Covenant News

Issue 5 | April 2020

ADDITIONS TO OUR TEAM

Mr Andrew Yap joins as Senior Director and Assistant Professor Tan Zhong Xing joins as Counsel

PROTECTING CHILDREN Resisting application for child psychiatrist examination in divorce proceedings

SERVING ONE AND ALL

Interview with seasoned corporate lawyer Mr Andrew Yap

JUSTICE AND MERCY Reflections on the heart of legal practice by Ms Charis Wong

COVENANT Chambers

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Reflections by Ms Charis Wong, Senior Associate When I penned my thoughts in the final newsletter of 2019, I mentioned about "tidal waves coming our way" in 2020. Never did I expect to face such an epidemic with consequences on a global scale. In the midst of the current Circuit Breaker measures implemented in Singapore, many businesses have been affected and many livelihoods negatively impacted. We are still counting our losses as a nation. To our many clients out there, we just wish to say that we are standing with you in this crisis. We will do our level best to be of quality service and to be



cost effective, which is of greater importance in this climate. I thank everyone of our clients out there because every engagement is a vote of confidence. And we will steward your trust in us well.

I am personally grieved to see the situation many of our foreign workers are in — being infected with the virus and facing massive quarantine measures. We applaud our government's efforts in containing the spread and mitigating the effects of the outbreak. Our firm has always been looking out for the interests of our foreign workers as part of our Corporate Social Responsibility efforts. Sometime in 2018, I received a brief from Transient Workers Count Too about a tragic case of a foreign worker who passed away after being hit on the head by a block of falling wood from height at the construction worksite. We took up the application for Work Injury Compensation after receiving an objection notice from the insurer of the employer. After a two-day trial before the Assistant Commissioner of Labour, our claim for S\$170,000 was allowed. The insurer appealed to the High Court. Just this month, we received the judgment from the High Court dismissing the insurer's appeal and affirming the award. We are humbled and grateful for the outcome and that we are positioned to help the deceased's family bring closure to the matter.

Lastly, it is an honour to have Mr Andrew Yap joining our firm in February this year as Senior Director. Mr Yap brings with him 40 years of experience and heads our Corporate and Commercial Practice Group. I am also honoured to have Assistant Prof Tan Zhong Xing join the firm as Counsel. Zhong Xing is a hot shot academic teaching in NUS and is a recipient of the NUS Annual Teaching Excellence Award. We thank God for the talent that God has placed in this firm which will ultimately benefit our clients.

To all our clients out there, let's stand in resilience and solidarity to navigate out of the current crisis together.

God Bless, **Lee Ee Yang** Managing Director

Strengthening our corporate and commercial practice

In February 2020, Andrew Yap & Co, headed by seasoned corporate lawyer **Mr Andrew Yap**, integrated with Covenant Chambers LLC. In addition, **Assistant Professor Tan Zhong Xing** of the National University of Singapore (NUS) joined us as Counsel.

Integration with Andrew Yap & Co

Mr Andrew Yap and his team currently operate out of the branch office — Covenant Chambers @ Adelphi. The integration of Andrew Yap & Co will boost Covenant Chambers' corporate practice, complementing our existing capabilities in dispute resolution and corporate and commercial law.

Mr Yap established Yap & Leong in 1986, which was subsequently renamed Andrew Yap & Company in 1997. He has 40 years of experience in the areas of corporate and commercial law, mergers and acquisitions, joint ventures, real estate investment trusts (REITs), and conveyancing. Mr Yap has also advised on several multi-national projects such as in acting for the Widjaja Kusuma



Mr Andrew Yap, Senior Director

Group (Indonesia) in its power plant project in Java, Indonesia, worth US\$600 million that brought together PowerGen (UK), Morrison Knudsen Corporation (US), China Machine Building International Corporation (China) and financiers Rothschilds among others.

Mr Yap joins us as Senior Director and is also a Commissioner for Oaths and a Notary Public.



