IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 196

Originating Summons No 36 of 2021

Between

Tan Hon Leong Eddie

… *Applicant*

And

Attorney-General

… *Respondent*

GROUNDS OF DECISION

[Administrative Law] — [Judicial review] — [Application for leave to commence judicial review proceedings] — [Extension of time to apply for leave]
[Administrative Law] — [Judicial review] — [Illegality]
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Introduction

1 Mr Tan Hon Leong Eddie ("the Applicant") sought to constrain the discretion conferred on the Director of the Central Narcotics Bureau ("the CNB") and the Attorney-General ("the Respondent") by relying on the parliamentary speech by the Minister for Home Affairs at the second reading of the Misuse of Drugs (Amendment) Bill (Bill No 51/2018) ("the Bill"). Clause 18 of the Bill introduced amendments to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") broadening the Director's power to make treatment and rehabilitation orders ("DRC Orders") and increasing the duration of DRC Orders and drug supervision orders ("Supervision Orders"). I refer to these amendments to the MDA as the "2019 amendments". I found that the Applicant's reliance on the Minister's speech was misconceived and dismissed

his application for leave to commence judicial review proceedings. The Applicant has appealed.

Background

2 In January 2020, the Applicant was arrested on suspicion of having committed drug-related offences.[1] Drugs, including cannabis mixture and ecstasy, were found in the Applicant's residence.[2] The Applicant told the authorities that the drugs were for his consumption only.[3] He acknowledged in his affidavit that the quantity of drugs in his possession was "relatively large"[4] and explained that he had resorted to taking drugs to cope with his rare disease and his psychiatric conditions.[5]

3 The CNB referred the matter to the Attorney-General's Chambers ("AGC").[6] The Applicant was then charged under ss 8(*a*), 8(*b*)(ii) and 9 of the MDA for five offences of drug possession and consumption.[7] The Applicant filed the summons to apply for leave to seek judicial review of two decisions: (a) the Director's decision not to subject the Applicant to a Supervision Order or a DRC Order ("the Director's Decision"); and (b) the Attorney-General's decision to bring the five charges ("the Charges") against the Applicant ("the Attorney-General's Decision").

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1 Affidavit of Muruganandam s/o Arumugam ("Respondent's Affidavit") at para 5.

2 Respondent's Affidavit at paras 5 and 12.

3 Affidavit of Tan Hon Leong Eddie ("Applicant's Affidavit") at para 13.

4 Applicant's Affidavit at para 13.

5 Applicant's Affidavit at para 12 and Tab 1 at p 16, paras 7 and 11.

6 Respondent's Affidavit at para 21.

7 Applicant's Affidavit at Tab 4.

4 The Applicant argued that his prosecution was not in keeping with the objectives of the 2019 amendments to the MDA regarding the enhanced rehabilitation regime.[8] At the second reading of the Bill introducing the 2019 amendments, the Minister had explained the enhanced rehabilitation regime for persons who only consume drugs, *ie*, pure drug abusers. The Applicant and the Respondent relied on various parts of the Minister's speech, the key excerpts of which are as follows (*Singapore Parliamentary Debates, Official Report* (15 January 2019) vol 94 (K Shanmugam, Minister for Home Affairs)):

> … we have been studying how to bring down recidivism down even further. Our assessment is that for pure abusers, we can now afford to focus, shift our balance quite decisively, and focus more on rehabilitation as opposed to detention. We all know that long periods of detention can affect the abusers' employability after they are released. …
>
> …
>
> Addiction is a complex problem. Staying clean is ultimately dependent on a variety of factors including the resolve of the abuser. But it is a difficult journey for the abusers. Often, they become estranged from their families, communities and the workplace. It is harder for them to reintegrate once released. A number get back into bad company, on drugs, and then they get re-arrested at various points; the cycle repeats itself over and over again.
>
> So, we have decided, let us try and distinguish between those who only consume drugs – I call them the "pure" abusers – from those who also face charges for other offences. For example, trafficking, property offences, violent offences. So, if they have abused drugs and they have committed some of these other crimes, we put them in one category. We put those who only abused drugs in one category.
>
> For the second group, those who consume drugs and commit other offences, they will continue to be charged for their drug-consumption offences as well as the other offences. If they are liable, they will be sentenced to LT [*ie*, Long-Term Imprisonment].

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[8] Applicant's Submissions dated 19 April 2021 ("Applicant's Submissions") at paras 8–11.

