IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 201

Originating Summons No 7 of 2020

In the matter of Sections 94(1) and 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed)

And

In the matter of Shanmugam Manohar an Advocate and Solicitor of the Supreme Court of the Republic of Singapore

Between

Law Society of Singapore

… *Applicant*

And

Shanmugam Manohar

… *Respondent*

JUDGMENT

[Legal Profession] — [Disciplinary proceedings]
[Res Judicata] — [Issue estoppel]
[Res Judicata] — [Extended doctrine of res judicata]
[Criminal Procedure and Sentencing] — [Statements] — [Admissibility]
[Evidence] — [Admissibility of evidence] — [Witness statements]

Law Society of Singapore
v
Shanmugam Manohar

[2021] SGHC 201

Court of Three Judges — Originating Summons No 7 of 2020
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Tay Yong Kwang JCA
12 April, 8 June 2021

25 August 2021 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

1 Originating Summons No 7 of 2020 (the "OS") is an application by the Law Society of Singapore for an order that the respondent, Shanmugam Manohar, be sanctioned under s 83(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"). The OS arises out of disciplinary proceedings commenced by the applicant, in which it preferred the following four main charges ("Charges") against the respondent:

(a) The first and second main charges (the "1st Charge" and "2nd Charge" respectively) concern payments made by the respondent to one Ng Kin Kok ("Ng") for referring claims arising out of five motor accidents to the respondent.

(b) The third and fourth main charges (the "3rd Charge" and "4th Charge" respectively) concern the respondent's failure to communicate

directly with the referred clients at the appropriate stages of the respective engagements, especially at the time of the signing of the warrant to act ("WTA").

2 The key evidence that was adduced against the respondent comprised police statements recorded from him and some other persons in the course of police investigations pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). The present case affords us the opportunity to consider for the first time the conditions under which such police statements recorded in the context of criminal proceedings may be admissible in disciplinary proceedings and/or other non-criminal proceedings generally. In particular, we will consider the ambit of s 259 of the CPC, which provides as follows:

> **Witness's statement inadmissible except in certain circumstances**
>
> 259.—(1) Any statement made by a person other than the accused in the course of any investigation by any law enforcement agency is inadmissible in evidence, except where the statement —
>
> (*a*) is admitted under section 147 of the Evidence Act (Cap. 97);
>
> (*b*) is used for the purpose of impeaching his credit in the manner provided in section 157 of the Evidence Act;
>
> (*c*) is made admissible as evidence in any criminal proceeding by virtue of any other provisions in this Code or the Evidence Act or any other written law;
>
> (*d*) is made in the course of an identification parade; or
>
> (*e*) falls within section 32(1)(*a*) of the Evidence Act.
>
> (2) Where any person is charged with any offence in relation to the making or contents of any statement made by him to an officer of a law enforcement agency in the course of an investigation carried out by that officer, that statement may be used as evidence in the prosecution.

3 The crucial question before us is which of the two following interpretations of s 259 of the CPC is to be preferred:

(a) That the provision applies to *criminal proceedings only* ("Narrow Interpretation") and therefore has no relevance at all to the admissibility of witness statements in non-criminal proceedings.

(b) That s 259 of the CPC governs the use that may be made as well as the admissibility of such witness statements in *all proceedings generally* ("Broad Interpretation").

4 We set out the background facts leading to the present disciplinary proceedings before turning to that question. We will also address other relevant issues raised by the parties and the consequential orders pertaining to the disposal of this matter.

Background

Investigations leading to the discovery of the alleged misconduct

5 The respondent is an advocate and solicitor of more than 27 years' standing. He was admitted to the Bar on 9 February 1994 and is a partner of M/s K Krishna & Partners (the "Firm").

6 According to the applicant, the respondent's alleged misconduct was first uncovered in the course of investigations undertaken by the Commercial Affairs Department ("CAD") into a motor insurance fraud scheme in which Ng had assisted one Woo Keng Chung ("Woo") to file a fraudulent motor insurance claim. During these investigations, the CAD recorded a statement from Ng dated 6 April 2016 ("Ng's Statement") pursuant to s 22 of the CPC. In his statement, Ng had mentioned his practice of approaching potential motor

accident claimants to sign WTAs appointing various law firms to act on their behalf. Ng would then submit the documents to the relevant law firm and be paid a commission if the ensuing claim was successful.

