of the Interview Agreement to his estate. Instead, the words "*my* express written permission" [emphasis added] indicate Mr Lee's intention that he, and only he, was authorised to grant that permission.

However, in substance, the estate remains in a position to bring an action to prevent the Government from permitting any copying or use of the Transcripts, should it manifest an intention to do so, before the expiry of the critical time. We say this because following Mr Lee's death, there can be no question of his giving any consent personally, unless he had prospectively done so during his lifetime for access, use or making a copy of the Transcripts after his death. Absent such consent, Clause 2(c) *prohibits* such access, copying or use. Hence, by virtue of the negative rights which are vested in the estate and which may be exercised without the consent or cooperation of the Government, the estate may act in such circumstances to restrain a breach of copyright, such as an unauthorised use of the Transcripts (see [64] above).

The right to personally use the Transcripts

66 Finally, we are amply satisfied that Mr Lee's personal right to use the Transcripts under Clause 3 of the Interview Agreement does not pass to his estate. We have explained this at [57] and [63] above. As alluded to at [33] above, we have no doubt that Mr Lee was aware and indeed mindful of the existence and operation of the OSA. That being the case, Mr Lee could not have envisioned that his estate would be able to make use of the Transcripts in the same way that he could. If the unqualified right to use the Transcripts under Clause 3 vests in the estate, it is likely that the information in the Transcripts would have to be communicated to the Appellants (as executors of his estate), which would, in the absence of lawful authorisation to do so, at least potentially be an offence under s 5(1)(i) of the OSA. It would equally be an offence for the Appellants to retain such information under s 5(1)(iii) of the OSA. We find it inconceivable that Mr Lee would have intended this. The Appellants have indicated that they would not release any information in the Transcripts in contravention of the OSA but this wholly misses the point that their *retention* of the information would itself contravene that Act. Their status as Mr Lee's children does not exempt them from the operation of the OSA.

67 These conclusions are entirely consistent with Mr Lee's desire to ensure that the information in the Transcripts would be protected until the critical time and even beyond that, because the interests at stake are not personal to Mr Lee but involve matters of national interest. It would be very surprising if the control of such material were left to the Appellants, who, as executors, are concerned only with his personal affairs. Relatedly, Mr Lee gave the interviews not in his personal capacity, but in his capacity as the Prime Minister of Singapore, as part of a Government project: this too militates against the notion of such rights being vested in his personal executors.

68 The Appellants say that the Interview Agreement consistently provides that the rights accrue until the critical time, that is, up to "the year two thousand (2000) or 5 years after [Mr Lee's] death" [emphasis added]. This is at variance with an earlier draft in which the critical time was the year 2000 or upon the interviewee's death (see [38] above). While no background was provided as to why this change was made, the Appellants postulate that the amendment must have been deliberate and made for the purposes of ensuring that the rights pass effectively to the estate for a fixed period of time after Mr Lee's death. We disagree. In our judgment, it is more likely that the provision for the critical time to extend to five years after Mr Lee's death (rather than upon his death) was to establish a minimum moratorium period. Mr Lee deemed that the expiry of the critical time would be the earliest time at which the information *could* be made available for research and even then, this was subject to the overriding direction of the Government. The practical effect of this is that if Mr Lee did not grant *prospective permission* under Clause 2(c) during his lifetime for access to, supply of copies of, or use of the Transcripts in the period after his death, then *no one* can have access to or use of the Transcripts until after the critical time. Further, even if there had been such permission, as we have noted at [52] above, the Government would not be obliged to permit such access to the Transcripts.

69 For these reasons, we find that although Mr Lee had secured for himself certain rights under the Interview Agreement while imposing some restrictions on the Government's ownership rights over the Transcripts, these were *personal* rights of his and not transmissible even to his estate. As for the positive rights that have passed to the estate as part of the copyright, these cannot be meaningfully exercised save with the consent and cooperation of the Government. However, as we have explained earlier, this does not affect the transmission and exercise of the negative rights of his copyright.

Conclusion

70 We accordingly order as follows in relation to the declarations sought:

(a) Declaration (a) is refused because it is not the case that all rights vested in Mr Lee under the Interview Agreement pass to and vest in his estate.

(b) Declaration (b) is refused because the estate is not entitled to use and/or have copies of the Transcripts.

(c) Declaration (c) is refused because the granting of permission for access to, supply of copies of and use of the Transcripts is a personal right of Mr Lee. Equally, unless Mr Lee can be shown to have given prospective permission in this regard, the Government *cannot* grant access to, supply of copies of, or use of the Transcripts to anyone for the period of five years from Mr Lee's death (that is, until 23 March 2020), after which it has the *discretion* to do so for the purposes of approved research as provided for in Clause 2(d).

(d) Declaration (d) is dismissed because there is no obligation on the part of the Cabinet Secretary to make the estate aware of requests for copies of the Transcripts after Mr Lee's death.

71 In the circumstances, we dismiss the appeal. Unless the parties come to any other arrangement on costs, they may seek our directions on costs by making written submissions, limited to five pages each, on the appropriate order and quantum of costs, within 14 days of the date of this judgment.