IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 120

Originating Summons No 1206 of 2019

Between

Shanmugam Manohar

… *Applicant*

And

(1) Attorney-General
(2) Law Society of Singapore

… *Respondents*

GROUNDS OF DECISION

[Administrative Law] — [Disciplinary proceedings]
[Administrative Law] — [Judicial review]
[Confidence] — [Breach of confidence]

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Shanmugam Manohar
v
Attorney-General and another

[2020] SGHC 120

High Court — Originating Summons No 1206 of 2019
Valerie Thean J
2 April 2020

16 June 2020

Valerie Thean J:

1 Mr Shanmugam Manohar ("the Applicant"), an advocate and solicitor of the Supreme Court, faces disciplinary proceedings before a Disciplinary Tribunal ("DT"). This DT was appointed after a request was made by the Attorney-General ("AG") under s 85(3) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"). In referring information to the Law Society of Singapore ("Law Society") under that section, the AG disclosed statements recorded by the Commercial Affairs Department ("CAD") under the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"). These grounds of decision concern the dismissal of various declaratory reliefs sought by the Applicant against the AG and the Law Society in respect of the recording, disclosure and use of these statements.

Facts

The investigations

2 The dispute in the present case arose out of a police investigation into a motor insurance fraud scheme, where one Mr Ng Kin Kok ("Mr Ng") assisted one Mr Woo Keng Chung ("Mr Woo") to file a fraudulent motor insurance injury claim.[1] On 6 April 2016 and 11 May 2016, the CAD recorded statements from Mr Ng and Mr Krishnamoorthi s/o Kolanthaveloo ("Mr Krishnamoorthi"), one of the partners at M/s K Krishna & Partners ("the Firm"), respectively. The statements revealed that Mr Ng would ask potential claimants to sign warrants to act appointing various law firms to act on their behalf. He would submit the documents to the law firms and would receive commissions from the law firms if the injury claims were successful. Mr Woo's claim was processed in this manner and the Firm, where the Applicant was and is an Associate Partner, was the law firm appointed in Mr Woo's case.[2]

3 On 21 March 2017, Mr Ng was charged in court for one count of abetment of cheating under s 420 read with s 109 of the Penal Code (Cap 224, 2008 Rev Ed) for the offence involving Mr Woo. On 31 August 2017, Mr Ng was convicted and sentenced.[3] That same day, the Attorney-General's Chambers ("AGC") directed the CAD to conduct further investigations into the commissions that were allegedly paid to Mr Ng by the law firms involved, to

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1 Lie Da Cheng's Affidavit at para 5.

2 Shanmugam Manohar's Affidavit at paras 2 and 5.

3 Lie Da Cheng's Affidavit at para 7.

ascertain if the conduct of these law firms and lawyers had disciplinary consequences.[4]

4 Senior Investigation Officer Lie Da Cheng ("SIO Lie") received the AGC's request and proceeded to record a further statement from Mr Ng on his past referrals on 14 September 2017 ("14 September statement"). Mr Ng's statement made reference to around six cases that he had referred to the Applicant between 2013 and 2015, and stated that the Applicant had given him a commission of $800 for each referral.[5] On 15 September 2017, SIO Lie then called the Applicant, asking if he knew Mr Ng and whether Mr Woo had been referred to him in respect of a personal injury claim.[6] The Applicant replied in the affirmative and a meeting was set up for SIO Lie to record the Applicant's statement.[7] On 18 September 2017, SIO Lie called the Applicant and asked him to bring the files of other personal injury claims that had been referred to him by Mr Ng.[8] On 20 September 2017, SIO Lie recorded a statement from the Applicant ("20 September statement").

5 On 12 December 2017, SIO Lie called Mr Krishnamoorthi to arrange for him to attend at CAD for a statement to be recorded. The statement was recorded on that same day ("12 December statement"). SIO Lie sought to record a further statement from Mr Krishnamoorthi and scheduled a further meeting, but Mr Krishnamoorthi stated that he could not make the scheduled appointment

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4 Huang Xi'en Magdalene's Affidavit at para 6.

5 Lie Da Cheng's Affidavit at para 11.

6 Shanmugam Manohar's Affidavit at para 5.

7 Shanmugam Manohar's Affidavit at para 5.

8 Shanmugam Manohar's Affidavit at para 7.

in an email dated 15 December 2017 and later declined to give a further statement when SIO Lie spoke with him.[9]

6 The CAD was of the view that no further offence of cheating was disclosed. The findings were forwarded, together with Mr Ng's 14 September statement, the Applicant's 20 September statement, and Mr Krishnamoorthi's 12 December statement to AGC.[10]

Referral to the Law Society and appointment of the DT

7 On 2 July 2018, the AG referred the information received to the Law Society pursuant to s 85(3) of the LPA. In its referral, the AG relayed information about the Applicant's alleged touting practices (a breach of r 39 of the Legal Profession (Professional Conduct) Rules 2015 ("PCR")), and the fact that the Applicant had given copies of the Firm's warrant to act to Mr Ng for his clients to sign without attending at the Firm. Accordingly, the AG requested the Law Society to refer the matter to a DT.[11]

8 On 13 July 2018, the Law Society responded with a letter requesting certain documents and information from the AG for the preparation of the case against the Applicant. Among its requests, the Law Society requested "copies of the statements of the relevant persons".[12] On 27 July 2018, the AGC then asked the CAD to check if Mr Ng and Mr Krishnamoorthi would consent to be contacted by the Law Society, and to find out if the Firm would agree for the

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9 Lie Da Cheng's Affidavit at paras 18–22.

10 Lie Da Cheng's Affidavit at para 23.

11 See Huang Xin'en Magdalene's Affidavit at para 8 and p 9.

12 See Huang Xin'en Magdalene's Affidavit at pp 9 and 12.

seized warrants to act to be shared with the Law Society. On 15 August 2018, the CAD informed AGC that both Mr Ng and Mr Krishnamoorthi had not agreed to these requests.[13] The AG updated the Law Society accordingly on 16 October 2018.[14]

9 In response, on 25 October 2018, the Law Society informed the AG that, without the statements, it had no evidence on which to prosecute the matter before a DT. It suggested proceeding under s 85(3)(*a*) of the LPA instead to first convene an Inquiry Committee, in order to consider whether there was sufficient evidence to justify a DT.[15] The AGC then contacted the CAD to inform them of the Law Society's position, and asked if the CAD would object to them sending the statements to the Law Society. The CAD informed that they had no objection.[16] On 19 March 2019, the AG forwarded to the Law Society Mr Ng's statement recorded on 6 April 2016 ("6 April statement"); Mr Ng's 14 September statement; the Applicant's 20 September statement; and Mr Krishnamoorthi's 12 December statement.[17]

10 On 3 July 2019, pursuant to s 85(3)(*b*) of the LPA, the Law Society applied to the Chief Justice to appoint a DT to investigate the Applicant's conduct.[18] On 18 July 2019, Sundaresh Menon CJ appointed the members of

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13 Huang Xin'en Magdalene's Affidavit at paras 10–11.

14 Huang Xin'en Magdalene's Affidavit at para 12.

15 Huang Xin'en Magdalene's Affidavit at para 13.

16 Huang Xin'en Magdalene's Affidavit at para 14.

17 Huang Xin'en Magdalene's Affidavit at para 15 and p 18–37.

18 K Gopalan's Affidavit at para 4.

the DT.[19] On 23 July 2019, the DT then issued directions for the filing of the Defence, the list of documents, the respective affidavits of evidence-in-chief, bundles of documents and bundles of authorities.[20] A series of delays followed as the Applicant sought abeyance of the DT proceedings on the premise that he would apply for judicial review.

OS 1206/2019 and OS 1030/2019

11 On 16 August 2019, the Applicant filed Originating Summons No 1030 of 2019 ("OS 1030/2019") applying for the DT proceedings to be held in abeyance pending resolution of judicial review proceedings against the AG. No application for judicial review was filed at that time.

12 On 27 September 2019, the Applicant filed Originating Summons No 1206 of 2019 ("OS 1206/2019") under O 15 r 16 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), for the following reliefs:

> 1. The following Declarations be made:-
>
> a. That the statements of the [Applicant] recorded on 20th September 2017 and/or Ng Kin Kok recorded on 14th September 2017 were recorded not in the course of investigation into any alleged offence(s) but were recorded improperly and/or unlawfully to establish that the [Applicant] was in breach of Rule 39 of the Legal Profession (Professional Conduct) Rules 2015.
>
> b. That the statements given to the Commercial Affairs Department by the [Applicant] on 20th September 2017, one Ng Kin Kok on 6th April 2016 and 14th September 2017 and one K. Krishnamoorthi on 12th December 2017 (hereinafter referred to as "the

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19 K Gopalan's Affidavit at para 5.

20 K Gopalan's Affidavit at para 6.

> statements") are confidential and cannot be disclosed by the Commercial Affairs Department and the [AG] to any other persons.
>
> c. The statements can only be used in the criminal proceedings for which they were recorded and not for any other collateral and/or ulterior purposes(s).
>
> d. That the information contained in the statements are confidential and the [AG]'s act of extracting and using this information to refer the Applicant to the [Law Society] under Section 85(3) of the Legal Profession Act (Cap 161, 2009 Rev Ed) for alleged misconduct on 2nd July 2018 is an abuse of privilege and/or unlawful and/or improper.
>
> e. That the [Applicant] has absolute immunity at all material times in respect of the statement given by him to the Commercial Affairs Department and the [Applicant]'s statement cannot be used by the [AG] for the purposes of referring the [Applicant]'s conduct to the [Law Society].
>
> f. That the Commercial Affairs Department's decision to agree to provide the statements to the [Law Society] was improper and/or unlawful.
>
> g. That the [AG]'s act of forwarding the statements to the [Law Society] on 19th March 2019 was improper and/or unlawful.
>
> h. That, henceforth, all proceedings of the Disciplinary Tribunal appointed under the Legal Profession Act to hear the alleged misconduct of the [Applicant] cease.

13 A series of pre-hearing conferences ("PHCs") were held by the DT to resolve the issue of how to proceed. On 14 February 2020, the DT issued timelines for the DT proceedings to continue, including provision for the filing of the Applicant's defence. At that same PHC, the DT was asked for a stay, which it refused, subject to any order of the court.[21] On 18 February 2020, the

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21 K Gopalan's Affidavit at para 18.

DT issued the Notice of Disciplinary Tribunal Hearing, which stated that the DT would hear the matter from 18 to 20 August 2020.[22] I heard OS 1030/2019 on 11 March 2020 and dismissed the application for a stay of the DT proceedings pending the hearing of OS 1206/2019. The Applicant did not appeal against that decision.