> For those who only abuse but do not have any other criminal offence, that means they only consume drugs and they admit to their drug abuse, then the general approach, regardless the number of times, would be that the Director of CNB will make the appropriate supervision or detention order, and channel them into the rehabilitation regime.
>
> So, this group of abusers may also include those who have minor consumption-related offences like possession of drug-taking utensils or possession of small quantities of drugs. If AGC agrees with CNB that there is no need to charge the drug abusers for these minor offences, then these persons will also be channelled to the rehabilitation regime.
>
> This will be conditional on the abusers admitting to their drug offences. If they deny their drug abuse despite the evidence, that means they have really not accepted the need for rehabilitation, they are likely to be charged in court, if AGC concurs.
>
> …
>
> And, really, to benefit as many persons as possible, CNB, with the concurrence of AGC, will generally not charge abusers, who meet the criteria I have explained, from tomorrow, 16 January 2019, on the assumption that the Bill is passed today.
>
> …

Summary of the Applicant's case

5 The Applicant sought the following orders:

(a) a quashing order to quash the Attorney-General's Decision;

(b) a mandatory order that:

(i) the Director reconsider his Decision; and

(ii) the Attorney-General reconsider his Decision; and

(c) a declaration that:

(i) the Director's Decision was contrary to Art 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999

Reprint) ("the Constitution"), was illegal, was irrational, or was contrary to the Applicant's substantive legitimate expectations; and

(ii) the Attorney-General's Decision was contrary to Art 12 of the Constitution, was illegal, was irrational, or was contrary to the Applicant's substantive legitimate expectations.

6 The Applicant argued that the materials before this court disclosed an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought. First, he submitted that, contrary to the Director's assessment, he was a pure drug abuser.[9] Second, he submitted that Parliament intended that prosecution for consumption offences be reserved for people who are not pure drug abusers,[10] and that he was the kind of offender that Parliament intended would benefit from the enhanced rehabilitation regime.[11] These two premises formed the basis for his challenge to the Director's and the Attorney-General's Decisions.

Summary of the Respondent's case

7 The Respondent argued that the Applicant brought this application for a quashing order out of time and should not be granted an extension of time.[12] It was also submitted that the Applicant was not a pure drug abuser whom Parliament intended to channel into the enhanced rehabilitation regime: the Applicant was in possession of several controlled drugs, including a large

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9 Applicant's Submissions at paras 51 and 80.

10 Applicant's Submissions at para 36.

11 Applicant's Submissions at para 8.

12 Respondent's Submissions dated 19 April 2021 ("Respondent's Submissions") at paras 32–34.

quantity of cannabis mixture.[13] There was therefore no basis to allege that the Decisions were contrary to Art 12 of the Constitution.[14] The Respondent further submitted that the Applicant had failed to produce evidence to show that the Director or the Attorney-General took into account irrelevant considerations.[15] There was therefore no basis to allege that the Decisions were illegal or irrational.[16] Finally, the Respondent submitted that the doctrine of substantive legitimate expectation could not apply because no representation had been made to the Applicant that he would be subject to the enhanced rehabilitation regime rather than prosecution,[17] and because the doctrine does not protect the expectations of one who commits offences in reliance on a representation.[18]

The decision

8 I concluded that the application for leave to commence judicial review should be dismissed. The materials before me disclosed no arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the Applicant. The Minister's speech did not dictate what factors the Director and the Attorney-General may consider, must consider or must not consider in reaching their decisions. Neither could it give rise to the Applicant's alleged substantive legitimate expectations based on which he allegedly committed the offences. Its only potential value lay in assisting in the interpretation of the MDA. Even then, it did not support the Applicant's interpretation.

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13 Respondent's Submissions at para 23.

14 Respondent's Submissions at para 47.

15 Respondent's Submissions at para 52.

16 Respondent's Submissions at para 52.

17 Respondent's Submissions at para 56.

18 Respondent's Submissions at para 57.

Analysis

Extension of time

9 Taking first the preliminary issue of whether the Applicant should be granted an extension of time to apply for leave to seek the quashing order, the circumstances merited the granting of such an extension.

10 Order 53 r 1(6) of the Rules of Court (2014 Rev Ed) provides:

> … leave shall not be granted to apply for a Quashing Order to remove any judgment, order, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made within 3 months after the date of the proceeding … or … the delay is accounted for to the satisfaction of the Judge to whom the application for leave is made …

11 Although there was some uncertainty about when exactly time started to run, it was common ground that the Applicant filed this application outside the three-month period.[19] The Charges were tendered against the Applicant in court in July 2020. The Applicant filed this application only in January 2021.