Assistant Professor Tan Zhong Xing, Counsel

Appointment of NUS academic as Counsel

To further strengthen our commercial practice, we can tap on AP Tan's practice and research experience as Counsel. AP Tan obtained his LLB from NUS and LLM from Harvard Law School and previously practised corporate and commercial dispute resolution at a reputable Singapore law firm. He practices, teaches, and researches in corporate and commercial law. As a practising academic, he frequently contributes to notable law journals including *Modern Law Review* and the *Journal of Business Law*.

Harnessing technology

The integration and appointments further enhance our ability to provide cost-effective and prompt bespoke legal services by harnessing tech-

driven digital automation. Covenant Chambers LLC has been a pioneer adopter of LegalTech solutions that advances productivity gains and cost savings through an overall practice management strategy, under the *SmartLaw* initiative.

// IN THE NEWS



News feature on the case and background of the deceased. // Source Shin Min Daily, 2 April 2020

Successful defence of work injury compensation appeal

Our Mr Lee Ee Yang and Mr Douglas Pang successfully defended a High Court appeal against the decision of the Assistant Commissioner of Labour awarding the sum of S\$170,000 to the family of a Bangladeshi worker under the Work Injury Compensation Act (WICA). We are grateful for closure to be brought to the family of the deceased foreign worker.

Background of the case

In 2015, the deceased (then 26) was injured by a piece of falling timber from height while he was working in a construction site. About a month later, he was hospitalised in a confused and disoriented state. Unfortunately, he later passed away in the ICU due to a brain injury following repeated seizures.

His family lodged a WICA claim, which was assessed to be at S\$170,000 by MOM. The employer and its insurer objected to

the claim, which was eventually allowed by the Assistant Commissioner of Labour following a twoday trial. They later brought an appeal to the High Court, which was ultimately dismissed, bringing closure to the matter after five years.

This matter was referred to us by Transient Workers Count Too, a non-profit organisation that promotes equitable treatment for migrant workers in Singapore. Read the case summary on our website <u>here</u>.

Court rejects lawyer's bid to give new proof at 11th hour

Attempt to present new evidence a day before decision is delivered would severely prejudice other party: Judge

K.C. Vijayan justice' to Senior Law Correspondent rely on D

lawyer who sent a letter claimghe had new evidence in a case day before the judge was due to eliver her decision has drawn reke from the court. Judicial Commissioner Mavis ionh said the sudden and be-

evidence at this stage would be severely prejudicial to the other party if the evidence were to be relied on. This was so since the respondents in the case, the estate of a

nity to test this purported new evidence and are being apprised of it literally at the eleventh hour", she added in decision grounds on Tuesday. Rejecting the move, the judge said: "With respect, this sort of conduct exhibits a disregard for

The case involved an appeal under the Work fnjury Compensation Act against a decision by the Assistant Commissioner (AC) to award \$170,000 to the family of Bangladesh worker Md Sharif Hossain Rana Abdul Malek, who died from a work-related injury.

His employer, Capstone Engineering, and its insurer, Great Eastern General Insurance, appealed to the High Court. The case was heard in February and dismissed with costs in a reserved

The new evidence involved a report from the orthopaedic doctor o whom the deceased had first been referred. Dr Kevin Yip had contacted the lawyer in February and had prepared the report beause he was allegedly "surprised by the coroner's findings in the

The lawyer representing the apellants, Mr Hong Heng Leong, id he had sent the letter "in the terests of justice", but the judge sagreed, saying: "It would be en-

puscee to allow the appendants to rely on Dr Tip's report." The judge also took issue with various comments about the AC in the written and oral submissions from the appellants that "were completely unwarranted and also not to be condoned". "I found particularly disturbing the attempts in the written submissions to suggest that the AC was somehow biased or incompe-

allow the appellants t

tentorboth." Deploring the "regrettably intemperate language used", she said the attacks on the AC's impartiality and competence were simply baseless. "I find it necessary, therefore, to put on record my disapprobation of the attacks on the AC. Such conduct should not be repeated," said the judge.

