Attorney-General v Tee Kok Boon
[2007] SGHC 226

Case Number : OS 1069/2007

Decision Date : 28 December 2007

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Solicitor-General Walter Woon Cheong Ming and Hay Hung Chun (Attorney-General's Chambers) for the plaintiff; Gregory Vijayendran, Dawn Wee and Melvin Lum (Rajah & Tann) for the defendant

Parties : Attorney-General — Tee Kok Boon

Civil Procedure – Pleadings – Whether defendant had habitually and persistently and without any reasonable ground instituted vexatious legal proceedings – Whether s 74(1) of Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) applying to proceedings in Court of Appeal and interlocutory proceedings

Courts and Jurisdiction – Jurisdiction – Whether High Court having power under its inherent jurisdiction to make restraining order against vexatious litigants

Criminal Law – Whether s 74(1) of Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) applying to criminal proceedings

Criminal Procedure and Sentencing – Whether s 74(1) of Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) applying to criminal proceedings

Statutory Interpretation – Application of s 74(1) of Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) – Whether s 74(1) of Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) applying to criminal proceedings

28 December 2007 Judgment reserved.

Woo Bih Li J:

Introduction

1 This is an application by the Attorney-General for an order against the defendant Tee Kok Boon ("Tee") pursuant to s 74(1) of the Supreme Court of Judicature Act (Cap 322) ("SCJA") for an order to restrain Tee from instituting legal proceedings without the leave of the High Court. The relief sought in the application was couched in wide terms, that is,

> "No legal proceedings shall without the leave of the High Court be instituted by [Tee] in any court; and that any legal proceedings instituted by the said [Tee] in any court before the making of the order shall not be continued by him without such leave, and such leave shall not be given unless the High Court is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings".

The ground for the application was that Tee has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings.

2 The order sought by the application and the ground relied upon follow s 74(1) which states:

74. – (1) If, on an application made by the Attorney-General, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any subordinate court, and whether against the same person or against different persons, the High Court may, after hearing that person or giving him an opportunity of being heard, order that –

(a) no legal proceedings shall without the leave of the High Court be instituted by him in any court; and

(b) any legal proceedings instituted by him in any court before the making of the order shall not be continued by him without such leave, and such leave shall not be given unless the High Court is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

3 I should add that s 74(3) SCJA states: "No appeal shall lie from an order under subsection (1) refusing leave for institution or continuance of legal proceedings".

4 The Attorney-General was represented by the Solicitor-General and Tee was represented by assigned counsel, Mr Gregory Vijayendran. At the hearing of the application, the Solicitor-General also relied on the inherent jurisdiction of the court to obtain the relief sought.

Background

5 Tee was at all material times a property agent with O K Property Pte Ltd ("O K Property"). In 2001, he had secured a tenant for a property belonging to one Mdm Heng Siew Ang ("Mdm Heng"). However, a dispute arose as to whether commission of $2,200 was payable by Mdm Heng to O K Property for services rendered by Tee. O K Property sought to recover the commission in the Small Claims Tribunal ("the Tribunal"). Tee testified that he had witnessed Mdm Heng sign a letter of undertaking dated 26 November 2001 under which Mdm Heng purportedly agreed to pay the disputed commission. Mdm Heng then lodged a police report on 18 May 2002 stating that she believed her signature was forged. On 24 May 2002, the Tribunal ruled against Mdm Heng holding that there was no evidence to show that her signature was forged and therefore, she was liable to pay the commission. Investigations were undertaken on Mdm Heng's police report and eventually Tee was charged with giving false evidence at the Tribunal, that is, by stating that he had witnessed Mdm Heng sign the letter of undertaking which he knew to be false as he did not witness her signing that document. The offence was punishable under s 193 of the Penal Code, Cap 224 and he was tried by the District Court.

6 According to the judgment of the District Court, Tee admitted that he had not witnessed Mdm Heng appending her signature on the letter of undertaking. He said that what he had meant to say to the referee of the Tribunal was that he had seen her signature. In other words, he had assumed that Mdm Heng had signed but the act of signing was not done in his presence. The District Court found that Tee had not misunderstood the referee when he gave his response. Tee was convicted and sentenced to ten months' imprisonment.

7 Tee then filed an appeal against his conviction to the High Court by way of Magistrate's Appeal No 167 of 2000. By the time his appeal was heard, he had also filed two applications, that is, Criminal Motion No 6 of 2005 ("CM 6/2005") and Criminal Motion No 8 of 2005 ("CM 8/2005"), which were to be heard together with his appeal. CM 6/2005 was an application to amend his original petition of appeal to include an additional ground, namely, that he did not have a case to answer at the close of the prosecution's case in the District Court. CM 8/2005 was an application to adduce fresh evidence

which was a certified true copy of a classified advertisement in the Straits Times issue of 21 November 2001 and obtained from Singapore Press Holdings Limited. The purpose of that application was to show that an exhibit of a Straits Times advertisement which had been tendered by Mdm Heng and/or her husband Tan Hock Hai ("Tan") in the District Court proceedings as having been published on 21 November 2001 was not in fact published on that date ("the disputed advertisement") and to show the actual advertisement published on that date.

8 At the commencement of the hearing of Tee's appeal in which Tee was represented by counsel, Tee withdrew CM 6/2005. He proceeded with CM 8/2005 and the appeal. Both were dismissed by the High Court on 28 June 2005. After Tee served his sentence, he took various steps as I shall elaborate below.

9 On 9 March 2006, Tee filed Criminal Motion No 5 of 2006 ("CM 5/2006") for an extension of time to apply for certain questions of law of public interest to be reserved for the decision of the Court of Appeal under s 60(1) SCJA. Under s 60(2), Tee was to have applied within one month of the High Court decision on 28 June 2005 or such longer time as the Court of Appeal might permit. On 27 March 2007, the Court of Appeal dismissed this application. Its judgment is [2006] SGCA 16. I need set out only paragraphs 6 to 9 of that judgment:

> 6 It appeared that the applicant was aware that to bring an application under s 60(1) he had to show that there was a point of law of public interest to be determined. He set out not one, but 11 alleged points of law in his affidavit, and from each of these points he further subdivided them into almost 40 alleged questions of law. It is not necessary to set out all of them because at this stage, the relevance of a point of law of public interest if it was manifest from the application, would be taken into account in deciding whether to allow the applicant's extension of time. As it were, none of the questions could be of public interest. There is a clear and strong distinction between a point of law and a point of law of public interest. In the former, the point of law would only be of interest to the applicant himself. A point of law of public interest within the meaning of s 60(1) means a question of law, the determination of which would have a general application to all future cases in which the same point might arise.
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> 7 Indeed, many of the questions raised were questions of fact. A great number of points related to the Small Claims Tribunal's adjudication in the applicant's favour in the claim brought by his company against one Mdm Heng Siew Ang ("Mdm Heng") for commission payable in relation to a tenancy agreement. Mdm Heng had alleged that there existed a co-broking arrangement, but the Small Claims Tribunal found otherwise. It was a letter of undertaking allegedly signed by Mdm Heng, produced and relied upon by the applicant's company in the proceedings before the Small Claims Tribunal, that became the subject matter of a charge of giving false evidence. The applicant was subsequently charged with falsely testifying before the Small Claims Tribunal that he had witnessed Mdm Heng signing the letter of undertaking. Mdm Heng maintained before the Small Claims Tribunal and the District Court that her signature on the letter of undertaking had been forged. The questions raised as to whether the Small Claims Tribunal or the District Court was right as to whether the letter of undertaking was actually signed by Mdm Heng or whether the applicant had truly seen her sign it, were matters of fact. The applicant further complained of the fact that the District Court had made a ruling against him in spite of the findings by the Small Claims Tribunal in his favour. The applicant appeared not to see that the issues were different. The issues in his criminal trial arose from the events in the Small Claims Tribunal and, therefore, were matters of fact. Furthermore, the issues in his criminal trial and consequently on appeal were very narrow in that they related to the question as to whether he had been rightly charged and convicted of giving false testimony before the Small Claims Tribunal. Another question raised, apparently as to whether the applicant's statements recorded by the investigating officer, which

were admitted as prosecution evidence in his criminal trial, were inconclusive or conflicting statements (Question Three), was also a question of fact.

8 These issues were dealt with at the trial and the applicant's appeal against the conviction was dismissed by the High Court. Section 60(1) permits a further appeal only on questions of law of public interest. Hence, unless the applicant was able to identify a point of law as such his application for an extension of time would fail on that ground alone.

9 As regards his other questions, even if they could be construed as questions of law, they were questions of law that were not of public interest. They were questions of law that would only be of interest to the applicant alone. For example, in Question One, the applicant queried whether, since the allegation of forgery was not substantiated in the Small Claims Tribunal, could he have been legitimately prosecuted for it in the District Court? There was no question that those were separate proceedings and the prosecution was legitimately instituted. Question Six was another way of stating the same. There the applicant stated:

> Whether a criminal conviction can be sustained in the face of a ruling by a small claims tribunal judge who has duly exercise [*sic*] the powers of adjudication and satisfied itself that there was "no evidence to substantiate the respondent [*sic*] contention that there was a co-broking arrangement".

10 In the meantime, Tee filed Criminal Revision No 8 of 2006 ("CR 8/2006") on 30 March 2006 in the High Court. This was to seek a revision of his conviction and sentence by the District Court. Also, Tee had written by letter dated 8 May 2006 to the Supreme Court to request for Criminal Motions 6 and 8 of 2005 to be heard on 19 May 2006 together with CR 8/2006. On 11 May 2006, an Assistant Registrar replied to remind him that he had withdrawn CM 6/2005 on 28 June 2005 and that CM 8/2005 was heard and dismissed on the same day. As both the motions had already been disposed of, they could not be re-heard afresh by the High Court.

11 CR 8/2006 was heard by Justice Tay Yong Kwang on 19 March 2006. At Tee's request, it was adjourned to 25 August 2006 when it was then dismissed (see *Tee Kok Boon v PP* [2006] 4 SLR 398). The judge said that although the High Court has revisionary powers over all subordinate courts, it does not have such a power over a decision of the subordinate courts which has already been upheld by the High Court on appeal and the High Court does not have revisionary powers over another High Court.

12 Tee then filed Criminal Revision No 1 of 2007 ("CR 1/2007") to seek once again a revision of his conviction and sentence as well as to cause the Attorney-General to investigate into the alleged fabrication by Tan of the disputed advertisement. On 23 March 2007, Justice V K Rajah dismissed CR 1/2007.

13 Sometime near the end of March 2007, Tee attempted to file a notice of appeal against the dismissal of CR 1/2007 but apparently it was not processed because of a defect with that notice of appeal.

14 On 21 April 2007, Tee filed Criminal Motion No 10 of 2007 ("CM 10/2007") in the High Court to seek leave to appeal to the Court of Appeal. I will elaborate on CM 10/2007 later.