12 The Applicant bore the burden of accounting for the delay to the court's satisfaction: *Per Ah Seng Robin and another v Housing and Development Board and another* [2016] 1 SLR 1020 ("*Per Ah Seng Robin*") at [51]. The court will lean towards granting an extension of time where the delay is caused by "serious and genuine attempts to resolve the dispute without litigation": *Per Ah Seng Robin* at [55].

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19 Applicant's Submissions at paras 134 and 136; Respondent's Submissions at para 32.

13 The Applicant explained that it took time to exhaust alternative remedies and attempt to resolve the dispute without seeking judicial review.[20] In September and October 2020, the Applicant had made representations to the Director and the Attorney-General as to why he should be subject to the enhanced rehabilitation regime rather than prosecution.[21] These were rejected in September and mid-November 2020 respectively.[22] In mid-December 2020, the Applicant by an open letter said that he intended to seek judicial review if the Charges were not withdrawn.[23]

14 The Respondent countered that two aspects of the Applicant's conduct were problematic. First, the three-month period had expired before the Applicant made his second set of representations. Second, the Applicant had not indicated in either set of representations that he intended to seek leave to apply for a quashing order.[24]

15 I concluded that neither aspect rendered the Applicant's explanation unsatisfactory. Before and after the three-month period expired, the Applicant was engaging the Director and the Attorney-General to persuade them to change their Decisions. Indicating an intention to seek judicial review of the Decisions was not essential to the Applicant's attempts to have the Decisions changed. The Respondent replied the Applicant's open letter on 7 January 2021,[25] and the Applicant filed this application just 11 days later. As in *Per Ah Seng Robin*

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20 Notes of Evidence dated 26 April 2021 ("NEs") at p 5, line 23; Applicant's Submissions at paras 136–138.

21 Applicant's Affidavit, Tab 6 at p 81; Applicant's Submissions at para 137.

22 Applicant's Affidavit, Tab 6 at p 81.

23 Applicant's Affidavit, Tab 6 at p 82.

24 Respondent's Submissions at para 34.

25 NEs at p 6, line 24.

(at [58]), this was not a case where the applicant allowed the matter to rest and, after a considerable lapse of time, sought leave to commence judicial review proceedings.

16 As the Applicant gave sufficient explanation for not filing the application earlier, the extension of time was warranted. It was thus not necessary to consider the Applicant's alternative argument that the limitation period did not apply here because it applied only where what was challenged was a decision, order or judgment by a court or tribunal.[26]

The application for judicial review

17 Three requirements must be satisfied before the court will grant leave to commence judicial review proceedings (*Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 883 ("*Gobi*") at [44]):

(a) The subject matter of the complaint must be susceptible to judicial review;

(b) The applicant must have a sufficient interest in the matter; and

(c) The materials before the court must disclose an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the applicant.

The Respondent submitted that the third requirement was not satisfied.[27] The Applicant pointed out that the threshold in the third requirement is "very low" (*Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal*

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[26] Applicant's Submissions at para 135.

[27] Respondent's Submissions at paras 15–18.

[2019] 2 SLR 216 at [76]) and submitted that he met this threshold for each ground of review.[28]

18 The applicable standard is a *prima facie* case of reasonable suspicion. It is not a high standard but nonetheless may be an insurmountable obstacle if the claims made have insufficient legal basis. The basis for an order for judicial review in this case had to be founded on either illegality, including unconstitutionality; irrationality; or possibly breach of substantive legitimate expectation. I will deal with illegality last and take irrationality first.

Irrationality

19 Irrationality as a head of review seeks to ascertain the range of legally possible answers and asks whether the decision made is one which, though falling within that range, is so absurd that no reasonable decision-maker could have come to it: *Tan Seet Eng v Attorney-General and another matter* [2016] 1 SLR 779 at [80]. A decision may be irrational because, for example, the decision-maker accorded manifestly excessive or manifestly inadequate weight to a relevant consideration: Harry Woolf *et al*, *De Smith's Judicial Review* (Sweet & Maxwell, 8th Ed, 2018) at para 11-029; *Secretary of State for the Home Department v AP* [2011] 2 AC 1 at [12]. Or, where the statute does not specify the considerations to be taken into account, a decision may be irrational because the decision-maker's assessment of what considerations are relevant or irrelevant is one which no reasonable decision-maker would have made: *Judicial Review* (Helen Fenwick gen ed) (LexisNexis, 5th Ed, 2014) at para 8.22.2; *R v Secretary of State for Transport, ex parte Richmond-upon-Thames London Borough Council and others* [1994] 1 WLR 74 at 95C.

