



# THE CHRISTOPHER BATHURST PRIZE 2022

**Submission Deadline: 30 June 2022 (5pm)**

## ABOUT THE PRIZE

Christopher Bathurst QC (1934-2009) was a member of Fountain Court Chambers and a leading practitioner at the Commercial Bar in London who developed a substantial practice in Southeast Asia, particularly Singapore.

He was regarded by many practitioners in Singapore not just as a formidable advocate and adviser but also as a friend and mentor. His cases include the leading decision of *Caparo v Dickman* [1990] 2 AC 605 and after that he developed a substantial Singaporean arbitration practice. As Viscount Bledisloe, Christopher was an elected hereditary peer, and a popular and energetic cross-bench member of the House of Lords.

This Prize seeks to honour his memory.

*Sponsored by Fountain Court Chambers.*

# THE CHRISTOPHER BATHURST PRIZE QUESTION

## INSTRUCTIONS TO ADVISE IN WRITING

Counsel is instructed to advise in writing on two potential claims by the Auld King group against Instructing Solicitors' client, We Know Green Consultants Pte Ltd ("**WKG**").

WKG are a firm of environmental consultants, based in Singapore. WKG were engaged by Auld King, an international energy group, to report on environmental issues in connection with the construction of a coal-fired power plant and associated sea terminal in a South East Asian country. WKG provided a report in January 2017 which contained two errors.

First, WKG advised on the environmental permits required for the operation of the power plant but omitted a particular permit for the discharge of certain effluent. This error was not identified until a few weeks before the plant was due to go into operation in March 2019. An application was then made, but the permit was not issued until March 2020. The plant therefore commenced operations 12 months late, foregoing revenue of \$50 million and expected profit of \$7.5 million over that period, and incurring costs of \$5 million to keep the plant "mothballed".

In the meantime, in May 2018, the national legislature passed the Environmental Protection (Cleaner Power) Act. Amongst other measures, it required that all coal-fired power plants commencing operations on or after 1 May 2019 would have to be fitted with filters for NO<sub>x</sub> and other pollutants. For Auld King's plant, the cost of fitting these filters was \$5 million.

Secondly, WKG conducted an environmental survey of the land on which the plant and terminal were to be built. WKG failed to notice substantial pollution on the terminal site which was likely to poison a reservoir if not tackled. The pollution was subsequently discovered after the land was purchased and construction commenced. Once discovered, the local environmental regulator ordered a clean-up, at the cost of \$8 million.

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WKG was engaged to provide its report under a letter of engagement with Auld King (International Projects) Ltd. As it was envisaged that another group company, Auld King (Power Generation) Ltd would be the owner and operator of the power plant and sea terminal, the letter of engagement provided that WKG's report would be made available to Auld King (Power Generation) Ltd, and the report was addressed to both these companies.

In March 2017, Auld King realised that the sea terminal could be used for more than just the importation of coal for the power plant and decided it should be run as a stand-alone business. In a late change to the project structure, a new company, Auld King (Terminal Operations) Ltd was incorporated and became the owner and operator of the sea terminal. Representatives of all three Auld King companies attended a Q&A session with WKG in April 2017 to discuss the report, but no amendment was made to the letter of engagement.

Auld King (International Projects) Ltd, Auld King (Power Generation) Ltd and Auld King (Terminal Operations) Ltd are all wholly-owned subsidiaries of Auld King (Holdings) PLC, the UK-listed parent company of the group.

The Auld King group alleges that WKG was negligent and is threatening proceedings against WKG, seeking to recover 12-months' lost revenue from the power plant, the cost of mothballing the plant, of the filters and of cleaning up the pollution. WKG accepts that it should have identified the permit and the pollution in its report, but seeks advice on whether it has any defence to these claims.

It is not clear whether English or Singapore law is to be applied. Counsel is therefore requested to identify any differences which are material to the advice.

(Separate advice will be sought on the conflicts of law question, so Counsel need not address that issue.)

**END OF QUESTION**

# PRIZE RULES

## ELIGIBILITY

The Competition is open to:

- a) every Full-time student enrolled in the LL.B. or LL.M. or PhD programme at the National University of Singapore Faculty of Law;
- b) every Full-time student enrolled in the LL.B. or JD programme at the Singapore Management University School of Law;
- c) every Full-time student enrolled in the LL.B. or JD programme at the Singapore University of Social Sciences Faculty of Law; and
- d) every Qualified Person under the Legal Profession Act who is aged 30 years or younger, as at 1 January this year.

Persons related to SAL (full-time & part-time staff and members of the Senate) and Fountain Court (all barristers & support staff) are not eligible.

Please note that only one entry per person is allowed.

## PRIZE

The Prize is an all-expenses-paid two-week internship at Fountain Court Chambers in London.

Expenses covered include: Return (economy) airfare; accommodation in a self-contained flat or studio apartment; and a per diem allowance to cover reasonable living and work travel expenses in London.

The internship will take place within one year of the announcement of the winner, on dates to be agreed mutually between Fountain Court Chambers and the winner.

# PRIZE RULES

## JUDGING CRITERIA

Entries will be judged on the following criteria (in no particular order): originality; critical analysis; succinctness; clarity; persuasiveness (where arguments are made) and pragmatism (in the case of suggestions or proposals).

## JUDGING PANEL

The Judging Panel will comprise members appointed by Fountain Court and SAL. All decisions of the Judging Panel and incidental decisions thereto, are final, and no correspondence will be entertained.

## DEADLINE

The deadline for submission can be found on the same document as this year's Problem. Entries must be submitted via email to [awards@sal.org.sg](mailto:awards@sal.org.sg) with the title, 'Entry for Christopher Bathurst Prize 2022'.

## ENTRY FORMAT

Entries are to be written in English. Entries should not exceed 3,500 words, including references, footnotes, charts, tables, diagrams, and appendices. Entries must be submitted in Word format and double-spaced. Compliance with the style guide for the Singapore Law Reports is recommended but not required.

# PRIZE RULES

## COVER SHEET

Entries must be prefaced with a separate cover sheet (legal advice and cover sheet are to be attached to the e-mail as separate documents) with the following information on the cover page:

- a) Full Name
- b) Last 3 digits + alphabet of your NRIC or passport number (e.g. 123A)
- c) Institution (university or employer)
- d) E-mail address
- e) Mobile number
- f) Total word count (including references, footnotes, charts, tables, diagrams, and appendices)

## IDENTIFICATION

Please indicate the last 3 digits + alphabet of your NRIC or passport number (e.g. 123A) in the header of every page of the legal advice. Do not indicate any other information which may identify the author.

## SOLE ORIGINAL WORK, COPYRIGHT

By participating in the Prize, the author warrants that the work is entirely the author's own. Joint submissions are not allowed. The following sentence is to be added at the end of the legal advice: "The author agrees to assign copyright of the work to Fountain Court Chambers and the Singapore Academy of Law, which shall hold the copyright jointly."

## **ABOUT FCC**

Fountain Court Chambers is a substantial and long-established set of commercial barristers, based in Temple, London, as well as Singapore. Recognised as leaders in the field of commercial dispute resolution and arbitration, Fountain Court Chambers offers expertise in a wide range of practice areas, including aviation, banking, energy and insurance.

## **ABOUT SAL**

The Singapore Academy of Law (SAL) is a promotion and development agency for Singapore's legal industry. SAL's vision is to make Singapore the legal hub of Asia.