15 On 16 July 2007, the present originating summons was filed by the Attorney-General.

16 I should also mention other steps which Tee took.

17 On 15 April 2005, he made a police report about the disputed advertisement.

18 On 29 December 2005, he lodged a complaint under s 133(1) of the Criminal Procedure Code ("CPC") about the disputed advertisement. On 30 December 2005, a magistrate sent a notice to the police to direct that an investigation be carried out on the allegation in the complaint.

19 By letter dated 6 July 2006, Tee wrote to the Attorney-General to request a fiat to proceed with a prosecution of Tan on the disputed advertisement. On 14 July 2006, the Attorney-General's Chambers ("AGC") replied to say that his request was not acceded to.

20 By a letter dated 26 September 2006, the police informed Tee that: "Having carefully considered the matter, and in consultation with the Attorney-General's Chambers, the Police will not be investigating further into your complaint and will close the case".

21 By letters dated 5, 9 and 12 April 2007, Tee again sought a fiat to prosecute Tan on the disputed advertisement. By a letter dated 19 April 2007, the AGC reminded him of his previous requests and rejection and said that it would no longer entertain any further request on the matter. This letter crossed with Tee's letter of 20 April 2007 which again sought a fiat to prosecute Tan.

Does s 74(1) apply to criminal proceedings?

22 The primary argument of Mr Vijayendran was that s 74(1) does not apply to criminal proceedings. For convenience, I will refer to this submission as "the narrow interpretation" and the converse as "the broad interpretation".

The United Kingdom

23 The main case cited by Mr Vijayendran for the narrow interpretation was the English case of *Bernard Boaler* [1914] 1 K.B. 21 ("*Boaler*"). In that case, the Court of Appeal had to construe the scope of s 1 of the Vexatious Actions Act 1896 ("VAA") which states:

> It shall be lawful for the Attorney-General to apply to the High Court for an order under this Act, and if he satisfies the High Court that any person has habitually and persistently instituted vexatious legal proceedings without any reasonable ground for instituting such proceedings, whether in the High Court or in any inferior Court, … the Court may … order that no legal proceedings shall be instituted by that person in the High Court or any other Court, unless he obtains the leave of the High Court or some judge thereof, and satisfies the Court or judge that such legal proceeding is not an abuse of the process of the Court, and that there is prima facie ground for such proceeding.

24 The majority of the Court of Appeal were of the view that the provision there should not be read to include criminal proceedings.

25 Kennedy L J. said at p 31 and 32:

> … Where, by the use of clear and unequivocal language, capable of only one meaning, anything is enacted by the Legislature, it must be enforced even though it be absurd and mischievous. If the words go beyond what was probably the intention effect must, nevertheless, be given to them : Maxwell on the Interpretation of Statutes, 5th ed., p.5; and see per Lord Esher M.R. in *Reg. v City of London Court*. Lord Macnaghten in *Vacher & Sons v London Society of Compositors* and Lord Haldane L.C. in *Inland Revenue Commissioners v Herbert* have recently stated the law in

almost equally stringent terms.

The present case is not that case. It is, in my view, impossible to say that the meaning of the expression "legal proceedings" is in itself and by itself clear and unambiguous. The words, taken by themselves, have a sufficient and a natural meaning if they are read as referring either to civil proceedings or to criminal proceedings; or they may be inclusive and signify both civil and criminal proceedings.

In the present contest no one contends that the words "legal proceedings" are to be read as applying only to criminal proceedings: the question is whether they ought to be read as including any but civil proceedings. It by no means follows, because the words are wide enough to do so, that they ought so to be interpreted. … We are therefore at liberty, and indeed in the performance of our judicial duty are bound, in ascertaining that which we have to try to ascertain, namely, the intention of the Legislature, to consider, in choosing between the possible interpretations, the context itself, the accord or the want of accord of one or other interpretation with well-recognized principles in regard to the interpretation of statutes, and, further, if other things are equal, the comparative reasonableness of the legislation as it is interpreted in one way or in the other. This last consideration, which I hold must be very cautiously applied, is put by Lord Esther in its strongest form in the following words : "If the words of an Act admit of two interpretations then they are not clear; and if one interpretation leads to an absurdity and the other does not, the Court will conclude that the Legislature did not intend to lead to an absurdity, and will adopt the other interpretation."

I proceed first to consider the context. The title speaks of "the institution of vexatious legal proceedings"; s. 1 speaks of a person having habitually and persistently "instituted vexatious legal proceedings" and "no legal proceedings shall be instituted." Now I have no doubt that the word "institute" may be found in use in statutes, legal text-books, and legal parlance, in reference to criminal as well as to civil proceedings. But when it is used n reference to criminal proceedings what does it denote? It denotes the commencement of the proceedings. How, in criminal proceedings, does that commencement take place? It is stated in Archbold's Criminal Pleading Evidence and Practice (24th ed.) at p.92 : "The commencement of the prosecution is the preferring of the indictment when it is sent up without a preliminary inquiry; or the laying of the information; or, it would seem, the arrest of the accused, or the application for summons or warrant in respect of the offence." Is it reasonable to suppose that the Legislature, when by this Act it gave the High Court power by order to prevent a person who had habitually and persistently instituted civil proceedings in the High Court or any inferior Court without any reasonable ground from instituting legal proceedings in the High Court or any other Court, intended that such a vexatious litigant, man or woman, should not if robbed or assaulted be entitled to give the criminal wrong-doer in charge, or to apply to a magistrate for a summons, without first going to a judge in chambers in London, or to a Divisional Court, and satisfying the judge or the Court that his proceeding is not an abuse of the process of the Court? But for the divergence of opinion in the present case, both in the Divisional Court and in this Court, I should have humbly ventured to think that the refusal of the institution of proceedings to obtain redress for a criminal wrong, however vexatiously litigious the applicant for that redress may have been, unless he first instituted an inquiry into the merits of his claim by civil proceedings in the High Court in London to get leave to institute the criminal proceedings—and this follows from the contentions of the learned Solicitor-General—was in itself sufficient to show that the construction which the appellant seeks to put upon "legal proceedings" in this statute was untenable. And in this connection it is not an unimportant consideration that in the case of indictable offences our law in the preliminary stage before the magistrate, or, if the matter goes before the grand jury, in their inquiry, has already given ample safe-guards against the further

prosecution of anything like a frivolous charge.

Passing from the use of the words "institute" and "institution" in the context, I think that on a well-known principle of construction the narrower meaning of the words "legal proceedings" is entitled to preference. The enactment is one which even in regard to civil proceedings seriously abridges the right of the subject to such redress in the Courts of law. I do not presume for one moment to question the wisdom of the abridgment. But if it includes an abridgment of the rights of the subject in regard to redress for crimes committed in regard to his person or his property, one would, I venture to think, justly expect the Legislature, instead of using words of general import, to make it quite clear that criminal proceedings were intended to be included in the enactment.

26 The other judge in the majority, Scrutton J, said in his judgment at p 36 to 40:

It cannot be denied that on the meaning put on this statute by the Solicitor-General Mr. Boaler may be robbed or assaulted in a distant county, or a lady litigant, who frequently brings vexatious actions and is restrained under the Act, may suffer the gravest wrong a woman can suffer; an unsympathetic policeman may say "It's only Boaler, or Mrs. So-and-so," and decline to take action, and the restrained litigant may be unable to obtain a warrant, or get any redress, until he or she has satisfied a judge in London, either by affidavit or personal evidence, that a wrong has been done to him or her.

I approach the consideration of a statute which is said to have this meaning with the feeling that unless its language clearly convinces me that this was the intention of the Legislature I shall be slow to give effect to what is a most serious interference with the liberties of the subject. …

The words "legal proceedings' are, in my opinion, wide enough to cover criminal as well as civil process; "instituting legal proceedings," however, seems to me a phrase much more appropriate to civil than to criminal process. A subject of the King by issuing a writ against a person within the jurisdiction institutes a proceeding which must proceed. He can serve the writ and obtain judgment by default, or compel the defendant to take part in the proceedings. A person presenting a bill of indictment to a grand jury, or applying for a summons to a magistrate, sets on foot of his own motion no proceedings which injure the accused. Nothing will happen unless the grand jury find a true bill, or the magistrate gives leave to issue the summons; and when the grand jury or the magistrate has allowed the proceedings to affect the accused, the proceeding is not the private prosecutor's. His name never, as far as I can trace, appears on the record: the title is "The King" v the accused. The King can control the whole proceedings; he can deprive the private prosecutor of any voice in them by taking over the prosecution; he can stop the proceedings by entering a nolle prosequi. …

Further, I find in the Act nothing about appeals, as I should expect to do if it related to criminal proceedings. An order restraining the vexatious litigant from taking civil proceedings, or allowing him to bring one civil proceeding, may be appealed to the House of Lords. An order restraining him from taking criminal proceedings, or allowing, or refusing to allow him to initiate one criminal proceeding, would, I think, be an order in a criminal matter which by the Judicature Act is not subject to an appeal, and if so an order refusing to allow a man or woman to endeavour to initiate proceedings in the criminal Courts in respect of a wrong alleged to be done to himself or herself would be made by a judge in the unreportable privacy of chambers without appeal. Parliament may enact this, as they may enact anything else, but I should expect words showing a clear intention so seriously to interfere with the liberties of the subject.…

In the case of this statute the Legislature clearly intends to interfere with some rights of persons, and uses words capable of extension to rights of litigation in criminal matters, but in my opinion more suitable to the subject-matter of rights of litigation in civil matters only. In my view, looking at the enacting part of the statute only, the presumption against interference with the vital rights and liberties of the subject entitles, even compels, me to limit the words to that meaning which effects the least interference with those rights. Two other matters have also influenced me in coming to this conclusion. I am influenced by consideration of the difficulty and evil which were in existence at the time this Act was passed, and which I have no doubt it was intended to remedy. The first order made under the Act of 1896 was made in January, 1897 – see *In re Chaffers* (1) – against one Chaffers who had brought, before the passing of the Act, forty-seven civil actions against the Speaker, the Archbishop of Canterbury, the Lord Chancellor, and numerous other high functionaries, without success, and without payment of costs. He had not extended his mischievous activity to criminal proceedings. I have no doubt that this was the grievance that Parliament was remedying. Secondly, s.2 of the Act contains a sub-section: "This Act may be cited as the Vexatious Actions Act, 1896." This has certainly in my mind supported the conclusion to which I have come. …

It is by no means conclusive, but it is striking that if they were intending to deal with criminal proceedings they should call their Act the Vexatious Actions Act. …

27 I come now to the judgment of the dissenting judge Buckley LJ. who said at p 28 to 30:

The words "legal proceedings" are no doubt general words, but generality is to my mind not ambiguity. The verb used in the Act is "institute." That is a word which is applicable to criminal proceedings. For instance, in s.9 of the Costs in Criminal Cases Act, 1908, occur the words "a person at whose instance the prosecution has been instituted." The expression "to institute a prosecution" is, I think, an accurate one. Colloquially "to start or to launch a prosecution" might be used, but I should not expect to find those expressions in Act of Parliament. The only other verbs which occur to me are "institute" or "begin." So far, therefore, the words of the Act seem to me to be sufficient to include criminal proceedings. Next, the proceedings which may be restrained are spoken of as proceedings in "the High Court or any other Court." By s.16, sub-s.11, of the Judicature Act, 1873, there is vested in the High Court jurisdiction in criminal matters, and s.29 speaks of "criminal jurisdiction capable of being exercised by the said High Court." Again, therefore, the words of the Act of Parliament are sufficient to include criminal proceedings in the High Court or any other Court even if the later words ought to be confined to other Courts having jurisdiction similar to that of the High Court.

