REPORT OF THE LAW REFORM COMMITTEE

ON

THE RATIONALISATION OF LEGISLATION RELATING TO LEAVE TO APPEAL

SINGAPORE ACADEMY OF LAW

LAW REFORM COMMITTEE

OCTOBER 2008

Authors/Sub-committee Members:

Mr Cavinder Bull (chairman)
Mr Aqbal Singh
Mr James Leong
Mr Sriram Chakravarthi

With the assistance of:

Ms Chua Ying-Hong

ISBN 978-981-08-1646-9

About the Law Reform Committee

The Law Reform Committee ("LRC") of the Singapore Academy of Law makes recommendations to the authorities on the need for legislation in any particular area or subject of the law. In addition, the Committee reviews any legislation before Parliament and makes recommendations for amendments to legislation (if any) and for carrying out law reform.

About the Report

See executive summary below.

Comments and feedback on this report should be addressed to:

Law Reform Committee
Attn: Law Reform Coordinator
Singapore Academy of Law
1 Supreme Court Lane, Level 6, Singapore 178879
Tel: +65 6332 4350
Fax: +65 6334 4940
Website: www.sal.org.sg

TABLE OF CONTENTS

Annexures

I. Executive Summary

1 The Law Reform Committee ("LRC") at its 108th meeting tasked this sub-committee to consider certain issues in relation to the rationalisation of legislation relating to leave to appeal. The sub-committee's report was tabled before the LRC at its 115th and 116th meetings on 23 October and 20 November 2004, respectively. In its report, the sub-committee considered, *inter alia*, whether there was a need to simplify or clarify the court to which interlocutory applications relating to appeals should be filed. The discussion on this issue is outlined in Part III of this Report.

2 At the meetings of the LRC on 30 November 2006 and 29 May 2007, the LRC asked that the sub-committee reconsider if the monetary thresholds for appeals without leave should be clarified and whether the requirement of further arguments under s 34(1)(*c*) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") ought to be retained.

3 The sub-committee concluded that amendments to sub-ss 21(1) and 34(2)(*a*) were necessary to clarify their respective monetary thresholds. The sub-committee was also of the opinion that the prohibition on appeals against orders of the High Court giving unconditional leave to defend or setting aside unconditionally a default judgment in sub-s 34(1)(*a*) should be clarified, and that a corresponding prohibition should be imposed on appeals against similar orders of the Subordinate Courts. The sub-committee's discussions on this issue are set out at Part II of this Report.

4 The sub-committee also concluded that the making of further arguments under s 34(1)(*c*) of the SCJA should not be mandatory, but should be at the option of the parties and the judge. The sub-committee's analysis of this issue is set out at Part IV of this Report.

5 The sub-committee was greatly assisted by the publication of three reports by the Rules of Court Working Party ("ROCWP"). One of these reports is referred to at Part IV of this Report. The other two reports are reproduced at the Annex of this Report.

6 The sub-committee is grateful to the Law Reform Committee for tasking it to undertake the study. It would also like to recognise the assistance of Ms Chua Ying-Hong in the preparation of this paper. The sub-committee members are:

(a) Mr Cavinder Bull (chairman)

(b) Mr Aqbal Singh

(c) Mr James Leong

(d) Mr Sriram Chakravarthi

II. Two Tiers of Hearing – Entrenchment in the Monetary Thresholds for Appeals without Leave and an Exception for Orders Giving Unconditional Leave to Defend

A. Introduction

7 This part deals with the legislative intention that there be two tiers of hearing for civil matters and examines the entrenchment of the two tier system in the monetary thresholds for appeals without leave, as well as an exception to the two tier system for orders giving unconditional leave to defend or setting aside unconditionally a default judgment. Specifically, this part critically examines the different language used in ss 21(1) and 34(2)(*a*) and the difficulties arising therefrom, as well as the two tier system as the *raison d'être* for the imposition of monetary thresholds for appeals without leave. This part also examines the need to clarify the exception to the two tier system for orders of the High Court giving unconditional leave to defend or setting aside unconditionally a default judgment, as well as to create a corresponding exception for similar orders of a District Court or a Magistrate's Court through amendments to ss 34(1)(*a*) and 21 of the SCJA, respectively.

B. The relevant statutory provisions

8 Section 21(1) of the SCJA provides for appeals from District and Magistrate's Courts to the High Court without leave in the following circumstances:

> Subject to the provisions of this Act or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court in any suit or action for the recovery of immovable property or in any civil cause or matter *where the amount in dispute or the value of the subject-matter exceeds $50,000* or such other amount as may be specified by an order made under subsection (3) or with the leave of a District Court, a Magistrate's Court or the High Court if under that amount … [emphasis added]

9 In contrast, s 34(2)(*a*) of the SCJA provides for appeals to the Court of Appeal without leave, in the following circumstances:

> Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) *where the amount or value of the subject-matter at the trial is $250,000* or such other amount as may be specified by an order made under subsection (3) or less … [emphasis added]

10 As an exception to the two tier system, sub-s 34(1)(*a*) of the SCJA prohibits appeals from the High Court to the Court of Appeal in the following circumstances:

> where a Judge makes an order giving unconditional leave to defend an action or an order setting aside unconditionally a default judgment …

11 However, there is no corresponding provision in respect of appeals from similar orders of a District Court or a Magistrate's Court to the High Court.

C. The monetary thresholds in subsections 21(1) and 34(2)(a)

12 As set out in sub-ss 21(1) and 34(2)(*a*), the relevant monetary thresholds for appeals to the High Court and to the Court of Appeal are $50,000 and $250,000, respectively. However, the plain language of the subsections provides little guidance to a party who wishes to ascertain if the amount or value of the subject-matter of his case meets the monetary threshold so as to entitle him to file an appeal without leave of court.

13 For ease of reference, the two subsections and their key phrases are reproduced in the table below:

	Appeals from District Court/Magistrate's Court to High Court	*Appeals from High Court to Court of Appeal*
SCJA provision	s 21(1)	s 34(2)(*a*)
Pertinent phrase	"amount in dispute or the value of the subject-matter"	"amount or value of the subject-matter at the trial"
Monetary threshold	exceeding $50,000	exceeding $250,000

14 Given that the basic purpose of both subsections is to screen appeals in accordance with the two tier system, there may be little basis for the two provisions to have substantially different language and approaches, especially in respect of their monetary thresholds. Such differences give rise to uncertainties, including the following:

(a) whether the relevant figure is the amount originally claimed or disputed in the court below, the amount in dispute on appeal, or the judgment sum (*ie*, amount adjudged or ordered by the court below); and

(b) whether interest and costs should be taken into account in ascertaining the relevant figure for the purposes of the monetary thresholds in sub-ss 21(1) and 34(2)(*a*).

D. Difficulties in interpreting subsections 21(1) and 34(2)(a)

15 Subsections 21(1) and 34(2)(*a*) of the SCJA were intended to "screen" appeals, in accordance with the two tier system, by requiring that some appeals be brought only with the leave of court. The subsections are similar in that each sets a monetary threshold for the automatic right of appeal. However, there are some differences between the two subsections, including the following:

(a) Section 21(1) adopts an inclusionary approach whereas s 34(2)(*a*) adopts an exclusionary approach. The former states that an appeal "shall lie" where the monetary requirements are met, while the latter prohibits an appeal unless the monetary requirements are met.

(b) The relevant amount for the monetary threshold of each subsection is different. Section 21(1), which regulates appeals from the District/Magistrate's Courts to the High Court, makes reference to "the *amount in dispute* or the *value of the subject-matter*" whereas s 34(2)(*a*), which regulates appeals from the High Court to the Court of Appeal, makes reference to "the amount or value of the subject-matter *at the trial*". [emphasis added]

16 As explored in detail below, these differences may give rise to difficulties in the interpretation of these subsections.

(1) Section 21(1): Appeals to the High Court

17 Section 21(1) governs appeals from the District Court/Magistrate's Court to the High Court. In order for an appeal to be brought without leave, the "amount in dispute or the value of the subject-matter" must exceed $50,000. However, it is uncertain if the phrase "amount in dispute" refers to the amount claimed in the lower court, the judgment sum or the amount in dispute on appeal.

18 This uncertainty is illustrated by the decision in *Augustine v Goh Siam Yong*,[1] in which the Court of Appeal held that the "amount in dispute" in s 21(1) referred to the difference between the original claim and the reduced amount of damages awarded by the court whose decision was sought to be appealed.