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[28] Applicant's Submissions at paras 5 and 12.

20 The Applicant submitted that the Decisions were irrational because they were founded on irrelevant considerations and did not take into account the relevant considerations; in light of the Minister's speech, no reasonable decision-maker considering the correct factors could have concluded that the Applicant, who was a pure drug abuser, should be prosecuted.[29]

21 The standard of the reasonable decision-maker refers to a person performing the function in question, not a person performing another function. The question in this case was whether the Minister's statement in Parliament could constrain the considerations to be weighed by the decision-makers, who were the Director and the Attorney-General. A parliamentary speech by a minister cannot, to my mind, introduce factors which are otherwise irrelevant or exclude those which are otherwise relevant.

22 The Applicant argued that the reasonable decision-maker would have considered the prevailing moral standards as reflected in "the pronouncements and legislative acts of Parliament".[30] That is correct in that the decision-maker must exercise the discretion in accordance with the legislation conferring that discretion: see *Chng Suan Tze v Minister for Home Affairs and others and other appeals* [1988] 2 SLR(R) 525 at [86]. But it does not follow that the decision-maker is bound to take into account the considerations described in the minister's speech. Neither does it follow that the decision-maker is forbidden from taking into account other considerations. That is because a minister's speech at the second reading of a bill is not law. A second reading speech serves to open the debate at the second reading stage by setting out and explaining the clauses in the bill: see Thio Li-ann, *A Treatise on Singapore Constitutional Law*

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29 Applicant's Submissions at paras 119–120.

30 Applicant's Submissions at paras 115–116.

(Academy Publishing, 2012) at para 6.071. Such a speech may perhaps be relevant in respect of a claim of breach of legitimate expectation or estoppel, or a claim that the speech introduced a gloss to be applied to statutory language, both of which will be considered below; but aside from these, the speech itself creates no legal rights or obligations between the State and the individual.

23 The discretion that Parliament creates by the statute is conferred on a particular office holder. That office holder must, absent specific language in the statute, be expected and permitted to examine relevant factors regardless of what is or is not contained in the second reading speech. Relevancy and irrelevancy are defined ultimately by the statute, which can prescribe what may, must or must not be considered: see Mark Aronson & Matthew Groves, *Judicial Review of Administrative Action* (Lawbook Co, 5th Ed, 2013) at para 5.30. In the context of the exercise of a discretion or power, a parliamentary speech can only suggest considerations. Thus, beyond this, a parliamentary speech can be material only if it assists in interpreting the legislative provision itself or if it somehow prevents a departure from the position espoused in the speech by way of legitimate expectation or an estoppel, which will be considered next.

Substantive legitimate expectation

24 Turning then to substantive legitimate expectation, the question of whether this doctrine should be recognised in Singapore remains open: *Kardachi, Jason Aleksander v Attorney-General* [2020] 2 SLR 1190 at [56]–[57]. Earlier, in *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 ("*Starkstrom*"), the Court of Appeal expressed concerns about adopting this doctrine as opposed to some form of procedural legitimate expectation. Doing so could lead to redefining the courts' approach to the doctrine of separation of powers and the relative roles of the judicial and the

executive branches of government: *Starkstrom* at [59]. With respect, I share that concern. As substantive matters generally lie within the purview of the executive and legislative branches of government, tying down the ability to change positions would seem to encroach on the bailiwick of others. Additionally, in so far as any restraint is necessary, the doctrine of estoppel, despite its origins in equity rather than the common law, could be a sufficient instrument of control if appropriately developed.

25 Be that as it may, I note that the formulation of the doctrine of substantive legitimate expectation by Tay Yong Kwang J in *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2014] 1 SLR 1047 ("*Chiu Teng*") does not significantly differ from estoppel, as it requires detrimental reliance. The requirements for substantive legitimate expectation are as follows (*Chiu Teng* at [119]):

> (a) The applicant must prove that the statement or representation made by the public authority was unequivocal and unqualified;
>
> > (i) if the statement or representation is open to more than one natural interpretation, the interpretation applied by the public authority will be adopted; and
> >
> > (ii) the presence of a disclaimer or non-reliance clause would cause the statement or representation to be qualified.
>
> (b) The applicant must prove the statement or representation was made by someone with actual or ostensible authority to do so on behalf of the public authority.
>
> (c) The applicant must prove that the statement or representation was made to him or to a class of persons to which he clearly belongs.