The words "legal proceedings" are twice used in the Act of 1896. According to ordinary principles of construction they ought to receive the same interpretation in each case in which they are used. Ought the words, when first used to be taken to mean legal proceedings other than criminal proceedings? Let me suppose a case in which a person has habitually and persistently instituted vexatious criminal proceedings, has repeatedly alleged fictitious criminal acts, and has habitually and persistently, whether against the same person or against different persons, instituted unfounded criminal proceedings, is there any reason in the language of the Act to doubt that it is intended to give power to order that no further criminal proceedings shall be instituted by him in the High Court or any other Court ? If that habitual and persistent institution of proceedings is proved, why am I to suppose that the plain words of the Act do not intend that a stop shall be put to it? If then the words when first used include criminal proceedings the same words when next used must also include them, and the Act empowers the prohibition of criminal proceedings. If the case were one in which the persistent proceedings were civil proceedings only, it may be that the Act might reasonably have provided that a veto might be imposed upon like proceedings

only to the exclusion of criminal proceedings, and inasmuch as the words of the Act are that "no legal proceedings shall be instituted" it may be that if an order is made it must extend to both. This, I think, is not matter for me to consider in determining what is the plain meaning of the words. I find in them a provision depriving a subject under extraordinary circumstances of those which would but for this Act of Parliament be his rights as a free citizen, and I have no right to say that the Legislature ought to have imposed a smaller right of veto than it has imposed. I have only to ascertain the ordinary and natural sense of the words. Construing the Act upon those principles it seems to me that the Act extends to criminal proceedings, and I so hold,

Considerations have been urged before us based upon questions of public policy and the like. I do not think that these are admissible when the question is only as to the meaning of the words of the Act, but I will say a word upon them as they have been raised. It seems to me that this is an Act giving extraordinary powers under extraordinary circumstances. On the one side it is no doubt a grave matter that a subject should be debarred from remedy if a criminal offence be committed against him. On the other hand it is a grave matter if a person has so conducted himself as to expose himself to an order under the extraordinary powers of this Act that he should be allowed to continue his litigious insistence undisturbed. As between those two matters the Legislature, I conceive, was convinced that the latter was the more grave. The subject is not deprived of redress, but being a person such as he is proved to be he is not allowed to seek redress until he has satisfied the proper authority that the legal proceedings he desires to take are not an abuse. I cannot think that the Act intended that, if (say) a person has persistently made false accusations of criminal offences and instituted prosecutions, it should not be possible to make an order under the Act against him. It is said that under such circumstances a magistrate might refuse a summons irrespective of this Act. This seems to me to overlook two facts, first, that the magistrate might well not have knowledge of, or if he had knowledge might have great difficulty in giving effect to, the known character of the intending prosecutor, and, secondly, that if the magistrate having such knowledge did on that ground refuse a summons he would be shutting the doors of a criminal Court against the intending prosecutor without giving him the benefit of the extraordinary precautions of the present Act which allow an order to be made only if the Attorney-General upon his responsibility takes it upon himself to apply to the Court for an order.

28 Mr Vijayendran submitted that the decision of the majority in *Boaler* was followed by the Court of Appeal in *Guilfoyle v Home Office* [1981] QB 309 ("*Guilfoyle*"). However, the facts in *Guilfoyle* did not concern an application to restrain a litigant from instituting legal proceedings. The issue was whether he was "a party to … legal proceedings" in a completely different context and the majority judgment in *Boaler* was mentioned only for the point that "legal proceedings" is a general phrase which may have to be limited by its context. *Guilfoyle* is therefore of no assistance.

29 I would add that under current United Kingdom legislation, *ie,* s 42 of the Supreme Court Act 1981, as amended by s 44 of the Prosecution of Offences Act 1985, the court may restrain a litigant from instituting civil or criminal proceedings or both. However, even then, a criminal proceedings order under the English legislation has a limited scope. It is defined to mean an order that:

(a) no information shall be laid before a justice of the peace by the person against whom the order is made without the leave of the High Court; and

(b) no application for leave to prefer a bill of indictment shall be made by him without the leave of the High Court;

Malaysia

30 In Malaysia, the High Court has additional powers as are set out in the Schedule to the Courts of Judicature Act 1964 ("CJA"). The statutory power to restrain a litigant from instituting vexatious legal proceedings is found in clause 17 of the Schedule which states:

> Vexatious litigants
>
> Power to restrain any person who has habitually and persistently and without reasonable cause instituted vexatious legal proceedings in any court, whether against the same or different persons, from instituting any legal proceedings in any court save by leave of a judge. A copy of any such order shall be published in the Gazette.

31 Section 3 of the CJA defines "proceeding" to mean "any proceeding whatsoever of a civil or criminal nature and includes an application at any stage of a proceeding". In *Hardial Singh Sekhon v Pegawai Buruh & Ors* [1999] 6 MLJ 257 ("*Sekhon*"), the appellant had made a complaint against the Director General of Labour for an offence under s 166 of the Penal Code. The magistrate refused to take recognisance of the complaint on the ground that the appellant had been "restrained from instituting any legal proceedings in any court save by leave of a judge" by an order of the High Court. The magistrate found that by swearing the complaint, the appellant was instituting criminal proceedings without leave of court. The High Court agreed with the magistrate's decision. The High Court was of the view that clause 17 applies to criminal proceedings as well and distinguished *Boaler* because of s 3 of the CJA. For Singapore, there is no definition of "proceeding" or "institute" in the SCJA or in the Interpretation Act (Cap 1). I will come back later to the legislative history for Singapore and Mr Vijayendran's submission on the position in Malaysia.

Australia

32 In *re Millane* [1930] VLR 381 ("*Millane*"), the Supreme Court of Victoria considered whether s 33 of the Supreme Court Act 1928 applied to criminal proceedings. Mann J who delivered the judgment of the court, noted that the Victorian provision was adapted from the VAA after the decision in *Boaler*. However, he also noted that the background leading to the English legislation was that a litigant had persistently instituted civil proceedings without reasonable ground whereas in Victoria, the legislation was brought about by a long course of vexatious proceedings of a criminal nature. The court also did not agree that the word "institute" was not so appropriate for criminal proceedings. Thus, Mann J said at p 386 and 387:

> Turning to the judgment of Scrutton, J., who concurred with Kennedy, L.J., we find that, in his view, the word "institute" is not so appropriate to criminal as to civil proceedings, because whenever a magistrate issues a summons in a criminal matter all further proceedings are in the name of the King. It is sufficient to say that in Victoria the proceedings are not in the name of the King until after committal for trial, and counsel were not able to suggest an answer to the question: Who institutes the proceedings if the informant does not? The learned Judge lays great stress upon the serious nature of the interference with his liberty which may ensue to any person against whom an order is made extending to criminal proceedings, and he concludes his judgment with the observation that ample remedy is provided for the grievance in respect of which Parliament was legislating by putting this narrow construction on the general words used. As already explained, the whole of this ground of judgment disappears in Victoria.
>
> The truth seems to be that the English section, designed to apply a convenient remedy for a particular ill, was held, notwithstanding the generality of its language, to be confined to its particular purpose. The same section in effect has been adopted in Victoria as a remedy for a different ill. Whether that remedy will prove at all convenient for its new purpose we venture to

doubt, but on the question of construction we cannot entertain any doubt that the general language of the section clearly applies to the class of legal proceeding which gave rise to its enactment. If it were necessary to say anything more on this head we should be content to adopt in its entirety the reasoning of Buckley, L.J. in his dissenting judgment in the case discussed.

33 Accordingly, the Supreme Court in *Millane* did not confine the Victorian legislation to civil proceedings.

34 In *Attorney-General v Van Reesema* [1986] 43 SASR 170, O'Loughlin J of the Supreme Court of South Australia considered whether s 39(1) of the Supreme Court Act 1935-1982 was confined to civil proceedings. That provision states:

> If, on an application made by the Attorney-General under this section, the court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings whether in the Supreme Court or in any inferior court, and whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall, without the leave of the court or a judge thereof, be instituted by him in any court, and such leave shall not be given unless the court or judge is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

O'Loughlin Jobserved that the Victorian legislation and its South Australian counterpart was modelled on s 51 of the English Supreme Court of Judicature (Consolidation) Act 1925 and not the 1896 legislation as Mann J had suggested. The difference between the 1896 and 1925 legislation is not material for our present purposes.

35 O'Loughlin J also said that the South Australian legislation was not, to his knowledge, brought in to strike down any particular mischief, whether of a civil or criminal nature. He concluded that criminal proceedings were not excluded from the South Australian legislation. Interestingly, he said at p 174 and 175:

> The final reason identified by Mann J. which led the Court of Appeal [in *Boaler*] to read down "legal proceedings" as meaning "civil proceedings" was that "an Act seriously abridging the right of a subject to redress in the Courts should be given as strict and limited construction as possible". I respectfully agree with this statement of principle – and s 39 does seriously abridge the rights of the subject; but in determining the rights that are abridged, I do not see the logic in excluding criminal proceedings when the intended litigant not only has the right to apply to this Court for leave, but also has the right to request the police to institute the prosecution at the request of the intended litigant. Such an argument would, in my opinion, militate in favour of a finding that legal proceedings excludes "civil proceedings" – not "criminal proceedings". But it is too late for such a point to be raised now.

36 Mr Vijayendran submitted that the suggestion that an intended litigant can request the police to institute a prosecution is not cogent for various reasons. His first two reasons overlapped. He submitted that asking the police to do so may amount to a contempt of an order made by the High Court and would allow the intended litigant to do through the back door what he could not do through the front door. I do not agree. Assuming there is power to make an order to restrain an intended litigant from instituting criminal proceedings, such an order will be directed at the intended litigant because he has habitually and persistently and without any reasonable ground instituted vexatious criminal proceedings. Such an order is not *per se* directed at the police. They are free to institute

such proceedings.

37 The third reason from Mr Vijayendran was that such a suggestion would go against the very mischief of the order to be made because the intended litigant would then harangue the police. While I accept that the intended litigant may then harangue the police, that is quite different from saying that the order, if made, would go against the very mischief it seeks to address. If the police are harangued because the intended litigant makes a nuisance of himself, then they will have to address the problem in some other way.

38 There is one point I would like to mention here. It may also be argued that the need for a s 74(1) order is greater for criminal proceedings than for civil proceedings because in civil proceedings, there is an inherent check, *ie*, the liability of the intended litigant to pay costs whereas costs are not always ordered against an unsuccessful litigant in criminal proceedings. Indeed, in criminal proceedings instituted by the Attorney-General, costs are not usually ordered against an accused person.