19 In *Augustine v Goh Siam Yong*, the registrar had assessed the damages at $4,780.89, but this award was reduced by a District Judge to $1,177.50. The plaintiff sought to appeal to the High Court against this reduction but the defendant objected,

1 [1992] 1 SLR 767.

inter alia, on the ground that the plaintiff had first to obtain leave to appeal, as the amount awarded by the District Judge's award was less than $2,000.[2]

20 The Court of Appeal rejected the defendant's contention and held that no leave to appeal was required. It held that "the amount in dispute" was $3,603.89, that is, the difference between the original amount of damages awarded by the registrar and the reduced amount awarded by the District Judge.

21 In view of the Court of Appeal's decision, the proper statutory interpretation of the words "amount in dispute" as a matter of *stare decisis* is settled.[3]

*(2) Section 34(2)(*a*): Appeals to the Court of Appeal*

22 The issue of the proper interpretation of s 34(2)(*a*) for appeals from the High Court to the Court of Appeal has been canvassed, time and again, before the Court of Appeal. This led the Court of Appeal to make the following remark in the case of *Hailisen Shipping Co Ltd v Pan-United Shipyard Pte Ltd*:[4]

> The motion that was brought before us raised once again the question as to the proper interpretation of s 34(2)(*a*) of the Supreme Court of Judicature Act (Cap 322) ("SCJA") …
>
> …
>
> A number of cases have in recent years arisen in relation to the interpretation and application of this provision.

23 The proper construction of the phrases "amount or value of the subject matter" and "at the trial" in the context of sub-s 34(2)(*a*) has been a matter of particular difficulty.

24 In *Spandeck Engineering (S) Pte Ltd v Yong Qiang Construction*,[5] the Court of Appeal held that the word "trial" should be construed purposively to mean:

> [A] hearing, whether in open court or in chambers, in which the Judge determined the matter in issue before him, whether it be an issue of fact or law.

25 The Court of Appeal in *Spandeck Engineering* rejected the argument that a "trial" meant only a hearing before a court at which evidence was adduced, arguments

---

2 This monetary threshold of $2,000 has since been increased to $50,000: see sub-s 21(1) of the SCJA (Cap 322, 1999 Rev Ed).

3 The decision of the Court of Appeal in *Augustine v Goh Siam Yong* was recently followed by the High Court in *Ang Swee Koon v Pang Tim Fook Paul* [2006] 2 SLR 733.

4 [2004] 1 SLR 148.

5 [1999] 4 SLR 401 ("*Spandeck Engineering*").

were canvassed and questions of fact and/or law were finally decided, taking into account the various anomalies that could arise if such a narrow interpretation was adopted.

26 In *Tan Chiang Brothers Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd*,[6] the Court of Appeal held that the term "at the trial" should not be interpreted to mean "at the appeal". Tan Chiang Brothers ("TCB") had sued Permasteelisa ("P") for payment due for works done in three construction projects. Their claim was in excess of $250,000. They were awarded judgment but filed a notice of appeal against only part of the judgment. P objected to the notice of appeal on the ground that TCB had to seek leave to appeal as "the amount or value of the subject-matter at the trial" was less than $250,000, and TCB had not done so.

27 The Court of Appeal held that the words in question referred to the quantum of TCB's claim when the matter came up for trial in the High Court. Therefore, TCB did not require leave to appeal because the quantum of their claim was in excess of $250,000.

28 The Court of Appeal rejected the view of the High Court in another case, *Twin Enterprises v Lim Heng Wah Peter*, where the judge expressed the opinion that "the value of the subject matter at trial … is also … intended to refer to the amount of the subject-matter on appeal".[7]

29 The Court of Appeal recognised that in adopting this construction, a party may always reserve to himself the right to appeal by inflating his claim beyond $250,000 but added that in doing so that party may be penalised in costs, if found out.

30 In the case of *Teo Eng Chuan v Nirumalan v Kanapathi Pillay*,[8] the Court of Appeal had to determine the proper construction of the phrase "subject matter at the trial" in the context of sub-s 34(2)(*a*). In *Teo Eng Chuan*, the claim was made for personal injuries. Liability had been admitted and interlocutory judgement entered. Although the total damages claimed by the plaintiff were more than $1.5m, the assistant registrar awarded damages of only $135,361. On appeal, the judge increased the total award to $265,361. The defendant appealed to the Court of Appeal. The plaintiff filed a motion to have the appeal struck out, arguing that the "subject matter of the trial" was less than $250,000.

31 The Court of Appeal dismissed the motion and held that the hearings before the assistant registrar and the "appeal" to the judge in chambers were effectively one hearing. The court held that the subject matter before the judge in chambers, which was

---

6 [2002] 2 SLR 225.

7 [2000] SGHC 288 at [32].

8 [2003] 4 SLR 442 ("*Teo Eng Chuan*").

the entire claim of the plaintiff, was more than $250,000 and that this was the amount to be considered for the purposes of sub-s 34(2)(*a*) of the SCJA.

(3) Should interest and costs be taken into account in determining if the monetary threshold has been met?

32 Subsections 21(1) and 34(2)(*a*) are silent on whether interest and costs ought to be taken into account in determining if their monetary thresholds have been met.

33 This issue was raised in relation to sub-s 21(1) in *Abdul Rahman bin Sharif v Abdul Salim bin Syed*.[9] This case concerned an appeal against a District Court's judgment in which damages of exactly $50,000 had been awarded to the plaintiff, with interest and costs. The defendant sought to appeal and argued that no leave to appeal was required as the amount in dispute included interest and costs and was therefore in excess of the monetary threshold in sub-s 21(1). The High Court disagreed with the defendant and held that "'the amount in dispute or the value of the subject-matter' did not encompass the non-contractual interest and costs elements of a claim for a contractual amount or for damages".

The approach in Malaysia

34 It is worth noting the Malaysian position for comparison. The Malaysian Courts of Judicature Act 1964 ("CJA") used to contain provisions that were very similar to our sub-ss 21(1) and 34(2)(*a*). In 1987, however, the Malaysian legislature deleted the phrase "at the trial" in their equivalent of our s 34(2)(*a*). They also amended s 68(1) of the CJA to read as follows:

> No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> … when the amount or value of the subject-matter *of the claim* (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal … [emphasis added]

35 To avoid the confusion that was experienced in *Abdul Rahman*, Malaysia has now expressly provided that statutory interest should be excluded when determining whether leave to appeal from the High Court to the Court of Appeal was required.[10] It appears that there are good grounds for Singapore to follow the Malaysian approach.

---

9 [1999] 4 SLR 716 ("*Abdul Rahman*").

10 See s 68 of the CJA. For appeals from the Court of Appeal to the Federal Court, the Malaysian legislature has abandoned the use of a monetary threshold. In its place, leave to appeal will be granted under s 96 of the CJA if the appeal involves "a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage".

*(4) The proper interpretation of subsections 21(1) and 34(2)(*a*) ought to be clear from a plain reading of the provisions*

36 As a result of the ambiguity inherent in the language of sub-ss 21(1) and 34(2)(*a*), it appears to be almost impossible to properly interpret the provisions without recourse to case law. This is exacerbated by the differing approaches to the determination of the relevant amount for the purposes of the monetary thresholds in sub-ss 21(1) and 34(2)(*a*). Subsections 21(1) and 34(2)(*a*) ought to be amended to make their true construction clear from a plain reading of the provisions.

