HCAL80/97

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ADMINISTRATIVE LAW LIST NO.80 OF 1997

BETWEEN

TRAN THANG LAM AND OTHERS — Applicants

and

THE DIRECTOR OF IMMIGRATION — Respondent

Before : Stock J in Court
Dates of hearing : 3rd-5th March 1999
Date of handing down judgment : 26th May 1999

J U D G M E N T

Background

This is an application to re-re-amend the notice of motion in this judicial review. These proceedings were launched in September 1997 when leave to apply for judicial review was granted. The decisions which have been central to the case are those made by the Director of Immigration between June and October 1997 by which the Director classified the applicants as refugees from Vietnam in China, permitted them to remain as such in Hong Kong under section 13A of the *Immigration Ordinance*, and then ordered their removal to China under section 13E of that *Ordinance*. It is the removal orders which are under challenge. By the time the substantive application came to be heard in

July 1998, it was infused with such a multitude of extant issues (with the possibility of yet further grounds if applications to re-re-amend were allowed), and so awash with torrents of evidence filed, that I decided first to try a number of defined central issues which might dispose of the case, or if not dispose of it, at least (one hoped) make it more manageable and also help to crystallise issues in the several complex interlocutory applications which were outstanding.

Five central issues or questions were drawn for my determination and they were answered in a judgment which was handed down in September 1998. The determination of those issues did not, in the event, dispose of the case, and before the second substantive stage of the application for judicial review can proceed, I must decide the outstanding interlocutory applications.

The remaining interlocutory applications

The interlocutory applications to be determined are these :

(1) an application by the applicants to re-re-amend the notice of motion;

(2) an application by the applicants for the attendance of witnesses who have deposed on behalf of the respondent;

(3) an application by the applicants for discovery of document; and

(4) applications by each side to strike out evidence filed by the other.

Applications for cross-examination, for discovery, and to strike out evidence, depend largely on the application to re-re-amend, and it is that application with which this judgment deals.

The less complex applications

There are a number of applications to re-re-amend which resolve themselves quite readily, and I shall address them first.

Paragraph 50A : It is proposed to insert this paragraph to contend that when the applicants were interviewed by immigration officers, the procedure adopted by the officers was unfair insofar as the officers did not show them their arrival statements, thus depriving them of the opportunity adequately to present their case fully. This is an issue which, it so happens, I have addressed fully in the judgment already delivered. It makes sense, therefore, to give leave to make the re-re-amendment, but the point does not fall for further argument.

Paragraph 52A : The suggestion here is that the applicants and their legal representatives were refused the opportunity to review interview notes as well as prior statements, and to make submissions and corrections prior to the decisions to remove the applicants from Hong Kong. This, too, is an issue canvassed before me at the hearing last year, and determined in the course of my judgment, and I grant leave to make the re-re-amendment though, again, it is not a point open to further debate.

Paragraphs 53(8) to (12) inclusive : Paragraphs 53(1) to (7) inclusive (argument in respect of which leave has already been given by Keith J.) are allegations that the Director was predisposed to disbelieve the applicants, wherefore no fair determination could be made. This allegation is based upon the fact that the decision maker was Mr Choy, to whom extensive reference is made in the first stage judgment, that he had been intimately involved in the past few years defending the merits of what is said to have been an unlawful policy designed to secure the removal of the applicants as if they were illegal immigrants; that he has always maintained that the Mainland settled all ethnic

Chinese from Vietnam; that he relied exclusively upon his own understanding of conditions for ethnic Chinese who fled to the Mainland from Vietnam; that he failed to find in favour of even one applicant; that he interviewed none of the applicants; that in several cases immigration officers said that the interviews were but a mere formality, and that a decision had already been made to send them back; and that it was unnecessary for Mr Choy to be the decision maker. It is proposed by the re-re-amendments to add paragraphs (8) to (12) to contend that Mr Choy was acting in bad faith (a contention fairly close, it seems to me, to the tenor of the allegation of predisposition); and, by way of particulars of this allegation of bad faith, and further particulars of the predisposition allegation, that in related habeas corpus proceedings in August 1997, before many of the decisions subject to this judicial review were taken, it was already evident that he had made up his mind that the Mainland settled all refugees from Vietnam in China; that he, in May 1997, had told the solicitors for the applicants not to take hasty and ill advised judicial review proceedings; that the approach to potential resettlement countries about the possibility of resettlement of the applicants was a charade; that he Mr Choy has always referred to the applicants as “illegal immigrants”; and that his decisions evidence a deliberate ploy to circumvent appeal to the Refugee Status Review Board. All these allegations are, it seems to me, extensions or further particulars of the predisposition argument for which leave has already been given, and it would be artificial if I were not to grant leave for these specific re-re-amendments. Nor do I think that the granting of leave to add these particulars will (further) encourage the infinite process of contestation, which is a virus that has already invaded the body of this judicial review. Accordingly, I grant leave for these re-re-amendments by the insertion of paragraphs (8) to 12 inclusive.

The more complex applications

There remain two categories of re-re-amendments which are somewhat more difficult to determine :

The first may broadly be described as an allegation that the Director, in the person of Mr Choy, did not in fact himself make the decisions which he says he made, but that the decisions were in fact made by others, namely, by his subordinates, the immigration officers who interviewed the applicants :

(1) Paragraph 54 : By this proposed paragraph, it is intended to assert that Mr Choy should have, but did not, interview the applicants or put to them reasons why he was minded to make the removal orders. I pause to note that this is an issue already determined against the applicants in the judgment which I have delivered. It is said in the same paragraph that :

> "In the circumstances, in adopting the procedures she did, the Director of Immigration unlawfully delegated her powers under s.13E to immigration officers who decided the questions of fact which determined whether an order under s.13E would be made by Choy."

Given my decision that there was no obligation upon Mr Choy to conduct the interviews himself nor to notify the applicants of his intention to make a removal order, the second contention is not tenable. In order to marry the notice of motion with issues which have been argued and determined, I shall grant leave for the re-re-amendment which is the proposed paragraph 54, but the point does not fall for further debate.

