# Tey Tsun Hang *v* National University of Singapore
# [2015] SGHC 7

**Case Number** : Originating Summons No 511 of 2014

**Decision Date** : 14 January 2015

**Tribunal/Court** : High Court

**Coram** : Quentin Loh J

**Counsel Name(s)** : Ravi s/o Madasamy (L F Violet Netto) for the applicant; Cavinder Bull SC, Gerui Lim and Priscilla Lua (Drew & Napier LLC) for the respondent; David Chong SC and Sivakumar Ramasamy (Attorney-General's Chambers) for the non-party.

**Parties** : Tey Tsun Hang — National University of Singapore

*Administrative Law – Judicial Review*

14 January 2015 Judgment reserved.

**Quentin Loh J:**

1 The applicant, Tey Tsun Hang ("Tey"), filed this Originating Summons ("OS") seeking leave under O 53 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") to bring judicial review proceedings against the National University of Singapore ("NUS").

2 Tey sought leave to pursue the following orders:

(a) A Quashing Order in relation to the decision of 27 July 2012 by NUS suspending Tey from duty, on the grounds that there was a breach of natural justice, whereby Tey's fundamental rights to a fair hearing and presumption of innocence were violated, and/or on the grounds that the decision to suspend Tey was illegal, irrational, and/or procedurally improper ("the 1st Quashing Order");

(b) A Quashing Order in relation to the decision of 28 May 2013 by NUS summarily dismissing Tey from his post, on the grounds that there was a breach of natural justice, whereby Tey's fundamental rights to a fair hearing and presumption of innocence were violated, and/or on the grounds that the decision to suspend Tey was illegal, irrational, and/or procedurally improper ("the 2nd Quashing Order"); and

(c) A Mandatory Order against NUS to reinstate Tey to his position as of 26 July 2012 ("the 1st Mandatory Order").

3 The central issue in this case is whether the decisions made by NUS are susceptible to judicial review.

**Background**

4 Tey was appointed an associate professor at the faculty of law in NUS in 2010. NUS is a university corporatised in 2006 by the National University of Singapore (Corporatisation) Act (Cap 204A, 2006 Rev Ed). Tey's employment with NUS was primarily governed by a letter dated 18 February 2010 which Tey had executed on 26 February 2010 ("the Employment Agreement"). [note: 1]

The relevant clauses of the Employment Agreement are as follows:

5. **TERMINATION OF APPOINTMENT**

5.1 The University may terminate the appointment by giving you not less than three months' prior notice in writing or three months' salary in lieu of notice …

5.2 The University may terminate your appointment immediately without prior notice and without payment of any compensation to you should you –

(a) be convicted by a court of law of any crime which in the opinion of the University is likely to bring the University into disrepute; or

(b) in the opinion of the University, be guilty of insobriety or misconduct or gross impropriety; or

(c) fail to perform your duties and/or obligations or observe any of the terms and conditions of your appointment; or

(d) be certified to be unfit to continue to be in the service of the University by a medical board appointed by the University.

6. **OTHER TERMS**

…

6.5 The appointee shall be bound by and conform with all policies, rules and regulations affecting University staff, as may be in force from time to time including, but not limited to, those in the Staff Handbook. …

5 On 27 July 2012, Tey was charged in court with six charges of corruption under s 6(*a*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"). On that same day, NUS suspended Tey from duty. Professor Simon Chesterman, Dean and Head of the faculty of law, wrote to Tey to inform him of this decision to suspend him. The letter read as follows: [note: 2]

Dear Prof Tey

**SUSPENSION FROM DUTY**

In the light of the Attorney-General's decision to charge you for alleged misconduct involving a student, the University will be initiating an investigation under NUS' Staff Disciplinary Procedures.

Pending the results of the investigation, you will be suspended from duty under paragraph 18 of the Procedures, with immediate effect. For the time being the suspension is without any change to your pay.

6 Paragraph 18 of NUS' Staff Disciplinary Procedures reads as follows: [note: 3]

*Suspension*

18. If disciplinary proceedings are contemplated against a staff member, the Dean may, in

consultation with VP(HR), suspend the staff member pending the outcome of such proceedings if it is believed that such action is deemed necessary:

a. To protect the interests of the University or any member of the University community; or

b. To ensure that the conduct of the investigation or the proper functioning of the University is not impeded.

