

Case was not special, experts say

Samantha Bowers

The High Court's decision to overturn the Malaysian swap deal is just a standard administrative law case which shows the separation of government powers working exactly as it should, legal experts say.

Former solicitor-general and leading silk David Bennett, QC, said the high profile of the case would not have placed particular pressure on Solicitor-General Stephen Gageler, SC.

"The Solicitor-General is largely independent," he said.

"It's a bit like a taxi driver. You can tell him which way to go to the destination, but you can't tell him when to change gears."

Mr Gageler declined to comment yesterday.

The Solicitor-General's duties to the government and, as a barrister, to the court, were no different to those of any advocate representing any client, Mr Bennett said.

Law Council of Australia president Alex Ward said any lawyer's job was to represent the client properly, and the "duty to the court doesn't mean that you temper the case as you present [it], so long as you're not misleading the court".

Mr Bennett said that while the case had "large ramifications" for the government, "it was basically a standard administrative law thing", involving a dispute over whether government powers were exercisable in certain circumstances.

The chief executive of the Rule of Law Institute of Australia, Richard Gilbert, said the decision was "not a first", but was simply an example of "the separation of powers principle in action".

"Government decisions have been struck down in the High Court [before]. This is just typical of the tensions in the separation of powers, and sometimes governments win and sometimes governments lose," he said.

"That's the game. So I don't think we should get in a lather ... about the rights and wrongs of the Solicitor-General's role in this or the court's role."