(2) The proposed paragraphs 55 and 56 assert that, alternatively, Mr Choy acted at the dictation of the immigration officers in making his decisions under section 13E(1) to order the removal of the applicants from Hong Kong. The point, as outlined by Mr Dykes SC in argument on behalf of the applicants, is somewhat different from the point in paragraph 54. The suggestion here is that Mr Choy did not himself, in truth, consider the individual cases as he suggests. It is argued that the reasons which he has

given for the orders which he has made constitute an *ex post facto* rationalisation. This is argument which I shall deal with below under the heading "the bogus reasons amendments" :

There remain proposed allegations which, although not all gathered under this head in the (proposed) notice of motion, nonetheless can conveniently be said to come under the umbrella of that which Mr Dykes has labelled "procedural mishap". The new paragraphs which the applicants wish to insert are :

(1) Paragraph 52B : an assertion that the records of screening interviews and prior statements of some applicants have been rewritten, altered, amended, or that relevant information has been omitted.

(2) Paragraph 52C : a contention that the process of read back during interviews was perfunctory and rushed.

(3) Paragraph 57 : the allegation is that the information finally presented to Mr Choy was "corrupt", in that there were errors in the records of interview; arrival statements had not been read back, and were incomplete; answers were, in their recording, suppressed and distorted and inaccurate, both in arrival statements and in records of screening interviews (in one case the word "falsification" is used in relation to a screening statement); and that there were threats of violence, and that there was intimidating conduct when arrival statements were taken.

The immediate task

In practical terms, the ramifications of permitting these further amendments are substantial. It would almost certainly mean further discovery of documents, and oral evidence in the case of each applicant in order to

determine the credibility of his or her complaint, and then, if credible, argument on the materiality of errors to the decision making process, and cross-examination of those who have deposed on behalf of the Respondent. I am told that it would be necessary for further documentary evidence (affidavits and exhibits) to be filed before such mini-trials were conducted, adding therefore to the 4,000 or so pages already filed in relation to ten of the applicants alone.

It is a case in which far too much evidence has in any event already been filed, a comment I made in my judgment in September last year, and it is a case in which, I regret to say, not too much attention has been paid to facilitating the task of this court. One has but to pick a morsel from one of the affirmations filed for a taste of what I mean :

> "Another new example of misinterpretation and misconstruction is in paragraph 15 of Robert Brook's 7th affirmation. He now misrepresents what I said in my 1st interlocutory affirmation to achieve, at least in his mind, a discrepancy between my 3rd affirmation in the substantive proceedings and my 1st interlocutory affirmation. At the same time, he succeeds in ignoring paragraph 319 of my 3rd affirmation in the substantive proceedings which is clearly to be read with the earlier paragraph 253 in the same affirmation which he misinterprets."

How it is thought that any court can possibly follow passages of that kind, and how it is thought that this quantity of evidence can, in a judicial review, ever be warranted, and how it is thought that public expenditure to this extent can be justified are matters which I will in due course have to address. It follows that an important facet of the exercise upon which I have been engaged in this interlocutory application is an attempt to ensure that the case will only proceed within the realms for which judicial review is designed, to assess whether points which are now sought to be taken could have been taken before; to assess how material are alleged errors or omissions to the decisions taken in this case; and to guard against any temptation that there may be to drag

this case into every conceivable tributary created by the evidence, as that evidence relentlessly erupts. To these ends, I have listened to oral submissions by counsel for three days and have since examined, in detail, the evidence filed to see what allegations were made, when and by whom, and importantly, to assess the materiality of the points now raised.

Procedural history

These applicants have been litigating their positions since 1995. The history before 1997 is rehearsed in my September 1998 judgment. The history of these particular proceedings is as follows :

In **August 1997**, the applicants obtained leave to apply for judicial review. It was said in the grounds then advanced that the evidence originally placed before the Director of Immigration was that they had been denied minimum rights, in other words, that there was no evidence upon which the Director of Immigration could properly conclude that Conclusion 58 (of the Executive Committee of the High Commissioner's Programme) did not apply.

In support of the application, affirmations were filed by ten of the applicants stating what had happened to them on the Mainland after their departure from Vietnam in or about 1979.

By two affirmations in late **November 1997**, Mr Choy on behalf of the Director answered their affirmations and set out at length the history of the "ECVII" problem and, in particular, the evidence to hand of country conditions which suggested to him what had in fact happened to those who left Vietnam in 1979 or thereabouts. He then also dealt with the cases of the ten applicants, and why it was he did not believe them. In doing that, he referred, certainly, to disparities between their arrival statements and their screening statements, but also tested their credibility and particular assertions made by them against his

knowledge of country conditions, and of Mainland policies, and of expenditure of resources, and against what happened in particular areas (such as Behei), which did not fit the accounts given, as well as other factors which militated against their stories; and, not least, against evidence from Mainland authorities about what had happened to particular applicants.

In early **December 1997**, there was then an application by the applicants for discovery of documents. What the applicants sought was discovery of the interview records and the immigration records. Keith J. declined to order discovery. He referred in his judgment to authority (**R v Secretary of State for Home Affairs ex parte Harris** (unreported; 10th December 1987) which was to the effect that an applicant for judicial review was not entitled to go behind an affidavit in order to seek to ascertain whether it was correct or not, unless there was some material available outside that contained in the affidavit to suggest that in some material respect, the affidavit was not accurate.

At the end of December 1997, affidavits were filed by the 'test' applicants — all alleging errors in the records by immigration officers. There are allegations of bad faith, including allegations that the immigration officers in the screening process said that the applicants would be sent back, whether or not they were classified as refugees, and allegations that arrival statements were inaccurate.

At the same time, the applicants gave notice that they would apply to re-amend the application to allege procedural unfairness and predisposition. On **6th January 1998**, they were granted leave by Keith J. to do so, and the re-amendments were made in early February 1998. The procedural fairness amendment did not make allegations of bad faith, or of inaccurate records, or of intimidation; in other words, there were no allegations in those re-amendments of "procedural mishap". Instead, the re-amendment alleging procedural

unfairness constituted allegations that country condition evidence was not put to the applicants, and that the Director was predisposed to disbelieve them.

In late **February 1998**, Keith J. gave leave to the respondent to file further evidence, and the applicants to file evidence in reply to such further evidence as the respondent would file.

At the end of February 1998, there was filed a long affirmation by Mr Choy. Not including its exhibits, it ran to 73 pages. It deals with the following matters :

(1) It purports to interpret, at some length, the decision of the Privy Council in the proceedings which constituted the precursor to these proceedings.