Mr Cavinder Bull SC, counsel for NUS, submitted that the Staff Disciplinary Procedures were incorporated into the Employment Agreement by cl 6.5 of the Employment Agreement. [note: 4]

7 Tey was tried by the District Court on the criminal charges preferred against him. During the trial, Tey admitted that he had:

(a) received gifts of significant value from one of his students at NUS ("the Student");

(b) been in an intimate relationship with the Student; and

(c) breached NUS' Code of Conduct, the Conflict of Interest Policy for NUS Staff, and the NUS Policy on Acceptance of Gifts by Staff

(see *Public Prosecutor v Tey Tsun Hang* [2013] SGDC 165 at [564]–[568]).

8 On 28 May 2013, the District Court handed down its judgment. It found Tey guilty and convicted him as charged. On the same day, NUS wrote to Tey informing him of the immediate termination of his employment. The relevant portions of the letter read as follows: [note: 5]

Dear Prof Tey

**SUMMARY DISMISSAL**

1. I refer to our letter to you dated 27 July 2012 regarding your suspension with pay pending the outcome of charges by the Attorney General on your alleged misconduct involving a student.

2. You have been found guilty of the charges as laid out by the Attorney General.

3. I draw your attention to Clause 5.2 of the terms and conditions of your appointment dated 18 February 2010, in particular Clause 5.2(a) which states:-

"The University may terminate your appointment immediately without prior notice and without payment of any compensation to you should you be convicted by a court of law of any crime which in the opinion of the University is likely to bring the University into disrepute."

4. In addition, Clause 5.2(b) and Clause 5.2(c) state that the University may exercise its rights of summary dismissal should you be guilty of insobriety or misconduct or gross impropriety; or if you have failed to perform your duties and/or obligations or observe any of the terms and conditions of your appointment.

5. Arising from the above, your employment with the University is terminated with immediate effect and without compensation, pursuant to Clause 5.2 of the terms and conditions of your

appointment.

…

9 Tey appealed against the decision of the District Court and the High Court allowed Tey's appeal on 28 February 2014. However, the High Court did not disturb any of the factual findings made by the District Court concerning Tey's admissions. In fact, the High Court affirmed the District Court's finding that Tey had breached the policies of NUS and that he had abused his position as a lecturer when he exploited the Student (see *Tey Tsun Hang v Public Prosecutor* [2014] 2 SLR 1189 at [225] and [320]).

10 On 3 June 2014, Tey filed the present leave application to commence judicial review proceedings against the decisions made by NUS to suspend, and then terminate, him ("the Impugned Decisions").

***The recusal applications***

11 During a pre-trial conference on 25 June 2014, Mr Ravi s/o Madasamy, counsel for Tey, stated:

> "My client has indicated that he would like to be present in court. My client has also asked that Justice Woo who heard the appeal, Justice Loh who heard the criminal motion, and JC Tan Siong Thye who heard the State Courts trial, should not hear the OS."

12 During the next pre-trial conference on 30 July 2014, when the assistant registrar informed parties that the matter would be fixed before me, Mr Ravi stated that Tey had an objection to my hearing the matter. The relevant portions of the transcript read as follows: [note: 6]

| | |
|---|---|
| [Mr Ravi]: | Our client had an objection to the matter being fixed before 3 of the Judges, one of whom is Justice Loh. |
| Ct: | This is fixed in accordance with the usual processes of the Registry. |
| [Mr Ravi]: | Very well. |

13 As such, the case remained fixed before me. On 31 October 2014, barely a week before the hearing, Tey sent an email to the Chief Justice and the Attorney-General ("AG") contending that I should not hear this matter. The relevant portions of his email read as follows:

> 1. I earlier instructed my solicitor, Mr M Ravi, to inform the Supreme Court Registry that my judicial review leave applications (OS 511/2014, OS 512/2014) should not be heard by the Honourable Quentin Loh J …
>
> 2. One of the applications involves the National University of Singapore (OS 511/2014), which is party to a criminal motion (CM 83/2012) for which the Honourable Quentin Loh J previously ruled against my application.
>
> 3. It should be highlighted that concurrent with CM 83/2012, the Honourable Quentin Loh J heard three other criminal motions [against the Public Prosecutor (CM 84/2012, CM 86/2012), against the Alexandra Hospital (CM 87/2012)] on 24 September 2012 …
>
> 4. For all four criminal motions (CM 83/2012, CM 84/2012, CM 86/2012, CM 87/2012), the

Honourable Quentin Loh J failed to produce any official written judgment.

5. It can only be expected that such an omission and absence of an official written judgment deprived the Court of Appeal of a proper consideration of the important issues in the consequent criminal reference (CM 89/2012) – all of which were critical to, and had direct impact on, the criminal prosecution against me then.

…

10. Despite my solicitor's specific request, the Supreme Court Registry fixed both judicial review applications for hearing before the Honourable Quentin Loh J on 3 and 5 November 2014 …

11. I register my dissatisfaction with the administration of justice in this regard.

12. I expect more from the administration of justice in Singapore, and its capacity to do so.

13. As a litigant, I expect – as all litigants would – that justice as regards these originating summons will be, and will be seen to be, administered consistently by the Supreme Court of Singapore, guided by fundamental principles of due process and natural justice. Preside with fairness, there is legitimacy; preside with conscience, there is confidence; preside with dignity, there is reputation; preside with compassion, there is respect.

14 When parties appeared before me on 3 November 2014 and started with their substantive submissions, I stopped counsel and asked Mr Ravi if his client was still pursuing the recusal application. Mr Ravi did not seem certain and said that he thought that, since the matter had been fixed before me, the objection had been dismissed. I asked Mr Ravi if he was sure of this position as Tey had sent an email dated 31 October 2014 to the Chief Justice and the AG. Mr Ravi was taken aback upon being informed of Tey's email and was apparently not aware of the email. I showed Mr Ravi a print out of the email. After reading the email, Mr Ravi then stated that Tey was still pursuing the recusal application. When I asked for the grounds of his application, Mr Ravi replied that I had not given grounds for the criminal motions and related matters, essentially deferring to whatever Tey had raised in the email. I then showed Mr Ravi a copy of my signed and dated Brief Oral Judgment, which was a 27-paragraph, 9-page document stating the reasons for my decision. Mr Ravi had nothing more to say.

15 Mr Bull SC, needless to say, strongly objected as he was hitherto unaware of Tey's email, let alone its contents and the grounds for the recusal application. He objected on the ground that no proper application supported by an affidavit had been filed.

16 It is not always the case that written judgments are necessary (see *Thong Ah Fat v Public Prosecutor* [2012] 1 SLR 676 ("*Thong Ah Fat*") at [31]). What is important is that the judge must give reasons for his decision. These reasons can be communicated either orally or in writing (see *Thong Ah Fat* at [24]). As such, a judge's decision not to issue a written judgment, without more, should not be a valid reason for complaint. *A fortiori*, it should not constitute grounds for his recusal in subsequent proceedings. Having said that, I accept that a judge's decision not to issue a written judgment could constitute grounds for recusal where he or she provided no reasons at all and there was proof that his or her reticence was indicative of apparent bias (see *Ten Leu Jiun Jeanne-Marie v The National University of Singapore* [2014] SGHC 247 ("*Ten*") at [26], citing *Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] 2 SLR 1108 at [34]). However, this is inapplicable as I did give reasons for my decision on 25 September 2012.

17 Tey's grounds for my recusal were untrue. He must have forgotten what transpired in the criminal proceedings he had brought before the court in September 2012. Those proceedings related to, amongst other things, Tey's attempt to obtain certain documents from Alexandra Hospital and NUS, the framing of the charges against him, as well as his request for more time to prepare for his trial. Prior to the hearing of those proceedings, NUS made some of the requested documents available.