E. Incongruity between subsection 21(1) and the two tier system

37 The legislative intention behind the imposition of monetary thresholds for appeals to the High Court and appeals to the Court of Appeal appears to be that there should only be two tiers of hearing for civil matters.[11] This was affirmed by the court in *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd*, which stated:[12]

> [A]s the limit of $250,000 in s.34(2)(a) was also the upper limit of the District Court's jurisdiction, the objective of s.34(2)(a) was *to ensure that where appeals from the decision of the District Court had been heard and disposed of by the High Court, there should be no further appeals therefrom to the Court of Appeal* unless (on sufficient grounds shown) leave of either the High Court or this Court was obtained. The provision provide [*sic*] for a process to screen appeals to be brought to this Court, thus preventing the clogging up of this Court by all kinds of appeals. *What was contemplated by the legislature in relation to an action commenced in the District Court was that there should be only two tiers of hearing – the first instance hearing and an appeal.* A further appeal to the Court of Appeal was only possible with leave. [emphasis added]

38 Similarly, in its decision of *IW v IX*, the Court of Appeal stated:[13]

> An examination of s 34 of the SCJA would show that, as a general rule, it is intended that there should only be one tier of appeal *as a matter of right*. A litigant in a case commenced in the Subordinate Courts would have a right of appeal to the High Court. Any further appeal to the Court of Appeal would require the leave of court. [emphasis added]

39 Subsection 21(1) restricts the circumstances in which parties enjoy an automatic right of appeal from a Magistrate's or District Court to the High Court. This is despite

---

11 The legislative intention that there be two tiers of hearing in civil matters is adhered to even in cases where the matter is heard, first, by an assistant registrar, secondly, a judge and finally the Court of Appeal. This is because a judge hearing a registrar's appeal exercises "confirmatory" jurisdiction, and not appellate jurisdiction. One practical consequence of this is that not all the *Ladd v Marshall* [1954] 1 WLR 1489 conditions are applicable in applications to admit fresh evidence in a registrar's appeal: *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2004] 2 SLR 392.

12 [2002] 2 SLR 225 at [19].

13 [2006] 1 SLR 135 at [22].

the fact that an appeal from the Subordinate Courts to the High Court is necessarily an appeal from the hearing at first instance, and is entirely consistent with the legislative intention that there should be only two tiers of hearing. To impose a requirement of leave, even for appeals from a first instance decision, runs counter to the intention that there should be one tier of appeal "as a matter of right".

40 Yet, absolute compliance with the two tier approach is impractical. Due regard must be given to the limited nature of judicial resources. Strict adherence to the two tier approach must mean that there would be no requirement of leave for *any* appeal from the Subordinate Courts to the High Court regardless of the quantum of the sum at stake. This is despite the fact that there would inevitably be instances where the costs of the appeal, to the parties as well as to the State, greatly outweigh the gain that may be had upon a successful appeal. This situation is exacerbated where the appeal is plainly unmeritorious or frivolous.

41 Even if the frivolous appellant is ordered to pay the respondent the costs of the appeal, such costs as may be ordered are unlikely to allow for full recovery of the costs likely to have been incurred by the respondent, not least because costs are usually ordered on a party-to-party basis. Intangible costs are also unlikely to be recovered.

42 The Minister for Law (Professor S Jayakumar) explained the requirement of leave to appeal for cases which do not meet the monetary threshold imposed by sub-s 21(1) at the second reading of the Supreme Court of Judicature (Amendment) Bill on 26 November 1998 in the following terms:[14]

> The requirement for leave is essentially a screening mechanism to sieve out non-serious and unmeritorious appeals. Appeals can still be brought with the leave of court in cases failing below the [monetary] limits.

43 Therefore, on balance, there ought to be a monetary threshold for appeals from the Subordinate Courts to the High Court without leave. Indeed, s 21(1) ought to be amended to impose a requirement of leave for all appeals from the Subordinate Courts to the High Court for which the amount in dispute at the hearing at first instance was $60,000.

44 This proposed approach differs from the current approach in two respects. First, the monetary threshold is an increase from the current monetary threshold of $50,000. Second, in order to achieve consistency with sub-s 34(2)(*a*), the relevant monetary value is that of the amount in dispute at the hearing at first instance, rather than the amount in dispute at the appeal. While this represents a departure from the approach adopted by the Court of Appeal in *Augustine v Goh Siam Yong*, this would eliminate the confusion which remains from a plain reading of the two subsections without reference to case law.

---

14 *Singapore Parliamentary Debates, Official Report* (26 November 1998) vol 69 at cols 1629–1630.

45 The effect of the proposed amendments is that leave to appeal would be required for all Magistrate's Court cases. This is a recognition of the fact that Magistrate's Court cases are relatively small claims and ought to be dealt with differently.

F. Incongruity between subsection 34(2)(a) and the two tier system

46 Pursuant to sub-s 34(2)(*a*), actions for which the "amount or value of the subject-matter at the trial" is $250,000 or less may only be appealed with the leave of court, even if they are commenced in the High Court. This contravenes the legislative intention that there should always be one tier of appeal as of right.

47 While claims below $250,000 should properly be commenced in the Subordinate Courts, a plaintiff may be obliged to commence his claim in the High Court even though the monetary value of his claim falls below $250,000, for instance, where the plaintiff wishes to enforce the judgment in a foreign jurisdiction or where the relevant statute prescribes the High Court as the only court with competent jurisdiction (see, for example, the Trade Marks Act (Cap 332, 2005 Rev Ed)). Where there are legitimate reasons for commencing the claim in the High Court even though the value of the claim falls below $250,000, parties ought to enjoy an automatic right of appeal in accordance with the two tier system.

48 Therefore, sub-s 34(2)(*a*) should be amended to provide for an exception to the requirement of leave where the case is commenced in the High Court and there are legitimate reasons for doing so even though the value of the claim is less than $250,000. The Explanatory Statement to the amendment bill should then specify examples of such legitimate reasons to provide guidance for the interpretation of the amended sub-s 34(2)(*a*). In addition, it may be advisable to amend the Rules of Court to require the party filing a Notice of Appeal to the Court of Appeal to indicate his grounds for being able to appeal without leave, if leave is not sought. This would assist the court in deciding whether or not there were legitimate reasons for the commencement of the claim in the High Court, despite the fact that the value of the claim fell below $250,000.

G. Exception to the two tier system – Orders giving unconditional leave to defend or setting aside unconditionally a default judgment

49 Subsection 34(1)(*a*) prohibits appeals from orders of the High Court giving unconditional leave to defend or setting aside unconditionally a default judgment. While sub-s 34(1)(*a*) constitutes an exception to the two tier system, there is a valid justification for this exception.

50 The rationale for sub-s 34(1)(*a*) is that the result of an order giving unconditional leave to defend or setting aside unconditionally a default judgment is

merely that the matter proceeds to trial as it ordinarily would. This was affirmed by the Court of Appeal in *Wellmix Organics (International) Pte Ltd v Lau Yu Man*:[15]

> The policy behind a provision such as s 34(1)(*a*) is really to ensure that appeals are not unnecessarily taken to the Court of Appeal. No one really suffers if the effect of an order is that the trial should proceed.

51 The ground on which the default judgment is set aside or the unconditional leave to defend is granted therefore ought not to matter at all. However, it is unclear if the underlying reason for which unconditional leave to defend was granted or a default judgment was unconditionally set aside ought to be taken into account by the court in interpreting the scope of sub-s 34(1)(*a*).

52 In *Wellmix Organics*, interlocutory judgment was entered in favour of the appellant, with damages to be assessed because the respondent failed to serve its affidavits of evidence-in-chief on the appellant in accordance with certain unless orders. The respondent's application to set aside the interlocutory judgment was initially dismissed by Andrew Phang JC (as he then was). However, upon hearing further arguments, Phang JC ordered that the interlocutory judgment be set aside unconditionally and that the action be restored for trial ("the Order").

53 The appellant appealed against the Order and the respondent sought to strike out the appeal on the ground that the Order was "non-appealable" under sub-s 34(1)(*a*). In response, the appellant argued that the true nature of the Order was an order to set aside the unless order, not an order unconditionally setting aside a default judgment. The Court of Appeal disagreed in the following terms:[16]

> It seems to us that, in the instant case, it would be quite artificial to draw a distinction between setting aside the unless order and setting aside the default judgment as the two are inextricably linked. One formed the basis for the other and the court cannot set aside one without also setting aside the other. There would be no legal basis to set aside the default judgment unless the court was also of the opinion that the unless order should be set aside because there was no contumelious breach on the part of the respondent.

54 The Court of Appeal further held that sub-s 34(1)(*a*) applied to all judgments obtained by default in complying with either the Rules of Court or an order of court. It stated as follows:[17]

> [T]here is nothing in s 34(1)(*a*) to suggest that the "default judgment" referred to in the provision is limited only to a judgment obtained by default in complying with the procedures prescribed in the ROC and not default in complying with an order of court. We can see no justification to give such a

---

15 [2006] 2 SLR 525 ("*Wellmix Organics*") at [35].

16 *Id*, at [32].

17 *Id*, at [30].

> restrictive meaning to the word "default" which means non-compliance with something. To so restrict its meaning would be to read, quite unwarrantably, additional words into the provision, words which are not there.