14 On 2 April 2020, after hearing parties, I dismissed OS 1206/2019. The Applicant has appealed against this decision, and I furnish my grounds of decision here.

Parties' positions in OS 1206/2019

15 In the present application, the Applicant argued that the CAD took statements from Mr Ng, Mr Krishnamoorthi and himself for the purposes of investigating breaches of the PCR, a purpose collateral to the statutory purpose. This statutory purpose, the Applicant argued, was confined to investigating into criminal offences. He also argued that the statements were subject to a duty of confidence. Therefore, the AG was not entitled to disclose them to the Law Society; the CAD, similarly, was not entitled to agree to that disclosure. Related to this, he contended that he had absolute immunity in respect of the statements that he made to the CAD. Initially, the Applicant further contended that for the above reasons that the DT ought not to use the information, and sought a stay of the DT hearing pending the hearing of this application. After the application for a stay was dismissed in OS 1030/2019, counsel for the Applicant refined his case and stated that the Applicant was no longer pursuing the prayer which sought a cessation of DT proceedings.

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22 K Gopalan's Affidavit at p 55.

16 The Law Society argued that the court did not have the jurisdiction to grant the declaratory reliefs requested because s 91A of the LPA ousted the court's jurisdiction.

17 The AG, while aligning himself with the Law Society's views on jurisdiction, was moreover of the view that there was no legal or factual basis for declaratory relief. His case was that the statements were not recorded for an ulterior purpose. The Applicant had no immunity against disclosure. Although the AG agreed that a duty of confidence attached to the statements, he asserted that the AG and the CAD were legally entitled to disclose the statements to the Law Society in the public interest. In addition, he argued that the LPA permitted him to refer any information, even confidential information, touching upon the conduct of a lawyer to the Law Society, and, further, immunised him from any liability in the fulfilment of his statutory role.

Issues

18 The issues in the application may therefore be analysed by reference to the following:

(a) whether s 91A of the LPA applied to oust the jurisdiction of the court;

(b) if s 91A of the LPA did not oust the jurisdiction of the court, how the court would exercise its discretion in respect of the various declarations prayed for;

(c) two further substantive issues were relevant in this further analysis:

(i) whether the Applicant's 20 September statement was recorded *ultra vires* in relation to CAD's power to record statements for being recorded for a collateral purpose; and

(ii) whether the CAD and the AG were entitled to disclose the statements to the Law Society.

Summary of decision

19 Section 91A of the LPA did not apply in the present case. Nevertheless, the statutory purpose underlying s 91A of the LPA and the disciplinary framework in Part VII of the LPA, which was to consolidate judicial review and hearings on the merit into one process in order to expedite the disciplinary process, remained relevant. To the extent that declarations were sought concerning the use of the statements as evidence by the DT, I held that there was, in the present case, no reason for the court to exercise its discretion to grant declaratory relief. Matters of evidence were properly to be considered by the DT in the first instance and reviewed, if necessary, subsequently by a High Court Judge or Court of Three Judges under ss 97 or 98 of the LPA, as the case may be. In addition, declarations pertaining to Mr Ng and Mr Krishnamoorthi's statements were not appropriate as they were not parties to the application.

20 Considering the remaining prayers that did not traverse these areas, two substantive issues emerged: the action of the CAD in recording the Applicant's statement, and that of the AG in disclosing the statement to the Law Society (and that of the CAD in agreeing to the same). There were no grounds to grant any of the declaratory relief sought, because the CAD had not acted unlawfully in recording the statements in question, and the disclosure of the statement to the Law Society was not a breach of the duty of confidence as it came within

the public interest exception to confidentiality. The AG's authority under s 85(3) of the LPA was correctly exercised because of the exception. Section 106 of the LPA did not immunise the AG against judicial review on the grounds of illegality, but on the facts, no illegality was shown.

Jurisdiction

Ambit of s 91A of the LPA

21 Section 91A of the LPA reads:

> **91A**.—(1) Except as provided in sections 82A, 97 and 98, there shall be no judicial review in any court of any act done or decision made by the Disciplinary Tribunal.
>
> (2) In this section, "judicial review" includes proceedings instituted by way of—
>
> (*a*) an application for a Mandatory Order, a Prohibiting Order or a Quashing Order; and
>
> (*b*) an application for a declaration or an injunction, or any other suit or action, relating to or arising out of any act done or decision made by the Disciplinary Tribunal.

22 It was common ground that s 91A of the LPA would, if it applied, exclude the court's jurisdiction. Section 91A provided that "there shall be no judicial review in any court…" Under s 91A(2)(*b*), "judicial review" is extended to include "proceedings instituted" by way of an application for a declaration "relating to or arising out of any act done or decision made by the Disciplinary Tribunal". Where s 91A applied, any such "judicial review" would be through s 82A, s 97 and s 98 of the LPA. Because Part VII of the LPA sets out a "self-contained disciplinary framework outside the civil proceedings framework", these provisions are not considered as part of court's civil jurisdiction, but rather, part of the disciplinary jurisdiction under the LPA: *Law*

Society of Singapore v Top Ten Entertainment Pte Ltd [2011] 2 SLR 1279 at [44]–[45]. In effect, s 91A redirects "judicial review", broadly defined, of any act done or decision made by the DT from the court's civil jurisdiction to the disciplinary jurisdiction under the LPA after the DT has made its determination.

23 The dispute between the parties related to the scope of s 91A of the LPA. The Applicant argued that, absent prayer 1(h), s 91A of the LPA no longer applied to the present case as the declarations sought were against the CAD and AG, and not the DT. He argued that any impact the declarations would then have on the DT would be for the DT to decide. The Law Society, on the other hand, argued that the court did not have the jurisdiction to grant declaratory relief because s 91A of the LPA still applied. Notwithstanding the absence of prayer 1(h), the purpose of the declarations sought was to circumvent the DT's decision on the admissibility of evidence before it.

24 The key preliminary question, therefore, was whether s 91A of the LPA applied in this case. In making this assessment, I drew guidance from the three-step framework used to structure the purposive approach to statutory interpretation as summarised by the Court of Appeal in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37], which may be described as follows. First, possible interpretations of the provision must be ascertained, with regard to the text of the provision and the context of the provision within the statute. Second, the legislative purpose or object of the statute must be ascertained. Finally, the interpretation that furthers the purpose of the statute is to be preferred.

25 At the first step, the court must be guided by the ordinary words of the provision, and endeavour to give significance to every word in an enactment:

see *Tan Cheng Bock* at [38]. Here, s 91A(1) of the LPA concerns itself with an "act *done* or decision *made* by the Disciplinary Tribunal" [emphasis added]. These words would ordinarily be understood to refer to actions in the past, directing the "judicial review" towards a prior act or decision. Section 91A(2) of the LPA then expands the definition of "judicial review". The specific types of proceedings referred to in this subsection deal retrospectively with past acts or decisions, rather than prospectively with future ones. Even more prophylactic orders such as the "injunction" envisaged under s 91(2)(*b*) of the LPA are linked to prior acts or decisions of the DT: any act that seeks to be restrained must relate to or arise out of "act[s] done or decision[s] made".

26 The Law Society did not proffer any alternative interpretations of the provision. Their point was that the Applicant's action was motivated by a wish to circumvent the provision. This argument, however, was premised on a broader interpretation of s 91A of the LPA to apply prospectively even when the issue to be considered had not yet been the subject of "any act done or decision made" by the DT. At the first step of the analysis in *Tan Cheng Bock*, the court must perforce be constrained by the parameters of the literal text of the provision (see *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183 at [57]). Therefore, the broader interpretation was not possible, and s 91A of the LPA was properly interpreted to relate only to past acts or decisions of the DT. As this interpretation was not sustainable on the text of the provision, it was not necessary for me to proceed to the second and third steps in the purposive approach: see *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319 at [39].

27 Coming back to the application at hand, the only prayer that referred to a prior act of the DT (prayer 1(h)) was no longer pursued before me. As the

remaining declarations dealt with issues that the DT had not had the opportunity to consider, there was no "act done or decision made" by the DT, and s 91A of the LPA did not apply. The jurisdiction of the court, therefore, was not ousted in this case.

Relevance of the purpose of s 91A

28 Nevertheless, the relevance of s 91A of the LPA did not end there. Although the jurisdiction of the court was not ousted by s 91A, the purpose of this provision was still important to the way my discretion was exercised in granting declaratory relief. Declarations, being discretionary, must be justified by the circumstances of the case: see *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another* appeal [2006] 1 SLR(R) 112 ("*Karaha Bodas*") at [14(c)]). This necessitates a consideration of the purpose of s 91A.

29 Section 91A of the LPA seeks to prevent delays to the disciplinary process, which had previously been caused by applications for judicial review of DT proceedings while those proceedings were still afoot. The solution was to defer judicial review of a DT's acts or decisions until after a determination had been made under s 93(1) of the LPA. As the Minister for Law stated during the second reading of the Legal Profession (Amendment) Bill (No 16 of 2018) (*Singapore Parliamentary Debates, Official Report* (26 August 2008) vol 84 col 3251):

> … I would clarify that judicial review is not "ousted". What we are doing is deferring it, because what has happened in the past is that even before the tribunal proceedings and disciplinary proceedings are over, there were repeated applications for judicial review, which then dragged on and delayed the entire proceedings, vastly contributing to delays. *So, the approach has been to finish with the process, then you go for judiciary* [sic] *review.* … [emphasis added]

30 Philip Pillai JC (as he then was) took the same position in *Mohd Sadique bin Ibrahim Marican and another v Law Society of Singapore* [2010] 3 SLR 1097 at [11]:

> Seen in the light of the operation of ss 97 and 98, it would appear that *the purpose of s 91A is to restrict judicial review by consolidating the judicial review process with the hearings on merit into one process, instead of maintaining them as distinctly separate processes*. What this means is that judicial review remains available but only through the single Judge process under s 97 (in the event that there are no show cause proceedings) or the court of three judge under s 98 (in the event there are show cause proceedings). [emphasis added]

31 The provision therefore seeks to preserve the integrity of the disciplinary framework under Part VII of the LPA and to prevent collateral attacks on the DT's proceedings by way of judicial review. Where factual matters are in issue, the section serves to bring matters within the remit of a DT first, before the High Court Judge or Court of Three Judges under ss 97 or 98 of the LPA later reviews the DT's determination. This enables issues to be considered in an orderly manner. Where findings of fact are made by the DT, the court would then deal with them just as an appellate court would in relation to findings made by a lower court: see *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [27] (approved in relation to DTs in *Law Society of Singapore v Chong Wai Yen Michael and others* [2012] 2 SLR 113 at [10]).