Lawyers Lee Le Yang, Claire Teng Shu-Min and Douglas Pang represented the deceased's nextof-kin, who were the respondents. The judge's remarks come some six weeks after High Court

judge Choo Han Teck had also remonstrated about proper conduct in litigation, in a lawsuit between JTrust Asia and Group Lease Holdings.

shorty are platter choice choice moved to reserve judgment in January, the lawyers for both the plaintiff and 'the first and second defendants began a long and protracted exchange of acrimonious letters and copying them to the court until 1 directed the lawyers to desist', hesaid.

"Lawyers are entitled to write to each other but their letters should not be copied to the court in breach of the peace in which the court is considering their final submissions without further material that might influence the court's decision, "he said.

pages, which were "rude and provocative letters oozing venom at every turn and achieved nothing but the death by poison of all that is gracious and noble in the craft of advocacy", said Justice Choo.

rests of vijayan@sph.com.sg

News feature on the conduct of the appeal. // Source The Straits Times, 4 April 2020

// IN THE NEWS Personal data protection amid the COVID-19 outbreak

In light of the COVID-19 situation, there has been an increase in the collection of personal data of visitors to buildings/offices to facilitate contact tracing should it be needed.

Now that the Personal Data Protection Commission has said that the collection of full NRIC numbers is permissible, what other rights do visitors have?

Our **Mr Che Wei Chin** was interviewed by Channel 8 (Mediacorp) in this feature on personal data collection during the COVID-19 situation. Watch the interview in Mandarin <u>here</u>.



Our Mr Che Wei Chin being interviewed on personal data protection by Mediacorp. // Photo Covenant Chambers

Claim against "investment guru" for breach of investment agreement

Our legal team, comprising Mr Lee Ee Yang, Ms Charis Wong, and Mr Douglas Pang acted successfully for 13 plaintiffs in their claims against a selfproclaimed investment guru for the return of their investment. The aggregate value of the final judgment awarded to our clients amounted to more than S\$2.7 million.



News features on the claims against Mr Kenneth Kam lodged by investors for his breaches of contract. // Source Lian He Zao Bao, 12 March 2020 (L) and Shin Min Daily, 12 March 2020 (R)

Family Court cautious in letting children be examined by child psychiatrists in divorce proceedings

Case update on *TWM v TWN* [2019] SGFC 129. The Courts adopt a cautious approach in dealing with applications for appointment of a child psychiatrist to examine the children in divorce proceedings. // Written by: Charis Wong, Senior Associate

In bitter custody or access disputes between divorcing spouses, it is not uncommon for one party to apply for the court's permission to appoint a child psychiatrist to examine the child and prepare an expert report for use in the divorce proceedings. Such applications are often driven by a motivation to advance the party's interests against the other spouse, as opposed to the child, and are rarely in the child's interests.

In the recent case of *TWM v TWN* [2019] SGFC 129, our team comprising **Mr Lee Ee Yang** and **Ms Charis Wong** successfully acted for the wife in resisting the husband's application for the children to be examined by a child psychiatrist in relation to the custody, care and control and access issues in the ancillaries.

The facts

In *TWM v TWN* [2019] SGFC 129, the parties were locked in contentious divorce proceedings spanning over three years. Two young children (aged six and nine) stood at the centre of the dispute. The children were under the wife's care pursuant to an interim court order. In the husband's previous efforts to

obtain care and control of the children, the husband had applied to switch interim care and control of the children and for a Personal Protection Order (PPO) against the wife's brother (who lived with and helped take care of the children), alleging family violence. Both applications were dismissed. The child psychiatrist application signified another attempt by the husband to gather ammunition against the wife for use in the divorce proceedings.

In his affidavit supporting the application, the husband made various allegations against the wife. These include allegations that the wife was largely absent from the children's lives and that the wife's brother was abusive of the children and had to be dissuaded from levying punishment on the children after the PPO application was filed. The husband also argued that the children should be allowed a voice in the proceedings, and that the appointment of a child psychiatrist would lend them a voice.

The wife strenuously resisted the application. The wife argued that the husband's allegations were without basis, and there was no objective evidence that the children required any psychiatric assessment.