55 From the above-cited *dictum* of the Court of Appeal, it is clear that the precise ground on which an order giving unconditional leave to defend an action or an order setting aside unconditionally a default judgment was made is not relevant in determining if the order in question falls within sub-s 34(1)(*a*).

56 The Court of Appeal's interpretation of sub-s 34(1)(*a*) in *Wellmix Organics* is manifestly correct. Unfortunately, that the appellant in *Wellmix Organics* was even able to fit his argument, that the Order was one setting aside the unless order rather than the default judgment, into the language of sub-s 34(1)(*a*) leaves much to be desired. Subsection 34(1)(*a*) ought therefore to be clarified to make it clear that what is relevant is the final result of the order made by the court below, rather than the precise reason for the order.

57 In addition, s 21 of the SCJA ought to be amended to provide for a corresponding exception to the two tier system for orders of a District Court or a Magistrate's Court giving unconditional leave to defend or setting aside unconditionally a default judgment. This would ensure that the policy underlying sub-s 34(1)(*a*) as stated in *Wellmix Organics*, which is equally applicable to appeals from the Subordinate Courts against orders giving unconditional leave to defend or setting aside unconditionally a default judgment, is given practical effect.

H. Recommendation

58 The sub-committee is of the opinion that sub-ss 21(1) and 34(2)(*a*) ought to be amended to make their proper interpretation clear from a plain reading of the provisions. The sub-committee is thus of the view that one or more of the following amendments should be adopted:

(a) amend s 34(2)(*a*) so that its monetary threshold is based on the amount in dispute on appeal to ensure consistency with s 21(1);

(b) amend s 21(1) so that its monetary threshold is based on the amount in dispute at the hearing below to ensure consistency with s 34(2)(*a*);

(c) amend sub-ss 34(2)(*a*) and 21(1) to clarify that interests and costs ought not to be taken into account for the purposes of their monetary thresholds;

(d) reduce the monetary threshold set out in s 21(1) so as to preserve the automatic right of appeal for the vast majority of cases heard in the Subordinate Courts, while preserving the requirement of leave for those cases which, even if successful on appeal, are unlikely to yield such

monetary benefit to the appellant as to warrant the legal costs incurred in the appeal; and/or

(e) remove the monetary threshold in s 21(1) so that all appeals from the Subordinate Courts to the High Court may be made without leave.

59 For instance, sub-ss 21(1) and 34(2)(*a*) of the SCJA could be amended in the following manner:

> Section 21(1)— Subject to the provisions of this Act or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute *at the hearing below (excluding interest and costs)* or the value of the subject-matter exceeds $*6*~~5~~0,000 or such other amount as may be specified by an order made under subsection (3) or with the leave of *the Court whose decision is being appealed* ~~a District Court, a Magistrate's Court~~ or the High Court if under that amount.[18]
>
> …
>
> Section 34—
>
> …
>
> (2) Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) where the amount *in dispute* ~~or value of the subject-matter~~ at the *hearing below* ~~trial~~(*excluding interest and costs) or the value of the subject-matter* is $250,000 or such other amount as may be specified by an order made under subsection (3) or less
>
> [*save for matters in respect of which by any written law the High Court has exclusive original jurisdiction*.] } *Optional*
>
> [additions in italics]

60 In addition, it is recommended that sub-s 34(1)(*a*) be amended to read as follows:

> (1) No appeal shall be brought to the Court of Appeal in any of the following cases:

18 Imposing a monetary threshold of $60,000 would also sieve out non-injury motor accident claims, the majority of which involve claims falling below $10,000. Many non-injury motor accident claims are determined by a Small Claims Tribunal, which has a jurisdictional limit of $10,000, or $20,000 with the agreement of the parties.

> (a) where a Judge makes an order giving unconditional leave to defend an action or an order setting aside unconditionally a default judgment *regardless of the underlying reason for the order* … [additions in italics]

61 The inclusion of this phrase at the end of sub-s 34(1)(*a*) would make it abundantly clear that sub-s 34(1)(*a*) cannot be circumvented by recharacterising the order in question as one other than an order giving unconditional leave to defend or setting aside unconditionally a default judgment.

62 In addition, it is recommended that two new subsections be included at the end of s 21 of the SCJA, as follows:

> …
>
> (4) No appeal shall be brought to the High Court where a District Court or Magistrate's Court makes an order giving unconditional leave to defend an action or an order setting aside unconditionally a default judgment regardless of the underlying reason for the order.
>
> (5) Except if the appellant is the defendant, no appeal shall be brought to the High Court where a District Court or Magistrate's Court makes an order giving leave to defend on condition that the defendant pays into court or gives security for the sum claimed or an order setting aside a default judgment on condition as aforesaid.

III. Interlocutory Applications in Appeals to the Court of Appeal

A. Introduction

63 When a litigant decides to appeal to the Court of Appeal, it would often be necessary to make interlocutory applications to the court. Such interlocutory applications relating to an appeal may be for a variety of situations, such as obtaining leave to appeal, to seek an extension of time to file the notice of appeal, to adduce fresh evidence, to obtain security for costs, or for the withdrawal of the appeal.

64 One would assume that the procedure for making such interlocutory applications would be exhaustively and clearly set out in the Rules of Court. However, at present, the rules prescribing the proper procedure for such applications can only be found in scattered parts of the Rules of Court, or from case law. Therefore, it is not readily apparent whether such an interlocutory application should be made to the High Court or the Court of Appeal.

65 The starting point for any litigant who wishes to make such an application is s 36 of the SCJA, which states:

> (1) In any proceeding pending before the Court of Appeal, any direction incidental thereto not involving the decision of the appeal, any interim order to prevent prejudice to the claims of parties pending the appeal, and any order for security for costs and for the dismissal of an appeal for default in furnishing security so ordered, may at any time be made by a Judge.
>
> (2) Every application under subsection (1) shall be deemed to be a proceeding in the Court of Appeal.
>
> (3) Every order so made may be discharged or varied by the Court of Appeal.

66 Section 36, however, does not prescribe the procedure which a party should adopt when an interlocutory application for the appeal is required. The section merely sets out the three broad categories of orders which a single judge, sitting as the Court of Appeal, may make under that provision, namely:

(a) any incidental direction,

(b) any interim order to prevent prejudice, and

(c) any order for security for costs and the consequential order for dismissal of appeal for default.

Therefore, s 36(1) merely establishes the jurisdiction of a single judge when faced with an interlocutory application.

67 As noted by the Court of Appeal in *Bank of India v Rai Bahadur Singh*,[19] the intent of the legislature behind the section "was to avoid burdening a three-judge court with interlocutory applications relating to an appeal which could be more expeditiously and less expensively disposed of before a single judge". Therefore, s 36(1) of the SCJA does little to clarify and crystallise the procedures related to such applications.

B. The present position

68 To determine the proper court to which an interlocutory application should be made, one must turn to various provisions in the Rules of Court and also case law. At present, the procedures for the various types of interlocutory applications are not consolidated in one single rule.

69 There is, however, a general rule that has to be observed with respect to all applications to the Court of Appeal. Under s 35 of the SCJA, a party who is entitled to make an application either to the High Court or to the Court of Appeal is required to apply to the High Court in the first instance. This is augmented by O 57 r 16(4) of the

19 [1993] 2 SLR 592.

Rules of Court which adds that an application may only be made to the Court of Appeal at first instance where there are "special circumstances which make it impossible or impracticable to apply to the Court below".

70 Where a party seeks to obtain *leave to appeal*, O 56 r 3 prescribes that the application should be made to the High Court and, in the event that leave is refused by the High Court, to the Court of Appeal. This is consistent with O 57 rr 16(2) and 16(3) which add that the application must be made *ex parte* in the first instance.

71 The procedure for an *expedited appeal or application* is set out in O 57 r 20 which stipulates that "where an appeal or application is one of urgency, any party may apply to a Judge of Appeal or, if one is not available, to a Judge … for such directions as may be appropriate". This clearly contemplates that such an application should be made to a single judge, sitting as the Court of Appeal.

72 A party may also apply to Court for an *extension of time to apply for further arguments* in compliance with s 34(1)(*c*) of the SCJA. The question of whether the Court of Appeal has the jurisdiction to entertain such an application arose in *Denko-HLB Sdn Bdh v Fagerdala Singapore Pte Ltd*.[20] In this case, the Court of Appeal held that an extension of time to apply for further arguments should be made to the High Court. The Court of Appeal does not have the requisite jurisdiction as such an application is neither the hearing of an appeal nor a matter incidental to the hearing of an appeal. Only if the application is refused by the High Court can an appeal be made to the Court of Appeal. Therefore, an application to extend time to apply for further arguments should be made to the High Court.