(2) It states that although country condition evidence was such as to justify general conclusions about registration of refugees from Vietnam, he, Mr Choy, has considered each case and were he to find that a particular applicant had slipped the settlement net he would find that that applicant had not been recognised and protected as a refugee in China and was therefore entitled to resettlement overseas. "I certainly did not see any proposition based on country condition evidence as predeterminative of all individual decision." But he has nonetheless used country condition evidence to evaluate aspects of individual claims to assess whether facts alleged are credible. He deals then in this affirmation at considerable length with country condition evidence, and with the Australian experience, and refutes country condition evidence advanced by the solicitors for the applicants. He asserts that there is no reliable evidence of refoulement. He describes the assessment of the UNHCR and of various countries to persons in the category of the applicants, namely, that they have been properly

> resettled in the Mainland. He then addresses the added grounds of the application which allege procedural unfairness, talks of 'corporate decision making', and describes the process by which the decisions in these cases were made. As for the suggestion that officers told applicants that the procedure was a formality and that they would all be sent back any way, this is denied. He states that the current offer from the Mainland authorities to settle all those returned includes any who may have "fallen through the cracks." He deals with the assertions of double backers as to their treatment upon return, addressing each case in turn. He reveals fresh information about one of the applicants, Hoang Viet Sinh, whose origin had, by the time of this affirmation, been traced, it being revealed that Hoang first came to Hong Kong under a different name and had in fact been registered on a farm in Fujian Province.

Then there were filed in February 1998, a host of affirmations by immigration officers dealing with what happened with the ten test applicants.

There is, for example, an officer who deals with the arrival registration form relating to one of the applicants, **Nguyen Tuan Cuong**. It is exhibited. Then there is another officer, Mr Lau, who says he took the "bio data" from this applicant during the screening exercise in 1997, and he denies telling Nguyen that the result was a forgone conclusion. Then yet another officer speaks (in an 18 page affirmation) of the interview of Nguyen upon arrival in 1991, and the statement is produced. It is said to have taken one hour and ten minutes, and that the whole statement was read back, and discrepancies put. There is a swathe of evidence filed by Nguyen in various affirmations in various proceedings. There are answers to the allegation that interpretation was inadequate; and answers to specific allegations of inaccuracies in recordings. Then there is yet another affirmation by the same officer — this one is 23 pages long — it deals with the screening interviews of

Nguyen; answers allegations of selectivity in taking down answers; and answers allegations that he wrote down answers on a rough piece of paper with a view to rewriting them in proper form later. I note that all this answers allegations made in the proposed re-re-amendments, for which leave had not been given at the date of these affirmations. It is, as with so many affirmations filed by the respondent in this case, a very detailed analysis of allegations made, with very detailed answers. Then the record of the screening interview is produced.

And so, of course, in accordance with the order which gave him leave to do so, Mr Nguyen put in his reply to this reply — another 21 pages of affirmation. This was dated 15th February 1998. He makes allegations about how statements were taken; that there was no read back; and then he analyses affirmations of immigration officers to show how they in themselves are faulty and how they support claims made by the applicants, and he repeats the allegation that he was told that the outcome was a foregone conclusion.

There were literally hundreds of pages of evidence filed at this stage of the exchange alone — hundreds, and in relation to ten applicants only.

At the same time, the applicants' solicitors were alleging, in a further affirmation (which, with exhibits, runs to 349 pages) that much of the respondent's evidence was inadmissible. They said that much of the information attested to by the immigration officers had not been before Mr Choy when he made his decision. Still, they had no choice, it was said, but to file evidence in reply to assertions in the respondent's evidence as to what had happened to individual cases. This affirmation deals with a host of matters, including comments upon the Director's country condition evidence and its sources; states that applicants have told them, the solicitors, that they were threatened when arrival statements were taken; states that applicants have said that screening records were falsified; questions the suggestion that Mr Choy read all the screening and arrival records; and, *inter alia*, complains that

Mr Choy has refused to provide for their examination copies of the recommendations made to him in any of the individual cases.

Needless to say that was not the end of the matter, for the applicants then felt compelled to state individually their responses to the assertions about how the records of interviews were in fact taken.

Then in early **May** last year, there was an application that the new evidence file by the applicants be struck out. That, too, was the time when this application to re-re-amend the application for judicial review was filed. It was said that it was the provision of screening records and full reasons for the decisions which now enabled the applicants to frame the additional grounds which were not previously available to them.

The applicants also filed an application that part of the respondent's evidence "be struck from the record".

Material non-disclosure

It is argued by the respondent that I should not now permit amendment because the applicants have been guilty of material non-disclosure in that they put forward a case they knew to be unsound and have thus not acted in good faith, so that they should, for that reason alone, be deprived of relief. The argument targets the ground put forward in the original application for leave, namely, that there was "no evidence" upon which the Director could properly have concluded that Conclusion 58 was applicable; yet it is evident (according to this argument) that the applicants knew that each had made an arrival statement and that each had been subject to a screening interview, so that it must have been obvious to them that these interviews afforded evidence — *some* evidence —upon which an adverse decision could be made. What is now, instead, proposed to be argued is that the evidence might

be there, but that it is tainted by error or malpractice. It is said that if there were legitimate complaints vitiating the validity of the arrival statements, they must have been in the minds of the applicants at the time of the first and second affirmations, so that the applicants knew there was evidence. So, too, it is said, the true grounds were suppressed in January 1998 when the re-amendments were advanced.

I think that this is a misconceived objection. This is not a non-disclosure point. This is not a case of misleading the court. This is, rather, an argument that the new grounds are grounds which should previously have been advanced but were not, and might, for that reason, be a valid ground for objecting to an amendment now based on a ground known to the applicants some time ago.

Threats, intimidation and failure to read back

The allegations in the proposed paragraph 57 under the heading "procedural mishap" are mixed. They include allegations of threats and intimidation as well as of erroneous records of interviews, and they vary from individual to individual. In the course of argument upon this interlocutory application, Mr Dykes, SC, was content to utilise the cases of three applicants to test or illustrate the merits of this aspect of his application.

The allegations of threats and intimidation, allegations that the officers said that the whole matter was a foregone conclusion, allegations that read back of arrival and screening interviews was perfunctory, are allegations which could all have been made before. This is a case with a very very long history and the applicants' solicitors, as well versed in immigration matters, I venture to think, as any firm of solicitors in this territory, have been acting for these applicants for years. They and the applicants must have known that there had been interviews upon arrival and that an obvious source, and the usual

source, of testing the credibility of an applicant for refugee status was to compare what he or she said on one occasion with that which he or she had said on another. Anybody who has had any contact with cases before the Refugee Status Review Board and with judicial review of decisions of that Board, or of earlier decisions of immigration officials, would know how common place a device that is. It is an obvious device with which to test credibility; one of the most obvious there is.