39 Mr Vijayendran referred to s 402 of the CPC 1985 Edition, Cap 68 to persuade me that sanction was provided for elsewhere in the context of vexatious criminal proceedings. S 402 (1) and (2) CPC states:

> 402-(1) If in any case a Magistrate's Court acquits the accused and is of opinion that the prosecution was frivolous or vexatious it may, in its discretion either on the application of the accused or on its own motion order the complainant or the person on whose information the prosecution was instituted to pay to the accused, or to each or any of the accused where there are more than one, such compensation not exceeding $50 as the court thinks fit:
>
> Provided that the Court –
>
> (a) shall record and consider any objections which the complainant or informant may urge against the making of the order; and
>
> (b) shall record its reason for making the order.
>
> (2) Whenever in like circumstances an accused is acquitted by the High Court or a District Court, the Court may, in addition to exercising the powers conferred on a Magistrate's Court by subsection (1), order the complainant or informant to pay to the accused, or to each or any of them, the full costs, charges and expenses, to be taxed by the Registrar or District Judge, incurred by the accused in and about his defence.

40 As can be seen, the sanction for vexatious prosecution in the Magistrate's Court is only a compensation not exceeding $50. Besides, the ambit of s 402(1) and (2) does not cover the situation which the Attorney-General is at present concerned with. The ambit of those provisions apply where, for example, a vexatious prosecution is instituted on the basis of a complaint or information from an individual and not where an individual continues to challenge a conviction after all avenues of appeal are exhausted.

41 I would add that even in civil cases, the costs factor can only go so far as a deterrent and there may well be cases where it will not deter a vexatious litigant. Furthermore, the victim will find little comfort even if he is reimbursed costs which he should not have had to incur in the first place.

42 Mr Vijayendran also submitted that the decision in *Millane* was subsequently overruled in *Kay v*

AG, an unreported judgment of the Court of Appeal in Victoria. That case centred on s 21(2) of the Supreme Court Act 1986. According to the judgment of Chernov JA at [6] and [7]:

> [6] The relevant terms of s21 are to the following effect.
>
> (a) Subs(1) enables the Attorney-General to apply to the Supreme Court for an order declaring a person to be a vexatious litigant.
>
> (b) So far as is relevant, subs(2) provides that the Court may make an order declaring a person to be a vexatious litigant if it is satisfied that the person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings in the Court, an inferior court or a tribunal against the same person or different persons.
>
> (c) Subs(3) empowers the Court to order that the vexatious litigant must not, without leave of the relevant court or tribunal, continue or commence any legal proceedings in the relevant court or tribunal.
>
> (d) Subs(5) empowers the Court "at any time to vary, set aside or revoke an order made under subs(2) if it considers it proper to do so".
>
> (e) Subs(7) states that "the Court, when exercising a power under this section, must be constituted by a Judge".
>
> [7] Given that "proceeding" is defined in s3(1) of the Act so as to exclude criminal proceedings, the better view is that any order that the Court might make under subs(3) cannot relate to such proceedings.

43 Footnote 1 of the judgment mentioned that *Millane*, which was decided on the original Victorian provision, was thus reversed. I have not been able to ascertain whether the original Victorian provision had s 3(1) of the 1986 Act and it may be that *Millane* was reversed only by subsequent legislation.

44 In *Attorney-General (NSW) v Bhattacharya* [2003] NSWSC 1150 ("*Bhattacharya*"), and *Attorney-General (NSW) v Betts* [2004] NSWSC 901 ("*Betts*"), both of which are not reported, the Supreme Court of New South Wales made orders against vexatious litigants in respect of civil or criminal proceedings. However, it may be that there was no argument in those two cases about the narrow and broad interpretation. There, s 84(1), (3) and (4) of the Supreme Court Act 1970 states:

> (1) Where any person (in this subsection called the vexatious litigant) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings, whether in the Court or in any inferior court, and whether against the same person or against different persons, the Court may, on application by the Attorney General , order that the vexatious litigant shall not, without leave of the Court, institute any legal proceedings in any court and that any legal proceedings instituted by the vexatious litigant in any court before the making of the order shall not be continued by the vexatious litigant without leave of the Court.
>
> (2) …
>
> (3) The Court may from time to time rescind or vary any order made by it under subsection (1) or subsection (2).

(4) Where the Court has made an order under subsection (1) or subsection (2) against any person, the Court shall not give that person leave to institute or continue any proceedings unless the Court is satisfied that the proceedings are not an abuse of process and that there is prima facie ground for the proceedings.

Canada

45 In *Mortimer v Barrisove* [1977] 6 WWR 383 ("*Mortimer*"), Hutcheon J of the British Columbia Supreme Court considered s 84 of the Supreme Court Act R.S.B.C. 1960, c 374 which states:

84. If, on an application made by any person under this section, the Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the Supreme Court or in any other Court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall, without leave of the Court, be instituted by him in any Court.

In a very brief judgment, he said at p 384:

It is my opinion that there is no jurisdiction under s. 84 to make an order preventing a person from using whatever procedures are open to him in criminal matters. For example, he may lay an information before a justice pursuant to s. 455.1 [en. R.S.C. 1970, c. 2 (2nd Supp.), s. 5] of the Criminal Code, R.S.C. 1970, c. C-34, and it is for the justice of the peace to determine whether or not to issue a summons. Section 84 of The Supreme Court Act was never intended to interfere with that process or with the discretion conferred upon the justice of the peace.

Section 83 of The Supreme Court Act seems to support the view I have expressed. That section reads:

"83. Nothing in this Act shall be deemed to affect the practice or procedure in criminal matters".

46 That decision was followed by the Ontario Court of Appeal in *Foy v Foy* (No. 2) [1979] 26 OR (2d) 220 ("*Foy*"). The court there was considering s 1(1) of The Vexatious Proceedings Act, R.S.O. 1970, c. 481 ("VPA") which states:

1. (1) Where upon an application made by way of originating notice according to the practice of the court and with the consent in writing of the Minister of Justice and Attorney General a judge of the Supreme Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings in the Supreme Court or in any other court against the same person or against different persons, the judge may order that no legal proceedings shall, without leave of the Supreme Court or a judge thereof, be instituted in any court by the person taking such vexatious legal proceedings, and such leave shall not be given unless the court or judge is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

47 Mr Vijayendran referred to a part of the majority judgment of Chief Justice Howland and submitted that the Ontario Court of Appeal concluded that "legal proceedings" there did not apply to criminal proceedings. However, it is important to bear in mind the reasons. I set out below the relevant extract from p 229:

Under s.91(27) of the British North America Act the Parliament of Canada has exclusive

jurisdiction over the criminal law, including the procedure in criminal matters. Under s. 92(14) the Legislature of Ontario has exclusive jurisdiction over the administration of justice in the Province, including the constitution of courts, civil and criminal, and including procedure in civil matters in those courts. There is a presumption that a legislative body does not exceed its powers under the constitution: Driedger, The Construction of Statutes at p.167. More specifically, the "reading down" doctrine requires that general language in a statute be construed more narrowly so as to keep it within the permissible scope of legislative power: Hogg, Constitutional Law of Canada at p.90. In my opinion the words "legal proceedings" in s.1(1) of the Act do not include criminal proceedings, and the seven charges of assault laid by the husband against the wife should not have been considered in the application under s.1(1) of the Act. I am fortified in this conclusion by the reasons of Hutcheon, J., in Mortimer v. Barrisove, supra, that the proceedings are not really initiated by the private prosecutor, but rather the justice determines whether a summons will be issued. I am also cognizant of the powers of Crown counsel to intervene in private prosecutions as discussed in Re Bradley et al. and The Queen (1975), 9 O.R. (2d) 161.

48 As can be seen, one of the reasons was the division of power between federal and state courts. Another reason was Hutcheon J's decision in *Mortimer* which in turn referred to yet another provision, *ie*, s 83 which is not found in the SCJA.

49 I would add that the majority of the Ontario Court of Appeal were also of the view that the relevant provision there did not apply to appellate proceedings and to interlocutory proceedings, whereas Blair JA dissented on the non-application to appellate and interlocutory proceedings. I will elaborate on these points later.

50 Mr Vijayendran also drew my attention to the recent Canadian case of *British Columbia (Attorney General) v Lindsay* [2007] BCCA 165 which, he suggested, appeared to go against his submission for the narrow interpretation. That case dealt with s 18 of the Supreme Court Act, R.S.B.C. 1996, c 443. S 18 states:

If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

51 On 10 January 2006, Bearnes J declared Mr Lindsay a vexatious litigant and ordered that he:

must not, without leave of the court, institute or commence legal proceedings in any British Columbia court, nor file applications in any existing legal proceedings in any British Columbia court without leave of the court; …

52 Mr Lindsay raised various arguments before the Court of Appeal, the first of which was that s 18 applies only to civil cases. Huddart J.A., who delivered the judgment of the Court of Appeal, dealt primarily with the third argument which is not material for our present purposes. As regards the first argument, he said at [29] and [30]:

[29] The problem underlying Mr Lindsay's submission is that the order of Bearnes J makes no reference to criminal proceedings and is not to be assumed to apply to such matters as filing a private information under the provisions of the Criminal Code or making full answer and defence to a criminal charge. It does not preclude him from defending a civil action or responding to an application or petition. It does preclude him from commencing a legal proceeding, whether by

writ, petition or application, whether originating or in a continuing proceeding without leave of the court.

[30] A great many of the proceedings Mr Lindsay instituted in the Provincial Court and the Supreme Court would properly fall within the terms of her order, either because he was instituting a civil action, attempting to use a criminal process to obtain a civil remedy, or attempting to use a civil process to obtain relief in a criminal or quasi-criminal proceeding, and doing so on grounds without any merit. The order, as I read it, appears to be well within the powers afforded to the Supreme Court by s 18 of the Supreme Court Act and the inherent power of that court as understood and applied by this Court in s. *v s.* [1998] B.C.J. No 2912 and *Household Trust*. In this regard, I note that the administration of justice is a head of provincial power set forth in s 92 of the Constitution Act and that the Supreme Court is a court of original jurisdiction, and "has jurisdiction in all cases, civil and criminal, arising in British Columbia": Supreme Court Act, R.S.B.C. 1996, c 443 s 9.

The court's decision

53 According to the submission of the Solicitor-General, the origin of s 74(1) is section 1 of the VAA. The original Courts Ordinance of the Straits Settlements contained no equivalent. Section 1 was introduced into Singapore when the CJA came into force on 16 March 1964. The CJA continued in force in Singapore even after independence until the SCJA replaced it on 9 January 1970. The history of the English provision is set out by Sir Anthony Clarke MR in his keynote address to the Conference on Vexatious Litigants held in Italy in 2006.

54 As mentioned in [31], the definition of "proceeding" in section 3 of CJA refers to "any proceeding whatsoever of a civil or criminal nature". If, as appears to be the case, clause 17 of the schedule of the CJA applies to criminal proceedings as well as civil, then this would be the position in Singapore at least until the SCJA came into force. Furthermore, if s 74(1) does not apply to criminal proceedings, then this would mean that a change was effected on this point when the SCJA came into force.