18 When I gave my decisions on the criminal motions on 25 September 2012, I *read* out my brief grounds in open court. As noted above, they were set out in a 27-paragraph, 9-page document which was dated and signed by me. I expressly told counsel that they could obtain copies of my brief grounds in written form from my private secretary after the court rose. Those copies bore the date and my signature.

19 Ms Gerui Lim, who is assisting Mr Bull SC in these proceedings, was present in court at the hearing of the criminal motions on 25 September 2012. She recalled seeing a written document containing my grounds at the conclusion of the criminal motions.

20 As far as I am aware, no one took issue with my decisions or my grounds. Although I dismissed the criminal motions in relation to Tey's request for documents from NUS as Tey did not satisfy the tests at Common Law for discovery against a third party, I stated that this did not preclude the making of an application before the trial judge under s 235 of the Criminal Procedure Code 2010 (Act 15 of 2010) which was applicable then. I also ruled in Tey's favour by stating to counsel for Alexandra Hospital that it had no valid reason to withhold Tey's hospital records from him. Counsel for Alexandra Hospital accepted that position and stated in open court that the records would be made available to Tey. I similarly made comments on the framing of some of the charges mounted against Tey and the Deputy Public Prosecutor told the court that the Attorney-General's Chambers would re-consider the charges in light of my observations. [note: 7] Finally, Tey complained that trial dates had been fixed with undue haste as it had been fixed for hearing from 15 October 2012 to 25 October 2012 when he was only charged on 27 July 2012. [note: 8] I acceded to his request and ordered that the trial was not take place any time before mid-December 2012. [note: 9]

21 It is indeed sad that someone with Tey's legal background should put forward grounds for a judge's recusal which have no factual truth or legal basis. The least he could have done was to check his facts and the law before making these grave allegations. Many judges give oral reasons in open court. There is no legal requirement that official (whatever that might mean) written judgments be issued for all decisions made by the courts. In any case, Tey should also have known that everything that was said by me in open court was recorded. He could have applied for a transcript of the recording. That recording would also have captured my brief grounds when I read them out in court. My brief grounds in writing, which I must emphasise was signed and dated and made available to all counsel, remains on the court records. Even if Tey had not obtained a copy from his counsel in the criminal motions at that time, or had misplaced it and did not want to incur the costs of obtaining a transcript, he could still have applied for a copy of my brief grounds in writing at a later time at no great cost.

22 Further, it does Tey no credit when he does not inform his counsel of his sending an email to the Chief Justice and the AG. To do so cuts the very ground from under his counsel's feet. Such behaviour on the part of the client is, needless to say, inimical to counsel's ability to effectively put forward his client's best case.

23 It was apparently not Tey's case that he was unhappy or that he disagreed with my reasons,

but simply that he did not obtain any "official written judgment". Besides not taking out a proper application for my recusal, I found that Tey's objection to my hearing this OS, made through statements from the Bar and an email to the Chief Justice and the AG, had no factual or legal basis whatsoever.

***Further authorities and evidence***

24 After I dismissed Tey's objection to my hearing this OS, Mr Ravi proceeded to inform the court that he was tendering 64 "supplemental authorities". He handed these authorities to the court. Opposing counsel were only handed their bundles just before the hearing commenced.

25 At the hearing, Mr Ravi's arguments generally followed what was stated in his written submissions dated 20 October 2014. He did not make any reference to the newly tendered supplemental authorities. However, he tendered a copy of an article from the Today Newspaper dated 28 February 2014. The article cited a portion of a statement made by NUS and this was what Mr Ravi seemed to rely on it for. The relevant portion reads as follows:

> NUS said in a statement that they were aware of the decision made this morning (Feb 28), but they would still have to undertake some consideration before reinstating him.
>
> "Mr Tey may choose to petition for reinstatement at NUS, but he would remain liable for any acts contrary to the NUS Staff Code of Conduct," the statement read.
>
> "In the event that he does seek to return to NUS, the University would first appoint its own Committee of Inquiry to determine whether Mr Tey is guilty of any misconduct and, if so, what sanctions are warranted."

