IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 301

Originating Summons No 675 of 2017 (Registrar's Appeal No 232 of 2017)

In the matter of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)

And

In the matter of Order 53 rule 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed)

And

In the matter of section 85(6) of the Legal Profession Act (Cap 161, 2009 Rev Ed)

Nalpon, Zero Geraldo Mario

… *Applicant*

GROUNDS OF DECISION

[Administrative Law] — [Judicial review] — [Leave]

TABLE OF CONTENTS

Re Nalpon, Zero Geraldo Mario

[2017] SGHC 301

High Court — Originating Summons No 675 of 2017 (Registrar's Appeal No 232 of 2017)
See Kee Oon J
18 September 2017

20 November 2017

See Kee Oon J:

Introduction

1 In May 2017, Mr Zero Geraldo Mario Nalpon ("the applicant") lodged a complaint with the Law Society of Singapore ("the Law Society") in respect of three lawyers who were his opposing counsel in a civil suit ("the Lawyers"). He alleged that the Lawyers were guilty of conduct unbefitting of an advocate and solicitor because of the manner in which they had conducted the proceedings in that suit. Review Committee No 035 of 2017 ("the Review Committee") was constituted to examine his complaint. In due course, the Review Committee informed the applicant that there was no support for his complaint and directed that it be dismissed. Dissatisfied with the Review Committee's decision, the applicant filed the present Originating Summons No 675 of 2017 ("OS 675/2017"), an *ex parte* application for leave to commence judicial review proceedings in respect of that decision.

2 During a Pre-Trial Conference ("PTC") for OS 675/2017, the Law Society, which had originally listed itself as a respondent to the action, indicated that it had taken steps to remove itself as a party. However, it did not remove the Notice of Appointment of its own solicitors ("the Notice of Appointment") from the record. When the applicant objected to this, Assistant Registrar James Elisha Lee ("AR Lee") stated that he was not minded to direct the removal of the Notice of Appointment from the record. The applicant then filed Registrar's Appeal No 232 of 2017 ("RA 232/2017"), ostensibly appealing against AR Lee's direction.

3 OS 675/2017 and RA 232/2017 came before me on 18 September 2017. After hearing the parties, I made no order on RA 232/2017 as I was of the view that AR Lee's direction was not a judicial decision that could be appealed against. I dismissed OS 675/2017 and denied the applicant leave to commence judicial review proceedings because I did not consider that he had made out a *prima facie* case of reasonable suspicion in favour of granting the remedies he sought. The applicant has filed an appeal against my decision to dismiss OS 675/2017 and I now set out the full grounds for my decision.

Background facts and procedural history

4 The Lawyers were acting for the plaintiff in Suit No 1083 of 2012, Innovez ID Pte Ltd ("Innovez"), a construction and renovation company. The applicant was acting for the defendant in that suit, Mr Wong Yoke Shin ("Mr Wong"), who was purportedly Innovez's project manager responsible for securing its contracts. The suit was commenced against Mr Wong, *inter alia,* for a breach of his warranty that the costs and expenses for a project at 86 Jalan Pemimpin Singapore 577237 ("the Pemimpin Project") would be about $900,000. Relying on this, Innovez accepted the Pemimpin Project at a contract

price of $1,507,000. However, Innovez alleged that Mr Wong caused or allowed the actual costs and expenses of the Pemimpin Project to escalate to $1,936,453.86. Innovez therefore claimed that it had suffered a loss of more than $400,000. Mr Wong, on the other hand, insisted that the Pemimpin Project was profit-generating.

5 At the hearing of a discovery application in early 2014, the applicant argued that certain documents disclosed by Innovez supported Mr Wong's position that Innovez had not made a loss on the Pemimpin Project. In order to determine the profitability of the Pemimpin Project, Innovez filed an application for an account to be taken in respect of the Pemimpin Project, pursuant to O 43 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court"). This application was heard by Assistant Registrar Wong Baochen ("AR Wong") over six days in 2015. During the taking of accounts, Innovez took the position that the Pemimpin Project was its only ongoing project at the material time, while Mr Wong strenuously denied that this was the case.