7 Ng was subsequently convicted of and sentenced on 31 August 2017 for one count of abetment of cheating in relation to Woo's motor insurance injury claim. On the same day, the Attorney-General's Chambers ("AGC") directed the CAD to investigate Ng's claim that he had been paid commissions by law firms for referrals, in order to ascertain whether the conduct of those involved had any disciplinary implications.

8 Senior Investigation Officer Lie Dai Cheng ("SIO Lie") received the AGC's directions and proceeded under s 22 of the CPC to record:

(a) a statement from Ng dated 14 September 2017 ("Ng's Further Statement");

(b) a statement from the respondent dated 20 September 2017 ("respondent's Statement"); and

(c) a statement from one K Krishnamoorthy, a partner in the Firm, dated 12 December 2017 ("Krishna's Statement").

9 These three statements are collectively referred to as the "Contested Statements" because their admissibility in the present disciplinary proceedings is contested. After recording the said statements, the CAD concluded that no further criminal offence of cheating or conspiracy to cheat was disclosed. It then forwarded its recommendations together with the Contested Statements to AGC. It is evident, in our judgment, that the CAD's principal concern was with

investigating any possible criminal offences. This is a point that we will return to later in this judgment.

10 On 2 July 2018, the Attorney-General ("AG") made a complaint concerning the respondent's conduct to the applicant. After several exchanges, the AGC also forwarded Ng's Statement and the Contested Statements (collectively, the "Statements") to the applicant in connection with and in support of the complaint.

11 As alluded to earlier, the Statements comprise the key evidence against the respondent in the present disciplinary proceedings. According to the applicant, the Statements revealed the following:

(a) Between 2014 and 2015, Ng referred four clients to the respondent in exchange for referral fees. These clients are referred to as "Client 1", "Client 2", "Client 3" and "Client 4" (being Woo) respectively. Ng was paid $800 for each of his referrals of Clients 1, 2 and 4 and $600 for his referral of Client 3.

(b) In early 2016, Ng referred a fifth client ("Client 5"), to the respondent and was paid $800 for the referral.

(c) At the time that each of the Clients signed their respective WTAs, neither the respondent nor anyone else from the Firm was present. Instead, the signing of each WTA was witnessed only by Ng, who would subsequently deliver the document to the respondent at a later time when the Clients were not present.

12 Arising from the AG's complaint, the applicant brought the four main Charges as well as corresponding alternative charges against the respondent.

Based on the applicant's case, the WTAs for Clients 1 to 4 were signed (and the relevant referral fees were paid) between March 2014 and July 2015. As such, the charges relating to Clients 1 to 4 are brought under the version of the LPA and the Legal Profession (Professional Conduct) Rules (2010 Rev Ed) which were in force prior to legislative amendments made on 18 November 2015. We refer to these as the "LPA 2011" and "PCR 2011" respectively. On the other hand, the matters relating to Client 5 occurred in 2016 and are thus dealt with by charges brought under the version of the LPA and the Legal Profession (Professional Conduct) Rules 2015 which were in force subsequent to the amendments of 18 November 2015. We refer to these as the "LPA 2015" and "PCR 2015" respectively.

13 The 1st Charge against the respondent deals with the payment of referral fees for Clients 1 to 4. The 2nd Charge deals with the payment of referral fees for Client 5. The said charges (and their alternatives) are summarised as follows:

Charge	**Legislative Provision**	**Misconduct targeted by the legislative provision**
1st Charge	s 83(2)(*e*) LPA 2011	Procuring employment through a person (to whom remuneration has been given or promised to be given)
2nd Charge	s 83(2)(*e*) LPA 2015	
Alternative 1st charge	s 83(2)(*b*) LPA 2011 read with r 11A(2)(*b*) PCR 2011	Breach of professional conduct rule (against rewarding a referror) amounting to improper conduct or practice
Alternative 2nd charge	s 83(2)(*b*)(i) LPA 2015 read with r 39(2)(b) PCR 2015	

Further Alternative 1st charge	s 83(2)(*h*) LPA 2011	Misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession
Further Alternative 2nd charge	s 83(2)(*h*) LPA 2015	

14 The 3rd Charge deals with the respondent's alleged failure to communicate directly with Clients 1 to 4 to obtain or confirm their instructions in the process of providing advice and at all appropriate stages of the matter, including:

> …at the outset of the relationship where a signed warrant to act was obtained from the client through a third party Ng Kin Kok without the presence of [the respondent] and/or any employee of [the respondent's Firm].

