Re Nalpon Zero Geraldo Mario
[2013] SGCA 28

Case Number	: Civil Appeal No 62 of 2012
Decision Date	: 23 April 2013
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Zero Geraldo Mario Nalpon (in-person) for the Appellant; Goh Yihan (Faculty of Law, National University of Singapore) as Amicus Curiae.
Parties	: Re Nalpon Zero Geraldo Mario

Civil Procedure – Judgments and Orders

Civil Procedure – Jurisdiction

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2012] 3 SLR 440.]

23 April 2013

V K Rajah JA (delivering the grounds of decision of the court):

Introduction

1 Mr Zero Geraldo Mario Nalpon ("Mr Nalpon") applied to Chan Sek Keong CJ for leave that an investigation be commenced in relation to his complaint of misconduct against Ms Nor'Ashikin binte Samdin ("Ms Nor'Ashikin"), a Deputy Public Prosecutor. The complaint arose out of a trial in the District Court ("District Court Trial"), where Mr Nalpon's client faced two charges of criminal breach of trust (District Arrest Case No 18210 of 2009 ("First Charge") and District Arrest Case No 18211 of 2009 ("Second Charge"). At the end of the trial, the District Judge ("DJ") convicted Mr Nalpon's client on the First Charge and fined him $6,000, but acquitted him of the Second Charge.

2 Both Mr Nalpon's client and the Prosecution appealed against the DJ's decision in Magistrate's Appeal No 401 of 2010 ("MA 401/2010"). Mr Nalpon's client appealed against his conviction under the First Charge, while the Prosecution appealed against the sentence under the Second Charge. The Prosecution also appealed against the DJ's decision to acquit Mr Nalpon's client under the Second Charge.

3 Before MA 401/2010 was heard, Mr Nalpon filed Criminal Motion No 58 of 2011 ("CM 58/2011") to adduce fresh evidence, namely, the transcript of a "999" call. In his supporting affidavit, Mr Nalpon stated that one of the key reasons why the application should be allowed was that Ms Nor'Ashikin had intentionally withheld evidence of this call to the DJ, thereby misleading him. Further related allegations of a similar nature against Ms Nor'Ashikin were also made. In her reply affidavit, Ms Nor'Ashikin refuted Mr Nalpon's allegations and denied that she had any intention either to withhold any evidence or to mislead the court.

4 Mr Nalpon's application under CM 58/2011 was, by consent, acceded to and MA 401/2010 proceeded before Lee Seiu Kin J. In the appeal papers, Mr Nalpon maintained the same allegations against Ms Nor'Ashikin. Lee J subsequently directed Mr Nalpon to first inform Ms Nor'Ashikin of the said

allegations before raising them in court.

5 From October 2011 to January 2012, a number of letters were exchanged between Mr Nalpon and the Attorney-General's Chambers ("AGC"), where Mr Nalpon continued with his allegations against Ms Nor'Ashikin. The AGC, however, took the position that these allegations were baseless and speculative, and invited Mr Nalpon to withdraw all allegations against Ms Nor'Ashikin. Eventually, in a letter dated 11 January 2012, Mr Nalpon made clear his intentions to proceed with the "requisite application pursuant to the Legal Profession Act against Ms Nor'Ashikin Binte Samdin".

6 On 31 January 2012, Mr Nalpon initiated Originating Summons No 77 of 2012 ("OS 77/2012") for leave for an investigation to be made into a complaint of misconduct against a Legal Service Officer. He asserted that Ms Nor'Ashikin, in conducting the District Court Trial, had intentionally withheld evidence, colluded with a witness, and misled the DJ. As mentioned above, Mr Nalpon's key allegation was that Ms Nor'Ashikin had withheld two documents which showed that the plaintiff in the District Court had made more than one "999" call to the police, thereby misleading both the court and the defendant.

7 For completeness, we should add that Mr Nalpon's appeal in MA 401/2010 was successful. In his judgment, *Ezmiwardi bin Kanan v Public Prosecutor* [2012] SGHC 44, Lee Seiu Kin J found that the trial should have proceeded under one charge only as the two charges shared similar elements and arose from the same transaction. Lee J eventually acquitted Mr Nalpon's client of this single charge. In coming to his decision, Lee J had observed that the Prosecution proceeded in a "muddled manner" (at [2]), and Mr Nalpon referred to Lee J's observations in further support of OS 77 of 2012.

8 OS 77/2012 was heard as an *ex parte* application by Chan CJ, who determined that Mr Nalpon failed to establish a *prima facie* case. The application was therefore dismissed (see *Re Nalpon Zero Geraldo Mario* [2012] 3 SLR 440). This appeal was then brought against that decision of Chan CJ.

9 When we first heard the appeal on 16 October 2012, we requested Mr Nalpon to address us on the preliminary issue on whether there could be an appeal from a decision of Chan CJ made under s 82A(5) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") for leave for an investigation to be made into a complaint of misconduct against a Legal Service Officer. As these proceedings were conducted as an appeal from an *ex parte* application, and hence there was no opposing counsel, we appointed Mr Goh Yihan ("Mr Goh"), a lecturer from the Faculty of Law, National University of Singapore, as Amicus Curiae.

The Court's decision

10 After considering the submissions made by Mr Nalpon and Mr Goh, we determined that we had no jurisdiction to entertain the appeal. Before we elaborate on our reasons, we set out our main findings:

(a) It is trite law that the jurisdiction of the Court of Appeal is circumscribed by statute, the *only* exception being the limited inherent jurisdiction of the Court. This "jurisdiction" is in fact an abbreviated reference to the court's residual powers and does not confer on a court the jurisdiction to hear matters that are not within the court's statutory remit. In this case, therefore, the jurisdiction of this Court to hear this appeal must be derived from the relevant legislation; see below [14]–[43].

(b) The relevant legislation in this case is the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"). In particular, it is ss 29A(1) and (2) which confer the jurisdiction upon

the Court of Appeal. A close reading of ss 29A(1) and (2) reveal that two threshold requirements must be met before the Court of Appeal is seized of jurisdiction; see below [44]–[46].

(c) The first threshold requirement is that the decision being appealed against must have been a decision of the High Court. Employing three indicia, we find that a decision made by the Chief Justice not to grant leave under s 82A(5) of the LPA is not a decision of the High Court. Instead, the Chief Justice made this decision *qua* President of the Legal Service Commission; see below [47]–[65].

(d) The second threshold requirement is that the decision appealed against must have been the exercise of the original/appellate civil jurisdiction or original criminal jurisdiction of the High Court. Disciplinary proceedings are an exercise of the Court's peculiar *disciplinary jurisdiction*, rather than an exercise of civil or criminal jurisdiction; see below [66]–[72].