6 AR Wong delivered her grounds of decision for the application on 7 July 2016 and made certain findings on the cost and expenses of the Pemimpin Project. She noted that the taking of accounts "presented significant difficulties" because the issue of liability had not been determined yet. She was therefore careful not to make findings that would circumscribe the proceedings before the trial judge.[1] In particular, she reiterated that there was "no real evidence" with regard to some of the "broader issues" before her and hence "no findings of fact" that could be made as to (a) whether Innovez had more than one project at the material time; instead, this was a "finding of fact that [could] be canvassed

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[1] Affidavit of the applicant in support of OS 675/2017 p 39 at para 7

and determined at trial" and (b) whether Innovez had withheld or was still withholding documents from Mr Wong and the court, such as evidence of its income and expenditure, which again was a matter that could be "canvassed at trial". She opined that these broader issues were in any event not directly relevant to the taking of accounts; rather, the trial judge should have latitude to hear the evidence and make the appropriate findings at trial. [2]

7 Discontented with AR Wong's decision, Mr Wong appealed. Hoo Sheau Peng JC (as she then was) heard and dismissed the appeal on 23 November 2016. The applicant then made an application on behalf of Mr Wong to request for further arguments to be heard, asserting that the taking of accounts had proceeded on the erroneous basis that Innovez only had one project at that time. In fact, the applicant contended, Innovez had withheld certain documents such as invoices and there were "much more bank deposits and other work than declared". Hoo JC heard the further arguments on 27 December 2016 but did not change her decision. The applicant filed an application for leave to appeal to the Court of Appeal. This was dismissed by Hoo JC on 23 January 2017.

8 On 14 February 2017, Innovez, through its director Mr Tang Wai Chong Eldee ("Mr Tang"), lodged a complaint with the Law Society against the applicant for "threatening criminal action against Innovez and its representatives, including wrongfully accusing Mr Tang of committing perjury".[3] Mr Tang alleged that throughout the application for taking of accounts and the corresponding appeal before Hoo JC, the applicant had made "numerous personal attacks" on various parties, including allegations that the

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2 Affidavit of the applicant in support of OS 675/2017 pp 57-59 para 47, 48(a), (c) and (d)

3 Affidavit of the applicant in support of OS 675/2017 pp 21-23

Lawyers were "misleading the court". Innovez pointed out that AR Wong had, in her Notes of Evidence for the taking of accounts, noted the "numerous statements [made in the applicant's written submissions] that were essentially personal attacks on various members on [Innovez's] side" and that "there [was] clearly no need for personal attacks in Court documents. Such professional discourtesy should not be encouraged or even condoned".[4]

9 It was in this context that the applicant filed his complaint to the Law Society on 2 May 2017 against the Lawyers. His main grievance was that Innovez had "lied that [it] had only one project or work during the period [from] December 2010 to December 2012". This was first stated by Mr Tang in his affidavit of evidence-in-chief for the suit, and "perpetuated" by Innovez's auditor, Mr Kelvin Thio, in his Report of Investigation on the suit. The Lawyers further referred to this during the cross examination of Mr Wong, in their written and reply submissions and in the correspondence between the parties and with the court. The applicant alleged that the Lawyers were fully aware that Innovez was engaged in other projects during the material period. In fact, the applicant claimed, Innovez had deliberately withheld or concealed a substantial portion of their invoices, payment vouchers and bank deposits which would have shown that it had been conducting other projects or work.[5] It should be noted that these were the same allegations on which basis the applicant claimed, in his correspondence with the Lawyers and the court, that Innovez (through Mr Tang) had committed perjury and the Lawyers had misled the court.[6] The accusations

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4 Affidavit of the applicant in support of OS 675/2017 pp 59-60

5 Affidavit of the applicant in support of OS 675/2017 pp 14-19

6 Affidavit of the applicant in support of OS 675/2017 pp 28, 30, 33

made by the applicant led to Innovez's complaint to the Law Society against him in February 2017, as outlined in the preceding paragraph.