26 Mr Bull SC objected to Mr Ravi's reliance on the article as it was not placed before the court until written submissions were tendered. He also pointed out that, as at the time of the alleged press statement, Tey was no longer an employee of NUS, and it was up to NUS to decide how it chose to hold interviews with prospective employees. [note: 10]

27 Indeed, Mr Ravi's reliance on the newspaper article was, to say the least, highly unorthodox. First, if Tey intended to rely on the newspaper article, handing a copy of the same to the court at the hearing was an inappropriate means of admitting the same as evidence. Secondly, if it were NUS' press statement Mr Ravi was seeking to rely on, it would have been appropriate for him to have admitted that statement in full through an affidavit. Nevertheless, given that the relevant portions of NUS' statement were not disputed, and that this was at a rather preliminary stage of proceedings, I decided to proceed on the assumption that NUS' statement was indeed made, and that it was accurately depicted in the newspaper article, taking into consideration Mr Bull SC's concerns.

28 Most importantly, I questioned Mr Ravi if Tey wrote back to, or telephoned anybody from, NUS to ask for reinstatement. Mr Ravi replied that Tey did not. [note: 11] At the end of the hearing, due to the additional authorities tendered by Mr Ravi, I allowed parties two weeks to respond with further submissions on these additional 64 authorities if they saw fit to do so, *ie*, by 17 November 2014.

***Tey's change in position***

29 On 4 November 2014, one day after the oral hearing, the court received a fax from Mr Ravi's firm. The relevant portion reads as follows:

4. Mr. Ravi inadvertently stated to the Learned Judge that Mr. Tey did not inform the University of his intention to return as a tenured Law Professor.

5. Our Mr. Ravi having obtained further instructions from his client on this matter wish to stand corrected that Mr. Tey had indeed informed by way of a teleconversation to the Dean of the NUS Law Faculty Professor Simon A. Chesterman immediately after the press release by NUS on 28 February 2014 which was referred to at the abovementioned hearing of his intention to return to the University as a tenured Law Professor.

6. Mr. Tey recalls that he made a few telephone calls to his Law Dean in the week of 3 March 2014. Our client says there is no reason why Professor Simon Chesterman would want to deny this.

30 Nothing about Tey's telephone calls to Professor Simon Chesterman, or any member of NUS for that matter, was contained in Tey's affidavit. In fact, Tey did not even refer to the NUS press statement in his affidavit. Understandably, counsel for NUS wrote to the court on 5 November 2014 objecting to the allegations contained in the fax, stating that it was highly improper for Tey to utilise solicitors' correspondence to raise new factual allegations to the court as if they were evidence adduced before the court.

***Further submissions***

31 On 17 November 2014, counsel for NUS and the AG each filed their further submissions. Tey, however, took it upon himself to send his further submissions to my personal email. The email was copied to Mr David Chong SC, who represented the AG, Mr Bull SC and Mr Ravi.

32 Tey's further submissions were not filed on e-Litigation. The Supreme Court Registry wrote to Mr Ravi on 28 November 2014 to highlight the matter and inform him that such submissions are unacceptable. Mr Ravi was given till 5 December 2014 to file the further submissions on e-Litigation. On 4 December 2014, Mr Ravi's firm sent a fax to the court simply stating that it would not be filing Tey's further submissions on e-Litigation.

**My Decision**

33 Having considered the arguments and circumstances of this case, I dismiss the application for leave for two main reasons. There is additionally an issue of delay.

**Leave**

34 The Court of Appeal held in *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [5] that for leave to be granted, generally, three requirements must be met. First, the subject matter of the complaint must be susceptible to judicial review. Secondly, the material before the court must disclose an arguable case, or a *prima facie* case, of reasonable suspicion in favour of granting the remedies sought by the applicant. Thirdly, the applicant must have sufficient interest in the matter.

35 Tey's application for leave in this case fails because, first, the matter is not susceptible to judicial review, as NUS' power to suspend or dismiss Tey stemmed from the employment agreement. Secondly, even if the matter were susceptible to judicial review, Tey had not exhausted all available remedies before seeking recourse from the court. A person seeking judicial review should normally exhaust all alternative remedies before invoking the jurisdiction of the court (see *Comptroller of*

*Income Tax v ACC* [2010] 2 SLR 1189 at [13], citing *Borissik Svetlana v Urban Redevelopment Authority* [2009] 4 SLR(R) 92 at [25]).