The wife further argued that it was clear from the draft letter of instruction to the child psychiatrist, which was drafted by the husband and which contained numerous unsubstantiated allegations against the wife, that the husband was merely seeking to garner arsenal for the care and control battle in the final ancillaries. Importantly, the wife argued that the application was adverse to the children's interests as the assessment would only make the children more keenly aware that they stand at the centre of the parties' dispute.

The Court's decision

The Court dismissed the application. The Court agreed with us that there was no objective evidence which showed that it was necessary for an expert to be appointed to adduce medical evidence on the state of the children's mental well-being. The Court noted that an experienced senior counsellor, who had interviewed the children and prepared a Social Welfare Report for the Court, had observed in the report that the children were healthy and growing well socially, emotionally, and academically.

The Court further opined that it was "mindful of the caution sounded by the High Court in L v J [1999] SGHC 258 at [7] that there were too many instances of fighting spouses sending their children for psychiatric assessments purely for the purpose of strengthening their case in court" and that "parties in every case ought first to consider

whether a psychiatric assessment can truly be in the interests of the child."

Interestingly, the Court also ordered a Child Representative to be appointed to represent the best interests of the children and to understand their perspectives. This was done on the Court's own motion, without any party having applied for the same.

Our remarks

The Court's decision in *TWM v TWN* [2019] SGFC 129 follows a line of cases¹ where the Court cautioned against sending children for psychiatric examination in divorce proceedings. The judicial caution towards psychiatric assessment of children in divorce proceedings is welcome. As the Court has commented, a psychiatric assessment may exacerbate feelings of guilt, anxiety and fear in the child arising from the breakup of the family, which is not in the interests of the child.

However, should you be concerned that your child's voice is not heard in a decision which would deeply and intimately affect his/her life, you may consider applying to Court for (*a*) a Social Welfare Report (SWR) to be prepared by a social welfare worker; and/or (*b*) a Child Representative to be appointed to represent the best interests of your child. As evinced by the Court's approach in *TWM v TWN* [2019] SGFC 129, the Courts are generally less cautious of SWRs and the appointment of Child Representatives.

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¹ *L v J* [1999] SGHC 258, *BF v BG* [2004] SGDC 115, *JBM v JBN* [2014] SGDC 429; *JAC v JAD* [2014] SGDC 385

// SPECIAL FEATURE

Exchanging insights with global lawyers

The Global Lawyers Forum (GLF) was hosted by the All China Lawyers Association, with the guidance and support of the Ministry of Justice of the People's Republic of China, in Guangzhou, China, in December last year. Our Managing Director, **Mr Lee Ee Yang**, attended the GLF and was greeted with a warm reception by the Chinese host.



Mr Lee Ee Yang at the Global Lawyers Forum with other international delegates. // Photo Mr Lee Ee Yang



Group photos of Mr Lee Ee Yang with other international delegates at the Global Lawyers Forum. // Photo Mr Lee Ee Yang

On top of attending the GLF, Mr Lee also paid a visit to the university campus of our client (Edvantage Group Holdings Ltd) — the Huashang College Guangdong University of Finance and Economics. The Edvantage Group is the largest private education provider in the Guangdong–Hong Kong–Macau Greater Bay Area. The campus is located in the beautiful district of Zengcheng and covers an area of 670,000 square metres. The Huashang College has over 30,000 students oncampus and offers 31 undergraduate majors, five Sino-foreign joint training credit recognition majors, and one bilingual class. Mr Lee visited the campus and had an inside look at the state-of-theDriven by the motivation that rule of law is a foundation for building the global community, the GLF was a platform for lawyers across the world to exchange ideas and foster cooperation. More than 600 delegates from governments, judicial departments, financial institutions, and international organisations of lawyers, bar associations, and law firms came together for this forum.



Photos from Mr Lee Ee Yang's visit to the Huashang College. // Photo Mr Lee Ee Yang

art facilities, including a new Traditional Chinese Medicine faculty which boasts a facility that held specimens of herbs and Chinese medicine.