73 As for an application for an *extension of time to file a notice of appeal*, the relevant provision is O 57 r 17, which states:

> Without prejudice to the power of the Court of Appeal under Order 3, Rule 4, to extend the time prescribed by any provision of this Order, the period for filing and serving the notice of appeal under Rule 4 or for making application ex parte under Rule 16(3) may be extended by the Court below on application made before the expiration of that period.

74 Thus, an application for an extension of time to file a Notice of Appeal should be made to the High Court where the application is made before the expiration of that period. However, where the application is made after the expiration of that period, the application should rightfully be made to the Court of Appeal.[21] The proper forum to which the application should be made thus depends on whether the prescribed period for filing the notice of appeal has expired.

---

20 [2002] 3 SLR 357.

21 *Chen Chien Wen Edwin v Pearson* [1991] SLR 578.

75 Applications for *security for costs* should be made to the Court of Appeal. Under s 36(1) of the SCJA, a single judge sitting as the Court of Appeal has the jurisdiction to make "any order for security for costs". Accordingly, an application for security for costs should be made to the Court of Appeal.

76 Similarly, an application for *further evidence* to be admitted on appeals from a judgment, after trial or hearing of any cause or matter upon the merits,[22] should be made to the Court of Appeal. Section 37(4) of the SCJA states that such further evidence will only be permitted with leave of the Court of Appeal. Hence, such an application should also be made to the Court of Appeal.

77 In a situation where an appeal is pending and a party wishes to apply for the *removal of a solicitor from record*, the application should also be made to the Court of Appeal: O 64 r 4 of the Rules of Court.

78 A party may also apply for a *stay of execution* under O 57 r 15. The jurisdiction of the courts to hear such an application is concurrent: *Cropper v Smith*.[23] However, bearing in mind s 35 of the SCJA and O 57 r 16(4), an application for a stay of execution should be made in the first instance to the court below. If this application is subsequently dismissed, the party may make the application to the Court of Appeal.

79 Finally, an application for the *withdrawal of an appeal (where parties do not consent)* should be made before the Court of Appeal. This is stipulated in O 57 r 11(3) which states that the Court of Appeal would hear any issue as to costs or otherwise outstanding between the parties.

C. Recommendation

80 Save for the fact that where an application can be made to both the High Court and the Court of Appeal, it should be made in the first instance to the High Court,[24] the present scheme does not provide any general guideline as to whether an interlocutory application relating to appeals to the Court of Appeal should be made to the High Court or the Court of Appeal. This may be a source of much confusion, as litigants making such interlocutory applications will have to consult various statutory provisions in order to determine the proper forum to which an application should be made. The likelihood of an application being made to the wrong court is increased as a consequence.

81 It is recommended that the Rules of Court be amended to provide for a general guideline that parties can follow when making an interlocutory application in an appeal

---

22 Further evidence may be given without leave on interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought: s 37(3) of the SCJA.

23 (1883) 24 Ch D 305.

24 Section 35 of the SCJA; O 57 r 16(4) of the Rules of Court.

to the Court of Appeal. To this end, it is suggested that the amendment should lay down the following guideline: interlocutory applications filed before the appeal is commenced will be heard by the High Court, and applications filed after the appeal has commenced will be heard by the Court of Appeal. For the purposes of this general guideline, an appeal should be deemed to have commenced at the time when the notice of appeal is filed, irrespective of any subsequent application to set aside or strike out the notice of appeal.

82 This guideline should be reflected in O 57 r 16 as this rule governs all applications to the Court of Appeal.

D. The Committee's views – Recommended changes to Order 57 rule 16

83 In view of the LRC's suggestions, it is suggested that O 57 r 16 be amended to read as follows:

> (4) Subject to this Order, applications in relation to a judgment or order of the Court below:
>
> (a) made before the commencement of proceedings in the Court of Appeal, shall be made to the Court below; and
>
> (b) made at the time of, or after, the commencement of proceedings in the Court of Appeal, shall be made to the Court of Appeal.
>
> (5) For the purposes of this Rule, "proceedings in the Court of Appeal" shall be deemed to commence when the notice of appeal is filed in accordance with these Rules, irrespective of any application to set aside such notice of appeal.
>
> (6) The following applications shall be made at the first instance to the Court below, even if proceedings in the Court of Appeal have commenced:
>
> (a) stay of execution of the whole or any part of a judgment or order of the Court below;
>
> (b) leave to appeal from the whole or any part of a judgment or order of the Court below;
>
> (c) extension of time to make further arguments pursuant to section 34(1*A*)~~(c)~~ of the Supreme Court of Judicature Act (Chapter 322); and
>
> (d) clarification or the correction of clerical mistakes in the judgment or order of the Court below.
>
> [addition in italics]

IV. Further Arguments and Appeals to the Court of Appeal

A. Introduction

84 The rule requiring "further arguments" can be briefly described as follows. Where a party who is adversely affected by an interlocutory order made by a judge in chambers wishes to appeal against the order, he first has to write to the judge who made that order in the form of an application for further arguments.[25] The party may use this opportunity to raise further arguments to the judge. Upon hearing further arguments, the judge may affirm, vary or set aside the interlocutory order. Alternatively, the judge may certify that he does not wish to hear further arguments,[26] in which case the party will be free to appeal to the Court of Appeal.

85 This requirement is set out in s 34(1)(*c*) of the SCJA, and the procedure is laid down in O 56 r 2 of the Rules of Court. Section 34(1) of the SCJA lists the various cases in which no appeal shall be brought to the Court of Appeal and an application for further arguments is required as a pre-condition to the filing of an appeal against an interlocutory order.[27] Section 34(1)(*c*) provides:

> No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> …
>
> (c) subject to any provision in this section, where a Judge makes an interlocutory order in chambers unless the Judge has certified, on application within 7 days after the making of the order by any party for further argument in court, that he requires no further argument.

86 The effect of the requirement of further arguments is that it allows the judge to reconsider the order made in the light of such further arguments as the counsel for the applicant is able to put forward.[28] Accordingly, if a judge agrees to hear further arguments, he must be "prepared to change his mind" on the order, or "at least alter his

---

25 The application should comply with the requirements set out in the Supreme Court Practice Directions, Pt X, para 71.

26 Under O 56 r 2(2) of the Rules of Court, if the registrar does not inform the party making the application within 14 days of the receipt of the receipt of the application that the judge requires further arguments, the judge shall be deemed to have certified that he requires no further arguments.

27 This may be contrasted with the predecessor of the present s 34(1)(*c*), formerly s 34(2), which provides that the aggrieved party could either apply to further arguments or seek leave to appeal from the Court of Appeal or from the judge who heard the application. The present s 34(1)(*c*) does not offer this alternative of leave to appeal.

28 *JH Rayner (Mincing Lane) Ltd v Teck Hock & Co (Pte) Ltd & Ors* (unreported) digested at [1989] *Mallal's Digest* 394 *per* Chan Sek Keong J (as he then was).

thinking on some of the issues he has to decide in coming to his conclusion which might have some bearing on the order he made".[29]

B. Purpose and rationale of the rule requiring further arguments

87 The purpose and rationale of this rule was enunciated in no uncertain terms by the Singapore Court of Appeal in *Singapore Press Holdings* in the following terms:[30]

> The intent and purpose of section 34(1)(c) of the re-enacted Supreme Court of Judicature Act and Order 56 Rule 2 of the Rules of the Supreme Court is to us abundantly clear and free from doubt. It is to prescribe a procedure for appeals in interlocutory matters heard by a judge-in-chambers being brought to this court, which may have arisen from full arguments not being presented to the judge-in-chambers due to the shortness of time available for the hearing of such applications or due to the judge-in-chambers having to decide on an issue without the time available to him for mature consideration.

88 This requirement of further arguments affords the judge an opportunity to reconsider his decision where the judge did not have sufficient time to hear and consider all the relevant arguments. This may be due to the judge having to make his order without sufficient time for evaluating the issues and the arguments.