(e) Since both threshold requirements are not fulfilled, we found that the Court of Appeal did not have the requisite jurisdiction to entertain such an appeal; see below [73].

We now give our detailed reasons for making this determination on the absence of jurisdiction.

Preliminary issue – what does the "jurisdiction of a court" mean?

11 Before we start, it may be useful to clarify exactly what the phrase "jurisdiction of a court" means. The word "jurisdiction" is an etymological chameleon that often takes colour from its context. Lord Bridge of Harwich in *In Re McC* (A Minor) [1985] 1 AC 528 at 536 perceptively observed:

> There are many words in common usage in the law which have no precise or constant meaning. But few, I think, have been used with so many different shades of meaning in different contexts or have so freely acquired new meanings with the development of the law as the word jurisdiction.

12 In *The Oxford English Dictionary* (J A Simposon & E S C Weiner eds) (Clarendon Press, 2nd Ed, 1989) at Vol VIII, p 320, the word "jurisdiction" is defined as, *inter alia*, "legal authority or power", and the "extent or range of judicial or administrative power; the territory over which such power extends". However, as a legal term, it is clear that it has been used to mean many other things. For example, in Yeo Tiong Min, "Jurisdiction of the Singapore Courts" in Kevin YL Tan, ed, *Singapore Legal System* (Singapore University Press, 2nd Ed, 1999), Prof Yeo suggests at least six different ways the word jurisdiction has been employed.

13 Given the disparate uses of the word "jurisdiction", we think it would be helpful to state our preference for the definition proposed by Chan Sek Keong J (as he then was) in *Muhd Munir v Noor Hidah* [1990] 2 SLR(R) 348 ("*Muhd Munir*") when it is employed in relation to a court's right to hear matters. At [19], Chan J defined the jurisdiction of a court as "its authority, however derived, to hear and determine a dispute that is brought before it" (cited with approval in *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1996] 2 SLR(R) 80 at [38]). This definition has the merit of plainly explaining the extent of this concept, see below [30]–[32]. Therefore, in the case before us, the issue before this Court is whether this Court has the "authority, however derived, to hear and determine" the appeal Mr Nalpon has brought before us. We now turn to discuss whether this authority (*ie*, jurisdiction) has been conferred upon this Court.

The jurisdiction of the Court of Appeal is circumscribed by statute

14 It is settled law that the jurisdiction of a court must be statutorily conferred upon by the statute constituting it. For instance, in *Blenwel Agencies Pte Ltd v Tan Lee King* [2008] 2 SLR(R) 529 ("*Blenwel*") (recently affirmed in *Law Society of Singapore v Top Ten Entertainment Pte Ltd* [2011] 2 SLR 1279 ("*Top Ten*")), this Court stated unequivocally at [23] that:

> ***The Court of Appeal is a creature of statue and, hence, is only seised of the jurisdiction that has been conferred upon it by the relevant provisions in the legislation creating it*** ... A jurisdiction-conferring provision, whether derived from the Act or elsewhere, is a crucial perquisite that a would-be appellant *must* satisfy so as to have, before this court, a legal basis upon which to canvass the substantive merits of his or her application. [original emphasis in bold and italics, emphasis in original in italics; emphasis added in bold italics]

15 The position in relation to the exercise of appellate criminal jurisdiction is similar. In *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106, it was mentioned at [17] that:

> It has been emphasised time and again that our Court of Appeal is a creature of statute and is hence *only seised of the jurisdiction that has been conferred upon it by the relevant provisions* in the legislation creating it ... [emphasis added]

16 This point has also been reiterated in the following cases: *Swift-Fortune Ltd v Magnifica Marine SA* [2007] 1 SLR(R) 629 at [45], *Microsoft Corp and others v SM Summit Holdings Ltd* [2000] 1 SLR(R) 423 at [17], *Abdullah bin A Rahman v Public Prosecutor* [1994] 2 SLR(R) 1017 at [7], *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196 at [13], and *Ting Sie Huong v State Attorney-General* [1985] 1 MLJ 431.

17 Pertinently, other Commonwealth jurisdictions have also declared that their courts are creatures of statute, and that their jurisdictions are circumscribed by the ambit of statute. In *Chadwick v Hollingsworth* [2010] EWCA Civ 1210, the issue concerned an order allowing an amendment to pleadings. The trial judge granted leave to appeal to the Court of Appeal, and the appellant appealed. A preliminary issue for the Court of Appeal was whether it had the jurisdiction to hear the appeal. After examining the relevant statute, the English Court of Appeal (Civil Division) decided that it had no jurisdiction to hear the present appeal. It explained at [11] that:

> Mr. Butler submitted in the alternative that the Destination of Appeals Order is directory in nature and does not deprive this court of jurisdiction to hear and determine an appeal once a notice of appeal has been lodged. I am afraid I cannot accept that. It has been pointed out many times that *the Court of Appeal is a creature of statute whose jurisdiction is limited by statute*. The Destination of Appeals Order, although not a statute, is secondary legislation made under statutory powers and therefore capable of limiting the court's jurisdiction. Section 56 of the Access to Justice Act 1999 under which it was made gives the Lord Chancellor power to provide that appeals that would otherwise lie to the Court of Appeal shall lie instead to another court, in this case the High Court. [emphasis added]

18 Similar views have been expressed by the English Court of Appeal (Criminal Division) as well. In *R v James Francis Hughes* [2010] 1 Cr App R (S) 25, the issue concerned whether the Court of Appeal could entertain an appeal against sentence by a man whose sentence has already been reviewed by the Court upon a reference by the Attorney-General under s 36 of the Criminal Justice Act 1988. The Court emphasised that its jurisdiction, if any, must be derived from statute. It stated at [5] that:

> *The Court of Appeal is a creature of statute and all its jurisdiction is statutory*. In relation to an

appeal against sentence, its powers are to be found in ss.9(1) and 11 of the Criminal Appeal Act 1968. [emphasis added]

The Court of Appeal later went on to find that it did have the statutory jurisdiction, but eventually refused to grant leave for the appeal given the facts of the case.