32 In this context, what of the converse situation, if the court decides any issue intended for the DT before the DT first deals the issue? If a court were to decide any issue intended for the DT, there is a very real possibility that issue estoppel would apply in the DT's proceedings. Once there is identity of parties, identity of subject matter, a final and conclusive judgement on the merits of an issue by a court of competent jurisdiction, the requirements of issue estoppel

would be made out: *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157 ("*Lee Tat Development*") at [14]–[15]. A court should be slow, therefore, to grant relief that would intrude upon the remit of the DT. Otherwise, the same historical problem of delay will recur, with every lawyer facing disciplinary proceedings attempting to impede, delay and stymie DT hearings with requests for prospective rulings over key pieces of evidence that they know will be assessed by the DT. Such action could also, in certain circumstances, amount to an abuse of judicial proceedings, because it creates multiplicity of proceedings where the intent of s 91A of the LPA is to redirect all such issues to after the determination of the DT, to the High Court Judge under s 97 or the Court of Three Judges under s 98, as the case may be.

Exercise of the court's discretion

33 In that context, I come to the reliefs requested by the Applicant.

34 If the Law Society chooses to use the Applicant's statement in the DT proceedings, the DT would be faced with the issue of the admissibility of the Applicant's statement. In that regard, even though the Applicant was no longer pursuing prayer 1(h), counsel candidly admitted that the declarations obtained in this application was for the purpose of being brought to the DT's attention. In his view, the statements obtained illegally would be a nullity and it would be for the DT to consider in that context.

35 In my view, the issue of the admissibility of the statements in the DT ought to be first considered by the DT, and thereafter reviewed if necessary under ss 97 or 98 of the LPA, as the case may be. For example, prayer 1(c) asked for the following declaration, that:

> c. The statements can only be used in the criminal proceedings for which they were recorded and not for any other collateral and/or ulterior purposes(s).

This issue would be squarely before the DT. If the court made a determination on this issue, issue estoppel could apply as there would be a final and conclusive judgement on the issue by a court of competent jurisdiction with identity of parties and subject matter: see *Lee Tat Development* ([32] *supra*) at [14]–[15]. This was simply a matter pertaining to the treatment of specific pieces of evidence. The appropriate course of action was therefore to allow the DT to make its findings and determination. This would prevent the framework under Part VII of the LPA from being undermined and reduce multiplication of proceedings. While I do not foreclose the possibility of a case where the interests of justice would necessitate such declaratory relief, the case at hand was not such a case.

36 This left me with two other allegations. These were, first, that the AG and CAD had a collateral purpose in recording the Applicant's statement, and second, that the CAD and AG had acted unlawfully in disclosing that statement. These were actions of public authorities that the Applicant contended resulted in violations of his private rights. Such rights were enforceable against the public bodies concerned: see *Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1 at [31] and [33]–[35] and *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [69].

37 These two allegations did not concern s 91A of the LPA since the subjects of these allegations were the CAD and the AG, not the DT. As such, these allegations called for a different approach from that adopted above at [34]–[35]. As explained in *Manjit Singh s/o Kirpal Singh and another v*

Attorney-General [2013] 2 SLR 844 ("*Manjit Singh*"), s 91A of the LPA is only intended to apply to acts or decisions of the DT and not those of any other persons: *Manjit Singh* at [58]. In *Manjit Singh*, the Chief Justice's decision to appoint members of the DT was held to lie outside the scope of s 91A as it was not an act of the DT. Such a finding, it was emphasised, did not undermine the purpose of s 91A since the provision simply did not apply in the first place: *Manjit Singh* at [59].

38 There is a final matter relevant to the reliefs requested. Neither Mr Ng nor Mr Krishnamoorthi were parties to the application. It was not appropriate to consider any declaratory relief regarding the taking or use of their statements since they were not before the court to receive any such relief. "[A]ny person whose interests might be affected by the declaration should be before the court": *Karaha Bodas* ([28] *supra*) at [14(e)]. As for the admissibility of their statements, that was properly to be considered by the DT. However, I did consider their statements as part of the context and insofar as they shed light on the Applicant's assertions regarding his own statement.

39 Therefore, I confine my remarks and decision to the issues pertaining to the legality of the CAD's and AG's conduct in respect of the Applicant's 20 September statement.

The recording of the Applicant's statement

40 I begin with the Applicant's claim that CAD had acted *ultra vires* in recording his statement. I should mention that the Law Society submitted that no relief could be obtained against the CAD because it was not a party to the present proceedings. However, s 19(3) read with s 19(1) of the Government Proceedings Act (Cap 121, 1985 Rev Ed) effectively provides that proceedings

against the Government be instituted against the AG. The Applicant was correct to join only the AG in this case.

The correct exercise of statutory power

41 The Applicant relied, in essence, upon the head of "illegality" as explained by Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410:

> By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

42 The relevant provision here is s 22 of the CPC. The Applicant contended that this power was exercised for a collateral purpose which was not authorised by the provision. Section 22(1) of the CPC reads:

> **Power to examine witnesses**
>
> **22.** – (1) In conducting an investigation under this Part, a police officer … may examine orally any person who appears to be acquainted with any of the facts and circumstances of the case —
>
> > (*a*) whether before or after that person or anyone else is charged with an offence in connection with the case; and
> >
> > (*b*) whether or not that person is to be called as a witness in any inquiry, trial, or other proceeding under this Code in connection with the case.

43 The provision is clear. It does not matter that the statements were taken after Mr Ng's conviction and neither does it matter that Mr Krishnamoorthi or the Applicant were never called as witnesses or charged in subsequent criminal trials. For the issue at hand, what matters is that the police officer's exercise of statutory power is examined and that the purpose for which such a statutory power was exercised is properly ascertained.

44 First, the relevant power of investigation is that of the police officer, SIO Lie. Hence, the focus of the court's inquiry on the facts was solely concerned with SIO Lie's explanations for the purposes for which the statements were recorded. While the AG as the Public Prosecutor ("PP") has control and direction of criminal prosecutions and proceedings by virtue of s 11 of the CPC, neither it nor Article 35 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) vests the AG with power over the police. The Commissioner of the Police is answerable to the Minister: s 5 of the Police Force Act (Cap 235, 2006 Rev Ed), and operates as a separate body from the AG and AGC.

45 Second, it is also clear that s 22 of the CPC may only be used for the purpose of investigating a criminal offence, which is "an act or omission punishable by any written law" (see s 2 of the CPC). This statutory purpose was not disputed. The Applicant was of the view that SIO Lie's "true and dominant purpose" in exercising his power was to investigate the Applicant's potential breach of the PCR. The AG did not dispute that investigating breaches of the PCR would not be an authorised purpose for which statements could be recorded under s 22 of the CPC. His submissions focused on the need on the part of the Applicant to show malice, and, in any case, that SIO Lie's purpose in recording the statements was to investigate a criminal offence.

Determining the true and dominant purpose

46 Where a statutory provision confers authority to obtain information for a specific purpose, that authority may only be exercised for that specific purpose. In the event that there is a plurality of purposes for which the public authority exercised its power to obtain the information, the exercise of power is

lawful only if the true and dominant purpose of the exercise of the power was authorised by the specific statutory provision. This is the "true and dominant purpose" test which the Applicant relied upon, as formulated in William Wade and Christopher Forsyth, *Administrative Law* (Oxford University Press, 11th Ed, 2014) ("*Wade & Forsyth*") at 352:

> Sometimes an act may serve two or more purposes, some authorised and some not, and it may be a question whether the public authority may kill two birds with one stone. The general rule is that its action will be lawful provided that the permitted purpose is the true and dominant purpose behind the act, even though some secondary or incidental advantage may be gained for some purpose which is outside the authority's powers. There is a clear distinction between this situation and its opposite, where the permitted purpose is a mere pretext and a dominant purpose is *ultra vires*.

47 This test was adopted by the House of Lords in the case of *R v Southwark Crown Court, Ex parte Bowles* [1998] 1 AC 641 ("*Ex parte Bowles*") at 651. *Ex parte Bowles* concerned a production order sought by the police from the Crown Court under s 93H of the UK's Criminal Justice Act 1998. The subject of the production order was Mrs Bowles, an accountant, whose clients included two persons who faced charges of dishonesty. She disputed the production order on the grounds that s 93H only applied to assisting in the recovery of proceeds of criminal conduct and could not apply to investigating the offences themselves. The House of Lords agreed, and dealt also with the question of legality if the police applied for a production order with two purposes, both to assist in the recovery of proceeds of crime (the authorised purpose) and to investigate into offences (the unauthorised purpose). Lord Hutton, delivering the judgment of the House of Lords, affirmed the need to ascertain the true and dominant purpose, first quoting from the same *Wade & Forsyth* extract (as above, albeit from an older edition), then holding (*Ex parte Bowles* at 651):

> Accordingly, I consider that if the true and dominant purpose of an application under section 93H is to enable an investigation to be made into the proceeds of criminal conduct, the application should be granted even if an incidental consequence may be that the police will obtain evidence relating to the commission of an offence. But if the true and dominant purpose of the application is to carry out an investigation whether a criminal offence has been committed and to obtain evidence to bring a prosecution, the application should be refused.

48 This approach was recently re-affirmed by the English Court of Appeal in *R (Miranda) v Secretary of State for the Home Department and another* [2016] 1 WLR 1505 ("*Miranda*") at [26], which involved the legality of the exercise of powers in Schedule 7 of the Terrorism Act 2000 to stop, detain, and question a person in order to determine whether he appears to be a person who "is or has been concerned in the commission, preparation or instigation of acts of terrorism" (referred to as "Schedule 7 powers" or a "Schedule 7 stop").

49 Mr Miranda, the claimant, was the spouse of one Mr Greenwald, a journalist, who was connected with Mr Edward Snowden. Mr Snowden had provided some journalists with encrypted data that had been stolen from the National Security Agency of the United States of America. Mr Miranda had been travelling from Berlin to Rio de Janeiro with storage devices containing these encrypted materials in his possession. On 18 August 2013, when he was *en route* back to Rio de Janeiro, Mr Miranda was stopped at Heathrow Airport by police officers from the Metropolitan Police. This was on the initiative of the Security Service, which had been tracking Mr Miranda's movements, and which had contacted the Counter-Terrorism Command in the Metropolitan Police, who also wanted to investigate Mr Miranda for criminal offences. It was decided that the best way to achieve the objectives of both the Security Service and the police was to conduct a Schedule 7 stop. To that end, the Security Service issued a

National Security Justification, a request from the Security Service to the police to ask them to consider using the Schedule 7 powers to conduct the stop. A second document, which was agreed between the police officers and the Security Service, concerned the "tactical aspects of the proposed stop", and was contained in the Port Circulation Sheet ("PCS"). Both these steps of authorisation were needed for a Schedule 7 stop to be conducted. In this case, the first PCS was not actively considered by the police, and the second PCS was considered by the duty officer, DI Woodford, to be insufficient. A third PCS was then prepared and sent to the police, which was then accepted. The Schedule 7 stop then went ahead on 18 August on the basis of the third PCS. Mr Miranda applied for judicial review, claiming, *inter alia*, that the power was exercised for a purpose not permitted by the statute.