55 Mr Vijayendran suggested that there was no change because in Malaysia, the position was that clause 17 does not apply to criminal proceedings. Notwithstanding the definition in section 3 of "proceeding" and *Sekhon*, Mr Vijayendran submitted that "proceeding" in section 3 did not have the same meaning as "legal proceedings" in clause 17. He said that the words in clause 17 were taken from s 1 of the VAA and so should be accorded the same ambit as was decided in *Boaler.* He also suggested that the additional word "legal" may have been deliberately added by the Malaysian Parliament so that "legal proceedings" in clause 17 does not have the same meaning as "proceeding" in section 3.

56 I do not agree that the word "legal" was deliberately added to clause 17 to make the distinction suggested. If such a distinction were deliberately intended, it would have been effected by clear words instead of by the vague manner suggested. I am of the view that "legal" was inadvertently added in clause 17. The correctness of the decision in *Sekhon* on this point has not been doubted so far.

57 However, Mr Vijayendran then suggested that, if clause 17 was extended to criminal proceedings as well as civil, then perhaps the SCJA did effect a change for Singapore. For this submission, he relied on the speech of Mr E.W. Barker, the Minister for Law and National Development in Parliament on 12 June 1969:

> Sir, the Supreme Court of Judicature Bill now before the House, as its very name suggests, provides a proper basis for the administration of justice in our Courts which should really have been introduced soon after we left Malaysia. Unfortunately, the many and varied Problems which we had to deal with upon leaving Malaysia had forced us to continue with the existing system of administration of justice until the present day. All that the Bill purports to do is to set out logically the consequences that flow from our becoming independent on our own with an independent system of administration of justice separate from the system that was introduced while we were part of Malaysia and which had since continued in use. Such anachronistic references to the Federal Court of Appeal, for example, would be done away with. The Supreme Court now consists of the Court of Appeal, the Court of Criminal Appeal and the High Court. The Bill generally does no more than to revert to the position obtaining before we joined Malaysia. The powers of jurisdiction of the Supreme Court are the same as heretofore, before we joined Malaysia and after we left Malaysia. There are some minor amendments to the law which can be regarded as technical and which generally relate to drafting technique. Apart from these minor changes, there is the introduction of a new provision in Part VII which deals with miscellaneous matters. This new section empowers the High Court to declare any person who is habitually and persistently and without any reasonable cause instituting legal proceedings as a vexatious litigant, whereupon such person may be prevented from instituting legal proceedings without first obtaining the leave of the High Court. Such application to the High Court to have a person declared a vexatious litigant can only be made by the Attorney-General.
>
> Needless to say, the Bill would be very welcome by all who practise the law as well as those who administer it. One could say, therefore, that this Bill has been long overdue and would set right on a proper basis the administration of justice in our Courts. No more have the records of appeal for the purposes of conformity with the existing law to be sent up to the Registry of the Federal Court in Kuala Lumpur as it is even now being done. The Court would carry on its proceedings in the same manner but without all the anachronistic carry-over of a system which prevailed when we were a state of the Federation.

58 Mr Vijayendran submitted that firstly, because the Minister mentioned the abandonment of anachronistic references and secondly, because the SCJA did not adopt the definition of "proceeding" found in s 3 CJA, Singapore did not follow Malaysia. I would add that the Minister's mention that s 74 was a new section could be added to lend weight to this submission.

59 However, it is clear to me that when the Minister referred to anachronistic references, he was not referring specifically to vexatious litigant legislation but to the fact of Singapore's independence which made references to the Malaysian system of administration anachronistic.

60 In so far as the Minister mentioned that there was a new section on vexatious litigants, it seems to me that this might have been an oversight because in the CJA, the provision on vexatious litigants is, as I have said, in the schedule and not in the main body of that Act. There was vexatious litigant legislation applicable to Singapore. On the other hand, the reference to a new section might have been because the terms of such legislation, when enacted specifically for Singapore in the SCJA, were different from those in clause 17 of the schedule to the CJA. (see [30]). The terms of s 74(1) are closer to s 51(1) of the English Supreme Court of Judicature (Consolidation) Act 1925 and the amendment by the English Supreme Court of Judicature (Amendment) Act 1959. S 51(1) states:

> (1) If, on an application made by the Attorney-General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior Court, and whether against the same person or against different persons, the Court may, after hearing that

person or giving him an opportunity of being heard, order that no legal proceedings shall without the leave of the High Court or a Judge thereof be instituted by him in any Court and that any legal proceedings instituted by him in any Court before the making of the order shall not be continued by him without such leave and such leave shall not be given unless the Court or Judge is satisfied that the proceedings are not an abuse of the process of the Court and that there is prima facie ground for the proceedings.

61 The English amendment in 1959 added the following words after the words "in any court" in s 51(1), "and that any legal proceedings instituted by him in any court before the making of the order shall not be continued by him without such leave".

62 I would add that the English 1959 legislation also amended s 31 of the English 1925 legislation so that no appeal shall lie from an order refusing leave for the institution or continuance of legal proceedings. This is similar to our s 74(3).

63 As for the non-adoption of the definition of "proceeding" in s 3 CJA, I am of the view that this is neither here nor there. After all, "proceeding" in other provisions of the SCJA clearly refers to both civil and criminal proceedings even without that definition. I will elaborate later on these other provisions.

64 In summary, I do not think that the Minister's speech or the non-adoption of the definition of "proceeding" assists to advance the case for the narrow or the broad interpretation.

65 Mr Vijayendran also submitted that it would be anomalous for a restraining order made under s 74(1) to extend to criminal proceedings when the application to obtain the order is made via civil proceedings through an originating summons procedure. It seems to me that even if s 74(1) were explicitly stated to apply to civil and criminal proceedings, the originating summons procedure would still be applicable. In any event, the anomaly, if at all any, is not one of substance.

66 In Singapore, an individual can make a complaint or give information which may cause a Magistrate to issue a summons or a warrant. Furthermore, as the Solicitor-General stressed, it is also possible for an individual to institute private prosecutions against another even though the Attorney-General can always step in. Where such private prosecutions are undertaken, neither the state nor the Attorney-General is named. Two examples of the last point were *Jasbir Kaur v Mukhtiar Singh* [1999] 2 SLR 349 and *Cheng William v LooNgee Long Edmund* [2001] 3 SLR 581. Also, in the second case mentioned, Chief Justice Yong Pung How had referred in paragraphs 4 and 18 of his judgment to a party having "instituted" a private summons against another.

67 Mr Vijayendran, however, argued that the institution of criminal proceedings was the purview of the Attorney-General alone. He relied on Article 35(8) of the Constitution of the Republic of Singapore which states:

> "The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence".

68 Article 35 deals with the office of the Attorney-General and matters incidental thereto such as the appointment of the Attorney-General, his duties and powers. I am of the view that while Article 35(8) states his power to institute proceedings for any offence, it does not preclude others from instituting criminal proceedings as may be prescribed by written law. The Attorney-General has overall control over criminal proceedings. As mentioned, the Attorney-General may intervene even in private prosecutions.

69 Furthermore, the words in Article 35(8) also show that "institute" is a verb that is appropriate to describe the commencement of criminal proceedings.

70 Mr Vijayendran also argued that in view of Article 35(8), there was a doubt whether a provision which allows the court the discretionary power to restrain a litigant from instituting criminal proceedings is constitutional. Significantly, no case was cited to me from any jurisdiction to suggest that such a statutory power would be unconstitutional in similar circumstances. In any event, I see nothing incompatible between the court's power under s 74(1) and the attorney-general's power under Article 35(8) if s 74(1) were to include criminal proceedings. They cover completely different situations. It is not as though Article 35(8) gives every individual the right to institute criminal proceedings.

71 The Solicitor-General also submitted that other provisions in the SCJA, *ie*, sections 8(2), 8(3) and 30(3) suggest that "legal proceedings" in s 74(1) should be given the broad interpretation. To facilitate a better understanding of his submission and my views, I set out below, s 8(1) to 8(3) and s 30(1), (3) as well as (4) below:

> 8.-(1) The place in which any court is held for the purpose of trying any cause or matter, civil or criminal, shall be deemed an open and public court to which the public generally may have access.
>
> (2) The court shall have power to hear any matter or *proceedings*or any part thereof in camera if the court is satisfied that it is expedient in the interests of justice, public safety, public security or propriety, or for other sufficient reason to do so.
>
> (3) A court may at any time order that no person shall publish the name, address or photograph of any witness in any matter or *proceeding* or any part thereof tried or held or to be tried or held before it, or any evidence or any other thing likely to lead to the identification of any such witness.
>
> 30.-(1) The civil and criminal jurisdiction of the Court of Appeal shall be exercised by 3 or any greater uneven number of Judges of Appeal.
>
> …
>
> (3) No Judge of Appeal shall sit as a member of the Court of Appeal on the hearing of, or shall determine any application in *proceedings* incidental or preliminary to -
>
> (a) an appeal from a judgment or an order made by him;
>
> (b) an appeal against a conviction before him or a sentence passed by him; or
>
> (c) the consideration of any point reserved by him under section 59.
>
> (4) Section 10A shall apply in relation to *proceedings* before the Court of Appeal as it applies in relation to *proceedings* before the High Court.
>
> [emphasis added]

72 The Solicitor-General's point was that "proceedings" or "proceeding" in s 8(2), (3) and 30(3) (and presumably s 30(4) as well, which deals with assessors) clearly include criminal proceedings.

Therefore, "legal proceedings" in s 74(1) should be construed accordingly.

73 I accept that this submission does lend some weight in favour of the broad interpretation. The other arguments for or against a particular interpretation have been canvassed in the judgments in *Boaler* and other cases. I do not propose to repeat all of them.

74 S 9A of the Interpretation Act states, "In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object".

75 The purposive approach was the Solicitor-General's strongest argument. Once the purpose of s 74(1) is considered, the answer becomes clear. As in the South Australian context, s 74(1) was not enacted to strike down any particular mischief. Nevertheless, the purpose of s 74(1) must surely be to prevent an abuse of the process of the courts. As has been said repeatedly, the problem with vexatious litigation is that it diverts the court's resources from dealing with meritorious disputes. I would add that it also diverts the attention and resources of the respondent and is oppressive. Accordingly, it must be clear that to adopt the narrow interpretation would not promote the purpose of s 74(1). As Buckley L.J. put it in *Boaler*, if it is established that a person has been habitually and persistently undertaking criminal proceedings, why should not a stop be put to this?

76 The strongest argument in favour of the narrow interpretation is that a litigant is being deprived of a right which he is otherwise entitled to but there are a number of answers to this, especially in the context of the facts before me.

77 First, an order under s 74(1) does not deprive a litigant the right of access to justice absolutely but qualifies the exercise of that right. He can do what he proposes to do if he first obtains leave of the court.