**Susceptibility to judicial review**

36 As held in *UDL Marine (Singapore) Pte Ltd v Jurong Town Corp* [2011] 3 SLR 94 ("*UDL Marine*") at [50], to determine if a decision is susceptible to judicial review, two questions have to be considered. First, is the source of the decision maker's power in making the decision statute or subsidiary legislation? Secondly, did the decision maker's decision involve an exercise of public law functions? If either question is answered positively, the decision may be susceptible to judicial review.

37 In this case, the Impugned Decisions are the decisions in question. The maker of these decisions was NUS. Tey relied heavily on the "judicial pronouncements in the High Court that NUS is a public body", [note: 12] and seemed to rely on this to establish the susceptibility of the Impugned Decisions to judicial review. Those "pronouncements", to be clear, were made in the context of the definition of a "public body" under s 2 of the PCA. More importantly, simply establishing that NUS is a public body in one particular context does not make all its decisions susceptible to judicial review. The two questions relating to susceptibility have to be approached with specific regard to the Impugned Decisions and not by simply considering whether those decisions were made by a public body.

38 In *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR(R) 133 ("*Linda Lai*"), the Court of Appeal dealt with an application for leave by Ms Lai, a senior officer at the Land Office, Ministry of Law, to commence judicial review proceedings against, amongst other parties, the Public Service Commission ("PSC"), in relation to the termination of her employment. Leave was allowed by the High Court and the PSC appealed to the Court of Appeal. The Court of Appeal allowed the appeal, holding that leave should not have been granted. Even though the court found that there was a contract of employment between Ms Lai and the Government of Singapore, this did not mean the matter was susceptible to judicial review.

39 In fact, the court found that the relationship between the Government and Ms Lai "was one of employer and employee", and that Ms Lai's employment was "not underpinned by any statute or any subsidiary legislation under a statute" (*Linda Lai* at [40]). Furthermore, the court noted that "when statutory bodies make certain decisions, it does not invariably follow that the statutory bodies are exercising a statutory power" (*Linda Lai* at [44]).

40 Similarly, the relationship between NUS and Tey was purely contractual. As noted in Sir Michael Supperstone *et al*, *Judicial Review* (LexisNexis, 4th Ed, 2010) at para 5.4.1:

> 5.4.1 Generally, a decision affecting the employment of a public employee will not, without more, be amenable to judicial review, even though the power to employ and dismiss may be conferred by statute or by prerogative. Thus, for example, civil servants, teachers and other local government employees are not usually entitled to challenge disciplinary action and dismissal by judicial review. There are two underlying reasons for this: the private, contractual character of the decisions and the availability of the remedy of unfair dismissal to a wide range of employees and officials…

I agree.

41 Tey attempted to distinguish the case of *Linda Lai* on the ground that Ms Lai was "not a confirmed public officer" whereas he was a tenured employee of NUS. [note: 13] He argued that a tenured professor was similar to a confirmed public servant. However, he did not elaborate on this.

Neither was it apparent from the judgment that the Court of Appeal took Ms Lai's probationary status into account when determining if the matter was susceptible to judicial review.

42 On the contrary, the Court of Appeal in *Linda Lai* cited the case of *Regina v East Berkshire Health Authority, ex parte Walsh* [1985] QB 152 ("*Walsh*"), which involved a dismissal of a nursing officer. It commented on the case as follows (*Linda Lai* at [31]):

> … The [English] Court of Appeal held that there was no "public law" element involved in the complaints of the applicant, which gave rise to administrative law remedies. Whether a dismissal from employment by a public authority was subject to public law remedies depended on whether there were special statutory restrictions, which underpinned the employee's position, and not on the fact of employment by a public authority *per se* or the *employee's seniority* or the interest of the public in the functioning of the authority. …
>
> [emphasis added]

Although the Court of Appeal in *Linda Lai* did not expressly endorse selected portions of *Walsh*, the proposition that an employee's seniority should not matter when determining the nature or the source of the power that the employer chooses to exercise is eminently sensible. As such, even if this were not a holding by the Court of Appeal by which I am bound, I find it is good law, and applicable to this case.