50 The Court of Appeal first considered the purpose of the stop in question. Lord Dyson MR agreed with Laws LJ (who heard the matter with two other judges at first instance) that the issue was one of fact: *Miranda* at [26]. In this context, Lord Dyson approved the use of the "true and dominant purpose" test, citing *Ex parte Bowles* ([47] *supra*). The Security Service and the Metropolitan Police were two separate bodies, similar to the AG and the CAD in this case. Lord Dyson MR proceeded on the basis that "although the process which led to the exercise of the stop power was *initiated* by the Security Service" [emphasis in original] the police also exercised an independent decision-making role: *Miranda* at [30]. Lord Dyson MR went on to state (*Miranda* at [30]):

> It is clear from the evidence of DS Stokley that the police exercised their own judgment in deciding whether it was appropriate to conduct the stop. They recognised that they could not act as a conduit for the furtherance of the purposes of the Security Service. They had to be persuaded that the conditions for the lawful exercise of the stop power were satisfied in the circumstances of the case. That is why they

> rejected the second PCS, which was the first PCS that they considered.

51 Mr Miranda claimed that the police were simply giving effect to the directions of the Security Service, but the Court of Appeal held otherwise. The true and dominant purpose of the stop was to give effect to the third PCS, which was the document upon which the police acted. Lord Dyson MR held in *Miranda* at [31] that the police were alive to the fact that "the objectives of the Security Service and the police were distinct" and that "the stop power could not be exercised unless the statutory conditions for its exercise were met". Having found that the true and dominant purpose was to give effect to the third PCS, and not the Security Service's agenda, Lord Dyson MR observed (*Miranda* at [31]):

> [T]he national security and counter-terrorism considerations in this case were linked and overlapped, as was reflected by the fact that this was a joint operation which had been initiated by the Security Service. *The fact that the exercise of the Schedule 7 power also promoted the Security Service's different (but overlapping) purpose does not, however, mean that the power was not exercised for the Schedule 7 purpose*. The Metropolitan Police exercised the power for its own purpose of determining whether Mr Miranda appeared to be a person falling within section 40(1)(*b*). [emphasis added]

52 The following principles drawn from *Miranda* ([48] *supra*) and *Ex parte Bowles,* are relevant to the present case:

(a) the purpose for which a statutory power may be exercised must be drawn from the statute;

(b) where there is more than one purpose, the true and dominant purpose must be sought;

(c) where there is joint action by more than one agency, the purpose that is relevant is that of the person exercising the power under the statute;

(d) the burden of proof would be on the party asserting an improper purpose; and

(e) any assessment of true and dominant purpose must be sensitive to the facts in the circumstances of the case.

53 In relation to the burden of proof, it is worth reiterating here that this follows from the general proposition that officials are presumed to act lawfully and the burden is on the party seeking to challenge the lawfulness of such actions to prove their case: *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 at [47]. This presumption is merely a "starting point", however, and the question is whether the applicant is able to prove otherwise: see *Saravanan Chandaram v Public Prosecutor and other matters* [2020] SGCA 43 at [154] (discussing the analogous presumption in relation to legislation).

Relevance of bad faith or malice

54 In this context, I should touch on the differences between an assertion of bad faith and malice, and an assertion of purposes collateral to the stipulated statutory purposes. The AG submitted that only proof of bad faith would establish that the statements had been recorded for an ulterior purpose. To that end, it characterised the Applicant's arguments as an attack on the *bona fides* of the investigation and ultimately concluded that the Applicant had failed to meet

its burden of proving bad faith.[23] In truth, the Applicant's claim was simply that the CAD had exercised its power under the CPC for a collateral purpose. This amounted to the CAD acting *ultra vires* and was therefore unlawful.[24]

55 As a matter of the applicable legal standard, bad faith did not need to be proved for a claim of collateral purpose to succeed. The distinction between an unlawful exercise of power and bad faith was explained by the Court of Appeal in *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 ("*Ridzuan*"). There, the Court of Appeal considered the applicant's argument that a failure to take into account relevant considerations or the taking into account of irrelevant considerations would amount to bad faith under s 33B(4) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") (see further below at [112]). The Court of Appeal rejected that argument, holding at [70]:

> We do not accept the Appellant's suggestion that bad faith on the part of the PP would be made out if it can be shown that the PP took legally irrelevant considerations into account or failed to take legally relevant considerations into account in reaching his decision on whether to issue the certificate of substantive assistance. *The touchstone of "bad faith" in the administrative law context is the idea of dishonesty*. Merely taking into account legally irrelevant considerations or failing to take into account legally relevant considerations, where there is no dishonesty involved, would not suffice. As Megaw LJ stated in *Cannock Chase District Council v Kelly* [1978] 1 WLR 1 (at 6D–6F):
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> > … I would stress—for it seems to me that an unfortunate tendency has developed of looseness of language in this respect—that bad faith, or, as it is sometimes put, 'lack of good faith,' means dishonesty: not necessarily for a financial motive, but still dishonesty. It always involves a grave charge. It must not be treated as a synonym for an honest, though mistaken, taking into consideration of a factor which is in law irrelevant.

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23 AG's Written Submissions at para 20.

24 Applicant's Written Submissions at para 30.

> Taking a cue from Megaw LJ's aforesaid statement, Alex Gask suggests that a decision maker is said to have acted in bad faith when he "acts dishonestly, taking action which is known by the actor to be improper" (Alex Gask, "Other Grounds of Review" in *Judicial Review* (Helen Fenwick, gen ed) (LexisNexis, 4th Ed, 2010) at para 13.2.1).
>
> [emphasis added]

56 Applying *Ridzuan* to the present case, the Applicant's claim is that the statement was recorded for a purpose that is not prescribed or authorised by the statute that gives the power to record the statement. Such an argument does not require proof of bad faith.

57 That being said, such an argument may effectively require proof of bad faith to succeed in certain circumstances. For example, the authority could acknowledge that its actions were motivated by multiple purposes. It could even acknowledge that some were unlawful in that they were not purposes for which the statutory power could be exercised, if taken alone. But ultimately, the authority may attempt to justify its actions by claiming that the unlawful purposes were entirely secondary and incidental to the lawful ones. In such a situation, challenging the authority's account may effectively be an allegation of dishonesty: the authority knew it was doing something unlawful but (dishonestly) sought to establish a pretext for its exercise of power and is now also (dishonestly) claiming that a lawful purpose was its true and dominant purpose. This is the case here. The contention that the statements were recorded for an ulterior purpose would, in effect, be an allegation that the CAD's stated (lawful) purpose was entirely pretext – a cover-up, in other words, for its real (unlawful) purpose. That would be an assertion of dishonesty. Hence, to the extent that this applies to the case at hand, I agree with the AG that contentions of dishonesty are serious allegations that must not be made on mere suspicion: see *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR(R)

568 at [39], citing *Yeap Seok Pen v Government of the State of Kelantan* [1986] 1 MLJ 449.

Application to the facts

58 According to Deputy Public Prosecutor Huang Xin'en Magdalene, the AGC on 31 August 2017 directed the CAD to conduct further investigations in relation to the commissions paid by law firms to Mr Ng, highlighting that such payment of commissions was improper and contrary to professional rules, and wanted to ascertain if the conduct of these law firms and lawyers had disciplinary consequences.[25] As stated at [43] above, in examining the legality of the taking of the statement, it is the purpose of the police officer in exercising the power that is relevant.

59 SIO Lie's evidence was as follows:[26]

> My view on AGC's directions was that I needed to determine the nature and extent of the involvement of any of the lawyers and/or law firms in the fraudulent motor insurance injury claims. Given that the lawyers and/or law firms may have acted improperly, I also considered whether any of these lawyers and/or law firms had engaged in a conspiracy to commit an offence of cheating.
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> The practice of law firms paying commissions to Mr Ng for referring cases to them was unusual and raised suspicion that past referrals of cases by Mr Ng to law firms could potentially have involved lawyers and law firms in fraudulent motor insurance injury claims.

60 It appears from the above that SIO Lie understood the AGC's request in context, which is that professional breaches could indicate more substantial

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25 Huang Xin'en Magdalene's Affidavit at para 6.

26 Lie Da Cheng's Affidavit at paras 8–9.

criminal activity. It raised a suspicion that fraud was afoot. He interpreted AGC's statement to be shorthand, so to speak, that where there are knowing breaches of ethical rules, there could be a line of investigation worth pursuing into criminal offences. SIO Lie's evidence indicated that he had exercised his own judgment on the purpose for which the statements should be recorded (see also *Miranda* ([48] *supra*) at [30]), and it is therefore his explanation that I focus on in this case.

61 SIO Lie explained that Mr Ng's 14 September statement had been recorded with a view to determining the extent of the involvement of any of the lawyers and law firms in fraudulent motor insurance injury claims. If any of the lawyers to whom Mr Ng referred cases had been aware that the referrals involved fraudulent insurance claims, these lawyers and/or law firms could have engaged in a conspiracy to commit an offence of cheating against the insurance firms who had to pay out on these fraudulent motor insurance injury claims.[27]

62 Further, SIO Lie stated that the Applicant's 20 September statement was recorded to gather more information on the motor insurance injury claims made by drivers who had been referred to the Firm as well as the circumstances under which those referrals had been made. SIO Lie deposed that this had been carried out to ascertain "the nature and extent of the involvement of [the Firm] and the Applicant in fraudulent motor insurance injury claims". This was why the statement contained a warning to the Applicant that the investigation was into an offence of "Cheating (Motor Insurance Fraud)" in the period "around 2013 till 2015".[28]

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27 Lie Da Cheng's Affidavit at para 10.