Hallmarks of a 40-year practice

In this special feature, we interview **Mr Andrew Yap**, Senior Director, whose firm (Andrew Yap & Co) was recently integrated with Covenant Chambers LLC. Given his four decades of practice experience, we wanted to hear his views on the practice of law.

What are your areas of specialisation?

I specialise in the areas of corporate and commercial law, conveyancing and corporate real estate including REITs (Real Estate Investment Trusts), and land law. More recently, I have also focussed on the areas of wills, probate, and private clients matters.

What do you find the most fulfilling in your work?

I get great satisfaction in advising clients in a way that adds value to their commercial matters, whether it's for important decisions to be made or to resolve their corporate disputes and challenges. I advise clients in strategising the way forward, not merely from the legal standpoint (which is our job, of course) but always with a keen sense that such strategies and decisions must be commercially suitable and beneficial for the clients. It's a commercial-minded legal approach.

It's most fulfilling when, over these 40 years of practice, I see the growth and development of many of my clients' businesses and know that I have contributed in some small measure to their growth.

For conveyancing matters, I have clients that have remained with me in many of their property purchases and sales, many times over the decades. And even the next generation, their children (now grown-ups), come to me for their conveyancing and property matters.

What motivates you in your practise of the law?

My biggest motivation in all my years of legal practice is to know that God has placed me in



Mr Andrew Yap, Senior Director

this profession for His purposes. That as a legal practitioner, I am His "legal ambassador". God is my boss. I am accountable to Him above everything else. As a Christian in the marketplace, I must do my level best for Him. **Professionalism, honesty, integrity, and humility, while always trying to help people with legal issues — these are the hallmarks of my practice.**

Over these 40 years of practice, what are the guiding principles for your work?

I strive to carry out my work, duties, and responsibilities with the highest standard of professionalism, honesty, integrity, and hard work, with thoroughness and meticulous care.

Ultimately my goal is to deliver quality bespoke legal services to my clients that specifically meet their needs, and which protect their interests. Every single case is special and unique, and treated with care.

As you survey the legal landscape today, what do you think is the biggest disruptor to the legal industry?

I belong to the rare generation of lawyers that has seen a revolutionary transformation of the law practice

The legal industry was totally manual: manual typewriters, short-hand dictation, telex machines. Over the years, I've seen a transition to electric typewriters, facsimile on thermal papers, to word-processors, then to main-frame computers, to personal laptops, to faxes, emails and the Internet, to "cloud" storage and beyond — all these over the period of 30–40 years.

In my view, I think the most significant disruptor is the digital and Internet transformations; everything would be "e-" something or the other! There are also the AI robots that might one day replace the human lawyers!

But a word of caution here. In adapting and going with the flow of such changes, we must never lose our personal touch and contact. Because, ultimately, our legal services are to be provided to real people with real personal needs and problems and to corporations and entities dealing with personal lives and practical issues.

We must never be "soul-less" or "faceless". People want to have solutions to their problems from lawyers who are personal to them, who speak to them, who come alongside them to help them practically, who understand them. People don't want to deal with machines and devices.

With the integration of Andrew Yap & Co with Covenant Chambers LLC as one entity, what are some positive outcomes we will see?

There is always strength in numbers. While I have thoroughly enjoyed running a small boutique practice, I have come to realise that

there are limitations. With all my years of experience, many banks still say "you don't have the minimum number of lawyers" in order to do their banking work.

And to take on some types of work, such as advising on development projects, infrastructure and turn-key projects, REITs, corporate real estate and such matters, a team of lawyers is needed to manage and deliver such legal services.

It's a definite advantage to combine my 40 years of experience and expertise with the number of lawyers in Covenant Chambers LLC, many of whom are very bright and promising. This is an ideal combination giving breadth and depth to the practice of Covenant Chambers LLC.

What are your thoughts looking ahead in the next few years?

It's my desire to mentor these junior lawyers who are promising and keen to learn and help shape and mould them; to guide, advise and encourage the young lawyer to realise their potential, to be excellent and respectable legal practitioners.