It is not to be forgotten that this is the second judicial review launched by these applicants. The first was launched as long ago as 1995. In 1995, it was evident from affirmations filed by the Director of Immigration that he viewed with considerable scepticism claims made in those proceedings that the applicants had been persecuted on the Mainland. In an affirmation dated 23rd August 1995, Mr Choy said that :

> "During the course of immigration examination of the applicants no evidence of persecution in China in terms of the Convention and the Protocol has been detected, and no claims have ever been received. In the present cases claims are now made that the various applicants suffered discriminatory treatment …"

In 1995, and again in early August 1997, before the institution of this judicial review, Mr Choy addressed the fact in affirmations that the applicants had been examined — clearly meaning examined on arrival — "and were found to be ECVIIs".

> "The majority would admit to be Vietnam refugees settled in China and report to us their residential address upon their arrival in Hong Kong. Some of them would only give an admission when they failed in the examination… According to the records, all the applicants have admitted to be Vietnam refugees settled in China for not less than five years…"

It is difficult to know what anyone could have thought My Choy was referring to, if not arrival statements.

It is instructive for the present purpose to examine what some of the ten applicants said in August 1997 in affirmations filed in support of this judicial review, as well, in some cases, in affirmations filed in preceding years.

(1) In August 1997, *Mr Long Quoc Tong* filed two affirmations stating that there had been an initial interview as well as a screening interview; that he had said he had never been settled on the Mainland and that he had been refouled to Vietnam. In a 1995 affirmation, he referred to being detained at Green Island upon arrival, and that he had told the authorities then that he had no registration on the Mainland, and that there were five interviews with the Immigration Department before 1993. It is also clear that by late November 1993, he knew that the Immigration Department did not accept his claim to have come here from Vietnam and had decided that he was an ex China Vietnam illegal immigrant — there are letters exhibited to his own 1995 affirmation saying just that. So, it was or ought to have been clear by then that the Director of Immigration was not accepting the credibility of what some applicants had said at Green Island and thereafter.

(2) On 14th July 1995, *Mr Nguyen*, whose name provided the title to the allied case which went to the Privy Council, affirmed in that case that he was interviewed in Green Island twice in 1991 and again in 1992, and that he then told the immigration officers what had happened to him. He told them his life history. In that affirmation, he sets out that life history. In a response as long ago as 23rd August 1995, Mr Choy stated why he did not believe that life history, and in particular why he did not believe the central allegation that the defendant had spent time at a detention camp called Fang Cheng. The Mainland authorities, according to Mr Choy, stated that Mr Nguyen had simply never been a Fang Cheng resident. The advantage of being a Fang Cheng resident is that they were, none of them, sent back to the Mainland. On 25th August 1995, Mr Nguyen affirmed further. He simply responded that this was not good enough and that he could not understand why he was not recorded

at that camp and that Mr Choy had failed to address what his fellow detainees said to support him. Then there came a reply from Mr Choy in which he pointed out that Mr Nguyen had made statements on arrival which "did not accord with the account he had now given". "There are", asserted Mr Choy — as long ago, be it noted, as 1995 — "considerable differences" and he even exhibited the arrival statement signed by Mr Nguyen in the presence of an interpreter.

So, again, at that stage, it must have been obvious to those advising the applicants that comparisons were being made with the arrival statements. It is obvious that Mr Nguyen's arrival statement contained considerable detail about the immigrants' history. If Mr Nguyen was typical, then the questioning upon arrival was, and the histories given were, fairly detailed. There was no suggestion then of bad faith in the sense of concoctions or abuse or threats when arrival statements were taken.

So we come to 1997 and on 27th August, Mr Nguyen made an affirmation in support of the present application. Here he sets out his life history again, and his problems on the Mainland. He asserts that he was prosecuted on the Mainland. As for suggested inconsistencies in his various accounts he complains that they are not really inconsistencies, and that, anyway, the life histories were taken in a very informal way. He then makes assertions as to errors in the 1991 record, and adds that he did not know what he was signing because he did not read Chinese. Then there is a further affirmation from him that he told his life history as stated in the August 1997 affirmation to the immigration officers during the screening interview.

The re-re-amendments now seek to assert that the arrival statement was taken without read-back and was incomplete and that answers were suppressed and that there are errors in the record about his life history.

Mr Choy, in November 1997, deals at great length with Mr Nguyen's case, stating that he has studied, not just one arrival statement and one screening statement; but there are four or five different statements over a period of years which are compared and in which discrepancies are found. There is reference to "an attempt during screening to account for discrepancies by saying the first statement might be inaccurate because of …" inadequate interpretation. So, it is thus explicitly stated that discrepancies appear to have been put to him and an opportunity given to answer them.

In his December 1997 affirmation, Mr Nguyen states that he was told upon screening that whether or not he was screened in as a refugee he was going to be sent back to the Mainland; the interviewing officer wrote selectively and it was obvious that he was taking notes away from which to compose and rewrite a record; arrival statements were but summaries; they contained errors and there was no read back; they were internally inconsistent and unreliable. There was much he is said to have told the immigration officers which he asserts he did not. Furthermore, he contends that it is impossible from Mr Choy to have conducted the detailed examination of each applicant's case as Mr Choy purports in his November affirmation to have done.

(3) *Tran Hua Buu* is a "double backer" — that is, one of the applicants who was sent back to the Mainland by the Hong Kong authorities, but has since returned. This applicant said in his August 1997 affirmation that the Director has it all wrong and that the representations from the Mainland authorities about what happened to him when he was first returned to the Mainland from Hong Kong are inaccurate representations. He says that he was never registered in China after his arrival there in 1979 until his first departure in 1993. There has already been aired in the courts in other proceedings a factual dispute about what happened to him and other double backers. This was aired in correspondence in 1996, and in affirmations in 1997. In January 1996, replying to contentions raised by the applicant's solicitors on behalf of six

double backers, the Director of Immigration stated that “when your clients came back, they did not mention failure to obtain registration or non-acceptance in original farms”.