28 Lie Da Cheng's Affidavit at para 13 and 40.

63 As for Mr Krishnamoorthi's 12 December statement, SIO Lie deposed that the purpose of recording that statement was to follow up on a claim made by Mr Woo that he had not received a letter of acknowledgement from the Firm dated 1 July 2015, which Mr Krishnamoorthi had claimed in an earlier statement to have sent to Mr Woo. Further, SIO Lie wanted to ascertain Mr Krishnamoorthi's knowledge of and involvement in the payment of referral fees to Mr Ng.[29]

64 In my judgment, SIO Lie's explanation was, on the face of it, plausible and logical. If the Applicant had been regularly paying referral fees to Mr Ng, and if he had done so in conscious breach of the PCR provisions, that would have been a relevant factor in SIO Lie's determination of whether there was evidence of the Applicant's involvement in a conspiracy to cheat insurance firms. In other words, the Applicant's knowing breach of professional conduct rules could ground a suspicion of and link to a larger breach of criminal law. It was sensible for SIO Lie to have pursued this line of inquiry with the Applicant.

65 I then considered whether the Applicant had any evidence to show that SIO Lie's explanation as to his purpose was false. First, the Applicant pointed out that the investigation into the Applicant's involvement was belated, having commenced only on 31 August 2017 after Mr Ng had been convicted and sentenced, while Mr Ng had already disclosed the involvement of lawyers in his statement dated 6 April 2016.[30] In my view, this delay was equivocal. AGC directed SIO Lie to look into this issue on the same day as Mr Ng's conviction and sentencing. It was equally plausible that any investigation into a wider and

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29 Lie Da Cheng's Affidavit at para 16.

30 Applicant's Written Submissions at paras 33–35.

deeper motor insurance fraud conspiracy could be more appropriate after the offender whose evidence would become crucial had been sentenced, or that the potential for a wider conspiracy was noticed only later after a subsequent officer noticed the potential disciplinary breaches. The Applicant's criticism here was speculative.

66 Second, the Applicant invited the court to examine the statements themselves to draw the conclusion that they were taken for the dominant purpose of investigating breaches of the PCR.

67 In relation to Mr Ng's 14 September statement,[31] the Applicant pointed out that four out of six of the questions were directed at "commissions" and "referrals". However, this was consistent with SIO Lie's evidence that his purpose in following up from Mr Ng's prior statements was to ascertain the scope of the lawyers' and/or law firms' involvement in the motor insurance fraud. In addition, the Applicant's name was volunteered by Mr Ng, and, on the face of the statement, was not suggested to him by SIO Lie. At the hearing before me, counsel for the Applicant sought to make a point concerning SIO Lie's indication of "N/A" in the field for "offence … alleged to have been committed". This was equivocal because SIO Lie's stated reason for interviewing Mr Ng was to investigate further criminal offences on the part of others in a motor insurance fraud conspiracy. That same field was filled out in the Applicant's and Mr Krishnamoorthi's statements and the failure to do so in Mr Ng's first statement did not go so far as to suggest that SIO Lie was solely concerned with breaches of the PCR at all times.

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[31] See Lie Da Cheng's Affidavit at p 37.

68 It was in this context that SIO Lie then contacted the Applicant. It was the Applicant's evidence that SIO Lie telephoned him on 15 September to ask to record a statement with respect to the referral of Mr Woo, and followed up with a request on 18 September for other personal injury files referred to the Firm by Mr Ng. On 18 September, the Applicant enquired as to the reason and was told that SIO Lie wished to ascertain whether any claims referred could be potentially fraudulent.[32]

69 On 20 September 2017, at the outset of the taking of the statement, SIO Lie administered the following warning to the Applicant:

> I am conducting a Police investigation into an offence of **Cheating (Motor Insurance Fraud)**, alleged to have been committed from **around 2013 till 2015** in Singapore. You are bound to state truly the facts and circumstances with which you have acquainted concerning the case save only that you may decline to make with regard to any fact or circumstance a statement which would expose you to a criminal charge or to a penalty or forfeiture.

70 In total, SIO Lie asked seven substantive questions (Q1 to Q7). SIO Lie opened with the following question (Q1):

> Police have investigated against one Ng Kin Kok for motor insurance fraud. In the course of the investigation, Ng Kin Kok has revealed that he had referred several accident cases to M/s K. Krishna & Partners Advocates and Solicitors. Can you provide details of these accident cases?

The Applicant's answer to this question took up the bulk of the statement, running from pages 1 to 4, and dealt with how he came to know Mr Ng, how Mr Ng started to refer cases to him, and gave details as to the different cases

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[32] Shanmugam Manohar's Affidavit at para 7.

that Mr Ng referred to him. The Applicant gave details of how he managed each case as they were referred to him.

71 The other six questions were as follows:

(a) Question 2: "Who did Ng Kin Kok ("Jimmy") liaise with usually at your law firm?"

(b) Question 3: "Why did Ng Kin Kok ("Jimmy") refer these accident cases to your law firms and not others?"

(c) Question 4: "Can you explain how these referrals from Ng Kin Kok ("Jimmy") were processed?"

(d) Question 5: "Do you know where Ng Kin Kok ("Jimmy") is now?"

(e) Question 6: "Do you have any idea that some of the claims submitted by Ng Kin Kok ("Jimmy") might be fraudulent?"

(f) Question 7: "Do you know that you would have contravened s39 [sic] of the Legal Profession (Professional Conduct) Rules 2015 by giving commissions for referrals by Ng Kin Kok ("Jimmy")?"

72 The Applicant argued that there were no questions concerning how the Applicant or the Firm submitted the claims, but the questions, in particular Q4 and Q7, concerned the breaches of the PCR. This was not a fair characterisation of the statement when read as a whole. First, concerning the Applicant's specific allegation that no questions were asked about how they submitted the claims, I noted that Q1 sought details about how the Firm dealt with the cases and Q6 sought to determine his knowledge of whether the claims were fraudulent. Second, the totality of the statement showed that the purpose was to investigate

breaches of the criminal law. At the outset, SIO Lie's warning stated that he was investigating motor insurance fraud. The bulk of the statement dealt with the Applicant's account of the cases that Mr Ng referred to him, which was clearly relevant to establishing his involvement in any motor insurance fraud. Q2, Q3, Q4, and Q5 then sought to particularise the relationship between the Applicant and Mr Ng: who did Mr Ng speak to at the Firm, why did Mr Ng refer to the cases to the Firm and not to anyone else, how were those referrals processed, and whether the Applicant knew what had happened to Mr Ng. These were relevant to SIO Lie's determination of the extent of the Applicant's involvement in any conspiracy to commit motor insurance fraud. Q6 expressly sought to determine the Applicant's knowledge of whether the claims were fraudulent. Q7, the *only* question to expressly refer to the PCR, arose in this context and, following directly from Qs 2 to 6, was, to my mind, exploring SIO Lie's hypothesis that a lawyer who *knowingly* breaches rules of professional conduct could have a wider criminal intent. The express reference to the PCR was justified because it was the Applicant's own knowledge of whether he was in breach of such rules that was also relevant to the investigation. It was the last question because the Applicant stated that he did not consider that he had breached any ethical rules. He thereby closed off the last avenue of enquiry.

73 The subsequent conduct of SIO Lie is equally consistent with his stated purpose. SIO Lie proceeded to interview Mr Krishnamoorthi on 12 December 2017.[33] The questions as a whole reveal that the focus was on obtaining information relating to the Firm's business with Mr Woo, the claimant of motor insurance in relation to whom Mr Ng was charged and convicted. The majority

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33 See Lie Da Cheng's Affidavit at p 46.

of the questions were directed to establishing the facts relating to the Firm's interactions with Mr Woo and Mr Ng, and the references to the PCR arose only in the two final substantive questions, which related to the same interactions. Hence, while there were references to the PCR, these references should be read in the broader context of the statement, suggesting that these questions were intended to identify possible connections between the Firm and Mr Ng's offences. SIO Lie sought to record a further statement from Mr Krishnamoorthi but Mr Krishnamoorthi declined. The statement and SIO Lie's follow up action showed that SIO Lie was looking for the law firm's involvement – but without success – in a larger context of fraud.

74 After the statements were recorded, the CAD then considered the evidence. The CAD's conclusion was that the evidence "did not disclose a further offence of cheating on the part of Mr Ng or an offence of cheating (or conspiracy to cheat) on the part of the Applicant", and its findings, together with the statements, were forwarded to the AGC for review.[34] At this stage, the CAD's purpose was to provide AGC with the police's recommendations concerning the criminal offences that were in question. There was nothing to suggest that the CAD's consideration of evidence was simply a pretext for covering up the use of investigative powers to inquire into breaches of the PCR. Subsequently, when the AGC wished to disclose the statements to the Law Society, it then sought the CAD's views on that request because the statements were recorded by the CAD. This again made sense in the light of SIO Lie's explanation. The Applicant contended that the fact that the CAD helped the AGC seek Mr Ng's and Mr Krishnamoorthi's consent to be contacted by the

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[34] Lie Da Cheng's Affidavit at para 23.

Law Society indicated that the CAD must have been helping the AGC investigate breaches of the PCR. On the evidence before me, it appears that the request was simply practical because SIO Lie was already in contact with Mr Ng and Mr Krishnamoorthi, and SIO Lie's assistance was an unsurprising professional courtesy. In any event, that later administrative act could have no bearing on his original reasons for taking their statements.

75 Looking at the evidence as a whole, the Applicant's assertions, if true, would have necessarily meant that SIO Lie had been actively misrepresenting his true intentions in his interactions with the Applicant. It would have meant that SIO Lie's representations to the Applicant during the 18 September phone call and the warning administered on 20 September were not entirely truthful. Concocted to facilitate investigations into breaches of the PCR, these would have amounted to dishonest misrepresentations. The CAD's consideration of the criminal case and recommendations to AGC would also have been fabricated. And SIO Lie's affidavit would accordingly have been an *ex post facto* rationalisation premised on the same sham. These allegations involving dishonesty were serious and as pointed out by the AG, advanced without basis. The Applicant bore the burden of proof and there was absolutely no evidence to support his arguments in the circumstances and context surrounding the recording of the statement. To the contrary, SIO Lie had a rational explanation of how he read the AGC's request and how he proceeded to take statements in order to investigate motor insurance fraud. His conduct throughout was consistent and cohered with his explanation. I found that the true and dominant purpose of recording the Applicant's statement was to investigate a criminal offence, namely motor insurance fraud.

Disclosure of the statements

76 I turn then to the next substantive issue, whether the Applicant's statement could be disclosed by the AG to the Law Society. The Applicant's contentions could be summarised into three arguments: that he had placed reliance on the police booklet which indicated that the statements would not be disclosed; that immunity could be founded on *Taylor and another v Director of the Serious Fraud Office* [1999] 2 AC 177 ("*Taylor*"); and that the statement was protected by the duty of confidence.