43 Tey also cited the decision of *Yeap Wai Kong v Singapore Exchange Securities Trading Ltd* [2012] 3 SLR 565 ("*Yeap Wai Kong*") for the proposition that "a public body has the basic duty to carry out and adhere to the fundamental tenets of due process before dishing out a sanction against a corporate director". [note: 14] In *Yeap Wai Kong*, the applicant, a director of a listed company, sought leave to quash the decision of the Singapore Exchange Securities Trading Ltd ("SGX-ST") to reprimand him. Although leave was denied, the High Court found the matter was susceptible to judicial review as, in light of the "the legislative and regulatory matrix of the Singapore securities market, the statutory underpinning of the reprimand power and the nature of the reprimand function", SGX-ST's reprimand power would properly be characterised as a public function (*Yeap Wai Kong* at [28]). That case can be distinguished as SGX-ST's power to reprimand was contained in Rule 720 of SGX-ST's Listing Manual, which had been enacted and approved by the Monetary Authority of Singapore in accordance with s 23 of the Securities and Futures Act (Cap 289, 2006 Rev Ed) (*Yeap Wai Kong* at [24]). In this case, NUS' power simply came from the Employment Agreement, a private contract between NUS and Tey.

44 I now return to the two questions from *UDL Marine* and answer them in the context of this case. First, the source of NUS' power, in making the Impugned Decisions, was the Employment Agreement. Secondly, NUS' decisions to suspend and terminate Tey, like the decisions in *Linda Lai*, were purely contractual in nature, as between employer and employee. They did not involve an exercise of any public law function.

45 Although my finding on this point is sufficient to dispose of this matter, I go on to consider the impact of Tey's failure to exhaust his remedies with NUS in the event this is taken up elsewhere.

**Exhaustion of alternative remedies**

46 As at the oral hearing, Tey's case, as conveyed by Mr Ravi, was that he had not communicated to NUS his desire to seek reinstatement since the time of his termination (see above at [28]). In this regard, even if the Impugned Decisions were susceptible to judicial review, I would be hard pressed to

grant Tey leave given his failure to even consider, let alone pursue, his alternative remedies. Putting to one side my serious reservations with taking into consideration the press statement handed to me by Mr Ravi, based on the portions of the press statement relied on by him, it seemed that NUS was, at the very least, willing to consider the prospect of reinstating Tey. Assuming Tey genuinely desired to be reinstated by NUS, it was odd that he failed to seize the opportunity when it presented itself on 28 February 2014. Odder still was his choice to wait for more than three months before commencing judicial review proceedings against the very employer he was hoping to work for.

47 On Tey's new case, (again, putting to one side my grave reservations, which I have voiced above), he had in fact communicated to Professor Simon Chesterman his desire to be reinstated by way of a "teleconversation" immediately after the press release on 28 February 2014 (see above at [29]). This "fact", however, was merely alleged in a fax by Mr Ravi's firm to the court. As pointed out by Mr Bull SC, it was not contained in any affidavit. Furthermore, not only was this "fact" not properly placed before the court and substantiated by any affidavit, it represented a crucial departure from Tey's original case and seemed to have been an afterthought. If Tey wanted this alleged "teleconversation" to be part of his evidence, he should have sought leave to adduce a further affidavit. NUS would then have had an opportunity to reply. Instead, Tey chose not to do so.

48 For these reasons, I am not prepared to accept, as a fact, that Tey had indeed communicated to NUS his desire to be reinstated. Even if he had communicated with NUS, given the dearth of evidence, it is unclear what the contents of that communication were. Furthermore, if he had felt that NUS had breached the Employment Agreement, he could have commenced an action in breach of contract. This he did not do. As such, I am unable to conclude that he had exhausted his alternative remedies before coming to this court seeking judicial review.