So, it is clear that the applicants and their advisers knew or ought to have known well before the current re-re-amendments were proposed that the immigration authorities relied, or were likely to rely, heavily on arrival statements that had been made and upon such disparities as they might find between such statements and screening statements. By late November 1997, the applicants would have known what the alleged disparities were, and the suggested significance of them. The approach of the applicants has, in this regard, been a piecemeal and incremental approach and in my judgment they should not now be permitted to introduce amendments to make allegations of intimidation and abuse or of failure to read back statements, matters about which — if true — they would have been fully cognisant a long time ago.

Procedural Mishap

The allegation is that the decision maker, Mr Choy, relied in making his decisions on material that was inaccurate and misleading and that, as a matter of law, where that happens, even though not the fault of the decision maker, the decision is liable to be vitiated. The nature of the allegation is that when records of interviews were taken, there were errors.

(1) *Examples*

The examples of three of the applicants are taken to demonstrate the kind of errors alleged. I shall summarise the allegations because it is worth seeing, I think, the kind of detail into which the applicants wish this court to delve in this case :

(i) *Mr Nguyen* : Mr Choy refers to disparities between the stories given by this applicant over a period of time. One of the disparities is that he, Mr Nguyen, had said in April 1991 that he had first been looked after, before his escape from Vietnam, by someone called Chan; and then, after he arrived on the Mainland, by someone called Hoang; whereas in a later interview, he said that Mr Hoang looked after him in Vietnam before he escaped to the Mainland. What has happened, it is alleged by Mr Nguyen, is that an error has crept into the record and that in fact Mr Nguyen met someone called Chan on arrival in Hong Kong, whom he supposes to be a UNHCR official, and that this name has somehow found its way into the record in place of Hoang, and that this error has then been converted into an inconsistency and used against him. This suggested error and this likelihood is disputed by the respondent, but nonetheless that is the nature of the point taken. It is fairly typical of the points taken, as the next example illustrates.

(ii) *Ho Quay Nguyen* : Mr Choy has said that this applicant's credibility was zero, and in support of that conclusion, he cites a number of discrepancies. It is said that in one statement, Mr Ho had said that he was the youngest of the family whereas in another he was not the youngest. The dates given for fleeing from Vietnam are different. In 1991, he had said that his family had household registration, and in the previous proceedings which reached in the Privy Council, he had not mentioned a tea farm which was mentioned in 1991. I should say in passing that it seems to me that Mr Choy appears to rely mainly, not on these internal disparities, but on information he has received from the Mainland about the actual place where this applicant had been settled. But, be that as it may, this applicant states that the screening record produced by the screening officer in these proceedings was not the original screening document. That, he says, is demonstrated by the fact that in the manuscript notes produced his first brother is said "all along to have been a cook for the army in North Vietnam; and that in about 1954 that brother moved to Saigon". Yet the first brother was only born in 1945 and if he moved to

Saigon in 1954, how could he "all along have been a cook in North Vietnam"? In fact, it was his second brother who was a cook for the North Vietnam army. So this shows, he says, that the record could not have been contemporaneous as is suggested. This error is culled from something like 30 pages of information, much of it in manuscript writing, from the immigration officer. I have little doubt but that from all interviews of this length, it will be possible in each and every case to glean at least one error or to show, perhaps, that notes had been rewritten from original notations. Still, it follows, it is said by the applicants, that the decision maker did not have a complete and accurate record of what was said and that he did not have a contemporaneous record.

(iii) In the case of *Lai Yen*, it is said that Mr Choy "relied upon inconsistencies in records". This is only partly accurate. It is clear from a reading of his reasoning that the main reason for rejecting her account is that the Mainland authorities had verified her residence in Hainan : "Since China has verified her residence in Hainan, her claims to the Director had no credibility and were materially at odds with her own previous claims". Nonetheless, she complains that Mr Choy says that in her 1996 interview she had claimed that the family had been properly resettled in Hainan in 1978. She says that these words did not, and do not, appear in her 1996 statement. I am not sure that I follow that assertion for there is reference in her 1996 statement to going to a farm in Hainan and that "the witness of our settlement was Hua Queyn Lan". This was in 1978, and in that statement, she says or is alleged to have said that in 1990 she moved to Guangdong. I do not think that it far fetched to interpret that as her saying that she was settled in Hainan. But that is not all : she is said by Mr Choy to have claimed to have been educated at P.3 level, whereas the 1996 interview record shows that it was actually P.5. A further complaint is that there is no mention, apparently, by Mr Choy that in 1996 she had said that she came to Hong Kong because she was not registered on the Mainland. Yet the 1996 record shows that she said in 1996 that "as I have no household in the Mainland, I wish to look for jobs in Hong Kong". That may be, but again,

the matter must be looked at in proper context for Mr Choy does refer to non-registration in Beihai "where she did not have household registration but where her [family] lived". That, however, is not to say that she had not been registered elsewhere. "The information from China" says Mr Choy, "was that she and her family had been, and is, registered at Nandoa Farm, Sanya, Hainan. I accept the accuracy and reliability of this information."

(2) *The law*

The phrase "procedural mishap" which is the heading under which these complaints are brought, is borrowed, it seems, from Bingham LJ in **Fauzia Wamar Din Bagga Khan v. Secretary of State for the Home Department** [1987] Imm. A.R. 543, 555 :

> "... If a procedural mishap occurs as a result of a misunderstanding, confusion, failure of communication, or even perhaps inefficiency, and the result is to deny justice to an applicant, I should be very sorry to hold that the remedy of judicial review was not available…."

Paragraph 57 of the proposed re-re-amendments is headed "Procedural Mishap". What is alleged is that there has been a corruption of evidence, whether deliberately or not; and that that corruption has affected the decisions or may have affected the decisions made. The grounds allege that "where material relied upon by a decision maker is inaccurate or distorts material facts, a decision made in reliance of such material is liable to be quashed". The cases cited in the body of the proposed re-re-amendments are **R. v. Leyland Justices, *Ex parte* Hawthorn** [1979] QB 283; **Secretary of State for the Home Department, *Ex parte* Al-Mehdawi** [1990] 1 AC 876; and **R. v. The Bolton Justices, *Ex parte* Scally** [1991] 1 QB 537. **Al-Mehdawi** apart, the cases in this category are cases in which the prosecuting authority failed to divulge highly material information, which quite obviously deprived a defendant of a defence, or of the chance to deploy material information in his defence. They are cases where the tribunal of fact has not been guilty of error,

or itself party to a breach of natural justice but where the conduct of a third party has led to that result. The conduct of the third party has, in these cases, been, though not fraudulent, classified as analogous to fraud.