77 The AG disagreed, arguing that a public interest exception applied to the duty of confidence, and, further, that the statutory context allowed the disclosure and immunised him from suit.

78 I found that the first two of the Applicant's arguments were not relevant and a public interest exception applied in respect of the duty of confidence. Section 85(3) of the LPA was of assistance to the AG, while s 106 of the LPA was not. I explain these points in turn.

The police booklet

79 The Applicant argued that "the Police Procedures states that all information provided to police officers by witnesses will not be transmitted to third parties."[35] The reference was to the "Information Booklet on Police Procedures" updated on June 2016 and exhibited in the Applicant's affidavit, which appears to be a booklet provided to certain persons who may need to deal

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35 Applicant's Written Submissions at para 69.

with the police.[36] Contrary to the Applicant's submissions, however, the booklet makes no such absolute statement. The closest that the booklet comes to dealing with this issue is the statement on p 26 and p 28: "As a police statement is an official document, no copy will be provided to you or other persons *unless otherwise provided for by law*" [emphasis added]. The issue in this case is the scope of what is provided for by law. Page 28 also states that "[a]ll information provided to our officers will be kept confidential", but this too, is not in dispute. The issue at hand is whether the public interest exception applied in the present case. Therefore, the Applicant's reliance on this booklet is misplaced.

Contention of "absolute immunity"

80 The Applicant claimed an "absolute immunity" in any suit or action in respect of the statement that he gave to the police, citing the case of *Taylor* ([76] *supra*). *Taylor*, however, concerned a defamation suit for things said in the course of police investigations as recorded in police statements. The absolute immunity discussed in that case pertained only to civil suits arising out of such statements made during investigations: see also *D v Kong Sim Guan* [2003] 3 SLR(R) 146 at [109]–[110]. It is also "limited to actions in which the alleged statement constitutes the cause of action": *Taylor* at 215C. The Applicant is not under threat of an action for defamation or any civil suit arising out of his statement to the CAD nor was that statement previously disclosed in a suit. The crux of his concern is that his statement may contain admissions or allude to facts relating to professional misconduct, but the absolute immunity claimed is irrelevant to this issue. That is a matter that pertains to the use of his statement

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[36] Exhibit SM-1 at p 5: Applicant's Affidavit at p 14.

as evidence in disciplinary proceedings and is better left to arguments on admissibility before the DT.

The duty of confidence

81 It was common ground that a duty of confidence applied.[37] The dispute centred on whether the public interest exception permitted AG and CAD to disclose the statements to the Law Society. The Applicant did not dispute the existence of the exception, only its scope.

Scope of the public interest exception

82 As a general matter, "there is no confidence as to the disclosure of iniquity": *Initial Services Ltd v Putterill* [1968] 1 QB 396 ("*Initial Services Ltd*") at 405 (see also *Wee Shuo Woon v HT SRL* [2017] 2 SLR 94 at [54]). Lord Denning MR went on to describe the scope of this principle as extending to (*Initial Services Ltd* at 405):

> … *crimes, frauds and misdeeds*, both those actually committed as well as those in contemplation, provided always – and this is essential – that the disclosure is justified in the public interest. The reason is because "no private obligations can dispense with that universal one which lies on every member of society to discover every design which may be formed, contrary to the laws of the society, to destroy the public welfare": see *Annesley v Anglesea (Earl)*. [emphasis added]

83 In the specific context of statements given to the police, the English Court of Appeal has held in *Frankson and others v Home Office* [2003] 1 WLR 1952 that the expectation of confidence may be overridden by a greater public interest shown on the facts of each case. Scott Baker LJ opined at [39]:

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[37] AG's Written Submissions at para 83.

> It seems to me that all who make statements to, or answer questions by, the police do so in the expectation that confidence will be maintained unless (i) they agree to waive it or (ii) *it is overridden by some greater public interest*. The weight to be attached to the confidence will vary according to the particular circumstances with which the court is dealing. [emphasis added]

84 In assessing whether the CAD and AG were entitled to disclose the statements to the Law Society in this case, the court is asked to balance "the public interest in upholding the right to confidence, which is based on the moral principles of loyalty and fair dealing, against some other public interest that will be served by the publication of the confidential material": *Attorney-General v Guardian Newspapers (No 2)* [1990] 1 AC 109 at 269. In the context of police statements, there is, on the side of confidentiality, also the interest in ensuring that witnesses are not deterred from coming forward to assist in investigations, and of respecting the expectations of those who do.

85 In the present case, disclosure was to a professional regulatory body. While there have been no local authorities dealing with this situation, courts in other common law jurisdictions have treated this issue as one where the public interest is better served by disclosure.

86 The English case of *Woolgar v Chief Constable of Sussex Police* [2000] 1 WLR 25 ("*Woolgar*") is on point. The case involved a nurse who was arrested after a patient died in her care. She was interviewed by the police under caution, but after investigations, the police informed the nurse and the local health authority that there was insufficient evidence for a charge. However, the local health authority's registration and inspection unit referred the matter to the nursing regulatory body, which contacted the police seeking, *inter alia*, the nurse's statements. The police sought the nurse's consent for disclosure, but she

refused. She then sought an injunction from the court to restrain the disclosure. The Court of Appeal held that there was no basis for an injunction. Although statements given to the police are *prima facie* confidential, there could be a public interest in disclosure (*Woolgar* at 36):

> [I]n my judgment, where a regulatory body … operating in the field of public health and safety, seeks access to confidential material in the possession of the police, being material which the police are reasonably persuaded is of some relevance to the subject matter of an inquiry being conducted by the regulatory body, then a countervailing public interest is shown to exist which, as in this case, entitles the police to release the material to the regulatory body on the basis that, save in so far as it may be used by the regulatory body for the purposes of its own inquiry, the confidentiality which already attaches to the material will be maintained.
>
> …
>
> Even if there is no request from the regulatory body, it seems to me that if the police come into possession of confidential information which, in their reasonable view, in the interests of public health or safety, should be considered by a professional or regulatory body, then the police are free to pass that information to the relevant regulatory body for its consideration.

87 This principle was applied in *R (Pamplin) v Law Society* [2001] EWHC Admin 300 ("*Pamplin*") in the context of disclosure to the Law Society in England. The applicant, a solicitor's clerk, had been investigated by the police in connection with the applicant's arrest for altering an attendance note. No prosecution followed, but the file of evidence was disclosed by the police to the Law Society. The Law Society then directed the compliance and supervision committee to consider whether an order should be made against him preventing any solicitor from employing him without consent. Newman J held that the police had not acted unlawfully. Although it may be desirable to give notice to the affected individual (see *Woolgar* at 37), disclosure without notice was not

thereby unlawful. The action taken by the police in that case was consonant with the public interest, identified by the court (*Pamplin* at [19]) as:

> [T]he interests of the public in the proper administration of justice; the interests of the public in the integrity of the solicitors' profession; the interests of the public in the maintenance and regulation of those who are involved in the legal profession who, for example, in the course of the discharge of their duties, are required to participate in the provision of legal services to persons in custody and the provision and preparation of cases for trial. *All of which makes necessary, for the better administration of justice, that there be disciplinary control over matters coming to the notice of either the police or the Law Society which may have a bearing on and put at risk those matters, which it is in the public interest to uphold.* [emphasis added]

88 In Australia, the Supreme Court of Victoria had occasion to consider similar issues in *McLean v Racing Victoria Ltd* [2019] VSC 690 ("*McLean*"). While the decision ultimately turned on the scope of the privacy legislation applicable in Victoria, Richards J made the following observations on the common law in *McLean* at [47]–[48]:

> *Woolgar* has not been considered or applied in Australia. However, the approach taken in *Woolgar* is consistent with the analysis of Warren CJ, in *Director of Public Prosecutions v Zierk*, of the circumstances in which an individual police officer has a "duty not to disclose" information. The Chief Justice held that whether a duty not to disclose information exists must be determined by reference to the context. There were circumstances in which there was a clear duty of non-disclosure; for example, if disclosure would impede the detection, investigation or prosecution of criminal acts. On the other hand, "if the disclosure would ensure adherence to safety requirements to prevent injury to members in the performance of their police functions, a duty of non-disclosure would not arise".
>
> *Absent legislation,* Woolgar *and* Zierk *provide a basis for concluding that confidential information held by police can be disclosed to a relevant regulator in the public interest…*
>
> [emphasis added]

89 The same principles were approved by the New Zealand Court of Appeal in *MA v Attorney-General* [2009] NZCA 490 at [43] in the context of disclosure of information to the New Zealand Immigration Service. There, information first gathered by the police was referred to the New Zealand Immigration Service and was then used to revoke the applicant's refugee status.

90 The position taken by the courts in England, Australia and New Zealand reflect sensible and pragmatic considerations, which should apply similarly in the local context. In Singapore, it has been acknowledged, albeit in other contexts, that there is a strong public interest in ensuring that errant lawyers are brought to task. In *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 ("*Rayney Wong (CA)*"), for example, where the Court of Appeal (at [51]) accepted the Law Society's argument that the doctrine of abuse of process did not apply to disciplinary proceedings against advocates and solicitors, Chan Sek Keong CJ stated the importance of retaining public confidence in the honesty, integrity and professionalism of the legal profession, which justified "a higher public interest in disciplining errant lawyers than in letting them off". In respect of touting in particular, the courts have regarded touting as a serious ethical breach. Rajah J (as he then was), had strong words for the effect of such violations of professional rules on the legal profession as a whole (*Wong Keng Leong Rayney v Law Society of Singapore* [2006] 4 SLR(R) 934 at [85]):

> A failure by significant numbers of the legal profession to abide by and observe these ethical standards would eventually drive the entire profession down the slippery slope of ignominy. Systemic ethical corruption will fray and ultimately destroy the moral fibre of the profession.

Application to the facts

91 In my view, where evidence of disciplinary breaches is presented to the police in the course of investigations, or where such information is then received from the police by the AG, there is a public interest in disclosure being made to the regulatory body in question. This is even more so where the alleged breach disclosed is a serious one, as it was in the present case. Such ethical breaches lead to corruption in the fabric of the bar and, as a practical matter, can often be closely linked to criminal activity. In this particular case, the ethical breach in issue had a potential nexus with wider motor insurance fraud, even if the questioning in particular had not yielded sufficient evidence to continue with investigation into that particular offence.

92 The Applicant's arguments to the contrary were not persuasive. His repeated argument, that confidentiality ought to be maintained in the interest of not deterring potential witnesses from cooperating, was neither controversial nor convincing. The real issue was whether that interest was outweighed by the public interest in disclosure. The Applicant's further argument that there is no public interest in allowing the CAD to use their powers to investigate breaches of the PCR under the guise of investigating criminal offences[38] effectively recycled his earlier arguments on collateral purpose and fell away in the light of my views on the same.