19 In *Eastman v The Queen* (2000) 203 CLR 1, the High Court of Australia stated at [175] that:

> There could have been no such obligation imposed by the common law as it developed in England in advance of the creation by statute of an appellate structure of the kind now familiar in Australia. ***The Federal Court is, of necessity, a creature of statute, as a court created by the Parliament within the meaning of s 71 of the Constitution*** . It has been regarded as settled since the judgment of Griffith CJ in *Ah Yick v Lehmert* (214) that the power of the Parliament under s 77(i) of the Constitution to make laws defining the jurisdiction of a court such as the Federal Court includes a power to provide for appellate jurisdiction (215). [emphasis added in bold italics]

In Canada, the Supreme Court of Canada in *Therrien c. Québec (Ministre de la justice)* [2001] 2 SCR 3 stated unequivocally at [34] that:

> ***Appellate courts are creatures of statute and their authority is conferred solely by legislation*** : *R. v. W. (G.)*, [1999] 3 S.C.R. 597), at para. 8. ***We must therefore begin by considering the instruments by which jurisdiction is assigned*** . The general jurisdiction of the Quebec Court of Appeal is set out in s. 9 *C.J.A.* and art. 25 of the *Code of Civil Procedure*, R.S.Q., c. C-25 ("C.C.P."). It has jurisdiction over all causes, matters or things appealed from. [emphasis in original in italics; emphasis added in bold italics]

In *HKSAR v Ooi Lim Khoon* [2011] 5 HKLRD 100, the defendant initially applied for leave to appeal against his sentence, but later filed a notice of abandonment. As a result, his appeal was dismissed. However, he tried to appeal again, claiming that he had discovered new grounds to make his appeal. The Hong Kong Court of Appeal held that since the appeal was dismissed, it was now *functus officio*, and thus now lacked the jurisdiction to hear the appeal again (unless the abandonment was set aside). Giving its reasons for finding so, the Hong Kong Court of Appeal made it clear at [10] that:

> [l]ike the English Court of Appeal, *the Hong Kong Court of Appeal is a creature of statute and its jurisdiction is derived from statute*. [emphasis added]

20 These authorities leave no room for any doubt that this Court's jurisdiction is anything but statutory in nature.

21 We pause here to address two arguments on "assumed jurisdiction" that Mr Nalpon made. He first vaguely asserted that regardless of what the relevant legislation may state, the essence of the Rule of Law requires that there be a right of appeal for every first instance decision made. When pressed to substantiate this contention, Mr Nalpon could not refer us to any authority that might support this contention. Indeed, two treatises known for their significance in this field, namely, Joseph Raz, "The Rule of Law and its Virtue" (1997) 93 LQR 195 and Lord Thomas Bingham's, *The Rule of Law* (Allen Lane, 2010) make no reference to any such right being invariably embraced by any notion of the Rule of Law.

22 This is not surprising, and we do not think there is any substance in Mr Nalpon's argument. In fact, it is not uncommon for courts to make unappealable determinations. An example would be the

operation of s 374(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), which stipulates:

> **When appeal may be made**
>
> **374.**—(1) An appeal against any judgment, sentence or order of a court may only be made as provided for by this Code or by any other written law.

23 A consequence of the stark terms of s 374 of the CPC is that there is no right of appeal for criminal motions filed under s 405 of the CPC, as no appeal procedure has been provided for under the CPC for criminal motions. This in fact mirrors the position in common law – the Court of Appeal does not possess the jurisdiction to hear an appeal of a criminal motion as a result of s 29A(2) of the SCJA (see *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106). This is an obvious example of a "first instance" decision where there is no further right to appeal, and could very well apply in other situations. We would also go on further to state that another aspect of the Rule of Law is the finality of decisions, and that it is up to Parliament to decide where to strike the balance.

24 Mr Nalpon's second argument is that this appeal has evolved in a way which unambiguously suggests that the courts have assumed jurisdiction to hear the appeal and therefore cannot now refuse to entertain an appeal. For instance, he states that he was allowed to file his *ex-parte* OS 77/2012 application on 31 January 2012, he was allowed to raise all of his allegations at the hearing on 28 March 2012, and the Registry of the Supreme Court did not prevent him from filing his Notice of Appeal to the Court of Appeal. As such, Mr Nalpon argues that the Court of Appeal must have already assumed jurisdiction to hear the appeal. In this manner, Mr Nalpon seemed to be suggesting that since the Court of Appeal has acted in a manner in which it "assumed" jurisdiction to hear the appeal, the Court is now "estopped" from denying a hearing of an appeal for want of jurisdiction. This may be referred to as "jurisdiction by estoppel", where one party is estopped from arguing that the courts do not have jurisdiction over the matter, a situation that sometimes arises in disputes concerning the conflict of laws.

25 We cannot agree with this contention. First, we do not see how the concept of "jurisdiction by estoppel" can apply to the courts. The "doctrine of estoppel" is a principle which prevents one party from acting inconsistently to the detriment of other parties. It is a doctrine which operates between the parties, and we do not see how this would apply to the courts as well. Secondly, even if the doctrine of "jurisdiction by estoppel" does apply to the courts, there must still be a *statutory* basis for the court to assume this jurisdiction. The concept of "jurisdiction by estoppel" in the conflict of laws is premised on the fact that the courts may be seized of jurisdiction by virtue of the submission of the parties under s 16(1)(b) of the SCJA. This brings us back to the point that this Court's jurisdiction must be statutorily conferred by the SCJA; the Court cannot assume or confer jurisdiction upon itself, regardless of how it may have acted. The fact that the Registry had processed the relevant appeal papers, that Chan CJ had considered further arguments, and that this Court had been convened are not decisive (or even legally relevant) considerations. The question of jurisdiction is a question of law, and must be determined by reference to the relevant legislation.

26 There are, however, limited situations where it has been suggested that the courts may be seized of jurisdiction even if relevant legislation does not confer such upon it – that is to say where the court possesses inherent jurisdiction. We pause for a moment here to clarify the position.

The so-called inherent jurisdiction of the court

27 What is the "inherent jurisdiction" of the court? The definition of the concept of the "inherent

jurisdiction" of the court most commonly adopted is found in I H Jacob, "The Inherent Jurisdiction of the Court" (1970) 23 CLP 23. Sir Jack Jacob defines the inherent jurisdiction of the Court (at 51) as:

> being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.

28 Sir Jack Jacob's article is one of "the most authoritative exposition[s] of the basis and extent of the court's inherent jurisdiction" (see *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 at [30]). However, we note that Sir Jack Jacob had chosen to define the concept of "inherent *jurisdiction*" in terms of a "reserve or fund of *powers*".

29 The terms "jurisdiction" and "powers" are commonly used interchangeably, sometimes to describe each other, in various contexts. For example, an article "The Inherent Powers of the Court" [1997] SJLS 1 by Professor Jeffrey Pinsler notes at p 1 that the phrase "inherent powers" has commonly been referred to as "inherent jurisdiction". Also, in *UMCI Ltd v Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd* [2006] 4 SLR(R) 95 ("*Tokio Marine*"), the High Court of Singapore described the "inherent jurisdiction" of the Court at [1] as:

> an amorphous source of *power* to do that which is deemed appropriate in the circumstances to secure the ends of justice. [emphasis added]

30 Given that the two terms are so often used together and sometimes even used interchangeably, we find it opportune to first clarify the conceptual difference between the "jurisdiction" of a court, and the "power" of a court, before elaborating further on the "inherent jurisdiction" or "inherent powers" of a court.