But that is not to say that whenever, even in non-criminal cases, there can be shown a mistake of fact in the decision-making process or a non-fraudulent misrepresentation that that then founds a ground for relief from the court in the exercise of its supervisory jurisdiction.

In this particular case, and for reasons which I have provided, it is not now open to the applicants to canvass allegations that statements were not read back, or that read back was perfunctory, or that there were threats of violence or other intimidation. In so far as it is alleged that there are inaccuracies in the material presented to Mr Choy or misrepresentations of what was said, it seems to me not apt to call this "procedural mishap" of the type for which the courts have, in the cited cases, granted relief. The principles established by such cases are these :

(i) Fraud, collusion, and perjury and analogous conduct provide grounds for judicial review even where there is no error on the part of the tribunal or decision maker.

(ii) "…. a challenge may also lie when unfairness in the conduct of proceedings results from some failure on the prosecutor's part even when no one has been guilty of fraud or dishonesty; that failure itself may be regarded as analogous to fraud." (See **R. v. Criminal Injuries Compensation Board, *Ex parte* A.** [1997] 3 WLR 776 at 793 per Simon Brown LJ.) However, in circumstances other than criminal or quasi-criminal proceedings, innocent misrepresentation of a material fact by a mere witness will not of itself render a decision unfair. "So to hold would go a great deal further than any of the authorities to which we were referred …. The ability

> of the court to review judicially a decision reached entirely properly by a tribunal because of circumstances external to the tribunal but affecting that decision must be closely confined." (Per Peter Gibson LJ in **R. v. Criminal Injuries Compensation Board, *Ex parte* A.** at page 799.) It has been suggested that it is the prosecution cases which "represent the emergence of a head of review separate from the traditional grounds of illegality, irrationality and procedural impropriety, since they are not founded upon any error of the decision maker".

Furthermore, "…. non-fraudulent misrepresentation is an everyday occurrence in administrative proceedings; it is hard to reconcile intervention by the court on such grounds alone with the constitutional imperative that Parliament has entrusted the finding of facts to the statutory decision-maker …." (See *Supperstone and Goudie "Judicial Review" 2nd Edition* at 6.13, footnote 1.)

I doubt, in the circumstances, that the attack can properly be mounted under the **Scally**/**Al-Mehdawi** head of "procedural mishap". In any event, what is alleged here is not error by a third party, but error by the decision maker based on information collated by or on behalf of the decision maker. I do not think it open to the Director to hide behind errors of his officers and say that he, the Director, is the decision maker :

> "I would wish to reserve to a case where the point is taken whether the Home Secretary can plead ignorance of what the Metropolitan Police have done .... Both are executive limbs of the state and it is arguable that in a real, as well as a constitutional sense, the state cannot be heard to say that its left hand does not know what its right hand is doing."

(See **In re Schmidt** [1995] 1 AC 339, 355.)

That said, the rules of natural justice do not render a decision invalid on the mere basis, in itself that, the decision maker or his advisers makes

a mistake of fact. Only if the reasons given for the decision disclosed irrationality, illegality or procedural impropriety can the decision be open to judicial review. (See Lord Templeman in **R. v. Independent Television Commission, *ex parte* TSW Broadcasting Limited**, unreported, 26th March 1992.)

Although in **Secretary of State for Education and Service v Tameside Metropolitan Borough Council** [1977] AC 1014, Lord Wilberforce said (at page 1047) :

> "In many statutes a minister or other authority is given a discretion any power and in these cases the court's power to review any exercise of the discretion, though still real, is limited. In these cases it is said that the courts cannot substitute their opinion for that of the administer : they can interfere on such grounds as that the administrator has acted right outside his powers, or outside the purpose of the act, or unfair, or upon an incorrect basis of fact. But there is no universal rule as to the principles on which the exercise of the discretion may be reviewed : The statute or title to statute must be individually looked at."

that has been qualified :

> "… we cannot believe that by the phrase 'upon an incorrect basis of fact' Lord Wilberforce intended to introduce a new and independent head of challenge to executive decisions. Of course a mistake of fact can vitiate a decision where the act is a condition precedent to the exercise of jurisdiction, or where the fact is the only evidential basis for a decision, or where the fact was a matter which expressly or impliedly had to be taken into account. Outside those categories we do not accept that the decision can be flawed in this court, which is not an appellate tribunal, upon the ground of mistake of fact."

(See **R. v. London Residuary Body *ex parte* ILEA**, *The Times*, 24th July 1987.)

> "Judicial review does not issue merely because a decision maker has made a mistake and it is not permissible to probe the advice received by the decision maker or to require particulars or to administer interrogatories or to cross-examine in order to discover the existence of a mistake by the decision maker or the advisers of the decision maker. An applicant for judicial review must show more than a mistake on the part of the decision maker or his advisers. Where a decision is made in good faith following a proper procedure and as a result of conscientious consideration, an applicant for judicial review is not

> entitled to relief save on the grounds established by Lord Greene MR in [Wednesbury]."

(See **R. v. Independent Television Commission *ex parte* TSW Broadcasting Limited** [1996] JR 185, 192.)

None of this is to say that errors of fact will never successfully found ground for relief. Such error may constitute a failure to take into account a relevant fact or the taking into account of an irrelevant fact. But if an error of fact is to play a part in judicial review, it must be material to the decision, and must be something established unassailably as erroneous (see **Nguyen Ho & Others v. Director of Immigration** [1991] 1 HKLR 576); and the courts in judicial review do not normally themselves engage upon exercises of primary fact finding (see **R. v. Secretary of State for Home Affairs *Ex parte* Harrison** [1997] JR 118). I also note that in those 'procedural mishap' cases, to which I have referred, where the courts were prepared to entertain review under this head, the errors or omissions were germane to the "heart of the case" (***Ex parte* A.**, page 784); "…. where the total apparatus of the prosecution had failed to carry out its duty …." (**R. v. Liverpool Crown Court, *Ex parte* Roberts** [1986] Crim LR 622); and where, for example, the corrupt process was such as to deny those charged with offences of a complete defence to the charge (see ***Ex parte* Scally**).