**Delay**

49 Another problem with Tey's case involved his delay in filing this OS. Two of his prayers in the OS dealt with quashing the Impugned Decisions. To be clear, these were decisions made in July 2012 and May 2013. Even with May 2013 as a starting point, Tey's application (filed on 3 June 2014) was brought far beyond the three month period stipulated in O 53 r 1(6) of the Rules of Court. No application was made for an extension of time before the oral hearing on 3 November 2014 and no reasons were given for the delay. In fact, Mr Ravi did not even address the issue of delay until Mr Bull SC raised it. [note: 15]

50 Mr Ravi's response to the delay was that time should be taken to run as at 28 February 2014. As pointed out by Mr Bull SC, even with this starting point, Tey had filed his application (on 3 June 2014) a few days out of time. The more important point though was that there was no principled reason for taking 28 February 2014 as the starting date. If Tey was affronted by the Impugned Decisions, the right time to seek a remedy would have been right after the decisions were made.

51 The only attempt at an explanation for the delay served to confuse rather than clarify. Mr Ravi focused on NUS' termination letter (see above at [8]) and argued that the sole basis for Tey's termination was his conviction. However, two points bear mention. First, the letter also cited cll 5.2(b) and (c) of the Employment Agreement, which dealt with termination on the grounds of misconduct and failure to perform duties respectively. Both of these grounds still seemed to have been met in light of Tey's admissions that were not appealed against nor disturbed by the High Court (see above at [9]). Secondly, even if Tey was awaiting the verdict of the High Court, and hence chose not to institute proceedings until then, he was still out of time by a few days, having only filed his application on 3 June 2014. Not only was no application for an extension of time filed, the delay was not explained until it was raised by Mr Bull SC at which point Mr Ravi stated that his failure to

deal with the matter was due to "an oversight". [note: 16]

52 Nevertheless, as I have dealt with this case primarily on the ground of susceptibility to judicial review, I need not make any finding as to whether Tey's applications in regard to the quashing orders were brought out of time. My purpose in bringing up this issue of delay was to highlight Tey's unsatisfactory conduct throughout these proceedings. When I refer to his conduct, I refer not only to his delay in bringing these proceedings, but his failure to apply for an extension of time, his failure to exhaust his alternative remedies before coming to the court, his "recusal application" by way of email to the Chief Justice and the AG, his decision to tender 64 "supplemental authorities" at the eleventh hour – most of which bore scant resemblance to the facts of this case and provided little guidance – and his failure to file his further submissions in the manner required under the Rules of Court, choosing instead to send them by way of email to the judge. From start to finish, Tey conducted his case in a cavalier manner and unjustifiably expended much of the court's time and resources.

**Conclusion**

53 For the reasons set out above, I refuse Tey leave under O 53 of the Rules of Court to bring judicial review proceedings against NUS.

54 I will hear the party on costs.

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[note: 1] Affidavit of Yau Seok Yen dated 2 July 2014 at pp 10–14.

[note: 2] Affidavit of Tey Tsun Hang dated 3 June 2014 at p 8.

[note: 3] Affidavit of Yau Seok Yen dated 2 July 2014 at p 6.

[note: 4] NUS' submissions dated 20 October 2014 at para 12.

[note: 5] Affidavit of Tey Tsun Hang dated 3 June 2014 at p 11.

[note: 6] Minute Sheet (Pre-Trial Conference) dated 30 July 2014.

[note: 7] Grounds of Decision (Crime) dated 25 September 2012 at paras 23–24.

[note: 8] Tey's Affidavit dated 17 September 2012 at para 12. Specifically, the initial trial dates were 15–19 and 22–25 October 2012.

[note: 9] Grounds of Decision (Crime) dated 25 September 2012 at para 27.

[note: 10] Minute Sheet dated 3 November 2014 at p 6.

[note: 11] Minute Sheet dated 3 November 2014 at p 3.

[note: 12] Tey's Written Submissions dated 20 October 2014 at paras 1(a), 14 and 16–18.

[note: 13] Tey's Written Submissions dated 20 October 2014 at para 102–110.

[note: 14] Tey's Written Submissions dated 20 October 2014 at para 60.

[note: 15] Minute Sheet dated 3 November 2014 at p 8.

[note: 16] Minute Sheet dated 3 November 2014 at p 11.

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