(d) The applicant must prove that it was reasonable for him to rely on the statement or representation in the circumstances of his case:

(i) if the applicant knew that the statement or representation was made in error and chose to capitalise on the error, he will not be entitled to any relief;

(ii) similarly, if he suspected that the statement or representation was made in error and chose not to seek clarification when he could have done so, he will not be entitled to any relief;

(iii) if there is reason and opportunity to make enquiries and the applicant did not, he will not be entitled to any relief.

(e) The applicant must prove that he did rely on the statement or representation and that he suffered a detriment as a result.

(f) Even if all the above requirements are met, the court should nevertheless not grant relief if:

(i) giving effect to the statement or representation will result in a breach of the law or the State's international obligations;

(ii) giving effect to the statement or representation will infringe the accrued rights of some member of the public;

(iii) the public authority can show an overriding national or public interest which justifies the frustration of the applicant's expectation.

The Applicant accepted that, to avail himself of the doctrine of substantive legitimate expectation, he had to fulfil all the requirements set out in *Chiu*

Teng.[31] He identified the representation to be the Minister's statement in his speech that "CNB, with the concurrence of AGC, will generally not charge abusers, who meet the criteria [the Minister] explained".[32]

26 On the fifth requirement in *Chiu Teng* of detrimental reliance, the Applicant submitted that he should be presumed to have relied on the Minister's representation because it was made in Parliament and that he has suffered detriment by being prosecuted.[33] But, as the Respondent argued,[34] it was difficult to see how detrimental reliance could be made out here. The Applicant essentially argued that he had committed the offences on the basis that the available responses would be limited. This reliance was of a different nature from other possible forms of detrimental reliance such as otherwise law-abiding citizens taking a course of action, incurring expenditure, or ordering legal affairs in a particular way.

27 As the Respondent highlighted,[35] in *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 ("*Kalangie*"), the Court of Appeal doubted that an individual can have a legitimate expectation, when he commits an offence, as to the sentence he will receive if successfully prosecuted (save that the sentence should be within the statutorily prescribed range). His expectation is that of one who deliberately flouts the law and later finds the consequences to be worse than anticipated: *Kalangie* at [57]. Although the Court of Appeal in *Kalangie* was not concerned with the doctrine of substantive legitimate

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31 Applicant's Submissions at para 125.

32 Applicant's Submissions at para 126.

33 Applicant's Submissions at paras 128–130.

34 Respondent's Submissions at para 57.

35 Respondent's Submissions at para 57.

expectation, its comments apply equally to this context. Where the expectation is that the commission of an offence will not lead to prosecution and the reliance consists of committing that offence, the applicant should not be allowed to invoke the doctrine of substantive legitimate expectation.

28 Further, the second requirement in *Chiu Teng* that the statement or representation be made by someone with actual or ostensible authority was not satisfied. The Applicant argued that the Minister had made the representation on behalf of the Director and the Attorney-General.[36] But I accepted the Respondent's argument that the Minister could not bind the Attorney-General in his exercise of prosecutorial discretion.[37]

29 A statement by a minister cannot form the basis of an expectation that an independent officer will act in a particular way: William Wade & Christopher Forsyth, *Administrative Law* (Oxford University Press, 10th Ed, 2009) at p 449. In *R v Director of Public Prosecutions, ex parte Kebilene and others* [2000] 2 AC 326 ("*Kebilene*"), the applicants submitted that ministers' public statements gave rise to a legitimate expectation that the Director of Public Prosecutions would exercise his prosecutorial discretion in a certain way. Lord Bingham of Cornhill rejected that submission. Ministers' statements on their officials' future conduct could not found a legitimate expectation as to future decisions by the Director of Public Prosecutions on the conduct of criminal proceedings because he acted independently of the Executive when making those decisions: *Kebilene* at 339. Similarly, under existing constitutional practice, the prosecutorial power is independently exercised by the Attorney-General; the Minister for Home Affairs cannot interfere with the Attorney-

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36 Applicant's Submissions at para 126.