31 At [10]–[12] above, we had adopted the definition of the word "jurisdiction" found in *Muhd Munir*. In stating this definition, Chan J was actually clarifying the difference between the "jurisdiction" and the "power" of a court. He had stated at [19] that:

> The jurisdiction of a court is its authority, however derived, to hear and determine a dispute that is brought before it. The powers of a court constitute its capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute. ... *The distinction between jurisdiction and power is recognised* in the SCJA, ss 16 and 17 (which confer jurisdiction) and s 18 (which confers powers). [emphasis added]

32 To clarify, in relation to civil matters, ss 16 and 17 of the SCJA set out the circumstances in which the High Court is seized of jurisdiction (*ie*, the authority to hear the dispute brought before it). Section 16 provides for the general circumstances (in general, where there is proper service of the writ or any other originating process or when the defendant has submitted to the jurisdiction of the High Court), while s 17 provides for six specific circumstances where the High Court is seized of jurisdiction. In contrast, s 18 of the SCJA sets out what the High Court is empowered to order to give effect to its determination. Section 18(1) provides that the High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore, while s 18(2) refers to the First Schedule of the SCJA, which lists out certain specific powers. Some examples of the powers provided for in the First Schedule of the SCJA include the power to give prerogative orders, to stay proceedings, and to order a medical examination of parties. Plainly, the jurisdiction of a Court and the powers of a Court are two distinct and entirely different concepts.

33 Given that the "jurisdiction" and "power" of the courts are two different and distinct concepts, what then is the difference between the "inherent jurisdiction" and "inherent powers" of the courts? The term "inherent" simply refers to the *source* of the jurisdiction and power (this source being the fact that the High Court and Court of Appeal in their very nature being superior courts of law), and should make no difference as to their conceptual distinctiveness. As such, in Goh Yihan, "The Inherent Jurisdiction and Inherent Powers of the Singapore Courts: Rethinking the Limits of their Exercise" [2011] SJLS 178, the author quite rightly states that the terms "inherent jurisdiction" and "inherent powers" should mean different things, the former being the court's inherent authority to hear a matter, while the latter being its inherent capacity to give effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute.

34 While this conceptual difference may apply to the "actual" jurisdiction and power of the courts, we find that they do not apply to the "inherent" jurisdiction and power of the courts. In our view, the so-called inherent jurisdiction of the court is in fact no more than the exercise by the court of its fund of powers conferred on it by virtue of its institutional role to dispense justice, rather than an inherent "authority" to hear and determine a matter. Our reasons are as follows.

35 First, we note that both Sir Jack Jacob and Prof Pinsler (see [28] and [29] above) had described the "inherent jurisdiction" of the court in terms of the powers that it could exercise. For example, Sir Jack Jacob had given three broad categories over which this "inherent jurisdiction" is exercised – (a) control over process, (b) control over persons, and (c) control over powers of inferior courts and tribunals. In yet another article trying to categorize this "inherent jurisdiction", Keith Mason in "The Inherent Jurisdiction of the Court" (1983) 57 ALJ 449 proposed four categories – (a) ensuring convenience and fairness in legal proceedings, (b) preventing steps being taken that would render judicial proceedings inefficacious, (c) preventing abuse of process and (d) acting in aid of superior courts and in aid or control of interior courts and tribunals. What clearly emerges from these categories is that the authors are actually categorizing the *powers* that the courts exercise (in terms of an order or remedy granted), rather than their *authority* to actually hear or determine a dispute. This indicates that the "inherent jurisdiction" of the court refers to the *powers* that the court exercises rather than the *authority* that it invokes to hear or determine a dispute.

36 Second, we also note that the Singapore cases which have used the phrase "inherent jurisdiction" are in fact referring to the exercise of an inherent power. For example, in *Management Corporation Strata Title Plan No 301 v Lee Tat Development Pte Ltd* [2011] 1 SLR 998, this Court held that it had the "inherent jurisdiction" to reopen and rehear an issue that it had decided in breach of natural justice as well as to set aside the whole or part of its earlier decision founded on that issue. In law, this was no more than an instance of a court re-examining a matter that it originally had jurisdiction to hear. It can be viewed as a continuation of the earlier proceedings. Therefore, since it was already seized of the jurisdiction required to determine the dispute, it would be inaccurate to state that the Court had to invoke an inherent "jurisdiction" to give the authority to determine the dispute. In fact, what the Court had to do was to invoke an inherent "power" to reopen and rehear the issue, since such a power was not provided for statutorily.

37 Another instance where this power was exercised is the case of *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1991] 1 SLR(R) 728, where this Court held that it has the power to strike out certain paragraphs of the petition of appeal despite the fact that the Rules of the Supreme Court 1970 did not empower it to hear an application of this nature. This Court found that it had the power to do so by virtue of its "inherent jurisdiction" over its own proceedings.

38 A further example may be found in *Tokio Marine*, where there was an application for the production of certain documents under O 24 r 6(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed)

("ROC"). Given that this was an application under the ROC, the court clearly possessed the necessary *jurisdiction* to hear such an appeal. However, the issue was whether the court had the *power* to compel production of the original documents into the possession of the applicant. After examining the ROC, Sundaresh Menon JC (as he then was) held that the court was indeed empowered to make such an order. However, he went on to state at [88] that even if he was wrong on this, he felt that it would be within the "inherent jurisdiction" of the court to make such an order. After examining a list of authorities concerning the "inherent jurisdiction" of the courts, he concluded at [96]:

> I am therefore satisfied that assuming this is not within the ambit of my *power* under O 24 r 6, the basis exists for me to make the order at [86] above in the court's inherent jurisdiction even though it is directed against a non-party. [emphasis added]

39 Although Menon JC had used the phrase "inherent jurisdiction", it is clear that this in fact refers to the inherent *power* to make such an order, rather than the inherent *jurisdiction* to hear and determine the dispute. This may also be discerned from the fact that at [89], he quoted Andrew Phang Boon Leong J (as he then was) in *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 ("*Wellmix*"), who made the following observation at [81]:

> The parameters of O 92 r 4 are, understandably, not particularly precise. What does appear clear is that if there is an existing rule (whether by way of statute or subsidiary legislation or rule of court) already covering the situation at hand, the courts would generally *not* invoke its ***inherent powers*** under O 92 r 4, save perhaps in the most exceptional circumstances [emphasis in original in italics; emphasis added in bold italics]

40 These cases illustrate that the inherent jurisdiction of the court actually refers to an exercise of the inherent powers of the court. Furthermore, we note that O 92 r 4 of the ROC uses the phrase "powers" instead of "jurisdiction" as well. It provides that:

> **Inherent powers of Court**
>
> **4.** For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court or make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

41 Therefore, for conceptual clarity, perhaps, in future, it would be preferable to refer to the exercise of this right to regulate matters properly before the court as the exercise of the court's inherent powers rather than its inherent jurisdiction.