78 Secondly, the majority in *Boaler* were concerned about an order with a broader ambit than the one which I was minded to make if I had the power to do so. Perhaps they assumed that only an order in wide terms could be made. Indeed, Buckley L.J. seemed to think that if an order were to be made, it must extend to both criminal and civil proceedings, see [27]. Before me, both the Solicitor-General and Mr Vijayendran accepted that I was not obliged to make an order in the wide terms originally sought. On my part, I am of the view that I may make an order in much narrower terms. As I mentioned, although the initial relief sought was in wide terms, the Attorney-General is prepared to accept a narrower order. Seen in that context, what complaint can Tee legitimately have? If the order to be made is confined to criminal proceedings relating to his conviction, can it be said that Tee has been deprived of his right if in fact he has already exercised his right and exhausted it?

79 In [35] of Sir Clarke's address, he said:

> Finally, it can justifiably be said that vexatious litigation does not in any event engage the right of access to justice. It does not because that right is the right to have genuine disputes properly and carefully adjudicated on their merits. The dispute which the vexatious litigant brings is in most cases one which has already been carefully and properly adjudicated. The vexatious claim is one which seeks to reopen or relitigate a dispute that has already been properly disposed of by the courts. The vexatious claim is thus one which abuses the court's process. The right of access to justice is not a right to abuse the court's process. Restrictions placed on an individual's ability to bring abusive proceedings cannot therefore infringe the right of access to justice.

80 Sir Clarke also said succinctly in [1] of his address: "[Restrictions] may restrict access to justice but they do not infringe the right of access to justice".

81 Thirdly, I am aware that a broad interpretation will mean that s 74(1) can be used to obtain an order in terms wider than the one I am considering for the present application. However, it is for the applicant to persuade the court that a wider order be made and if the applicant can establish such a case, then I see no reason why the appropriate order should not be made. As was mentioned by Mann J in *Millane*, the person against whom such an order is made would only have himself to blame.

82 I therefore rule in favour of the broad interpretation, *ie*, that s 74(1) applies to both civil and criminal proceedings.

Does s 74(1) apply to proceedings in the Court of Appeal?

83 I come now to another issue which was raised in the course of arguments before me. Mr Vijayendran submitted that proceedings which Tee had initiated before the Court of Appeal after his appeal to the High Court had been dismissed should not be taken into account because of the qualifying phrase "whether in the High Court or in any subordinate court" in s 74(1). If Mr Vijayendran were right, then his argument might also mean that the ambit of the court's power under s 74(1) does not extend to an order to preclude Tee from filing proceedings in the Court of Appeal.

84 If I were to look only at the terms of the first part of s 74(1), I would be inclined to agree with Mr Vijayendran's submission on this point. I say this not only because of the qualifying phrase but also because of the reference in s 74(1) to the institution of vexatious legal proceedings. It seems to me that the word "institute" is more apt to refer to an originating process and not to an appeal. That is why, in my view, the first part of s 74(1) refers to the institution of proceedings "whether in the High Court or in any subordinate court". These are courts with original jurisdiction although, for example, the High Court also has appellate jurisdiction. It seems to me that Parliament had in mind the institution of legal proceedings in courts with original jurisdiction and might not have considered whether proceedings in the Court of Appeal, or, for that matter, interlocutory proceedings should be excluded.

85 I have considered a possible argument that the reference to any subordinate court in the qualifying phrase is meant to obviate any doubt as to whether s 74(1) applies to inferior courts. However, if the qualifying phrase is to obviate any doubt in respect of inferior courts, why does it not also in the same vein obviate any doubt with respect to the Court of Appeal?

86 I am aware that under s 74(1) (a) and (b), the High Court may order that a person shall not institute and shall not continue with proceedings "in any court". However, it seems to me that these words are in turn to be consistently interpreted by the meaning to be attributed to the first part of s 74(1). If the High Court is not to take into account proceedings in the Court of Appeal for the purpose of making an order under s 74(1), then it is also not to make any order restricting the right to file proceedings in the Court of Appeal. I should mention that in *Boaler*, Buckley L.J. was of the view that "any other Court" in s 1 of the VAA ought to be confined to other courts having jurisdiction similar to that of the High Court (see [27] again).

87 In *Bhattacharya*, Whealy J of the Supreme Court of New South Wales was of the view that the phrase "whether in the Court or in any inferior Court" in s 84(1) of the Supreme Court Act (which is set out in [44]) means the Supreme Court of New South Wales and any New South Wales inferior court. However, the rest of Whealy J's judgment suggests that he was making the point that the provision there does not apply to other tribunals such as the Industrial Court as opposed to excluding,

say, appeals to the High Court of Australia from the scope of the provision. It appears that the latter point was not in contention in that case. Likewise in *Betts*, when Hoeben J adopted the same interpretation as Whealy J.

88 As mentioned above, in *Foy*, Chief Justice Howland was considering s 1(1) of VPA. The terms therein are wider than those in our s 74(1) when the issue of appeals to the Court of Appeal is considered. I have set out s 1(1) in [46] above. The important phrase therein for the present discussion is "in the Supreme Court or in any other court". Notwithstanding such wide terms, Chief Justice Howland concluded that the provision did not apply to appeals or to interlocutory proceedings for that matter. Blair J.A. dissented. At p 230 to 232, Chief Justice Howland said:

> The next point to be considered is whether s 1(1) of the Act applies to interlocutory proceedings and to appeals, or whether the word "instituted" should be limited to proceedings instituted by writ of summons or by originating notice of motion or similar originating proceedings. In *Re Vernazza, supra*, the Court did not have to determine this point as there were sufficient actions or originating summonses to justify an order being made under s 51(1) of the English Act of 1925. The majority of the Court, however, expressed the view that the words "instituted … legal proceedings" did not extend to every step in an action which would lead to the granting of relief, but that the bringing of an appeal to the Court of Appeal might be regarded as a separate institution of proceedings other than an institution of proceedings in the original action.
>
> Black's Law Dictionary, 4th ed. 91951), at p. 940 defines "institute" as "To inaugurate or commence; as to institute an action". It is noted that the English Act of 1925 was specifically amended in 1959 so as to provide that where an order has been made under it, leave is required not only to institute proceedings, but to continue any legal proceedings which were instituted before the order. By drawing a distinction between "instituting" and "continuing" legal proceedings it has made it quite clear that an order can apply to interlocutory proceedings, and is not limited to a new action or a new originating notice of motion. In the same way, the failure to amend the English Act of 1925 to provide that both the institution and continuation of vexatious legal proceedings may be the basis for making an order leads to the conclusion that interlocutory proceedings cannot form the basis for such an order. …
>
> While the Act in question in this appeal has not been amended so as to draw a distinction between the institution and continuation of proceedings, in my opinion the word "instituted" in "instituted vexatious legal proceedings" in s 1(1) only applies to the commencement of an action or proceeding by writ or originating notice of motion or similar originating proceedings. It would not apply in any event to proceedings which were a response to, or a participation in, proceedings instituted by another party. …
>
> I do not consider that the Act properly applies to interlocutory proceedings instituted by the husband. Such interlocutory proceedings may in themselves be vexatious, but they cannot be the basis of an order under s 1(1) of the Act. Such proceedings can be stayed, or otherwise dealt with, by the Court under its inherent jurisdiction to prevent an abuse of its process or under Rule 126.The Act itself is limited to controlling a multiplicity of vexatious proceedings instituted by writ, or by originating notice of motion or similar originating proceedings.
>
> Caution must always be exercised in relying on the interpretation of words in other legislation. The decision of the Court of Appeal in England in *Hood Barrs v Cathcart* [1894] 3 Ch. 376, is, however, helpful. In that action the Court had to consider the words: "In any action or proceeding now or hereafter instituted by a woman …" in s 2 of the *Married Women's Property Act,* 1893 (U.K.), c 63, under which the Court might order payment of costs out of property of a

married woman which was subject to a restraint on anticipation. The issue was whether these words meant some action or proceeding in the nature of an action, initiated by a married woman as plaintiff, and did not include any motion or step made or taken by a married woman in an action in which she was a defendant. The Court held that it had no jurisdiction to order payment in the case of an appeal by a married woman in an action where she was the defendant.

> At pp 378-9, Lindley, L.J. stated:
>
> It appears to me that the word "instituted" is an important one, and that the expression "proceeding instituted" means some action in which a married woman is the actor, in the sense of having started it, and does not include motions made by a married woman who is a defendant, or appeals by a married woman who is a defendant. I do not think the language of the section is large enough to hit such a case as the present. *An appeal is not a "proceeding instituted" as the expression is understood by lawyers.* [Emphasis added].
>
> At p 379, Lopes, L.J. stated:
>
> The expression "proceeding instituted" conveys to my mind the idea of some action commenced or proceeding initiated; as, for instance, an originating summons, or any summons which is the initiation of the matter which has to be dealt with – a proceeding in which a married woman is the *first and prime mover.* [emphasis added].
>
> And again, Davey, L.J. at pp 379-80 stated:
>
> Mr Hopkinson's contention is that the words "proceeding instituted" include any motion or step taken by a married woman in an action in which she is defendant. This contention, in my opinion, is not borne out by the language of the section.
>
> It must be borne in mind that *an appeal is in reality in the nature of a defence by the person against whom an order has been made*. Now, I take it that the words "action or proceeding" must mean some action, or some proceeding in the nature of an action; that is to say, a *proceeding in which a lis is initiated*; and it appears to me that "instituted" would be an inapt word for any such proceeding as has been suggested by Mr Hopkinson. *I have never myself heard of an appeal being "instituted", and I do not suppose any one ever heard of such an expression being applied to an appeal;* whereas "instituted" is an apt word for the commencement of a suit …
>
> [emphasis added]

89 After referring to other English cases, Chief Justice Howland concluded at p 233 that "the launching of an appeal is not the institution of a separate legal proceeding within the meaning of s 1(1) of the Act".

90 On the other hand, Blair L.J. said at p 240 to 245:

> In my view, the word "institute" is of the same generic type as the word "proceeding". There is no fixed and unalterable meaning to be attached to the phrase "institute proceedings". The often-quoted comment of Martin, J.A., in Eddy v Stewart [1932] 3 W.W.R. 71 at p. 74, about the variable meaning of the word "proceeding", applies with equal force to the words "institute proceedings". He said:

> The word "proceeding" in its derivative sense, means, according to *Murray's English Dictionary*, vol. 7, at p. 1407, "the action of going onward; advance, onward movement or course." In its legal sense, it includes the form in which actions are brought and defended; the manner of intervening in suits and of conducting them; it is sometimes used as equivalent to and interchangeable with the word "action," and it is also applied to any step in an action. From the authorities it is clear that the word may be differently construed in different Acts: *Stroud's Judicial Dictionary*, vol. 3, pp. 1561 et seq.; Ratteau v Ball (1914) 47 N.S.R. 488, 15 D.L.R. 574-Townshend, C.J., at p. 576.
>
> The meaning of the word "proceeding," … must be gathered from the context.