Even if Covenant Chambers LLC were to grow to be a bigger firm with many more lawyers, we must never lose the personal touch of being a lawyer who can connect with his/her clients. And not just serving the clients in high places or so-called "high net-worth" clients, but even more so for the ordinary man in the street. We must always deliver our legal services to serve the needs of the community.

The mark of a truly good lawyer is one who is able and willing to serve the "lowest" person in society — serving with sincerity, humility, and distinction, giving of his/her best services. It's not about the money. It's about the high calling of our profession. And *"a fortiori"*, serving our Lord Jesus in the marketplace!

With heart and soul

Newly promoted Senior Associate, **Ms Charis Wong**, pens her reflections on being with the firm since her graduation from law school. Beyond the glitz and glamour, the heart of legal practice is helping people gain access to justice.

A fter graduation, I took quite a different route from my peers in law school. Most of my peers went to big law firms and were surprised at my decision to train in a small firm. What surprised them even more was when I stayed for a couple of years and am still here.

Sure, there is an undeniable glamour to working in a high-flying legal team in a fancy firm

(although the allure begins to wear off when the clock strikes midnight and you're still in the office). But very so often, the language that is spoken in such places is money. *Billing targets, the dollars and cents of every file, is this client a good paymaster*... It's difficult to escape feeling like a cog in the relentless profit-making machine.

Here in Covenant Chambers, things are different. *There is heart and soul* in this firm. And it's not just written in the company's values for people to pay lip service to once in a while. The firm advocates for the man in the street. The firm provides legal representation for those who would otherwise be shut out from the law's protective reach — even where there is little to no commercial value to be gained. That's how you know a firm is serious about the values it proclaims: the management put their money where their mouth is, where it hurts.

As I look back on my short slightly-over-three-years here in Covenant Chambers, it's not the thrill of cutting my teeth in oral



Ms Charis Wong (R) at the Mass Call 2017 where she was admitted as an Advocate and Solicitor of the Supreme Court of Singapore with her husband. // Photo Ms Charis Wong

advocacy against senior practitioners, the grit of ploughing through copious amounts of documents to draft submissions, or the adrenaline of assisting my boss in a case before the Court of Appeal that I remember the most. It's the cases where *heart and soul* are involved.

I remember the case in my first year where we successfully convinced the High Court to overturn a lower court's decision which countenanced a moneylender's unscrupulous practices in their application to bankrupt a defenceless old lady. At the crux of the case was a lacuna in the law which was exploited by many licensed moneylenders to the effect of snowballing the debts owed by unwitting borrowers like our client. The decision sparked a review of the Moneylenders' Rules by the Ministry of Law and the lacuna in the law was eventually plugged by an amendment of legislation.

I remember the case in my second year where we helped a Malaysian widow and her young children, who had lost their sole breadwinning husband and father in a workplace accident. We

successfully overturned the Commissioner of Labour's decision to award nil compensation to the family. The compensation sum the insurers were ordered to pay to the family was vital in providing them with money to stand on their own two feet to walk the long road of recovery.

These are just some of the cases where we fought for the underdog, on the side of justice and mercy — and won, against the odds. I remember these cases not just for the individual stories they tell and the real faces involved. I remember these cases because they tell me that "*the light shines in the darkness, and the darkness has not overcome it*". There is a God who cares for the poor, the foreigner, the widow, and the orphan, and He is in the business of making all things new.

There is heart and soul in this firm. And it's not just written in the company's values ... The firm advocates for the man in the street.

For more articles, commentaries, and case updates visit our website.

Our recent articles include:

Legislation Update: COVID-19 (Temporary Measures) Act 2020

Consider if you may seek temporary relief under the new law or object to another party relying on such relief

A New Approach to Breach of Confidence

Apex court changed law to better protect confidential information in digital world

Cybersquatting, Contracts, Illegality & Public Policy

Commentary on the abusive practice of domain name registration

Where Marriage is not a 50-50 Proposition How should courts divide matrimonial assets in "highly unusual" marital breakdowns?



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