37 NEs at p 9, lines 1–3.

General's exercise of discretion: *Gobi* at [50]. So the Minister's speech could not give rise to a legitimate expectation as to the Attorney-General's Decision.

Illegality and unconstitutionality

30 Aside from irrationality and possibly substantive legitimate expectation, an administrative decision may be quashed if it is either illegal or unconstitutional. Illegality in the context of this case means that the action fell outside the statutory powers, that is, it was *ultra vires*. Unconstitutionality means breach of a constitutional right or limitation.

(1) Illegality / *ultra vires*

31 The Applicant argued that the Director's exercise of his discretion conferred by s 34(2) of the MDA was *ultra vires*. Specifically, in assessing that the Applicant was not a pure drug abuser, the Director took into account irrelevant considerations and failed to take into account the relevant considerations reflected in the Minister's speech.[38]

32 In determining whether the Applicant had an arguable or *prima facie* case on the ground of illegality, the starting point had to be the statutory text. The proper approach to interpretation has been laid down in various Court of Appeal decisions including *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*"). Section 9A(1) of the Interpretation Act

[38] Applicant's Submissions at paras 73–75.

(Cap 1, 2002 Rev Ed) mandates a purposive approach. A purposive interpretation involves three steps (*Tan Cheng Bock* at [37]):

> (a) First, ascertain the possible interpretations of the legislative provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole.
>
> (b) Second, ascertain the legislative purpose or object of the statute.
>
> (c) Third, compare the possible interpretations of the text against the purposes or objects of the statute.

33 As extrinsic material, the Minister's second reading speech may be considered for any of the three purposes set out in s 9A(2) of the Interpretation Act (*Tan Cheng Bock* at [54(c)(iii)]):

> (a) If the ordinary meaning of the provision (taking into account its context in the written law and purpose or object underlying the written law) is clear, extrinsic material can only be used to confirm the ordinary meaning but not to alter it.
>
> (b) If the provision is ambiguous or obscure on its face, extrinsic material can be used to ascertain its meaning.
>
> (c) If the ordinary meaning of the provision (taking into account its context in the written law and the purpose or object underlying the written law) leads to a manifestly absurd or unreasonable result, extrinsic material can be used to ascertain the meaning of the provision.

In deciding whether to consider extrinsic material and what weight to place on it, the court should have regard to, among other things, whether the material

(a) is clear and unequivocal; (b) discloses the mischief aimed at or the legislative intention underlying the statutory provision; and (c) is directed to the very point of statutory interpretation in dispute: *Tan Cheng Bock* at [54(c)(iv)]. Crucially, purposive interpretation is "not an excuse for rewriting a statute" (*Tan Cheng Bock* at [50]), and primacy should be given to the text and statutory context over any extrinsic material (*Tan Cheng Bock* at [43]). So the only relevance that the Minister's second reading speech could have was in confirming or ascertaining the meaning of the text of s 34(2) of the MDA.

34 In assessing that the Applicant was not a pure drug abuser, the Director took into account the Applicant's possession of several controlled drugs, including 262.30g of cannabis mixture – more than eight times the statutory minimum weight to invoke the presumption of trafficking under s 17(*e*) of the MDA.[39] The Director's evidence was that possession of a large quantity of drugs is a serious drug offence because of the risk of the drugs entering circulation.[40]

35 The Applicant argued that his possession of a large quantity of drugs was irrelevant to whether he was a pure drug abuser and therefore whether the Director should have exercised his discretion under s 34(2) to make a Supervision Order or a DRC Order.[41] The Applicant argued that the Minister's speech "narrow[ed]" the relevant considerations to two considerations:

(a) whether the person demonstrates a propensity and willingness for rehabilitation by admitting to consuming drugs; and

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39 Respondent's Affidavit at para 20.

40 Respondent's Affidavit at para 19.

41 Applicant's Submissions at para 76.

(b) whether the person's culpability extends only to his own drug consumption, as opposed to offences distinct from his own drug consumption.[42]

I did not accept the Applicant's argument for two reasons.