(3) *These particular cases*

When studying and listening to the submissions upon the procedural mishap point in the course of this interlocutory application, one might be forgiven for assuming that it is the disparities upon which the decision making process concentrated and relied. The fact, however, is that the length and detail of argument about them has distorted the place they in fact assumed and that the significance of the procedural mishap/mistake of fact point is exaggerated. I have spent considerable time studying the papers and the history of the decision making process as revealed by the evidence, the facts

asserted by the ten applicants, and the analysis of their cases by Mr Choy, and in my judgment the alleged contradictions played, in fact, an ancillary rather than the central role. What played the decisive role was the judgment made about country condition evidence as that reflected upon each applicant's contentions, as well as the information received from the authorities on the Mainland about what happened to individual applicants. The short point is that I simply cannot see, in the event, that the exercise upon which Mr Dykes now invites me to embark will make any difference; in other words, I am satisfied that determination as to credibility will not be shown to be clearly wrong by reason of these suggested errors.

In his affidavit of 22nd November 1997, Mr Choy spends the bulk of a very long affirmation dealing with country condition evidence, and only late in that affirmation does he turn to ten individual cases where specific facts have been put forward. He says :

> "Much of the answer to this general factual claim lies in the inferences that can be drawn from the facts of China's action with UNHCR in providing assistance in respect of the 286,000 or so Indo-Chinese from Vietnam, conditions in China …. and the general facts relating to protection and settlement. All such evidence may be loosely described as 'country condition evidence' …..
>
> However I have summarised what was in fact put before the decision maker in each of the ten cases…."

It is evident from the reasons given in individual summaries that he relies predominantly not on the inconsistencies in accounts given by the applicants but on the inconsistency between their assertions of non-registration and settlement on the one hand, and, on the other, assurances and evidence from the Mainland authorities.

So, for example, the case of Tran Hoa Buu. He refers to the fact that when he first came to Hong Kong, he said that he had been registered or settled at the Hua Shi Forestry Farm. However, it is not so much the assertion

that an admission of registration had been made that carries the day against Tran, but the fact that the Mainland authorities had informed Mr Choy that the applicant had been registered in Beihai, and also "I believed from country condition evidence that they were registered". So, too, for the account of what happened on his return from Hong Kong in January 1995, Mr Choy believes what he was told by the Chinese authorities.

In Nghiem Kiet's case, it is true that Mr Choy refers to claims in 1991 that were "very different" but again :

> "country condition information is such that I am satisfied that a young boy with his grandmother arriving at Dong Xing and Fang Cheng in September 1979 …. must have been caught up in arrangements then in place to …. settle refugees. Both Dong Xing and Fang Cheng were centres of Chinese activity in resettling refugees at the time ... I do not find details of the present claim credible …. So many resources had been mobilised by China to resettle exactly this kind of refugee on exactly this kind of resettlement farm".

So, too, in the case of Lai Yen. Whilst there is indeed an allegation in Mr Choy's November 1997 affirmation of disparities and accounts being materially at odds with previous claims, it is nonetheless clear that he relies heavily on :

> "the information from China ... that her family were registered in Hainan. I accept the reliability of this information. In considering her claims I considered the country condition evidence. Since China has verified her residence in Hainan, her claims to the Director had not credibility and were materially at odds with her own previous claims".

So, also, in the case of Ho Quay Nguyen. Mr Choy, in November 1997, sets out a number of (suggested) contradictions between Mr Ho's 1997 story and his 1991 story, and concludes that his credibility is zero. But he ends by reciting the fact that in August 1997, the Mainland authorities confirmed that Ho had been identified as settled at Qiaxueling Overseas

Chinese Tea farm in Gaungdong, and Mr Choy says that he accepts that information.

> "In the context of this information, I now find that he was fully settled with the benefits of a refugee ... including household registration. He never revealed his address to anyone on behalf of the Director since arriving here in 1991."

In Mr Nguyen's case, it is evident that Mr Choy relies heavily on extraneous checks of veracity, in particular that

> "the evidence from China is very clear : in Gaunxi Mr Zhiang's records [Mr Zhiang is a Mainland official] are very thorough and complete ... I accept the evidence from China and am sure that Nguyen was not registered at the Fang Cheng Refugee Centre".

And again :

> "the evidence about China's refugee programme ... shows that he would have been a priority category for settlement as a young unaccompanied minor".

In the case of Mr Truong Chi Huy, he had not yet been verified by the time Mr Choy made his decision and he does rely on disparities in accounts, but again, there is cardinal reliance upon other extraneous factors :

> "China has checked his claim of settlement in Dong Mei Farm with negative result.
>
> His claim that he languished in Fang Cheng Reception Centre is out of line with conditions in the border area in 1979 .... inconsistent with clear information about what was happening at that time. The events of 1993 in Beihai are well known to me."

As for the suggestion of refoulement, all country condition evidence he says is against that suggestion.

> "For the authorities in China it has been a matter of huge investment and national commitment to protect the refugee population."

Mr Hoang, in respect of whom no specific allegation in the proposed re-re-amendments have been made, is said by Mr Choy to have made a number of inconsistent statements, but there again :

> "Leaving aside both earlier statements [on a point about the fate of his parents] to the opposite effect, the evidence concerning country condition evidence is such that I found I wholly disbelieved this claim."

Ta Minh Hieu : the allegation in the proposed re-re-amendment is that his arrival statement was incomplete and inaccurate and that he was shouted at and intimidated, and that, in the screening, important information about refoulement was omitted. Mr Choy does refer in his affirmation to discrepancies in accounts but there is again much in the credibility assessment exercise that depends upon Mr Choy's expertise on country condition evidence. For example, on the question of refoulement :

> "In late 1993, this youth would have been just 17 years old. It would have been obvious to any PSB official that he had been in China as refugee since he was a small child. It would have been obvious he did not speak Vietnamese. I did not believe that he had been refouled as claimed. All the known information points against this."

Mr Doan Cuu De wishes to complain by way of an amendment that his arrival statement was an edited version of what he told the immigration officer and that errors were made about his family and his education and registration. In this particular case, I note that Mr Choy has already, in November 1997, addressed that very contention in that he states in his affirmation dated 27th November 1997 :

> "In April 1997, he claimed that he had not given full details or correct details of his life history.... that is why his account was so different from that given in April 1993."

What is therefore proposed are amendments which will carry this case into months of evidence and debate about who said what, when and to whom about certain specific facts amongst a host of specific facts, when in

reality the overwhelming aspect of the assessment by Mr Choy is based upon the response of Mainland officials to individual claims, combined with country condition evidence. The case in relation to discrepancies in individual statements is but an addendum to Mr Choy's evidence. It is now sought to make it a mainstream and central matter.