93 I deal therefore with the Applicant's specific arguments. First, the Applicant claimed that the CAD's and AG's actions effectively prevented the Applicant from challenging the admissibility of the statements, which he would

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38 Applicant's Written Submissions at paras 84 and 87.

have been able to at trial.[39] This was not relevant. The issue of "admissibility" would be determined differently in disciplinary proceedings (in accordance with the Evidence Act (Cap 97, 1997 Rev Ed): see r 23 of the Legal Profession (Disciplinary Tribunal) Rules (Cap 161, R 2, 2010 Rev Ed)) than at a criminal trial (in accordance with the CPC) in any case. It is not the disclosure, but the nature of the DT proceedings, that affects how the Applicant would be able challenge the statements, and therefore, this argument does not serve as a countervailing factor against disclosure.

94 Second, the Applicant argued that the disclosure was not necessary because the matter could have proceeded under s 86 of the LPA if an Inquiry Committee had been convened to investigate the issue. The authorities did not suggest that the standard was pegged at such a high level of strict necessity. Disclosure could still warranted even if there was an alternative means of pursuing disciplinary action. In *Woolgar* ([86] *supra*) at 36H, disclosure was justified if the police "in their reasonable view" decided that the information "should be considered by a professional or regulatory body". In *John Foster Emmott v Michael Wilson & Partners Ltd* [2008] 2 All ER (Comm) 193 at [103] (as approved in *AAY and others v AAZ* [2011] 1 SLR 1093 at [71]), Collins LJ considered that disclosure could be made where "the public interest *reasonably* requires it" [emphasis added]. Here, the AG's decision was reasonable, as it was clear that Mr Ng and Mr Krishna would not cooperate with the Inquiry Committee. The AG and the CAD, as a first step, sought to obtain the consent of Mr Ng and Mr Krishnamoorthi for them to be contacted by the Law Society.

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[39] Applicant's Written Submissions at para 79.

They had refused.[40] It was only *after* this refusal and the Law Society's indication that they needed the evidence in the statements that the CAD and AG decided to disclose the statements to the Law Society. There was no need to obtain the Applicant's consent, because he was the lawyer being investigated. His own statement to the CAD had direct relevance, whether the proceedings were before an Inquiry Committee or a DT. Public interest would not be served in convening an additional Inquiry Committee when cogent evidence was available that ought to be considered directly by a DT.

95 In the circumstances, the disclosure of the statements were not in breach of confidence by either the CAD or the AG, since such disclosure was justified in the public interest.

Statutory provisions relevant to the AG

96 In respect of the reliefs requested against the AG, the AG advanced two further arguments relying on provisions in the LPA. The first was that the section governing the AG's referral to the Law Society, s 85(3) of the LPA, furnished a wide power to refer any information, including confidential information. The second was that in the exercise of his statutory function, he was immunised from liability by an immunity provision under s 106 of the LPA.

The power of referral

97 Section 85(3) of the LPA reads as follows:

> Any judicial office holder specified in subsection (3A), the Attorney-General, the Director of Legal Services or the Institute may at any time refer to the Society *any information touching*

[40] Lie Da Cheng's Affidavit at paras 27–28.

> *upon the conduct of a regulated legal practitioner*, and the Council must —
>
> > (*a*) refer the matter to the Chairman of the Inquiry Panel; or
> >
> > (*b*) if that judicial officer holder, the Attorney-General, the Director of Legal Services or the Institute (as the case may be) requests that the matter be referred to a Disciplinary Tribunal, apply to the Chief Justice to appoint a Disciplinary Tribunal.
>
> [emphasis added]

98 The crucial question was whether "any information" included confidential information even where its disclosure would involve a breach of the duty of confidentiality. The AG contended that, in this context, any information would extend even to information protected by the duty of confidence. There was no dispute that the word "information" included documentary information such as statements. The dispute was on the width of the word "any". The AG advanced two arguments on this, one based on the ordinary and literal meaning of the word, the other premised on the use of the word in the LPA. This again involved the court in an exercise of statutory interpretation, and as such, I again considered the interpretative approach summarised in *Tan Cheng Bock* ([24] *supra*) at [37].

99 The first step was to consider the text of the provision and the context of the provision within the statute. The word "any" ordinarily has a broad meaning. In *Li Shengwu v Attorney-General* [2019] 1 SLR 1081 ("*Li Shengwu*") at [170], the Court of Appeal interpreted "any other written law" in O 11 r 1(*n*) of the ROC to mean, in its plain and ordinary meaning, "any and all statutes". On that basis, the AG argued that "any information" would mean the AG could refer "any and all" information to the Law Society.

100 That was not the end of the matter, however, as the phrase "any information" was also to be considered in the context of its use within the LPA. Within s 85(3) itself, the phrase is used to describe the AG's power of referral: the AG "may refer… any information". In *Li Shengwu*, the word was used to describe a range of written law. Used in that context, the breadth of "any written law" is readily ascertainable. When the word is used in the context of a power, on the other hand, it gives the power an all-encompassing breadth which is not, on the face of the statute, readily ascertainable. Because of this distinction, the interpretation used in *Li Shengwu*, while helpful, could not be determinative.

101 I went on to consider the two other instances where the phrase "any information" was used in the context of the AG's power of referral. I bore in mind that where identical words are used in a statute, they "should presumptively have the same meaning" although that may be displaced by the context: *Tan Cheng Bock* at [58(c)(i)]. In my opinion, these other uses of the words "any" and "information" appeared to cast some doubt on the *prima facie* breadth of the phrase "any information" as it appears in s 85(3) of the LPA.

102 First, under s 2E(2)(*a*) of the LPA, the AG may furnish "any information" to the Director of Legal Services. This was a similar power to that in s 85(3) of the LPA that enabled the AG to facilitate the work of the Director of Legal Services in regulating certain lawyers and legal practice entities. Hence, the word "any" could be said, at first glance, to involve a similar usage. That provision, however, opens with the phrase "[n]otwithstanding any written law or rule of law" in s 2E(2). There is no such qualification in s 85(3) of the LPA. The manner in which this provision is framed could instead suggest that, in the absence of a similar phrase in s 85(3) of the LPA, and contrary to what

the AG argued, the AG would not have any additional authority to disclose information beyond that provided within existing law.

103 The second reference to the words "any" and "information" is in s 66(2) of the LPA. Section 66 as a whole reads as follows:

> **66.**—(1) Except insofar as may be necessary for the purpose of giving effect to any resolutions or decisions of the Council and any Review Committee or Inquiry Committee, confidentiality shall be maintained in all proceedings conducted by the Council, its staff and the Review Committee or Inquiry Committee.
>
> (2) Notwithstanding subsection (1), the Chief Justice or the Attorney-General may require the Council to disclose to him *any matter or information* relating to any complaint of misconduct or disciplinary action against any advocate and solicitor.
>
> [emphasis added]

Again, the drafting differs from s 85(3). Section 66(2) opens with "[n]otwithstanding subsection (1)". Subsection 1 provides for the confidentiality of the proceedings of the Council of the Law Society, its staff, the Review Committee and the Inquiry Committee. Section 66(2) of the LPA was introduced to ensure that despite the confidentiality of proceedings provided by s 66(1), the Law Society would be able to disclose such information if requested: *Singapore Parliamentary Debates, Official Report* (12 November 1993), vol 61 at cols 1165 to 1166 (Prof S Jayakumar, Minister of Law). In subsection (2), the word "any" allows the AG to circumvent any confidentiality requirements. This however, is only made possible by the words "notwithstanding subsection (1)" which qualify s 66(2) of the LPA.

104 Therefore, both s 2E(2)(*a*) and s 66(2) of the LPA appear to use "any information" in different contexts, which suggests that whatever meaning "any

information" has in those provisions may not apply generally to other uses of "any information" in the LPA. I further noted that these provisions were introduced substantially later than the original provision which eventually became s 85(3) of the LPA was. This is not a case where identical words in a statute are used identically. Hence, the fact that "any information" in those provisions may be broad enough to refer to confidential information would not be sufficient for the court to find that the same applies in s 85(3) of the LPA.

105 Further, the other provisions are qualified with the phrases "[n]otwithstanding any written law or rule of law" and "[n]otwithstanding subsection (1)" respectively. This suggests that "any information" as a description of the AG's power of referral does not, by itself, warrant a broad interpretation covering information that would otherwise be a breach of duty or unlawful to disclose. In other words, it could be argued that the phrase "any information" was not intended to mean "any and all" in such a broad manner, as such a broad definition of "any" would render the relevant qualifications in s 2E(2) and s 66(2) of the LPA superfluous. In particular, the framing of s 2E(2) with the phrase beginning "[n]otwithstanding…" was the more relevant one for the purpose at hand, because it concerned a similar power of referral to discipline. This qualifier would suggest that in the absence of that phrase, the AG would be constrained by statute and common law.

106 There were, therefore, at the first step of the analysis, two possible interpretations of "any". The first was the literal interpretation preferred by the AG. The second, which follows from the use of the word and its framing within s 2E(2), was to interpret "any information" to mean information that the AG would not otherwise be prevented from disclosing under any written law or rule

of law. I refer to this as the "limited interpretation". In the light of these two possibilities, I proceeded to the remaining steps of the purposive approach.

107 The second step in the *Tan Cheng Bok* ([24] *supra*) analysis looks to the purpose of the provision and legislation. At the outset, I note that the legislative history does not shed further light on the purpose or scope of the provision. The material part of the provision was first introduced by the Advocates and Solicitors (Amendment) Ordinance (SS Ord No 6 of 1936) amending s 26 of the Advocates and Solicitors Ordinance (SS Cap 62, 1936 Rev Ed), but no comment was made on it at the time. It was then adopted as s 89(2) of the Legal Profession Act 1966 (Act 57 of 1966) without further comment. Hence, the focus of the present discussion is on the purpose as gleaned from the provision and statute itself. Section 85(3) of the LPA provides for a specific means by which a referral of information concerning a regulated legal practitioner can be made to the Law Society. The provision applies to judicial office-holders (as specified by s 85(3A)), the AG, the Director of Legal Services and the Singapore Institute of Legal Education ("the Institute"). Each of these offices has a special responsibility for and interest in the standards of the legal profession. In their different capacities, they would in the course of their work come upon information concerning regulated legal practitioners that would be of interest to the Law Society. Facilitating such referral of information would serve the greater purpose of regulating the legal profession through the Law Society, as this would be an important means by which information reaches the regulatory body.