15 The 4th Charge deals with the respondent's alleged failure to do the same with Client 5. Both the 3rd and 4th Charges (as well as their alternatives) are summarised below:

Charge	**Legislative Provision**	**Misconduct targeted by the legislative provision**
3rd Charge	s 83(2)(*b*) LPA 2011 read with r 11A(2)(*f*) PCR 2011	Breach of professional conduct rule (requiring direct communication with client at all appropriate stages) amounting to improper conduct or practice
4th Charge	s 83(2)(*b*)(i) LPA 2015 read with r 39(2)(*g*) PCR 2015	

Alternative 3rd charge	s 83(2)(*h*) LPA 2011	Misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession
Alternative 4th charge	s 83(2)(*h*) LPA 2015	

Related court proceedings in OS 1030/2019 and OS 1206/2019

16 The respondent commenced two originating summonses prior to the disciplinary hearing ("DT Hearing"), as follows:

(a) On 16 August 2019, the respondent filed HC/OS 1030/2019 ("OS 1030/2019"). As subsequently amended, this was an application for the disciplinary proceedings against him to be held in abeyance pending the resolution of another application that he had filed by the time of the amendment, namely HC/OS 1206/2019 ("OS 1206/2019").

(b) On 27 September 2019, the respondent filed OS 1206/2019 to seek declarations to the effect that, amongst other things, the Contested Statements:

(i) were recorded improperly in that they were recorded in connection with the investigation of professional misconduct rather than criminal offences;

(ii) are confidential and should not have been disclosed by the CAD and AGC to any other persons; and

(iii) could only be used in criminal proceedings and not for other purposes (including as evidence in disciplinary proceedings).

17 OS 1030/2019 was heard and dismissed by a High Court Judge ("Judge") on 11 March 2020. The respondent did not appeal against that decision. On 2 April 2020, the Judge also heard and dismissed OS 1206/2019: see *Shanmugam Manohar v Attorney-General and another* [2021] 3 SLR 600 ("*Shanmugam Manohar v AG*"). OS 1206/2019 is especially pertinent for present purposes because some of the arguments raised by the respondent against the admissibility of the Contested Statements in the present OS had been raised before and were ruled on by the Judge in OS 1206/2019. We will return to this point later in addressing whether any of these arguments are barred by operation of the doctrine of *res judicata*. At this stage, it suffices to note that although the respondent initially appealed against the Judge's decision in OS 1206/2019, he eventually withdrew the said appeal shortly after the DT Hearing had concluded.

The disciplinary proceedings below

18 The DT Hearing took place on 18 and 19 August 2020. The disciplinary tribunal hearing the matter ("DT") determined on the first day that all four Statements were admissible in evidence and the hearing proceeded on that footing. The applicant called three factual witnesses – namely, SIO Lie, Mr K Gopalan (the director of the applicant's Conduct Department) and Ng (who was subpoenaed). The respondent chose not to give any evidence in his defence or to call any witnesses.

19 Relying mainly on the strength of the Contested Statements, the DT eventually found that all the Charges were proved beyond a reasonable doubt and held that cause of sufficient gravity existed for disciplinary action under s 83 of the LPA. The DT's decision dated 20 October 2020 is reported as *The*

Law Society of Singapore v Shanmugam Manohar [2020] SGDT 9 ("DT Decision"). The DT's findings included the following:

(a) The Statements were admissible in evidence (see DT Decision at [37]–[42]). Contrary to the respondent's arguments, the Statements were "recorded in the proper exercise of [SIO] Lie's powers of investigation" and although they were confidential, their disclosure was nonetheless permitted in the public interest.

(b) Given the admissions in the respondent's Statement and the corroboration from Krishna's Statement and Ng's Further Statement, the 1st and 2nd Charges were proved beyond a reasonable doubt (see DT Decision at [43]–[52]). Under s 93(1)(*c*) of the LPA, there was cause of sufficient gravity for disciplinary action under s 83 of the LPA.