42 Finally, we wish to state that although the court may possess such residual powers, they should only be invoked in *exceptional circumstances* where there is a clear need for it and the justice of the case so demands (see *Roberto Building Material Pte Ltd and others v Oversea-Chinese Banking Corp Ltd and another* [2003] 2 SLR(R) 353 at [17]).

43 In any case, Mr Nalpon has not raised any arguments on the "inherent jurisdiction" of this Court, nor do we find any exceptional circumstances warranting the exercise of this limited power as we had, to begin with, no basis to hear the matter. Indeed, if any interested party, like Ms Nor'Ashikin or the Attorney-General had intervened and applied to strike out the notice of appeal in this matter, we would have done so as we had the inherent power to strike out the notice since it is plain that Mr Nalpon had no legal basis and therefore no right to initiate this appeal. We now turn to examine the relevant legislation to determine whether the jurisdiction to hear Mr Nalpon's appeal has been conferred upon this court.

Two threshold requirements must be fulfilled before the Court of Appeal is seized of jurisdiction

44 The relevant legislative provision that defines the Court of Appeal's jurisdiction is s 29A of the SCJA. Section 29A of the SCJA provides that:

> **Jurisdiction of Court of Appeal**
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> **29A.**—(1) The civil jurisdiction of the Court of Appeal shall consist of appeals from any judgment or order of the High Court in any civil cause or matter whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to the provisions of this Act or any other written law regulating the terms and conditions upon which such appeals may be brought.
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> (2) The criminal jurisdiction of the Court of Appeal shall consist of appeals against any decision made by the High Court in the exercise of its original criminal jurisdiction, subject nevertheless to the provisions of this Act or any other written law regulating the terms and conditions upon which such appeals may be brought.
>
> (3) For the purposes of and incidental to —
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> (*a*) the hearing and determination of any appeal to the Court of Appeal; and
>
> (*b*) the amendment, execution and enforcement of any judgment or order made on such an appeal,
>
> the Court of Appeal shall have all the authority and jurisdiction of the court or tribunal from which the appeal was brought.
>
> (4) The Court of Appeal shall, for the purposes of and subject to the provisions of this Act, have full power to determine any question necessary to be determined for the purpose of doing justice in any case before the Court.

45 A proper reading of s 29A shows that it is ss 29A(1) and (2) which confer jurisdiction onto the court. Contrary to this, Mr Nalpon has argued that it is s 29A(4) that confers jurisdiction upon this Court. In particular, he has argued that the phrase "full *power* to determine any question necessary" in s 29A(4) indicates that the Court of Appeal's jurisdiction is in fact unlimited. This argument is misconceived because, as observed above at [30] and [32], there is a clear distinction between the jurisdiction and the power of a court. We see no need to elaborate on this further, and with reference to the SCJA, it is clear that it is ss 29A (1) and (2) which determine the ambit of the Court of Appeal's jurisdiction, while s 29A(4) determines the powers which the Court of Appeal has. Only after the jurisdiction pursuant to ss 29A(1) and (2) is established does s 29A(4) apply, conferring on the Court of Appeal a wide range of powers.

46 A closer reading of ss 29A(1) and (2) of the SCJA indicates that two threshold requirements must be met before the Court of Appeal is seized of jurisdiction to hear an appeal. First, the decision appealed against must be a decision of the High Court ("the first threshold requirement"), and second, the High Court must have been exercising either its original/appellate civil jurisdiction or its original criminal jurisdiction ("the second threshold requirement"). We now explain why the two threshold requirements under ss 29A(1) and (2) were not fulfilled here.

A decision whether or not to grant leave under s 82A(5) of the LPA is not a decision of the High

Court

47 As stated above, the first threshold requirement is that the decision appealed against must have been a decision of the High Court. What is a decision of the High Court? Mr Nalpon argued that this matter was heard by the High Court because it was treated as an ordinary High Court hearing. To fortify this contention, he asserted that the *ex-parte* OS 77/2012 application was filed like every other normal originating summons started in the High Court, that the requirements of the Electronic Filing System inclusive of filing fees were those specifically prescribed for the High Court, that Chan CJ heard OS 77/2012 in his chambers in the Supreme Court building dressed in his prescribed attire, and that there were letters between the Registrar of the Supreme Court and the parties. In our view, this at most reflects how the matter was handled procedurally and/or administratively, and adds nothing of legal substance to the issue of whether it was the High Court or the Chief Justice (sitting by virtue of his office) who had heard the matter.

48 We note that while the Supreme Court of Singapore has been defined in s 2 of the Interpretation Act (Cap 1, 2002 Rev Ed), there is no express definition of the "High Court". Section 9 of the SCJA does refer to the "Constitution of the High Court" but this does not clarify when a decision is made by the High Court. Perhaps, three indicia can be employed in determining whether a decision is made by the High Court. There three indicia are:

(a) Language used in statute.

(b) The type of jurisdiction exercised.

(c) The specific incorporation of the Rules of Court.

Indicia 1 – Language used in statute

49 The first indicia as to whether it is a decision of the High Court is to look at the plain language of the statute. In this case, ss 82A(5) and (6) of the LPA provide that:

> **82A.**— ...
>
> (5) An application for such leave shall be made by ex parte originating summons and shall be accompanied by an affidavit setting out the allegations of misconduct against the Legal Service Officer or non-practising solicitor.
>
> (6) Where *the Chief Justice* is of the opinion that the applicant has made out a prima facie case for an investigation into his complaint, the Chief Justice may grant such leave and appoint a Disciplinary Tribunal under section 90.
>
> [emphasis added]

50 It is clear from this that it is the Chief Justice, and not the High Court, which makes this decision. However, we would go one step further to observe that the legislative history of s 82A of the LPA also indicates that a decision under s 82A(5) is not one of the High Court. An examination of the legislation preceding the LPA ("the Preceding Legislation") reveals significant legislative changes that were made in relation to the oversight of disciplinary proceedings involving solicitors. This oversight of disciplinary proceedings was initially within the purview of the High Court (and its relevant predecessor), but later transferred to a specially constituted court. We will elaborate on this, and it suffices to note here the linguistic changes across the Preceding Legislation – the oversight of

disciplinary proceedings started off being supervised by "the Court", but was subsequently changed to "the Judges of the Court or by a majority of them", then to "at least one Judge of the Supreme Court", then to "a court of two Judges", and eventually to a "court of three judges". This "court of three judges" is a specially constituted court, and not the High Court. For ease of reference we set out the Preceding Legislation we will refer to:

(a) section 35, Straits Settlements Supreme Court Act 1867 ("SSSCA 1867");

(b) section 40, Straits Settlements Supreme Court Ordinance 1868 ("SSSCO 1868");

(c) section 34, Chapter VII, Straits Settlements Court's Ordinance 1873 ("SSSCO 1873");

(d) section 50, Chapter IX, Straits Settlements Courts Ordinance 1878 ("SSSCO 1878");

(e) section 110, Chapter XII, Straits Settlements Courts Ordinance 1907 ("SSSCO 1907");

(f) section 25, Straits Settlements Advocates and Solicitors Ordinance 1934 ("SASO 1934"); and

(g) section 30(7), Singapore Advocates and Solicitors Ordinance (Cap 188, 1955 Ed) ("SASO 1955");

51 We first examine s 35 of the SSSCA 1867. The section conferred on the court jurisdiction over advocates and attorneys:

> Admission of Advocates.
>
> 35. The Court is hereby authorized to admit as Advocates and Attorneys such persons as are now admitted in the said Court of Judicature as Agents for Suitors, and such other persons as may hereafter be qualified, under any Act of the Legislative Council passed or to be passed for the purpose ; and *the Court* may on due and reasonable cause, in accordance with the practice of the Superior Courts at Westminister, and subject to the provisions of any Act or Acts passed or to be passed by the Legislative Council in that behalf, strike off the rolls any persons so admitted.
>
> [emphasis added]

Later, s 40 of the SSSCO 1868 provided that:

> Admission of Advocates and Attornies.
>
> 40. The present Law Agents of the Court of Judicature shall be Advocates and Attornies of *the Court* ... subject always to be removed by *the Court* from their station therein upon reasonable cause. Provided always that it shall be lawful for the Court to permit any person to act without fee or reward as Advocate or Attorney on special occasions, and to withdraw such permission at pleasure.
>
> [emphasis added]

The term used in the above provision was "the Court". However, this later changed. Section 34 of Cap VII of the SSSCO 1873 stated:

Privileges and liabilities of Advocates, &c.

34. All advocates and Attornies so admitted shall be qualified to appear and plead in all Courts of Justice in the Colony, and shall be subject to the control of the Court, and shall be liable, on due cause shewn, to be suspended from practice or struck off the Rolls of the Court, *by the Judges of the Court or by a majority of them*.

[emphasis added]

This marked a significant change in language, namely from "the Court" to "Judges of the Court". The language used in subsequent re-enactments was broadly similar:

(a) Section 50 of Cap IX of the SSSCO 1878:

Control over – Advocate, &c., may be suspended, &c.

50. The Advocates and Solicitors shall be subject to the control of the Supreme Court, and shall be liable, on due cause shewn, and subject to the rules and Orders of Court as may be made under Section 81, to be suspended from practice, or struck off the Rolls of the Court, *by the Judges of the Court or by a majority of them*. [emphasis added]

(b) Section 110 of Cap XII of the SSSCO 1907:

Procedure in case of misconduct by Advocates and Solicitors.

Applications that an Advocate and Solicitor may be suspended from practice, or that he be struck off the Rolls, shall be by motion for an order calling upon the Advocate and Solicitor to show cause. An application for an order to show cause may be made to the Court at any Settlement in its ordinary jurisdiction, and shall, if the application be to suspended from practice, be returnable before *at least one Judge of the Supreme Court*, and shall, if the application be to strike off the Rolls, be returnable *before the Chief Justice and at least one Puisne Judge*.

[emphasis added]

(c) Sections 26(1) and (8) of the SASO 1934:

Procedure in case of misconduct by advocate and solicitors.

26.--(1) Application that an advocate and solicitor may be struck off the roll or suspended from practice or censured shall be by motion on behalf of the Bar Committee or by or on behalf of the Attorney-General, intituled "In the matter of an advocate and solicitor", for an order calling upon the advocate and solicitor to show cause.

...

(8) Any application under this section shall be made to *a Court of two Judges*, of whom the Chief Justice shall be one.

[emphasis added]

52 As can be seen from the above provisions, the legislation leading up to ss 26(1) and (8) of the

SASO 1934 continued to adopt variants of the phrase "Judges of the Court". In SASO 1934, the phrase "a Court of two Judges" used would seem to imply that this would be a "specially constituted court" that is not within the ordinary Court scheme. That this was meant to be a specially constituted court is made clear by the language used in SASO 1955. For instance, s 30(7) of the SASO 1955 states:

> 30.—(7) The application to make absolute and the showing of cause consequent upon any order to show cause made under subsections (1) and (2) shall be heard by a court of three judges of whom the Chief Justice shall be one and from the decision of *that court* there shall be no appeal to *any court in this Colony*. For the purposes of an appeal to Her Majesty in Council an order made under this subsection shall be deemed to be an order of the *Court of Appeal* [emphasis added]

What is clear is that the statute specifically refers to a specially constituted court as "that court", drawing a distinction between "that court" and "any court in this Colony". It also apparent that this specially constituted court is not the Court of Appeal, as its orders are only *deemed* as an order of the Court of Appeal for the purposes of an appeal to "Her Majesty in Council". Comparing this to the present LPA, the phrase "court of 3 Judges" continues to be used (see for example, s 98(7) of the LPA), indicating that this "court of 3 judges", which has oversight of disciplinary proceedings, continues to be a specially constituted court which falls outside the normal Court system of Singapore. In that sense, it would go against the entire grain of the LPA if we were to find that under s 82A(5), the Chief Justice makes his decision *qua* the High Court, while in all other cases, the oversight of disciplinary proceedings are not handled by the High Court.

Indicia 2 – The type of jurisdiction exercised

53 The second indicia as to whether it is a decision of the High Court is to look at the type of jurisdiction that has been exercised. The definition of the High Court is inextricably linked to its jurisdiction; to an extent, the entity of the High Court is defined by its jurisdiction.

54 Section 3 of the SCJA states, *inter alia*, that the High Court shall exercise original and appellate civil and criminal jurisdiction. In addition to those jurisdictions which are elaborated under ss 15–22 of the SCJA, ss 23–28 of the SCJA elaborates on the supervisory and revisionary jurisdiction of the High Court. As a starting point, it is clear that a decision under s 82A(5) cannot be an exercise of supervisory or revisionary jurisdiction as it is an original decision. Thus, there is nothing to supervise and nothing to revise.