89 The requirement of further arguments recognises that, in practice, parties are often given only a short amount of time to present their arguments to the judge in chambers, and that there will inevitably be instances whereby parties fail to present all relevant arguments whether deliberately for the purpose of saving time or inadvertently. The order would thus have been made without the benefit of the judge having considered the arguments in full. Similarly, in most interlocutory applications before a judge in chambers, the judge will often have to deal with the issues in a very short time, and would often have to make an order quickly and on the spot.

90 In the more recent case of *Aberdeen Asset Management Asia Ltd v Fraser & Neave Ltd*,[31] the Court of Appeal considered the requirement of further arguments, and opined that "the process is basically to give the judge another opportunity to review his decision", and added that "there is nothing unjust about requiring a party who wishes to appeal against a decision of a judge made in chambers, and which does not dispose of the entire action, to request for further arguments before he may file his notice of appeal."

91 The Court of Appeal therefore appears to be in favour of the rule requiring further arguments. However, it is noteworthy that the "further arguments" procedure

---

29 *Singapore Press Holdings Ltd v Brown Noel Trading Pte Ltd* [1994] 3 SLR 151 ("*Singapore Press Holdings*") at [41].

30 *Id*, at [40].

31 [2001] 4 SLR 441 ("*Aberdeen Asset Management*").

was abandoned in Malaysia in 1994,[32] and in a recent proposal by the Rules of Court Working Party, it was recommended that the need to ask for further arguments be eliminated.

C. The case for the rule requiring further arguments

92 As stated by the Court of Appeal in *Singapore Press Holdings*, the main rationale behind the rule requiring further arguments is to allow the judge an opportunity to reconsider his decision. This is regarded as necessary and desirable as interlocutory orders are often made under significant time constraints and without due consideration.

93 From this, three arguments can be advanced in favour of the rule. First, the short amount of time given to the litigants to present their cases means that not all arguments will be completely or adequately addressed at the hearing. Counsel are often expected to present their arguments to the judge in a short space of time, and it is not uncommon to discard or heavily summarise certain arguments due to the limited time available. This is especially so for applications involving difficult areas of the law or complex facts.

94 Counsel may also have inadvertently left out some relevant arguments. This is likely to occur where there is an urgent application to be heard and the time for preparation is short, when certain issues become apparent only at the hearing, or when a particular issue is simply not raised or addressed at the hearing due to a lack of time.

95 These factors may result in the judge not having the opportunity to hear all relevant arguments. Therefore, the requirement of further arguments enables aggrieved parties who were unable, for one reason or another, to advance all the relevant arguments a legitimate opportunity to make such further arguments for the judge's consideration.

96 Secondly, just as counsel are expected to present the arguments within a limited time, a judge is also often required to make an interlocutory order in a short period of time. Due to the lack of time, not only may a judge be deprived of hearing all the relevant arguments as described earlier, but he may also be denied sufficient time to deliberate on the issues at hand. As such, it is reasoned that a judge should be afforded an opportunity to review an interlocutory order made under such circumstances, so as to allow him time to rethink and further evaluate the pertinent issues.

97 Finally, the rule requiring further arguments also acts, in a way, as a filtration process to limit the volume of appeals to the Court of Appeal, such that the Court of

---

32 On 24 June 1994, the Courts of Judicature Act 1964 was amended whereby s 68(2) was deleted, as a result of which the appellate procedure of hearing further arguments in open court, at the instance of the aggrieved party in respect of decisions given in chambers, became obsolete.

Appeal is less likely to encounter frivolous or unmeritorious appeals. A party who has applied for further arguments to be heard, or who has even had the advantage of a second hearing before the judge, and still fails to convince the judge of his position may well be discouraged from appealing if it becomes apparent in the process that his case is weak.

98 Further, the rule ensures that all interlocutory orders which are the subject of an appeal are duly and carefully considered by the judge in chambers before they are appealed. There can be no argument that a judge failed to take into consideration, or has not heard all relevant arguments. As the aggrieved party is obliged under the rule to apply for further arguments before appealing, any order passed would have been made with the benefit of due consideration by the judge. This reduces the likelihood of appeals being brought without full arguments being heard.

D. The case for abolishing the rule requiring further arguments

99 It has been pointed out that the large majority of requests for further arguments do not raise any fresh arguments, but are merely made to comply with sub-s 34(1)(*c*) of the SCJA. Such an application is clearly envisaged by para 51(2) of Pt X of The Supreme Court Practice Directions 1997, where it is expressly acknowledged that an application may raise no new issue or argument but is made solely for the purpose of complying with sub-s 34(1)(*c*) of the SCJA. Thus, it is argued that to impose the rule in all cases would only waste time and costs.

100 Secondly, it is also felt that sub-s 34(1)(*c*) of the SCJA imposes a very tight deadline on litigants, and may cause a party to lose the right of appeal if he fails to take what is effectively an inconsequential step in the proceedings. Under sub-s 34(1)(*c*), an aggrieved party has seven days from the date of the order to file the application for further arguments.

101 Further, the one-month period within which a notice of appeal has to be filed runs from the date the order was pronounced: *Aberdeen Asset Management*, distinguishing *Bank of America National Trust and Savings Association v Chai Yen*.[33] Yet, a litigant may be informed of the judge's decision not to hear further arguments as late as 21 days after the judge made the order in chambers, leaving him with seven to ten days to file his notice of appeal.

102 Thirdly, the rule draws a distinction between interlocutory and final orders, which gives rise to difficulties in practice as the distinction is not always clear. An abolition of the rule requiring further arguments for an appeal on interlocutory orders would effectively eliminate the need to distinguish between interlocutory and final orders, and greatly simplify the appeal process for such orders.

---

33 [1980] 1 MLJ 198.

103 Finally, it has been noted that the distinction between final and interlocutory orders with regards to further arguments may be irrelevant if the rationale behind s 34(1)(*c*) of the SCJA is to give the judge an opportunity to reconsider his decision due to the lack of time at the first hearing. This is because many final orders are also made in chambers and under the same time constraints or conditions as interlocutory orders. The distinction is thus artificial, and the rule should accordingly be abolished.

E. Recommendation

104 It is recommended that parties should continue to be allowed to make further arguments. The making of further arguments ensures that the order against which an appeal is filed was made upon due consideration by the judge of all the relevant arguments and issues.

105 Since the making of further arguments was intended to address the possible injustice arising from full arguments not being made before the judge, further arguments should be allowed in respect of all orders except those made after a trial. Subsection 34(1)(*c*) should be accordingly amended to eliminate the ambiguity inherent in the definition of an "interlocutory order".

106 However, the making of further arguments ought not to be mandatory but should be at the option of the parties and the judge. Appellants who fail to apply for further arguments in accordance with s 34(1)(*c*) may be entirely deprived of their right to appeal because the breach of s 34(1)(*c*) is not one that can be easily waived. This was recognised by the Court of Appeal in *Lai Swee Lin Linda v Attorney-General*:[34]

> If the appellant had, in fact, failed to comply with s 34(1)(*c*), then, having regard to the basic purpose underlying the provision (which was briefly recounted above), it is clear that such failure was not a mere technical breach that could be overlooked by the court. Indeed, if such a breach were overlooked, we would be setting a precedent that could well mark the beginning of a potential floodtide of contraventions which would ultimately undermine the very *raison d'être*, indeed the very existence, of the provision itself.

107 Yet, to impose such a draconian penalty on appellants who decline to exercise their right to apply for further arguments, to their own detriment, is unjustified and unnecessary. Applications for further arguments therefore ought not to be mandatory as long as the power of the judge to call for further arguments is preserved. This would also force the parties to apply their minds to the question of the strength of their further arguments and, indirectly, on the issue of whether they ought to appeal at all.

108 The extended jurisdiction of the court to affirm, vary or set aside its order after hearing further arguments, even if the order has already been perfected, should also be

---

34 [2006] 2 SLR 565 at [32].

preserved. In *Tan Yeow Hiang Kenneth v Tan Chor Chuan*, the court affirmed that a court usually becomes *functus officio* upon the extraction of the order of court:[35]

> As the order of court had been extracted, the court was functus officio and could not allow what would in effect be a variation of the order as distinct from a clarification.

109 However, the Court is conferred an extended jurisdiction to vary or set aside its order even after the order of court has been extracted under s 34(1)(*c*). In *Singapore Press Holdings*, the Court of Appeal held:[36]

> In our judgment O 56 r 2(3) permits the judge hearing 'further argument' to make more firm what might have been tentative … or to vary, or set aside the interlocutory order in chambers previously made by him irrespective of whether the interlocutory order has been perfected …
>
> [T]he common law rule that no further arguments can be heard once an interlocutory order has been drawn up and perfected has no application. To hold otherwise would be to deny the procedure specially designed by Parliament for the manner in which appeals from an interlocutory order of a judge made in chambers are to be made.