I do not in the circumstances think this court should travel this course, or be enticed into a detailed examination of suggested errors of the kind which I have itemized. I believe it to be sufficiently clear in the present case that the decisions stood on a broader basis than the particular points of suggested error, and that even if error were shown, the decisions on credibility will stand in any event on the footing of other facts which the decision maker has properly taken into account. Therefore the application to introduce the re-re-amendments sought in the proposed paragraphs 52B, 52C and 57 is rejected.

The 'bogus reasons' amendments

The proposed paragraphs 55 and 56 seek to put forward an argument along the following lines : that the evidence filed by Mr Choy shows and concedes that he did not interview any of the applicants, and that that was done by others who then came to a conclusion about their credibility and who made recommendations. The procedure which was adopted is summarised in my September 1998 judgment in this case (reported at [1998] 2 HKLRD 789, 842). Mr Choy's case is that he considered and studied each case and each recommendation and made his own decision. It is, in my judgment, not arguable that if the procedure which he says was adopted, was indeed adopted, that it can constitute an unlawful delegation of his decision making function.

But the argument, or proposed argument, goes further than that, and it is that it cannot conceivably be the case that Mr Choy has considered the

papers to the extent which he has suggested. The recommendations made to him by more junior officers have not been disclosed, though the applicants seek their disclosure. It would appear that Mr Choy has kept no note of his own in any analysis of the individual cases. The task, it is said, upon which he would have had to embark in order to examine each case as he suggests, would have been Herculean in the time frame in which interviews took place and decisions were made, and, furthermore, it is said that Mr Choy has given wholly contradictory evidence about his decision making process, a fact that is said to show that the full reasons he has provided in the case of the applicants are not the true reasons for his decisions, and constitute instead an *ex post facto* rationalisation by him. That alone is ground for judicial review, and the circumstances as a whole are such, it is argued, as to suggest that the decisions can only in reality have been taken by the immigration officers and not by him.

In his affirmation in February 1998, Mr Choy said that what was passed on by an interviewing officer were screening interview notes which contained the full record of what the applicant claimed and a summary of the case and recommendations in respect of findings and decisions. Together with the screening interview notes was any relevant arrival or other statement or material that had been considered by the immigration officer. He went on to say :

> "In all cases I read the screening interview notes and other statements and decided what facts I considered were established and made the decision in accordance with my findings. I did not always agree with all the comments and suggested findings of those considering it before me, but in every case I endorsed the conclusion that they recommended to me. I did not feel bound to do so and that is why I considered what were the correct findings before finalising and effecting the decision. All of the officers involved in this decision making process were trained in country conditions in China relating to the reception and settlement and refugees from Vietnam from 1978 to the present time."

In an affirmation in April 1998 by the applicants' solicitors, he says in this particular regard — and this is perhaps illustrative of the ambit of judicial review as perceived by him :

> "The applicants intend to put Mr Choy to full proof over his assertion, …"

and then sets out suggested reasons why Mr Choy should not be believed — for example :

> "I believe that more than six months of full time work would be needed for the type of detailed anlaysis that Mr Choy purports on affirmation to have made in respect of each applicant."

He complains that Mr Choy has exhibited no contemporaneous notes, and in argument before me, the point is made that the applicants have not had the advantage of seeing any summaries he, Mr Choy, made nor the recommendations of the individual immigration officers. The application for discovery which awaits this court's decision on the application to re-re-amend will, I have no doubt, embrace those recommendations and those summaries.

In his May 1998 affirmation, Mr Choy answers this suggestion by saying :

> "It is untrue to suggest that my words in my first affirmation are a claim that I spent hours analysing each decision and hundreds of hours in making all decisions. In all but very few cases the matter was prepared for me to the point that all I had to do after some reading was to consider a few findings in the form of recommendations and assess the extent to which I shared them."

This is said by the applicants to be in stark contradiction to Mr Choy's February 1998 affirmation; a contradiction which justifies the exercise upon which the applicants now wish to embark.

I do not, however, think that the evidence deployed by the applicants warrant that exercise. It may be that Mr Brooks, the applicants' solicitor, finds it difficult to see how the decision making process of which

Mr Choy speaks can have been completed in the time, with the thoroughness he suggests. That said, Mr Choy is an immigration expert, steeped in the subject matter with which he was dealing and thoroughly familiar with the history of this group of applicants. On the evidence before this court, the papers which were presented to him — screening forms in particular and, no doubt, minutes and recommendations, were in standard format with which he was or would soon become, by reason of the very extent of the exercise, very familiar. The essential points to look for would have been quite quickly identifiable, and in a significant number of cases, the fact the applicant had been verified by the Mainland authorities would be a fact standing out like a sore thumb and a fact which would have almost certainly carried the day against the applicant. I am informed that somewhere between one-quarter and one-third of all applicants fell into this category. Mr Choy states that :

> "The system had to be set up, if it was to be workable, so that after the reading described … I could formulate my findings of fact quickly by reference to the recommended findings of others."

Put in the context of these considerations I do not believe that the assertions by Mr Choy are on their face incredible as the applicants suggested, and I am not, in such circumstances, inclined to permit an opening up of this vast issue. To do so would unnecessarily give steam to the infinite process of contestation upon which the applicants seem bent, and against which the courts must, in my judgment, stand firm.

The application to introduce paragraphs 55 and 56 is therefore rejected.

Summary of Decisions

The application to re-re-amend is allowed to the following extent, namely, to introduce the following new paragraphs :

Paragraph 50A : though the issue is already decided so that no further argument upon it arises.

Paragraph 52A :	this issue, too, has been determined, and is not open to further debate.
Paragraph 53 :	all proposed re-re-amendments are permitted; in other words, the insertion of the words “and/or in bad faith” and of sub-paragraphs (8) – (12) inclusive.
Paragraph 54 :	the re-re-amendment is allowed although no further argument arises upon it.

All other applications to re-re-amend are refused.

There remain other ancillary applications to determine, and I shall reserve the question of costs of this application until their determination.

(F. Stock)
Judge of the Court of First Instance,
High Court

Mr Philip Dykes, S.C., and Mr Matthew C.S. Chong, inst’d by
M/s Pam Baker & Co, for the Applicants

Mr William Marshall, S.C., and Mr Wesley Wong, inst’d by
the Department of Justice, for the Respondent