10 In the applicant's complaint to the Law Society, he alleged that the Lawyers' conduct was unbefitting of an advocate and solicitor because of purported breaches of the following six provisions of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015):

(a) Rule 9(2)(*a*) – attempting to mislead the court and a legal practitioner during the application for taking of accounts, by submitting that Innovez had only one project during the material period;

(b) Rule 9(2)(*g*) – contriving the fact that Innovez only had one project when evidence clearly showed otherwise;

(c) Rule 10(3)(*a*) – assisting their clients to suppress evidence in the form of the payment vouchers, invoices and bank account deposits;

(d) Rule 10(3)(*b*) – assisting their client to give false information to the court that Innovez only had one project;

(e) Rule 10(4)(*a*) – continuing to act for their client when it had given false information to the court;

(f) Rule 10(4)(*b*) – perpetuating Innovez's falsehood that it was working on only one project "after it had been exposed numerous times".

11 On 18 May 2017, the Review Committee was constituted to examine the applicant's complaint. On 25 May 2017, the Review Committee rendered its decision in the form of a letter to the applicant. The letter read as follows:[7]

REPORT OF THE REVIEW COMMITTEE

1. This Review Committee was constituted on 18 May 2017.

2. The Complainant's complaints are set out at Paragraph 3 of the Complainant's letter dated 2 May 2017 to the Law Society.

3. However, the information and documents provided by the Complainant do not provide any support for any of the complaints.

4. For the above reasons, the Committee is unanimously of the view that the Complainant's complaints are lacking in substance and directs the Council to dismiss them.

12 On 16 June 2017, the applicant filed OS 675/2017, an *ex parte* application for leave to commence judicial review proceedings in relation to the Review Committee's decision, seeking the following reliefs: (a) a quashing order against the decision of the Review Committee and (b) an order that his complaint be reheard by a freshly constituted review committee. His affidavit in support of the application substantially repeated his complaint to the Law Society as set out at [9] and [10] above. In addition, he took issue with the fact that the Review Committee rendered its decision only seven days from the date of its inception (even though the supporting evidence he submitted constituted about 500 pages) and thereafter made the "simplistic pronouncement" that "the information and documents provided by the [applicant] [did] not provide any support for any of the complaints". He further claimed that the Review Committee did not exercise its powers under s 85(7) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the Act") to call the applicant or the Lawyers to answer any inquiry or furnish any record. He thus grounded his judicial review application on the basis that the decision of the Review Committee was "so outrageous in its defiance of logic or of the accepted moral standards that no sensible person who had applied his mind to the question to be decided could

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[7] Affidavit of the applicant in support of OS 675/2017 pp 499-500

have arrived at it". This was the test applied in the English House of Lords decision of *Council of Civil Service Unions v Minister for the Civil Service* [1984] 3 WLR 1174 at 1196. The applicant alleged that there was "clear evidence" that Innovez had lied that it had only one project during the material period and there was "sufficient evidence" that the Lawyers had full knowledge of this fact.[8]

13 Although OS 675/2017 was filed as an *ex parte* application, on 21 June 2017, the Law Society filed the Notice of Appointment, listing itself as a respondent in the action, with KSCGP Juris LLP as its solicitor on record. The applicant objected to this through various letters to court and to the Law Society. At a PTC before AR Lee on 24 July 2017, counsel for the Law Society, Mr P Padman ("Mr Padman") indicated that his instructions were to "remain in the action". However, AR Lee expressed the view that the addition of the Law Society at that point in time was an "irregularity". AR Lee then directed that the title in the action was to be amended to remove the Law Society as a party. At the following PTC before AR Lee on 14 August 2017, Mr Padman indicated that he had filed a request to withdraw the Law Society from the action. The applicant contended that if that was the case, the Notice of Appointment should similarly be removed from the record. Mr Padman indicated that he had no instructions to remove the Notice of Appointment and that the Law Society would be seeking leave for its solicitors to attend the hearing of OS 675/2017 on a watching brief. AR Lee stated that he was "not minded" to direct that the Notice of Appointment be removed. On 28 August 2017, the applicant filed RA 232/2017, ostensibly appealing against AR Lee's direction that he was not minded to order the removal of the Notice of Appointment.