(c) As to the 3rd and 4th Charges, the WTAs signed by the Clients were admissible in evidence (contrary to the respondent's submission). Based on the admissions in the respondent's Statement and his failure to explain this or to adduce any contrary evidence, the respondent was found to have failed to communicate with each of his Clients at the outset of the solicitor-client relationship. The 3rd and 4th Charges were thus also proved beyond a reasonable doubt (see DT Decision at [53]–[63]). Under s 93(1)(*c*) of the LPA, there was cause of sufficient gravity for disciplinary action under s 83 of the LPA.

(d) Furthermore, the respondent had failed to give evidence himself and did not provide a reasonable explanation for this despite his evidence being material to his defence. The respondent also failed to produce documents or call witnesses in his defence. As such, an adverse inference was drawn against the respondent to the effect that any

evidence he might have given would have shown that he had paid referral fees to Ng and had failed to communicate and meet with the Clients at all appropriate times (see DT Decision at [64]).

This led to the filing of the OS.

The parties' submissions in the present OS

20 The applicant's position, in the main, may be summarised as follows:

(a) As a preliminary matter, the DT was correct to hold that the Contested Statements were admissible in evidence. Pursuant to r 23(1) of the Legal Profession (Disciplinary Tribunal) Rules (2010 Rev Ed) ("DT Rules"), the admissibility of the said statements is governed by the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") and not by s 259 of the CPC, contrary to the respondent's contention. As held in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 (*"Phyllis Tan"*) and *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 (*"Rayney Wong*"), the general rule under the EA is that "all relevant evidence is admissible" unless its prejudicial effect outweighs its probative value. In the present case, the Contested Statements are plainly admissible since they are highly relevant to the Charges and their probative value is compelling and outweighs their prejudicial effect.

(b) Based primarily on the contents of the Statements, the Charges have been proved beyond a reasonable doubt and there is due cause for disciplinary action under s 83(1) of the LPA.

(c) The respondent should accordingly be sanctioned for each of the Charges under s 83(1) of the LPA, taking into account the following factors: (i) the sentencing precedents; (ii) the respondent's seniority as

an advocate and solicitor; and (iii) the respondent's lack of remorse and repeated attempts to delay the disciplinary proceedings.

21 On the other hand, the respondent submits that the Contested Statements are inadmissible in evidence and that the DT had incorrectly relied upon them in finding that the Charges were made out. The respondent advances two main grounds in support of his position.

22 The respondent's first ground ("*Ultra Vires* Argument") is that the CAD had acted *ultra vires* in purporting to exercise its power under s 22 of the CPC to record the Contested Statements. The respondent alleges that in recording the said statements, SIO Lie had acted with the improper purpose of investigating professional misconduct, instead of the statutorily-permitted purpose of investigating criminal offences. Given the supposedly *ultra vires* nature of his recording, the Contested Statements are said to be a "nullity" and "void *ab initio*".

23 The respondent's second ground was initially described as an argument about "confidentiality". He developed this in the following manner:

(a) The Contested Statements are confidential in nature and should not have been disclosed by the CAD and the AGC to the applicant.

(b) As the Contested Statements were recorded pursuant to a statute, their admissibility should be strictly governed by the statute itself. To be specific, the Contested Statements were recorded under s 22 of the CPC. They may therefore only be used in the manner contemplated by s 259 of the CPC (meaning, they may not be admitted as evidence unless they fall within the exceptions specifically stated in that provision). Section 22, read with s 259 of the CPC is, in other words, *determinative* of when

> the statements are admissible in evidence and this is the position not only in criminal proceedings, but also in any other type of proceedings including disciplinary proceedings. Whilst it may be the *general* rule under the EA that all relevant evidence is admissible, the statute under which the Contested Statements were recorded (which is the CPC) *specifically* provides that the statements may only be admitted under specific exceptions based on certain provisions in the EA. Hence, it is only these specific provisions in the EA that may be invoked even in the context of disciplinary proceedings. On the present facts, none of the exceptions under s 259 of the CPC are applicable.

24 It may be noted that the respondent's second ground encompasses what are, in fact, two distinct arguments. The argument relating to the "confidentiality" of the Contested Statements at [23(a)] is in fact concerned with the permissibility of the *disclosure* of the Contested Statements by the CAD and the AGC to the applicant (hereinafter, the "Confidentiality Argument"). On the other hand, the respondent's argument outlined at [23(b)] above is a distinct argument to the effect that where a statement is recorded under s 22 of the CPC, its use including its *admissibility* (not just in criminal proceedings, but also in disciplinary proceedings) is circumscribed by s 259 of the CPC (hereinafter, the "CPC Argument"). It was only during the oral hearing before us that the respondent's counsel developed the CPC Argument as a standalone argument that was advanced on its own.