55 In our view, a decision under s 82A(5) is neither an exercise of "civil jurisdiction" nor "criminal jurisdiction", but in fact the exercise of a unique "disciplinary jurisdiction" over Legal Service Officers and non-practising solicitors (for completeness, this same unique "disciplinary jurisdiction" over practicing solicitors is found under s 82 of the LPA). A closer analysis of the Preceding Legislation reveals a clear demarcation between these three forms of jurisdictions. As we have observed at [52], this disciplinary jurisdiction is ultimately exercised by a specially constituted court and not by the High Court or the Court of Appeal.

56 Starting with the SSSCA 1867, these three forms of jurisdictions were provided for by three separate provisions (civil jurisdiction under s 27, criminal jurisdiction under s 22, and disciplinary jurisdiction under s 35). A similar division between the three provisions was observed in the SSSCO 1868 (civil jurisdiction under s 29, criminal jurisdiction under s 24, and disciplinary jurisdiction under s 40). However, for these two statutes, there was *minimal* categorization separating the provisions providing for disciplinary jurisdiction and the other provisions of the statute.

57 This would later change. The relevant provisions addressing the control of advocates and solicitors would start to be distinctly recognised as a "separate" category of provisions. In SSSCO 1873, SSSCO 1878, and the SSSCO 1907, the provisions providing for the criminal, civil, and disciplinary jurisdictions of the Courts were separated into a specific chapters, each chapter specifically addressing such concerns. For purposes of clarity, the "categorization" into different chapters were as follows:

(a) Straits Settlements Court's Ordinance 1873 ("SSSCO 1873"):

(i) section 64 of Cap XII sets out the civil jurisdiction of the court;

(ii) section 52 of Cap X sets out the criminal jurisdiction of the court;

(iii) section 34 of Cap VII sets out the disciplinary jurisdiction over advocates and attorneys;

(iv) Straits Settlements Courts Ordinance 1878 ("SSSCO 1878");

(v) chapter V sets out the civil jurisdiction of the court;

(vi) chapter VI sets out the criminal jurisdiction of the court; and

(vii) chapter IX sets out the disciplinary jurisdiction over advocates and attorneys.

(b) Straits Settlements Courts Ordinance 1907 ("SSSCO 1907"):

(i) section 8 sets out generally that the Supreme Court has civil and criminal jurisdiction;

(ii) section 9 sets out the civil jurisdiction of the court;

(iii) section 10 sets out the criminal jurisdiction of the court; and

(iv) chapter XI sets out the disciplinary jurisdiction over advocates and attorneys.

58 This categorization into different chapters coincided with the change in language – the phrase used in the disciplinary provisions were changed from "the Court" to "Judges of the Court" (or a similar variant).

59 Eventually, the most obvious demarcation would happen with the SASO 1934 and the SASO 1955, where completely separate legislations regulating the profession were passed. As stated in *Top Ten* at [71], this "reinforced the separation of disciplinary proceedings from the normal civil process, which is now governed by the SCJA".

60 We thus see a coincidence of the change in language and the trend of the separation of provisions governing the disciplinary jurisdiction of the Courts. The effect of these changes was to remove the "disciplinary" jurisdiction of the Court, and then transfer it to a specially constituted Court. Decisions made by this specially constituted Court under the LPA would then be an exercise of this disciplinary jurisdiction. Since the High Court is no longer vested with this disciplinary jurisdiction, such a decision logically cannot be one by the High Court. In short, the proceedings under the LPA are part of a "self-contained disciplinary framework", see *Top Ten* at [44].

Indicia 3 – Specific references to the incorporation of court practices

61 The last relevant indicia is that there are provisions in the LPA specifically stating that the ROC should apply. Parallels may be drawn with s 98 of the LPA ("Application for order that solicitor be struck off roll, etc"), which is found in Part VII of the LPA. Section 98(6) of the LPA states, in similar language to the Preceding Legislation, that "a court of 3 Judges of the Supreme Court" shall hear an application under s 98. Section 98(3) then specifically mentions thus:

> **98.**— ...
>
> **...**
>
> (3) If the solicitor named in the application under subsection (1) is or is believed to be within Singapore, *the provisions of the Rules of Court (Cap. 322, R 5) for service of writs of summons shall apply* to the service of the application.
>
> [emphasis added]

Another example would be s 91(4) of the LPA, which provides thus:

> **91**.— ...
>
> ...
>
> (4) The subpoenas referred to in subsection (2)(*b*) shall be served and may be enforced *as if they were* subpoenas issued in connection with a civil action in the High Court.
>
> [emphasis added]

62 If such proceedings were heard by the High Court, there would be no need to specially mention the applicability of the ROC. Likewise, the reference to subpoenas under s 91(4) "as if they were" High Court subpoenas, as they are also not considered to be High Court subpoenas. Although there is no similar provision under s 82A, s 82A is also found in Part VII of the LPA, which is entitled "Disciplinary Proceedings". It would be right to conclude that if the procedure under s 91(4) and an application under s 98 is not heard by the High Court, neither would an application under s 82A(5). Framed in the negative, it would be internally incoherent if similar procedures under the same part were governed differently. The absence of an "importing" provision should make no difference to this argument, because under s 82A there would be no need to mention the rules of service, since s 82A(5) states that the application is made *ex parte* by originating summons.

Summary – A decision under s 82A(5) is not one of the High Court

63 An examination of all three indicia evince that a decision under s 82A(5) of the LPA is not one of the High Court. To summarize the three indicia:

(a) Indicia 1 – The change of the language used, from "the Court" to variants of "Judges of the Court" indicates a legislative intention to form a specially constituted court for disciplinary proceedings.

(b) Indicia 2 – The coincidence between the creation of this specially constituted court, and a clear demarcation of "disciplinary jurisdiction", indicates a legislative intention to remove the disciplinary jurisdiction from the High Court and confer it upon the specially constituted court.

(c) Indicia 3 – The specific importation of the ROC in Part VII of the LPA indicates that *prima facie*, the ROC do not apply, leading to the inference that proceedings under the LPA are not heard by the High Court.

As a result, the first threshold requirement (that the decision being appealed against must have been a decision of the High Court, see [44] above) is not met; a decision made by the Chief Justice not to grant leave under s 82A(5) of the LPA is not a decision of the High Court. This should come as no surprise, as similar views have been expressed in *Top Ten* at [59]–[71].