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[8] Affidavit of the applicant in support of OS 675/2017 paras 11-13

RA 232/2017

The parties' arguments

14 In the applicant's affidavit in support of RA 232/2017, he alleged that because OS 675/2017 was an *ex parte* application, it was "completely illegal" for any other party to be part of the proceedings. The only other party that was required to be served was the Attorney-General pursuant to O 53 r 1(2) of the Rules of Court. It was only if the court decided that it would be useful to hear the application *inter partes* to dispose of the merits of the substantive application, and invited the putative respondent to attend at the hearing of the leave application and to make representations, that any other party could be involved in the proceedings. Since this direction had not been made, it made no sense for the Notice of Appointment to remain on the record as the Law Society was effectively a "non existent" party.[9]

15 In response, counsel for the Law Society relied on *Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] 2 SLR 1108 at [17] and [18] to argue that the Law Society had the right to hold a watching brief in the leave application, because of (a) its undeniable statutory role in the ongoing disciplinary proceedings, a part of which the applicant sought to challenge and (b) the fact that its presence would not cause any prejudice to the applicant.[10]

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9 Affidavit of the applicant in support of RA 232/2017 p 1 para 2, p 2 para 3, p 8 para 16 and p 9 para 17

10 Certified transcript p 7 lines 4-19

Analysis

16 As the applicant was well aware, this was not the first time that an appeal of this nature had come before the High Court. In an earlier, unrelated case, the applicant had lodged a complaint against another senior lawyer. The circumstances in that case were comparable to those in the present one. The review committee in that case had also directed the Council to dismiss the applicant's complaint. Dissatisfied with the review committee's decision, the applicant similarly filed an *ex parte* originating summons for leave to bring judicial review proceedings to challenge the review committee's decision. Counsel for the Law Society, WongPartnership LLP ("WongPartnership"), filed a notice of appointment of solicitors in the action. At a PTC before AR Lee, the applicant orally applied for AR Lee to direct WongPartnership to withdraw that notice, contending that the Law Society was not entitled to be present or to be heard in an *ex parte* application. WongPartnership resisted the application. AR Lee declined to make the direction sought by the applicant as he was of the view that the matter should be decided by the judge hearing the originating summons.

17 The applicant appealed against that direction, which came before Woo Bih Li J. In his Grounds of Decision (reported at *Nalpon Zero Geraldo Mario v Law Society of Singapore* [2017] SGHC 206), Woo J indicated (at [28]) that he informed the parties that AR Lee had not rendered a judicial decision and that there was consequently no need for the applicant file an appeal therefrom. Nonetheless, he continued to hear the applicant's objection to the notice of appointment filed by WongPartnership. In the end, Woo J was of the view (at [29]) that although the Law Society was not entitled to be heard on an *ex parte*

application, it could be heard on an opposed *ex parte* basis, and thus allowed WongPartnership to attend at the hearing of the leave application.

18 I saw no reason to differ from the reasoning adopted by Woo J. I was similarly of the view that AR Lee's direction in the present case was essentially an administrative, rather than a judicial, decision and should not have been appealable. Consequently, I made no order on RA 232/2016. I proceeded with the hearing of OS 675/2017 on an *ex parte* basis, as the Law Society had already withdrawn itself from the action. However, I allowed counsel for the Law Society to continue in attendance on a watching brief as I was satisfied that it had an interest in the proceedings, and the applicant did not show that the Law Society's attendance would cause prejudice to him. For avoidance of doubt, I did not invite the Law Society to participate in the hearing of OS 675/2017.

OS 675/2017

19 I turn then to consider the main application, which was for leave to commence judicial review proceedings in respect of the decision of the Review Committee.

Legal principles

20 For leave to be granted under O 53 r 1 of the Rules of Court, the following three requirements must be satisfied:

(a) the matter complained of must be susceptible to judicial review;

(b) the plaintiff must have a sufficient interest or standing in the matter; and

(c) the material before the court must disclose an arguable case or *prima facie* case of reasonable suspicion in favour of granting the public law remedies sought by the plaintiff.

See *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [5] and *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [55].