110 This extended jurisdiction ought to be expressly preserved. It may be thought that there might be little impetus for the judge to call for further arguments without application by the parties. However, it would still be prudent to preserve this extended jurisdiction of the court so that the judge has the option of asking for further arguments. However, in the interests of certainty, this extended jurisdiction of the court to alter its order should not continue indefinitely but should expire upon the extraction of the order of court.

111 The seven-day deadline for applications for further arguments ought to be retained because it allows the parties to proceed to appeal or enforce the order upon the expiry of seven days after the making of the order. Without such a deadline, an application for further arguments may be made even after one of the parties has already proceeded to appeal or enforce the order, resulting in wasted time and costs. The deadline is also necessary to ensure that the appeal process is not unduly delayed.

112 Where further arguments have been requested, the time for filing the notice of appeal ought to run from the time that the judge affirms, varies or sets aside his order after hearing further arguments, or certifies or is deemed to have certified that he requires no further arguments. This preserves the month-long period within which the notice of appeal must be filed and is entirely consistent with the fact that when a judge agrees to hear further arguments, there is no longer any decision against which an appeal can be lodged and the time within which the notice of appeal must be filed only

---

35 [2006] 1 SLR 557 at [8].

36 *Supra* n 29, at [43] and [44].

starts to run from the date on which the judge makes his decision after hearing further arguments.[37]

113 In the premises, it is proposed that sub-s 34(1)(*c*) be deleted and a new subsection be enacted in s 34 as follows:

> (1A)(1) Before a notice of appeal is filed in respect of any order of a judge after any hearing save for a trial, a judge may hear further arguments in respect of the order,
>
> (a) upon request by any of the parties within seven days after the making of the order, or
>
> (b) at his own request at any time before the order has been extracted if further arguments have not been requested by any of the parties.
>
> (2) After hearing further arguments, the judge may affirm, vary or set aside his order, even if an order of court has already been extracted in respect of the order.
>
> (3) If further arguments are requested, no appeal shall be filed against the order until the judge affirms, varies or sets aside his order after hearing further arguments, or certifies or is deemed to have certified that he requires no further arguments.
>
> (4) If further arguments are requested, the time for appealing the order of the judge shall run from the time that the judge affirms, varies or sets aside his order after hearing further arguments, or certifies or is deemed to have certified that he requires no further arguments.
>
> (5) For the avoidance of doubt, parties are at liberty to, but are not required to, request further arguments before appealing an order of a judge.

114 In line with the proposed changes to sub-s 34(1)(*c*), minor amendments to O 56 r 2 of the Rules of Court are necessary. Specifically, it is proposed that the word "interlocutory" be deleted from O 56 r 2, as follows:

> Further arguments on ~~interlocutory~~ orders *of a Judge* (O. 56, r. 2)
>
> 2.—(1) An application to a Judge for further argument in Court pursuant to section 34(1*A*)(~~c~~*1*) of the Supreme Court of Judicature Act (Chapter 322) shall, subject to the provisions of that section, be made in accordance with practice directions for the time being issued by the Registrar.
>
> (2) Unless the Registrar informs the party making the application within 14 days of the receipt of the application that the Judge requires further

37 *Thomson Plaza v Liquidators of Yaohan Departmental Store* [2001] 3 SLR 248 at [6]–[10].

arguments, the Judge shall be deemed to have certified that he requires no further arguments.

(3) Upon hearing further arguments, the Judge may affirm, vary or set aside the ~~interlocutory~~ order previously made or may make such other order as he thinks fit. Any such hearing, if in Chambers, shall be deemed to be a hearing in Court for the purposes of section 34(1*A*)~~(c)~~ of the Supreme Court of Judicature Act.

[additions in italics]

ANNEX A:

RULES OF COURT

WORKING COMMITTEE REPORTS

Report No 2

Report No 2

Matter for consideration

Amendments to Order 57 rules 16–17, 20

PROBLEM

Presently, unless a particular application relating to appeals is specifically dealt with under the Rules of Court, it is unclear whether an application should be made to the High Court, a single judge (sitting as the Court of Appeal) or the Court of Appeal.

Section 36 of the Supreme Court of Judicature Act ("SCJA") provides limited guidance. It states:

> **Incidental directions and interim orders**
>
> 36(1) In any proceeding pending before the Court of Appeal, any direction incidental thereto not involving the decision of the appeal, any interim order to prevent prejudice to the claims of parties pending the appeal, and any order for security for costs and for the dismissal of an appeal for default in furnishing security so ordered, may at any time be made by a Judge.
>
> (2) Every application under subsection (1) shall be deemed to be a proceeding in the Court of Appeal.
>
> (3) Every order so made may be discharged or varied by the Court of Appeal.

In relation to appeals from the High Court to the Court of Appeal, the Rules of Court and case law provide as follows:

(a) expedited appeal – Single Judge of Appeal or, if one is not available, a judge (O 57 r 20(1));

(b) leave to appeal – High Court, with the Court of Appeal exercising a concurrent jurisdiction (O 57 rr 16(2), 16(3));

(c) extension of time to comply with s 34(1)(*c*) of the SCJA – High Court (*Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 3 SLR 357);

(d) extension of time to file notice of appeal:

  (i) before the expiration of time – High Court (O 57 r 17),

  (ii) after the expiration of time – Court of Appeal;

(e) security for costs – Court of Appeal;

(f) stay of execution – High Court, with the Court of Appeal exercising a concurrent jurisdiction (s 41(1) of the SCJA and O 57 r 15(1), read with s 35 of the SCJA and r 16(4));

(g) further evidence – Court of Appeal;

(h) removal of solicitor – Court of Appeal;

(i) withdrawal of appeal, where parties do not consent – Court of Appeal (O 57 r 11(3); *Supreme Court Practice 1999* (vol 1) at para 59/1/72).

The Rules of Court should be amended to clarify matters, and to avoid a litigant having to consult different sources to determine how an application should be made. This will also reduce the prospect of applications being made to the wrong court, resulting in appeals/applications being filed out of time.

SOLUTION

It is proposed that, subject to certain specified instances, the Rules of Court be amended to make it clear that all applications filed before the appeal is commenced be heard by the court below, and that all applications filed after the appeal is commenced be heard by the Court of Appeal. By that principle, parties will not be left in any doubt as to which forum the application should be made.

Identifying rules to be amended

It is suggested that O 57 r 16 be amended as follows:

(4) Subject to this Order, applications in relation to a judgment or order of the Court below:

(a) made before the commencement of proceedings in the Court of Appeal, shall be made to the Court below; and

(b) made from the commencement of proceedings in the Court of Appeal, shall be made to the Court of Appeal.

(5) For the purposes of this Rule, "proceedings in the Court of Appeal" commence when a notice of appeal is filed, irrespective of whether any application may be brought to set aside such notice of appeal.

(6) The following applications shall be made to the Court below, notwithstanding that proceedings in the Court of Appeal may have commenced:

(a) stay of execution of a judgment or order of the Court below;

(b) leave to appeal from a judgment or order of the Court below;

(c) injunction in relation to the whole or any part of a judgment or order of the Court below;

(d) extension of time to comply with section 34(1)(*c*) of the SCJA;

(e) clarification or the correction of clerical mistakes in the judgment or order of the Court below.

(7) Subject to paragraph (6), any order made by the Court below pursuant to this Rule may be appealed to the Court of Appeal.

(8) Any order of the Court below in respect of an application under (4)(*a*) and (*b*) above may be discharged or varied by the Court of Appeal upon application by motion made within 7 days after the date of the order.

(9) Subject to this Order, a single Judge of Appeal or a Judge may exercise the jurisdiction and powers in relation to any matter incidental to any proceedings in the Court of Appeal.

(10) Any order made by a single Judge of Appeal or a Judge exercising the powers of a Judge of Appeal pursuant to section 36 of the Supreme Court of Judicature Act (Cap 322) may be discharged or varied by the Court of Appeal upon application by motion made within 7 days after the date of the order.

The following other amendments to O 57 are also suggested, for consistency:

(a) Delete present r 16(4).

This is replaced by the suggested amendments.

(b) Delete r 17.