64 In what capacity then does the Chief Justice make this decision? It appears to us that the Chief Justice made his decision in his capacity as the President of the Legal Service Commission. Section 82A was enacted to address an anomaly where, following a decision of the Court of Appeal, legal officers who were admitted to the Bar and non-practising lawyers were subject to the disciplinary control of the Law Society while those Legal Service Officers not admitted to the Bar were not (see *Law Society of Singapore v Ang Boon Kong Lawrence* [1992] 3 SLR(R) 825). In the second reading of the 1993 Legal Profession (Amendment) Bill (see *Singapore Parliamentary Debates, Official Report* (12 November 1993) vol 61 at col 1163), then Minister for Law Professor S Jayakumar stated that:

> To correct this, the Bill provides that both legal officers and non-practising lawyers will be subject to the direct disciplinary control of the Court and not of the Law Society, which means that the Law Society's control is with respect to those who are practising advocates and solicitors. There will be ***a special procedure for disciplinary action*** against such persons involving a show cause application ***to the Chief Justice*** . ***The Chief Justice may grant leave*** for the appointment of a Disciplinary Committee to look into the complaint. *Only when a prima facie case of misconduct is established, would the case be referred to a court of three judges who are empowered to impose certain punishment against the errant legal officer or non-practising lawyer ...* [emphasis in italics and bold italics added]

This special procedure requiring leave from the Chief Justice only applies to disciplinary action against Legal Service Officers and non-practicing solicitors. When queried about the differences in disciplinary procedures between practicing and non-practicing advocates and solicitors, Prof Jayakumar explained that (see *Singapore Parliamentary Debates, Official Report* (12 November 1993) vol 61 at cols 1174–1175):

> For practising advocates and solicitors, the procedures which begin from the Inquiry Committee, [Disciplinary Committee] and show cause, almost invariably will affect his right to practise. Whereas ***for the legal officer, whatever is the result of the actions which may result from the Disciplinary Committee for legal officer and non-practising lawyer, as to whether he is to be retained in the service, whether he is to be demoted or fired or whatever in respect of his career, that has to be the subject of a separate independent proceeding to be brought*** – Mr Low Thia Khiang referred to it - ***by the Legal Service Commission*** . Therefore, because of these differences, the approach has been crafted differently. [emphasis in bold italics added]

65 The above speech gives considerable insight about the context in which s 82A was enacted, and how it was meant to operate. For Legal Service Officers, it is the Legal Service Commission that has the "final say" as to the consequences of the officer's actions. Therefore, quite logically, the decision to commence any investigation should also lie with the Legal Service Commission. More significantly, it would be the Chief Justice, *qua* president of the Legal Service Commission rather than as a High Court Judge, who makes this decision.

A decision under s 82A(5) is not an exercise of original/appellate civil jurisdiction or original criminal jurisdiction

66 At [46] above, we found that under ss 29A(1) and (2) of the SCJA, two threshold requirements must be met before the Court of Appeal is seized of jurisdiction to hear an appeal. The first threshold requirement is that the decision appealed against must be a decision of the High Court, and the second threshold requirement is that the High Court must have been exercising either its original/appellate civil jurisdiction or its original criminal jurisdiction.

67 Since both threshold requirements must be fulfilled before the Court of Appeal is seized of jurisdiction, our determination that a decision made under s 82A(5) of the LPA is not a decision of the High Court means that there was never any competent appeal that could be made to this court. However, for completeness, we also find that the second threshold requirement is not fulfilled as well – the oversight of disciplinary proceedings under the LPA is ***not*** an exercise of a civil or criminal jurisdiction. Instead, this is an exercise of a unique disciplinary jurisdiction by a specially constituted court. We had already alluded to this at [47]–[62] above, and wish to add the "disciplinary jurisdiction" of the Courts is not a foreign concept, and has been recognised both judicially and academically. For the position in England, see for example *Ridehalgh v Horsefield (C.A.)* [1994] Ch 205 at 277, *Weston v C C C Administrator (C.A.)* [1977] 1 QB 32 at 42, *Myers v Elman* [1940] 1 AC 282 at 302–303 and *R & T Thew Ltd v Reeves (No 2) (C.A.)* [1982] 1 QB 1283 at 1286, which all recognise the disciplinary jurisdiction of the Courts, which is distinct from the civil/criminal jurisdiction of the Courts For the position in Singapore, see *Law Society of Singapore v Ang Boon Kong Lawrence* [1992] 3 SLR(R) 825 at [13] and *Law Society of Singapore v Tham Yu Xian Rick* [1999] 3 SLR(R) 68 at [22] which reflect similar sentiments. These cases show that the "disciplinary jurisdiction" of the Courts is not something new, and does indeed exist.

68 A number of writings also refer to this "disciplinary jurisdiction". Writing in the American context, Joseph Frank Strength has commented that since the disciplinary proceeding against lawyers "does not fit neatly within either the civil or criminal category, it may accurately be called sui generis" (see Joseph Frank Strength, "Attorney Disciplinary Proceedings: Civil or Criminal in Nature?" (1994–1995) 19 The Journal of the Legal Profession 257 at 266). Writing with reference to the English position, J Gareth Miller also refers to the "disciplinary jurisdiction" of professional tribunals (see J Gareth Miller, "The Disciplinary Jurisdiction of Professional Tribunals" (1962) 25 MLR 531). In the Singapore context, it has been noted that the jurisdiction to discipline misconducting advocates and solicitors is "on the whole civil in nature, although it partakes of criminal elements" (see Tan Yock Lin, *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998) at p 765).

69 The above analysis fortifies our findings at [47]–[62] the position that the "disciplinary jurisdiction" is a unique jurisdiction entirely distinct from the civil or criminal jurisdiction of the Court. Disciplinary proceedings under the LPA, including a decision under s 82A(5), would be an exercise of this disciplinary jurisdiction. While disciplinary proceedings may possess "criminal elements", the originating process and procedures differ vastly from the normal criminal procedure, and it would thus be a stretch to argue that such would be an exercise of the court's criminal jurisdiction.

70 Consequently, even if we are to assume that Chan CJ's decision not to grant leave under s 82A(5) was a decision of the High Court, it is not an exercise of the High Court's original/appellate civil jurisdiction or its original criminal jurisdiction. Thus, the second threshold requirement is not met.

Conclusion

71 Since both threshold requirements of ss 29A(1) and (2) were not met, we found that this Court

was not seized of the jurisdiction to hear the appeal. In the result, we held that there was no competent appeal.

72 It only remains for us to place on record our debt to Mr Goh for his admirable research into (and comprehensive submissions about) the historical evolution of the various Courts' disciplinary jurisdiction over legal professionals in Singapore. We should add that both his written and oral submissions were models of clarity and conciseness.