21 Only limb (c), that is, whether the applicant had established an arguable or *prima facie* case of reasonable suspicion in favour of granting leave, was an issue in the present case. It is clear that judicial review is limited to the decision-making *process* and does not extend to a review of the *merits* of the decision itself. Findings of fact are also not within the purview of such a review: *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 ("*Chee Siok Chin*") at [93]. The question is whether a quick perusal of the material discloses what may on further consideration turn out to be an arguable case in favour of granting the applicant the relief claimed: *Chai Chwan v Singapore Medical Council* [2009] SGHC 115 ("*Chai Chwan*") at [30]. An in-depth examination is inappropriate and the court is not permitted to resolve conflicting factual evidence and arguments in order to decide whether to grant or refuse leave: see *Chai Chwan* at [32]. Instead, an application for leave is simply a means of filtering out groundless or hopeless cases at an early stage; its aim is to prevent a wasteful use of judicial time and to protect public bodies from harassment that may arise: *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR(R) 133 at [23].

22 The applicant's ground for judicial review is irrationality or *Wednesbury* unreasonableness.[11] *Wednesbury* unreasonableness is a shorthand legal

reference to the English Court of Appeal decision of *Associated Provincial Picture Houses, Limited v Wednesbury Corporation* [1948] 1 KB 223 at 229–230, where Lord Greene MR stated that the court can interfere if a decision made is "so unreasonable that no reasonable authority could ever have come to it", for example if a red-haired teacher were dismissed because she had red hair. In other words, the decision had to be "so outrageously defiant of "logic" and "propriety" that it can be plainly seen that no reasonable person would or could come to that decision": see *Chee Siok Chin* at [94]. The court in *Chee Siok Chin* also opined at [95] as follows:

> *Reasonableness in arriving at a determination does not, however, mean that there should be a single inevitable approach or determination in any given matter.* The essence of reasonableness is that decision makers can in good faith arrive at quite different decisions based on the same facts: there is an inherent measure of latitude in assessing reasonableness…
>
> [emphasis added]

In this light, the test for *Wednesbury* unreasonableness sets a "high bar" for the applicant to meet: *Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] 4 SLR 483 ("*Manjit Singh (CA)*") at [7].

Analysis

23 The issue in this leave application was a narrow one, namely, was there a *prima facie* case of reasonable suspicion that the decision of the Review Committee directing a dismissal of the applicant's complaint was *Wednesbury* unreasonable? It could not seriously be disputed that the decision of the Review Committee was brief. The only ground given for directing a dismissal of the applicant's complaint was that "the information and documents provided by the

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[11] Certified transcript p 11 lines 12-22

[applicant] [did] not provide any support for any of the complaints". Nonetheless, in my judgment, the high threshold of *Wednesbury* unreasonableness had not been crossed. The sensible inference to be drawn from the Review Committee's letter was that it had properly considered the complaint by the applicant and simply found no basis for his grievance.

24 The applicant insinuated that the Review Committee could not possibly have assessed all the evidence presented to it in only seven days (or four working days).[12] There were several issues with this argument. First, it was not the role of the Review Committee to carry out a *detailed* examination of the underlying facts; otherwise, it would essentially be descending into the fray and making a finding of fact which was solely within the remit of the trial judge after he or she had heard the witnesses and reviewed the evidence adduced at trial. Given that this was the case, I did not consider that there were good grounds for the applicant's intimation that the Review Committee had failed to give due consideration to his complaint.

25 Second, the fact that the applicant evidently disagreed with the outcome of the Review Committee's decision did not *ipso facto* mean that the Review Committee's decision was *Wednesbury* unreasonable. As explained in *Chee Siok Chin* at [95] (see [22] above), reasonableness in arriving at a determination does not mean that there should be a single inevitable approach or determination in any given matter. In any event, there were in my view reasonable grounds in support of the Review Committee's decision. This was because no finding had yet been made on the key factual contention of whether Innovez had only one project at the material time, which was the subject of three of the applicant's six

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12 Certified transcript p 19 lines 1-6

complaints against the Lawyers. AR Wong herself declined to make a finding on it, preferring to leave this matter to the trial judge (see [6] above). Without a conclusive finding on this key factual premise, there was no basis for concluding that the Lawyers had attempted to mislead the court or to contrive facts in this regard during the taking of accounts.