91 He continued at p 242 to 244:

The words "instituted proceedings", in my opinion, were intended by the Legislature to describe broadly how proceedings may commence. Proceedings can be undertaken in a number of ways, including: the issuing of a writ; the making of an application; the bringing of a motion; or the launching of an appeal. The statute is intended to cover a variety of proceedings and until very recently there was no suggestion that it did not. Early decisions under the English statute do not indicate that the Courts believed that the legislation was restricted in its application only to the narrow category of actions or other originating proceedings. On the contrary, the usual and proper approach is illustrated by *Re Boater, supra,* where Buckley, L.J., at p. 25, gave a "short statement" of the history of the action, including a summary of an affidavit which provided the basis for an order under the *Vexatious Actions Act, 1896.* He said:

> The affidavit I have mentioned was one which stated that Mr. Boaler had brought, made, moved, taken out, lodged, supported or caused forty-six separate and distinct legal proceedings in connection with a company called John Esson & Son, Limited …

It is plain that the Court relied heavily, if not altogether, upon the institution of interlocutory proceedings as the justification for its order.

The precise nature of the proceedings required to justify an order under the English or Ontario Acts has never been a matter of great concern to the Courts. In most of the reported cases under the English Act, there have always been sufficient "original" proceedings to justify invocation of the Act without specific reference to interlocutory proceedings. Until *Re Vernazza,supra,* the propriety of including interlocutory proceedings does not appear to have been considered. In *Re Langton, supra,* for example, Lord Parker, C.J., while holding that interlocutory proceedings could not be taken into account in that case because they were properly brought, made no suggestion that such proceedings would not be considered in another case where they might be regarded as vexatious. The only reported case under the Ontario Act, *Re Mangouni, supra,* supports the view that interlocutory applications may be taken into account as indicated in its headnote.

Re Vernazza, supra, was an appeal to the Court of Appeal from an order declaring a person to be a vexatious litigant under the English Act. The appellant had submitted (at p. 187) "that the proper construction of the words 'instituted legal proceedings' must be the commencement of an action by a writ or other procedure, and that nothing else could be regarded as the institution of proceedings". He had harassed a company, its liquidator, its principal shareholder and his personal representative with legal proceedings extending over a 20-year period. Nevertheless, he contended there were insufficient "original" proceedings to justify a finding that he had habitually and persistently instituted vexatious proceedings. In the result, the Court dismissed the appeal.

Harmon, L.J., found it unnecessary to deal with the definition of the words "institution of legal proceedings" because, in his opinion, sufficient original proceedings had been instituted to justify the Divisional Court's decision. The other two members of the Court, Ormerod, L.J., and Wilmer, L.J., were much less explicit than Harmon,'L.J., in finding that the order could be justified on the basis of the original actions or proceedings instituted. Ormerod, L.J., at p. 188, contented himself by saying: "I think that it is beyond question that there was ample material before the Divisional Court which would justify it in exercising its discretion in the way it did in making this order". The conclusion of Wilmer, L.J., was to the same effect at p. 191. Both Ormerod and Wilmer, L.JJ., discussed what proceedings could be taken into account and, in particular, whether appeals could be considered as proceedings instituted within the meaning of the section.

Ormerod, L.J., at pp. 187-8, after referring to the narrow interpretation supported by the appellant, stated:

> The Attorney-General on the other hand submitted that the term "instituted proceedings" carried a very much wider construction than the construction for which counsel for the appellant contended. His submission was that taking any step in an action was the institution of proceedings. His junior counsel in the course of his submission to the court said that it was a step taken which, if successful, would set in train the machinery of the court with the effect that the court would grant relief or compel the other party to take a procedural step. That, of course, puts an extremely wide construction on the section, and would operate to bring within its ambit even a summons for directions. I am not prepared to put so wide a construction as that on the words of this sub-section, but I think that the words admit of a wider construction than that for which counsel for the appellant contends, which is that the words "institution of proceedings" mean nothing more than the commencement of an action by a writ.
>
> In this particular case various matters have been referred to which might or might not be said to constitute the institution of proceedings … There are appeals to this court and, if not appeals, petitions for leave to appeal, to the House of Lords. I think the question whether petitions to the House of Lords for leave to appeal amount to the institution of proceedings is a question which is very much in doubt. The question also arises whether an appeal to this court can be regarded as a separate institution of proceedings other than an institution of proceedings in the original action. It is probably unnecessary to decide that question here, but *I lean to the view that an appeal to this court from a decision of the High Court or from any other court is the institution of a separate proceeding.*
>
> [emphasis added]
>
> Wilmer, L.J., stated at p. 191:
>
> As I said at the beginning, I do not feel disposed to accept either of the propositions on which that argument rests. It seems to me that the construction of the section which we are invited to adopt by counsel for the appellant is much too narrow. At the same time, I share the view already expressed by my Lord that the alternative construction suggested to us by the Attorney-General and by his junior counsel is much too wide. I do not think that this is an occasion which makes it necessary to attempt the almost impossible task of drawing an exact line between that which does and that which does not amount to "instituting" proceedings. *I should have thought that there is much to be said for the view that, when one institutes an appeal in an action which has already been disposed of, one can fairly be said to be instituting proceedings*, even though the title of the action and its

number may be the same when it gets to the Court of Appeal as in the Court below.

[emphasis added]

It seems to me that the views of Ormerod and Wilmer, L.JJ., provide an eminently sensible guide for the interpretation of the section. It is a matter to be left to the discretion of a Court to determine whether and to what extent appeals and interlocutory proceedings may be taken into account. Much more attention would be paid, for example, to proceedings which would have the effect of determining the rights of the parties, such as a motion to rescind a judgment or motions dealing with access, maintenance or custody, than to those proceedings which would be purely procedural in character. An appeal is of the same order of importance as the former type of proceedings. The broad view which the English Courts have traditionally taken of the operation of the section, as reflected in the statements quoted, should be applied to the interpretation of the Ontario Act.

This interpretation of the Ontario Act is not affected by the amendment made to the English Act in 1959. This amendment provided that, after the making of an order, not only is a litigant precluded from instituting legal proceedings without leave of the Court, but "any legal proceedings instituted by him in any Court before the making of the order shall not be continued by him without such leave". No comparable change in the earlier part of the section was made and the grounds that justify an order remain the institution of vexatious legal proceedings. It seems to me that the simple purpose of the amendment was to prevent an anomalous situation after the issuance of an order under which a vexatious litigant might have been able to continue a proceeding which he would have been forbidden to institute. The amendment does not address the issue of what type of proceedings are encompassed by the Act.

92 Although there is in s 74(1) (a) and (b) references to the institution and the continuation of proceedings, I agree with Blair J.A. that such references do not address the issue as to what type of proceedings are encompassed under s 74(1) but were meant to avoid an anomaly. I remain of the view, for the reasons I have stated, that the correct interpretation, if based on the wording alone, would have been that proceedings in the Court of Appeal are not included in s 74(1).

93 However, once again, if a purposive interpretation were adopted, as should be the case, it is obvious to me that to exclude appeals to the Court of Appeal would not promote the purpose of s 74(1). Put in another way, if a litigant is habitually and persistently undertaking vexatious proceedings, why should he not be stopped just because such proceedings are proceedings in the Court of Appeal? If he has exhausted his right of appeal to the Court of Appeal (assuming such an avenue is available), why should he be allowed to proceed there? Furthermore, if s 74(1) were to be confined to courts of original jurisdiction, that would suggest that it applies to proceedings in the High Court where the High Court is exercising its original but not its appellate jurisdiction. That would be an anomalous situation.

94 Therefore, in my view, the qualifying phrase should be read as being illustrative and not exhaustive and "institute" does not exclude proceedings in the Court of Appeal. Accordingly, I am of the view that s 74(1) extends to proceedings in the Court of Appeal.

95 Mr Vijayendran also submitted that as Tee was the subject of the charge under s 193 of the Penal Code, he was not instituting the criminal proceedings. Therefore, any step he took and might be inclined to take would only be in response to the charge. For this submission, he relied on what Chief Justice Howland had said in *Foy* which I have cited in [88]. I do not accept that submission. Tee has exhausted his right to respond. Any attempt to re-litigate his conviction cannot be categorised as a

mere response and is caught by s 74(1) under the purposive interpretation.

Does s 74(1) apply to interlocutory proceedings?

96 I have already set out above the differing views in *Foy* of Chief Justice Howland and Blair J.A. on interlocutory proceedings.

97 In *Betts*, Hoeben J said at [6]:

> Section 84 of the Supreme Court Act 1970 is clearly directed to the removal of abuses of the processes of the Court and of hardship to persons against whom vexatious proceedings are taken. While it is probably correct to say that interlocutory proceedings taken in the course of an action instituted by another person which is still current are not within the section, I think, without endeavouring to supply an exhaustive definition, that, where a final decision has been given, any attempt, whether by way of appeal or application to set it aside, or to set aside proceedings taken to enforce such decision, which is in substance an attempt to re-litigate what has already been decided, is the institution of legal proceedings. It is to the substance of the matter that regard must be had and not to its form.

98 In Malaysia, the definition of "proceeding" in s 3 CJA "includes an application at any stage of a proceeding".

99 Taking a purposive interpretation, I am of the view that s 74(1) also includes interlocutory proceedings. Indeed, Mr Vijayendran accepted that if I were to conclude that s 74(1) extends to criminal proceedings, then s 74(1) will also extend to interlocutory applications in such proceedings.

100 I would add that although Ormerod L.J. (in *Re Vevnezza*) doubted very much whether petitions to the House of Lords for leave to appeal amounted to the institution of proceedings, I see no reason to distinguish between, say, applications for leave to appeal and the appeal itself or between an interlocutory proceeding and the main action itself or between originating proceedings and appellate proceedings for the purpose of s 74(1).

101 Accordingly, in my view, applications to the Court of Appeal for extension of time under s 60(2) SCJA to apply for any question of law of public interest to be determined by the Court of Appeal may also be taken into account under s 74(1) and may also be the subject of an order made under s 74(1). Whether any of such applications should in fact be taken into account and/or be the subject of an order under s 74(1) will depend on the facts of each case.

Has Tee "habitually and persistently and without any reasonable ground instituted vexatious legal proceedings"?

102 It must be remembered that the mere institution of vexatious proceedings does not in itself bring s 74(1) into play. The respondent must have "habitually and persistently and without any reasonable ground instituted vexatious legal proceedings".

103 In *Foy*, Chief Justice Howland said at p 226:

> The word "vexatious" has not been clearly defined. Under the Act the legal proceedings must be vexatious and must also have been instituted without reasonable ground. In many of the reported decisions the legal proceedings have been held to be vexatious because they were instituted without any reasonable ground. As a result the proceedings were found to constitute an abuse of

the process of the Court. An example of such proceedings is the bringing of one or more actions to determine an issue which has already been determined by a Court of competent jurisdiction: *Stephenson v. Garnett, [*1898] 1 Q.B. 677 at pp. 680-1; *Re Langton,* [1966] 3 All E.R. 576.

104 Blair J.A. agreed with Chief Justice Howland on this point. He also said a broad view of the proceedings as a whole must be taken.

105 In *Betts*, Hoeben J said at [8] to [10]:

[8] The courts have generally accepted the definition by Roden J of the expression "habitually and persistently" in Attorney General v Wentworth at 492:

> Habitually suggests that the institution of such proceedings occurs as a matter of course, or almost automatically when the appropriate conditions (whatever they may be) exist;
>
> Persistently suggests determination, and continuing in the face of difficulty or opposition, with a degree of stubbornness.