The combination of the suggested amendments to r 16 and the deletion of r 17 makes one substantive change. At present, an application for an extension of time, before the expiration of deadline, to file a Notice of Appeal or to apply *ex parte* to the Court of Appeal for leave to appeal, is made to the High Court. Implicitly, such applications, if taken out of time, are made to the Court of Appeal. The suggested amendments mean that such applications, whether taken before or after the expiration of time, are taken to the High Court because there would be no proceedings before the Court of Appeal pursuant to the suggested r 16(4). Any order made on that application may be appealed to the Court of Appeal.

Alternatively, r 17 may be left alone, making an application to extend time an exception to the general rule that applications are heard by the court below or the Court of Appeal depending on whether the appeal has commenced.

(c) Delete the words in r 20(1) "to a Judge of Appeal or, if one is not available, to a Judge (including the Judge hearing the proceedings in the Court below)".

There may be little substantive change as a result of this deletion. The application for an expedited appeal can still be heard by a Judge of Appeal or a judge pursuant to the suggested r 16(7). Rule 16(7) is expressed in permissive, not mandatory, terms. The Registry is therefore afforded the administrative discretion to fix the application before the Court of Appeal, a Judge of Appeal or a judge.

ANNEX B:

RULES OF COURT

WORKING COMMITTEE REPORTS

Report No 3

Report No 3

Matter for consideration

Amendments to section 34 of the SCJA, Order 56 rule 2

PROBLEM

In this section, amendments are proposed to deal with two different issues relating to s 34 of the SCJA, namely:

(a) whether it is necessary to impose, as a precondition to filing an appeal against interlocutory orders made in chambers, the need to request further arguments; and

(b) if s 34(1)(*c*) is to be retained, its relationship with s 34(1)(*b*) and s 34(2) of the SCJA.

(1) Further arguments

The difficulties with the interpretation of s 34(1)(*c*) of the SCJA, and how it should be read and understood with the other subsections in the rest of s 34, is well documented and has spawned a host of cases on various issues, *eg*, in respect of whether an order is interlocutory or final. Some of these issues still remain unresolved.

Why is there a need for this pre-condition in the first place? In *Singapore Press Holdings*, it was explained that a judge hearing an interlocutory matter in chambers may not have the time to give sufficient consideration to interlocutory applications, and should therefore be given the opportunity to reconsider his decision before an appeal is filed[38]. It is submitted that this does not warrant making a request for further arguments a pre-condition to filing an appeal:

(a) In our experience, the large majority of requests do not raise any, or any fresh, arguments, but are sent merely to comply with s 34(1)(*c*) of the SCJA (see The Supreme Court Practice Directions (1997 Ed) Pt X, para 51(2)). This only wastes time and costs of litigants in having to send, and the courts in having to deal with, and respond to, these requests.

(b) Section 34(1)(*c*) imposes a very tight deadline on litigants, and may cause a party to lose his right of appeal if he fails to take, what is effectively, an inconsequential step.

---

38 *Supra* n 29, at [40].

(c) It gives rise to difficult issues of whether an order is final or interlocutory, when there is no practical reason for such a distinction. Unlike in the UK, where a party requires leave to appeal an interlocutory order, a party in Singapore may appeal an interlocutory order as of right (subject to s 34, which applies to final orders as well). Further, it is not strictly correct to treat final orders as being "safer" than interlocutory orders. Many final orders are also made in chambers and under the same time constraints or conditions as interlocutory orders, *eg*, in originating summonses.

PROPOSED SOLUTION

It is proposed that s 34(1)(*c*) be deleted altogether. The concerns over interlocutory orders may easily be met by giving the parties the option of asking for further arguments. The litigants are best placed to know if they could have presented a better case to the judge and/or if they have any further arguments worth making.

If a party wishes to write in for further arguments, he may still proceed to do so. The court shall have jurisdiction to hear further arguments, unless the order has been extracted. A party wishing to make further arguments should inform the opposing party not to extract the order.

Amendments

The SCJA: delete s 34(1)(*c*).

The Rules of Court: delete O 56 r 2.

*(2) Sections 34(1)(*c*) and 34(2)*

It is unclear how s 34(1)(*c*) works with s 34(2) of the SCJA. It was stated, albeit *obiter*, in *Seabridge Transport Pte Ltd v Olivine Electronics Pte Ltd* [1995] 3 SLR 545 at [16] that s 34(1)(*c*) is subject to s 34(2):

> Quite obviously, as Mr Chong submitted, these words refer to s 34(2) which refers to matters which are appealable but only with the leave of the Court of Appeal or a judge and since leave to appeal is required from either it would be otiose also to require certification by the judge that no further argument is required.

However, the drafting of s 34 does not make this clear. In particular, it is not clear where a party who wishes to appeal against an order or judgment falling within both s 34(1)(*c*) and s 34(2), whether he should apply for further arguments under s 34(1)(*c*) and additionally, apply for leave under s 34(2), or whether s 34(1)(*c*) is inapplicable and he should only proceed to apply for leave under s 34(2).

The former interpretation is clearly unworkable. An interlocutory order is non-appealable under s 34(1)(*c*) until the judge certifies that he does not require further arguments or is deemed to have done so. At the same time, the party is required to

apply for leave to appeal within seven days of the order. However, until the judge certifies that he does not require further arguments (or is deemed to have done so), there will be no appealable order, nor an order to found an application for leave to appeal. If it takes more than seven days to certify that no further argument is required, the party will be out of time to ask for leave.

PROPOSED SOLUTION

> Section 34 should be amended to make it clear that any party applying for leave under s 34(2) does not have to request for further arguments under s 34(1)(*c*).

Amendment

It is proposed that s 34(1)(*c*) be amended as follows:

> (c) subject to any other provision, *and save in cases where leave is required under subsection (2) below*, where a Judge makes an interlocutory order in chambers unless the Judge has certified … he requires no further argument;

*(3) Sections 34(1)(*b*) and 34(1)(*c*)*

It was held in *Seabridge Transport Pte Ltd v Olivine Electronics Pte Ltd* that the right of the defendant to appeal under s 34(1)(*b*) is qualified by the more general terms of s 34(1)(*c*). There, the defendant failed to comply with s 34(1)(*c*) (the application for further argument was not made within the prescribed time and an application for extension of time was dismissed) and therefore argued that s 34(1)(*b*) was an independent ground of appeal.

The Court of Appeal did not accept the defendant's argument and held that s 34(1)(*c*) had to be satisfied irrespective of compliance with s 34(1)(*b*). The words "subject to any other provision in this section" in s 34(1)(*c*) did not make s 34(1)(*c*) subject to s 34(1)(*b*). Such an interpretation would, as the Court of Appeal found, "put a defendant who is given conditional leave to defend the action by a judge in chambers in a very special position which Parliament could not have intended and which is not justified by the scheme of section 34(1)".

PROPOSED SOLUTION

Although the position has now been settled, it is submitted that s 34(1) should be amended to make clear what the intended appellant's obligations are. In this regard, we agree with Pinsler's observations in *Singapore Court Practice 2006* at para 56/3/5 on the decision of the Court of Appeal:

> This court's interpretation of these provisions is obviously justified, even though it is not entirely consistent with the layout and phraseology. First, if s 34(1)(*c*) is an overriding provision which applies to all interlocutory orders, it ought to be set out in a separate subsection rather than grouped as one of the various circumstances in which an appeal does not lie … Secondly, para (b) is essentially exclusionary in nature: it prevents the plaintiff from appealing

against an order giving the defendant conditional leave to defend an action. If the inclusionary words at the beginning of this paragraph ("except if the appellant is the defendant") are excluded, and the terminology makes clear that it is the plaintiff who is debarred from appealing (without any reference to the defendant), then the defendant would not be able to rely on this paragraph as a separate basis for appeal. That is, although he would not be prevented by para (b) from appealing, he would not be able to contend that it specifically vests a right of appeal in him which operates independently of para (c). In this proposed framework, only para (c) allows an appeal (if procedure for further arguments is complied with).

Amendment

It is proposed that the inclusionary words at the beginning of s 34(1)(*b*) ("except if the appellant is the defendant") be deleted, and at the same time, it be made clear that it is the plaintiff who is debarred from appealing (without any reference to the defendant):

(b) *if the intended appellant is the plaintiff*, where a Judge makes an order giving leave to defend on condition that the defendant pays into court or gives security for the sum claimed or on order setting aside a default judgment on condition aforesaid.