26 At the hearing of OS 675/2017, the applicant went through the supporting documents in detail in an attempt to prove that the Lawyers had indeed misled the court.[13] But as explained at [21] above, it was not my role, in the determination of the leave application on a *prima facie* level, to conduct an in-depth examination of the documents in order to resolve conflicting factual evidence, much less make a ruling in his favour before the matter proceeded to trial. I should add that the applicant is not left without recourse – he is at liberty to pursue his client's substantive case before the trial judge, who may well find in his client's favour, if indeed there is (as he claimed) clear supporting documentation that supports that position. If, after the determination by the trial judge, the applicant remained of the view that the Lawyers had deliberately misled the court, it would be open to him to bring further proceedings against the Lawyers.

27 I turn then to consider a separate point not expressly raised in the applicant's affidavit supporting the leave application, that is, whether the apparent failure of the Review Committee to *give reasons* for its decision rendered it *Wednesbury* unreasonable. This was presumably the underlying premise of the applicant's complaint about the "simplistic pronouncement" in the Review Committee's letter that the documents he provided did not support

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[13] Certified transcript pp 13-18

his complaint. The argument was ostensibly that in its brief grounds, the Review Committee had failed to explain *why* the documents and information provided did not support his complaint.

28 The immediate difficulty with such a contention is that there remains no general *common law* duty to give reasons for administrative decisions in Singapore, unless a decision appears to be aberrant or involves matters of special importance to the applicant such as personal liberty: see *Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] 2 SLR 844 at [85] and *Manjit Singh (CA)* at [10]. The Court of Appeal had, in so holding, followed the English House of Lords decision of *Regina v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531. Neither of the two exceptional circumstances existed on the facts of the present application. If at all, it was *the Lawyers*, rather than the applicant himself, who were more likely to be affected by any decision of the Review Committee.

29 The Court of Appeal in *Manjit Singh (CA)* acknowledged at [13] however that whether there is a requirement to furnish reasons is "dependent on the *operative statutory context* and factual matrix of each case" [emphasis added]. In the present case, there is a good arguable case that s 85(8)(*a*) of the Act itself imposes a duty on the Review Committee to provide reasons. Section 85(8)(*a*) states that if the Review Committee is unanimously of the opinion that the complaint is for example, lacking in substance, it shall direct the Council to dismiss the matter and "*give the reasons* for the dismissal" [emphasis added]. But in my assessment, the Review Committee's statement that the information and documents provided no support for the applicant's complaint was *itself* a reason for the dismissal of his complaint. The natural inference from its statement was that it had reviewed the documents submitted by the applicant

and reasoned that they provided no support for his complaints, possibly on the basis that no findings of fact had been made on a critical issue. While the Review Committee's reason for dismissing the complaint was admittedly very brief, an assertion that *more extensive or better* reasons should have been given is not a recognised ground for review.

30 For completeness, I should add that the fact that the Review Committee had not required the applicant or the Lawyers to answer any inquiry or furnish any record under s 85(7) of the Act could not be the basis for asserting that its decision was *Wednesbury* unreasonable, as the applicant suggested (see [12] above). Parliament had clearly vested the discretion to take such further steps in the Review Committee, as evident from the use of the word "may" in that provision. In other words, the Review Committee could choose to do so when it considered the inquiry or furnishing of records "relevant for the purpose of the review". But there was no *obligation* on the Review Committee to call for the answers to inquiries or the furnishing of records; the applicant conceded as much during the hearing.[14] In the present case, the Review Committee must have taken the position that the invocation of this procedure was unnecessary in the circumstances.

Conclusion

31 For these reasons, I dismissed OS 675/2017. In my judgment, the applicant had not made out even a *prima facie* case of reasonable suspicion that the Review Committee's decision to direct the dismissal of his complaint was *Wednesbury* unreasonable. In the premises, it was not necessary for me to

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[14] Certified transcript p 18 lines 19-25

address the issue of whether the Law Society should be directed to withdraw the Notice of Appointment. I further made no order as to costs.

See Kee Oon
Judge

The applicant in person;
P Padman and Timothy Yeo (KSCGP Juris LLP) for the non-party.