108 At the same time, it is necessary to consider the variety of contexts in which the bodies and persons referred to in s 85(3) of the LPA do their work. Each of them may come into possession of information in different contexts,

each with different legal considerations attaching to the use of that information. There are a variety of legal rules that have been developed in different areas of law that touch on the use and publication of such information to other persons. The issue of confidentiality may arise, as it has in this case, and for which the law on confidentiality has developed its own exception for such use. In other contexts, where the information in question could be potentially defamatory, the issue of qualified privilege may be raised: *Adam v Ward* [1917] AC 309 at 334; see also *Low Tuck Kwong v Sukamto Sia* [2014] 1 SLR 639 at [60]. The referral of information in s 85(3) of the LPA would operate in the context of many other rules that govern the scope of the use and publication of information. In the present context, and again in comparison with the frame of s 2E(2) which does not exist in s 85(3), s 85(3) of the LPA was not intended to allow disclosures, irrespective of the confidential nature of the information. This would amount to a new ground on which disclosure may be justified. Nothing in the provision suggested that this had been Parliament's intention. Rather, in the framework of Part VII of the LPA, it appears to be a purely facilitative provision. It provides a statutory basis for the AG and other bodies to make referrals of information to the Law Society, with the accompanying power to make a specific request for a DT to be constituted.

109 Turning then to the third step in the purposive approach, I considered which of the two possible interpretations best serves the purpose of the legislation. In my judgment, the limited interpretation is most appropriate. First, it sits more easily with ss 2E(2) and 66 of the LPA, delineating a good rationale for the use of the extra words in those sections. Second, as I have noted, s 85(3) of the LPA is intended to operate in a wide variety of contexts where different legal rules may apply to protect the interests of individuals in different ways. In the absence of language to the contrary, it was more appropriate in this regard

to give effect to these norms within s 85(3) of the LPA rather than to read s 85(3) as overriding all these other rules. In this regard, the limited interpretation was more suitable as it worked in tandem with the common law and other rules relating to the use of information. Third, arising from the second, this interpretation operated on the premise that each of the bodies given such power would consider the law prior to exercise of its power. This is a sound basis because the boundaries of the law should always be a relevant consideration in the mind of any person exercising statutory power. The expectation must be that such persons invested with statutory authority would seek to comply with all their duties, whether under statute or common law, whether in public or private law.

110 Applying this approach to the case, the lawfulness of the use of s 85(3) of the LPA in the present was therefore contingent on whether an exception to confidentiality applied. Because I was of the view that the public interest exception applied, it followed that the AG properly exercised his power of referral under s 85(3) of the LPA.

Section 106 of the LPA

111 In disclosing the Applicant's statement to the Law Society, the AG was fulfilling his statutory regulatory function. The AG therefore relied on s 106 of the LPA, a wide-ranging immunity clause which reads:

> *No action or proceeding shall lie* against the Attorney-General, the Society, the Council, a Review Committee or any member thereof, an Inquiry Committee or any member thereof, or a Disciplinary Tribunal or any member or the secretary thereof for any act or thing done under this Act *unless it is proved to the court that the act or thing was done in bad faith or with malice.* [emphasis added]

112 The italicised words in s 106 of the LPA are found also in s 33B(4) of the MDA, which reads:

> The determination of whether or not any person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities shall be at the sole discretion of the Public Prosecutor and *no action or proceeding shall lie* against the Public Prosecutor in relation to any such determination *unless it is proved to the court that the determination was done in bad faith or with malice.* [emphasis added]

113 Section 33B(4) of the MDA was considered by the Court of Appeal in *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 ("*Nagaenthran*"). It was contended by the AG in that case that s 33B(4) of the MDA extended to oust the court's power of judicial review over the PP's determination under s 33B(2)(*b*) as to whether an accused had substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities except on the grounds of bad faith, malice or unconstitutionality, and the applicant's claims in that case fell short of malice and bad faith: *Nagaenthran* at [43]. The Court of Appeal disagreed, holding that the clause did not oust the jurisdiction of the court but operated by way of an immunity clause: *Nagaenthran* at [47].

114 Of relevance is the Court of Appeal's summation of the approach to such clauses in *Nagaenthran* at [50]:

> First, they are exceptional in that they preclude claims being brought against certain classes of persons under prescribed conditions where ordinarily, such persons might otherwise be subject to some liability. Second, statutory immunity clauses commonly seek to protect persons carrying out public functions. It is on account of the responsibilities that burden the exercise of such public functions and the desire not to hinder their discharge that such immunity clauses are commonly justified. Thus, as was noted in *Rosli bin Dahlan* (see [49] above), immunity from suit may be justified in order to

> safeguard the ability of prosecutors to exercise their prosecutorial discretion independently without fear of liability … Third, and as a corollary to this, such immunity generally would not extend to the misuse or abuse of the public function in question; nor would the immunity typically apply where its beneficiary exceeded the proper ambit of the functions of his office. Thus, it was held that prosecutorial immunity would not extend to protect against claims for malicious, deliberate or injurious wrongdoing: *Rosli bin Dahlan* at [98]…

115 The Court of Appeal then considered s 33B(4) of the MDA, holding in *Nagaenthran* at [51] that:

> On its face, s 33B(4) does not purport to exclude the jurisdiction of the courts to supervise the legality of the PP's determination under s 33B(2)(*b*) of the MDA. What it does do, is to immunise the PP from suit save on the stated grounds. In other words, an offender who is aggrieved by the PP's determination that he had not provided substantive assistance to the CNB in disrupting drug trafficking activities cannot take the PP to task by way of proceedings in court except where he can establish that the PP's determination in that respect was made in bad faith, with malice or perhaps unconstitutionally. … Further, in our judgment, nothing in s 33B(2)(*b*) excludes the usual grounds of judicial review, such as illegality, irrationality and procedural impropriety (see *Tan Seet Eng* ([46] *supra*) at [62]), on the basis of which the court may examine the *legality* of the PP's determination, as opposed to its *merits*. …

116 In my view, the same approach applies in interpreting s 106 of the LPA. In doing so, it is important to ascertain and delineate both what lies within and outside its scope. *Nagaenthran* (at [51]) clarifies that illegality, irrationality or procedural impropriety is outside the scope of such immunity clauses. If, as asserted by the Applicant, the AG has exercised his s 85(3) power outside the limits of his authority, the section would provide no protection for his action. The legality of the exercise of powers under a statute continue to be subject to the supervisory jurisdiction of the court. As the Court of Appeal stated in *Tan Seet Eng v Attorney-General and another matter* [2016] 1 SLR 779 at [98]: "All power has legal limits and it is within the province of the courts to determine

whether those limits have been exceeded." This approach is consistent with Woo Bih Li J's in *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 ("*Deepak Sharma*") at [44]–[49], which was decided prior to and did not have the benefit of the reasoning of *Nagaenthran*, but which arrived at the same conclusion. Woo J there held that s 106 of the LPA did not exclude judicial review over the parties named therein and therefore did not apply to immunise the Review Committee from judicial review of its actions.

117 The inquiry turns to the proper ambit of the immunity that s 106 of the LPA provides. *Deepak Sharma* did not deal with this issue. The context of the MDA as discussed in *Nagaenthran* ([113] *supra*) is very different from the LPA, and the relevant part of s 33B(4) of the MDA, which does not feature in the case at hand, pointed to non-justiciable matters. Nevertheless, the guidance given by *Nagaenthran* (at [49] and [50]) remains relevant in relation to the AG's exercise of his power under s 85(3) of the LPA. The primary purpose of the AG's power under s 85(3), similar to the two cases on prosecutorial immunity cited in *Nagaenthran* at [49], is, ultimately, for cases to be brought by the Law Society before a separate fact finding tribunal. While the AG's role in this context is not strictly one of prosecution, there are similarities which suggest that the three policy reasons and countervailing concern cited in *Nagaenthran* at [49] are relevant here. These policy concerns were articulated in *Henry v British Columbia (Attorney General)* [2012] BCJ No 1965, 2012 BCSC 1491 at [20], and the countervailing concern was expressed in *Rosli bin Dahlan v Tan Sri Abdul Gani bin Patail* [2014] 11 MLJ 481 at [95]. First, such immunity encourages public trust in the fairness and impartiality of those who exercise their discretion in bringing criminal prosecutions (in this context, the referral of information for disciplinary action to be taken). Second, the threat of personal liability for tortious conduct would have a chilling effect on the prosecutor's

exercise of discretion (in this context, the AG's discretion to refer information to the Law Society). Third, to permit civil suits against prosecutors would invite a flood of litigation that would deflect a prosecutor's energies from the discharge of his public duties; and it would open the door to unmeritorious claims that might have the effect of threatening prosecutorial independence (in this context, there is a risk that the AG, in exercising this power, may be subject to suits from disgruntled targets of disciplinary actions). As against these considerations are concerns that private individuals ought not to be denied a remedy where they have been, for example, maliciously prosecuted. In the result, a balance is struck where prosecutors enjoy a broad immunity from suit in respect of the carrying out of their functions, but are not given *carte blanche* to exercise their discretion.

118 Applying these principles, s 106 of the LPA serves to preserve the ability of the AG to exercise his judgment freely in this statutory duty of referral without fear of liability. If the AG's referral, exercised *intra vires*, is in good faith and without malice, no action or proceedings would lie. If, for example, the referred matter should later be adjudicated by the DT or the Court of Three Judges to be unmeritorious, the AG would have immunity save where malice or bad faith could be proved. The same rationale also applies to the other bodies and persons referred to in s 106 of the LPA. Each plays a role in the regulatory and disciplinary process under the LPA, and each should be free to exercise their powers lawfully without fear of liability.

119 Coming then to the present application, I was of the view (at [110]) that the AG's power of referral was exercised lawfully. If, as the Applicant asserted, the AG's exercise of his power had been unlawful, s 106 of the LPA would not have afforded any protection. That, nevertheless, was not the situation at hand.

Conclusion

120 OS 1206/2019 was dismissed. Costs were awarded to the AG and Law Society. Bearing in mind that the Law Society was previously awarded costs for raising similar arguments in OS 1030/2019, these were fixed at $4,500 and $2,500 for the AG and Law Society respectively, inclusive of disbursements.

Valerie Thean
Judge

Choo Zheng Xi and Priscilla Chia Wen Qi (Peter Low & Choo LLC) for the applicant;
Jeyendran s/o Jeyapal and Ruth Ng Yew Ching (Attorney-General's Chambers) for the first respondent;
Aaron Lee Teck Chye and Chong Xue Er Cheryl (Allen & Gledhill LLP) for the second respondent.