[9] His Honour did not attempt to formulate a definition of absolute or universal application. The concepts of "habitually" and "persistently" are ordinary English expressions and do not require precise elaboration. Nevertheless the explanation by Roden J is helpful and would cover most situations.

[10] In relation to the concept of "vexatious" Roden J in Attorney General v Wentworth at 491 said:

> 1. Proceedings are vexatious if they are instituted with the intention of annoying or embarrassing the person against whom they are brought.
>
> 2. They are vexatious if they are brought for collateral purposes and not for the purpose of having the court adjudicate on the issues to which they give rise.
>
> 3. They are also properly to be regarded as vexatious if, irrespective of the motive of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless.
>
> 4. In order to fall within the terms of s 84:
>
> > (a) Proceedings in categories 1 and 2 must also be instituted without any reasonable ground (proceedings in category 3 necessarily satisfy that requirement);
> >
> > (b) The proceedings must have been "habitually and persistently" instituted by the litigant.

106 He added at [11] and [12]:

[11] In *Jones v Skyring* (1992) 109 ALR 303 at 306, Toohey J, in considering the scope and interpretation of High Court Rules 0.63, r 6(1) observed that the question must be decided on the facts, not by reference to whether the person against whom the order is sought has acted in good faith. It is immaterial that the respondent may believe in the justice of his or her argument and may not understand that the argument has been authoritatively rejected.

[12] It is clear that the court should approach the questions involved in s 84(1) with care and

caution. The making of an order under the section effects a significant curtailment of a citizen's rights. Once satisfied that the prerequisites have been met, however, a court should act firmly and authoritatively to restrain and control new and existing vexatious litigation, to the extent the statutory power enables it to do so. There is, of course, undoubtedly a discretion whether to act or not, even where the statutory preconditions have been established.

107 Mr Vijayendran drew my attention to *Attorney-General for the State of Victoria v Michael Westin* [2004] VSC 314 where Whelan J also adopted the above formulation by Roder J but with one qualification. That qualification is not material for our present purposes and I need not elaborate on it.

108 I now go back to the proceedings which Tee has undertaken after the dismissal of his appeal by Chief Justice Yong.

109 CM 5/2006 was Tee's application for extension of time to ask the Court of Appeal to determine questions of law of public interest. Although he had set out many questions, the Court of Appeal dismissed his application. However, Mr Vijayendran submitted that the Court of Appeal did not say explicitly that the application was without merit. While that is true, it seems to me that that was effectively what the Court was saying. The questions there were either not even questions of law or were not questions of law of public interest. Nevertheless, if seen in isolation, that application would not have caused much concern.

110 However, Tee then filed CR 8/2006 to seek a revision of his conviction and sentence. As mentioned, this was heard by Justice Tay who dismissed his application which was clearly without basis. It was a blatant attempt to get one High Court judge to overrule a decision made by another High Court judge, *ie*, Chief Justice Yong.

111 Subsequently, Tee filed CR 1/2007. The primary relief sought under that application was again to obtain a revision of his conviction and sentence although in that later application, he was also seeking an order to direct the Attorney-General to investigate into the alleged fabrication of the disputed advertisement. Again, his application was dismissed by Justice Rajah.

112 Tee then filed a notice of appeal against Justice Rajah's decision which was not processed because it was defective in form. However, there was clearly no basis to file the notice of appeal.

113 I come now to the latest proceeding which Tee has instituted, that is, CM 10/2007. The reliefs sought were stated as follows:

(1) Whether Court of Appeal having jurisdiction to hear appeal under section 44(3) Supreme Court of Judicature Act (cap 322, 1999 Rev Ed).

(2) Use of fabricated evidence in the production of form of advertisement by PW1 in relation to his evidence relating to exhibit P2 during the course of trial to secure conviction.

(3) The said PW1 has clearly perjured and consequently mislead the court to my detriment, the same Tan Hock Hai had also altered or falsified document and made a false statement of statutory declaration to forestall enforcement proceeding commenced by my company against his wife consequent upon the obtaining of order of the small claims tribunal.

(4) "No case for me to answer" criminal motion 6/2005 was withdrew by my previous counsel during the appeal stage. "That the LDJ had erred in law and fact when he failed to hold that the prosecution had not made up a case against me which if unrebutted would warrant a conviction".

(5) I am humbly pleading to this Honourable Court to grant me leave, in the interest of justice which basically means that as much as a rightful conviction shall be upheld a wrongful one should be quashed.

CM 10/2007, which is filed in the High Court, has led to the present application under s 74(1). The reliefs sought were poorly drafted. Furthermore, the heading of the application and prayer 1 refer to s 44(3) SCJA which is meaningless as s 44(3) deals with appeals by the Public Prosecutor and not by an accused person.

114 Prayer 2 relates again to the use of the disputed advertisement in the trial which led to Tee's conviction.

115 Prayer 3 relates to acts of Tan in relation to the proceedings before the Tribunal and not in relation to the charge against him.

116 Prayer 4 seems to complain about Tee's counsel's withdrawal of CM 6/2005 which in turn relates to the dismissal of Tee's appeal by Chief Justice Yong.

117 Prayer 5 suggests that his conviction should be quashed.

118 In summary, it appears to me that the crux of CM 10/2007 is that Tee is seeking again to have his conviction quashed, as Mr Vijayendran accepted, although Mr Vijayendran stressed that he was not representing Tee in CM 10/2007.

119 While the number of proceedings Tee has undertaken falls far short of the number in *Boaler* and many of the other cases I have mentioned, I agree with the Solicitor-General that this is not a numbers game.

120 Looking at the proceedings which Tee has undertaken after the dismissal of his appeal by Chief Justice Yong, from a broad view, it is clear to me that he has habitually and persistently and without any reasonable ground instituted vexatious proceedings. He simply refuses to accept the finality of the decision by Chief Justice Yong. He is unable or unwilling to understand that that decision is final. He is unable or unwilling to understand that whether his allegation about the disputed advertisement is true or not, it has no bearing on his conviction. In other words, whether Tan had lied about the disputed advertisement, this is a separate point from the issue as to whether Tee had lied about witnessing Mdm Heng's signature on the letter of undertaking. He is under an illusion that unless Tan is penalised for his (alleged) lie about the disputed advertisement, then he too should not have been convicted.

121 I would add that it is not enough that Tee sincerely believes in the justice and correctness of his cause, a point which Mr Vijayendran also accepted.

122 In the circumstances, I am of the view that the Attorney-General has made out a case for an order to be made under s 74(1) against Tee.

The courts' inherent jurisdiction

123 The Solicitor-General made the alternative submission that if I were to conclude that the High Court's power under s 74(1) does not extend to criminal proceedings, the High Court's power under its inherent jurisdiction does. Mr Vijayendran submitted that the High Court has no such power under its inherent jurisdiction.

124 In the light of my conclusion on s 74(1), these submissions were academic. Indeed, one may ask whether the court's inherent jurisdiction to make a restraining order against a vexatious litigant, even if it existed, has been superseded, wholly or partly, by s 74(1) especially if the applicant is the Attorney-General. As I did not have the benefit of full arguments, I will not attempt to answer that question.

125 Nevertheless, I would like to take this opportunity to elaborate briefly on the court's inherent jurisdiction in Australia, Canada, the United Kingdom and Singapore to make a restraining order as this is an area of the law that seldom comes up for discussion in our courts.

126 Mr Vijayendran drew my attention to the decision of the High Court in Australia in *Commonwealth Trading Bank of Australia v Inglis* [1974] 3 ALR 19 ("*Inglis*"). There, the High Court expressed the view that there is no inherent power to make such a restraining order in respect of new legal proceedings and that such a power extends only to existing proceedings. The High Court observed that there was no reported case then in England or Australia in which an order in respect of new legal proceedings had been made. Although the English case of *Grepe v Loam* [1887] 37 Ch D 168 is often cited as the *locus classicus* for the court's inherent jurisdiction to make such a restraining order, the High Court considered the order made in *Grepe v Loam* to have been made in the context of existing proceedings.

127 In *Williamsv Spautz* [1992] HCA 34, the High Court of Australia was of the view that the inherent jurisdiction of Australian superior courts to stay (existing) proceedings extends to both civil and criminal proceedings.

128 As for the situation in Canada, Mr Vijayendran drew my attention to a December 2005 discussion paper of the *Law Reform Commission of Nova Scotia*. At p 9 and 10, the paper mentioned that while some Canadian courts have made decisions implying that they may make such orders of restraint under their traditional inherent jurisdiction,there was no reported decision suggesting that Nova Scotia courts were amenable to what was perceived as a wider form of inherent jurisdiction.

129 As for the position in the United Kingdom, Sir Clarke's address for the 2006 conference contains a helpful summary. Sir Clarke noted that the number of vexatious litigants and vexatious applications in the United Kingdom have increased substantially since the late 1990s. He mentioned that the *Grepe v Loam* order had been extended in various ways by three decisions of the Court of Appeal: *Ebert v Venvil* [2000] Ch 484, *Bhamjee v Forsdick & Others* (No. 2) [2004] 1 WLR 88 ('*Bhamjee*") and *Mahajan v Department of Constitutional Affairs* [2004] EWCA Civ 946. One extension was to place restrictions on a litigant's ability to seek permission to appeal orders made against him. The extensions have been modified and form part of the Civil Procedure Rules. The English orders can also be imposed against lay individuals known as MacKenzie Friends who are supposed to help litigants in court. The English court has also held that it can restrain litigants' access to court buildings and court staff where their conduct has been seriously abusive and is seriously impeding or likely to seriously impede the proper administration of justice although this power is exercised only in exceptional circumstances.

130 I would add that in *Bhamjee,* which was decided after *Inglis,* the Court of Appeal was of the view that the court does have power under its inherent jurisdiction to make a restraining order which embraces the institution of new proceedings.

131 It is true that in the Singapore case of *Chua Choon Lim Robert v M N Swami* [2000] 4 SLR 494, Amarjeet Singh JC ruled that the High Court has the power under its inherent jurisdiction to make a restraining order in the context of civil proceedings. He also said that such a power is in addition to

that under s 74(1). However, the subject matter before him was not the restraint of criminal proceedings. Neither was the subject matter before him an application by the Attorney-General under s 74(1).

Order

132 I order that no criminal legal proceedings shall without the leave of the High Court be instituted by Tee Kok Boon (NRIC No. S1829404D) with respect to his conviction for an offence under s 193 of the Penal Code and any criminal legal proceedings instituted by him in any court with respect to the said conviction before the making of this order, including CM 10/2007 filed in the High Court, shall not be continued by him without such leave, and such leave shall not be given unless the High Court is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

133 In case the order I make above turns out to be too wide or is not wide enough, I grant the parties liberty to apply.

134 If either party wishes to apply for any other consequential order, including costs, that party is to write as soon as possible to the Registrar, Supreme Court, for an appointment to be fixed to hear the parties on that application.