36 First, the Minister's speech could not modify the text of the statute by prohibiting the Director from taking into account considerations other than the two advanced by the Applicant. Although the Minister's second reading speech might aid in determining the purpose of s 34(2) of the MDA, the starting point was the ordinary meaning of the text: see *Tan Cheng Bock* at [43]. Section 34(2) of the MDA provides:

> **Supervision, treatment and rehabilitation of drug addicts**
>
> **34.**— … (2) If, as a result of such medical examination or observation under subsection (1) or both the urine tests conducted under section 31(4)(*b*) or the hair test conducted under section 31A, *it appears to the Director* that it is necessary for any person examined or observed, or who supplied the urine specimen for the urine tests, or who supplied the hair specimens for the hair test —
>
> (*a*) to be subject to supervision, the Director may make a supervision order requiring that person to be subject to the supervision of an officer of the Bureau for a period not exceeding 5 years; or
>
> (*b*) to undergo treatment or rehabilitation or both at an approved institution, the Director may make an order in writing requiring that person to be admitted for that purpose to an approved institution.
>
> [emphasis added]

Section 34(2) is clear and unambiguous, taking into account its context in the MDA and its purpose or object. There was no basis to read into the text a

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42 Applicant's Submissions at paras 38–39 and 72–73.

requirement that the Director have regard only to whether the person has admitted to consuming drugs and whether the person has committed offences distinct from his drug consumption.

37 Second, the Minister's speech did not in fact clothe the text with the interpretation advanced by the Applicant. Rather than suggesting that the quantity of drugs in a person's possession was an irrelevant consideration, the Minister's speech suggested that it was relevant. The Minister's speech focused on distinguishing pure drug abusers from those who might have committed other offences, including trafficking. He said that the former group could include those who might have committed minor consumption-related offences, including "possession of small quantities of drugs", if the AGC agreed with the CNB that they not be charged for those minor offences (see [4] above). Because the Minister mentioned quantity as a relevant consideration, nothing in the speech could be taken as constraining the interpretation of the statutory text to conclude that the Applicant was meant to be entitled to or eligible for supervision or detention rather than prosecution.

38 As for the Attorney-General's Decision, the Applicant argued that the Attorney-General's exercise of prosecutorial discretion conferred by Art 35(8) of the Constitution was *ultra vires*. The Applicant submitted that, like the Director, the Attorney-General took into account irrelevant considerations and failed to take into account the relevant considerations reflected in the Minister's speech.[43] In making this submission, the Applicant took the reasons provided in the Respondent's affidavit to be both the Director's and the Attorney-General's reasons.[44]

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43 Applicant's Submissions at para 83.

44 Applicant's Submissions at para 68.

39 The affidavit was made, however, by an officer of the CNB authorised by the Director,[45] and the Respondent's counsel made it clear that the affidavit gave only the Director's and not the Attorney-General's reasons.[46] Further, the Minister's speech on the Bill did not assist in interpreting Art 35(8) of the Constitution and the scope of the Attorney-General's discretion under that provision.

(2) Unconstitutionality / breach of Art 12

40 Given my conclusions on irrationality and the proper construction of the MDA, no breach of Art 12 of the Constitution was made out on the evidence before me. There was no other evidence before me to show any other illegitimate differential treatment.

Miscellaneous points: the giving of reasons

41 In addition to the orders set out in [5] above, the Applicant applied for leave to seek a mandatory order that the Director and the Attorney-General give reasons for the Decisions. In oral submissions, the Applicant's counsel accepted that the Director had given reasons through the adduced affidavit.[47] So the question of the Director giving reasons did not arise.

42 As for the Attorney-General not giving reasons, in so far as this remained a live issue, I accepted the Respondent's argument that the Attorney-General need not give reasons justifying his exercise of prosecutorial

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45 Respondent's Affidavit at para 1.

46 NEs at p 7, line 22.

47 NEs at p 5, lines 13–14.

discretion.[48] The Attorney-General has no general obligation to disclose his reasons for making a particular prosecutorial decision: *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 ("*Ramalingam*") at [74]. Disclosure is not required unless the applicant adduces *prima facie* evidence that the Attorney-General has breached the relevant standard (*Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 at [36]), such as bad faith or unconstitutionality (*Ramalingam* at [17], citing *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [149]). There was no such evidence here.

Conclusion

43 For these reasons, the application for leave was dismissed. Costs were determined separately.

Aedit Abdullah
Judge of the High Court

Eugene Singarajah Thuraisingam, Chooi Jing Yen and Joel Wong En Jie (Eugene Thuraisingam LLP) for the applicant;
Loo Yu Hao Adrian, Pavithra Ramkumar and Lim Woon Yee (Attorney-General's Chambers) for the respondent.

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[48] Respondent's Submissions at paras 41–44.