25 The respondent thus has three strings to his bow, as it were – the *Ultra Vires* Argument, the Confidentiality Argument and the CPC Argument (collectively, the "Arguments"). He submits that the Contested Statements are inadmissible in the present disciplinary proceedings on account of these three arguments and that if any one of them is accepted and the Contested Statements

excluded, there would be insufficient evidence to prove the Charges. He does not, however, put forward any alternative version of events to refute the substance of the Charges against him.

26 We heard oral arguments on 12 April 2021, in the course of which, as we have noted above, the respondent's CPC Argument in relation to s 259 of the CPC came to the fore. We considered that this merited exploration and we therefore invited the parties to file further written submissions on two related questions (the "Questions"):

(a) Whether s 259 of the CPC governs the admissibility of police statements in criminal proceedings only or all proceedings generally ("Applicability Question", which was identified at [3] above).

(b) How s 259 of the CPC is to be construed in light of the decisions in *Phyllis Tan* and *Rayney Wong* ("Interface Question").

27 We also allowed the applicant's request for leave to inform the AGC of the court's directions above and to convey to us the AGC's views, if any, on these questions. The AGC furnished written submissions on the Questions, which were annexed by the applicant to its own submissions. The parties were also granted leave to file further submissions as to whether any of the respondent's three Arguments mentioned at [25] above are precluded by the doctrine of issue estoppel (if and to the extent the said arguments had already been raised and decided in OS 1206/2019).

28 Subsequently, we also directed parties to file further submissions on whether this court may or should make an order for a fresh hearing under s 98(8)(*b*) of the LPA in the event that any or all of the Contested Statements are found to be inadmissible in the present disciplinary proceedings. Section

98(8)(*b*) of the LPA (reproduced at [130] below) empowers the Court of Three Judges to set aside the determination of the disciplinary tribunal and to direct (a) the disciplinary tribunal to rehear and reinvestigate the matter; or (b) the applicant to apply for the appointment of a new disciplinary tribunal to hear and investigate the matter.

29 In gist, the applicant contends in its further submissions that:

(a) The respondent's Arguments against the admissibility of the Contested Statements have already been raised and ruled upon by the Judge in OS 1206/2019. The respondent is therefore precluded by issue estoppel and/or the doctrine of abuse of process from raising the same arguments in the present OS.

(b) On the Applicability Question, the Narrow Interpretation of s 259 of the CPC is to be preferred.

(c) Given that s 259 of the CPC is not applicable to disciplinary proceedings, the admissibility of the Contested Statements is governed only by the EA pursuant to r 23(1) of the DT Rules (see [20(a)] above). As to the Interface Question, the court in *Phyllis Tan* and *Rayney Wong* held that under the EA, the general rule is that "all relevant evidence is admissible" subject to the discretion of the court to exclude evidence if its prejudicial effect exceeds its probative value. The overarching test of relevance under the EA along with this exclusionary discretion provides sufficient safeguards to ensure the reliability of evidence in non-criminal proceedings. Applying the general rule under the EA to the Contested Statements, the Contested Statements are admissible for the purposes of the disciplinary proceedings.

(d) In the event, however, that the Contested Statements are found to be inadmissible, this court should make an order under s 98(8)(*b*)(ii) of the LPA for a new disciplinary tribunal to hear and investigate the complaint against the respondent. The public interest weighs in favour of the matter being fully heard and investigated in a fresh hearing, instead of the respondent being acquitted.

30 The AGC's views, as set out below, were limited to the Questions:

(a) In answer to the Applicability Question, s 259 of the CPC should be construed as applying only to (i) criminal proceedings; and (ii) such other proceedings as may be prescribed by any relevant statutes (that is to say where the statute specifies that the CPC applies to proceedings brought under that statute).

(b) As to the Interface Question, the decisions in *Phyllis Tan* and *Rayney Wong* recognise the court's discretion to exclude evidence where its probative value is outweighed by its prejudicial effect. This exclusionary discretion serves as a sufficient safeguard in disciplinary proceedings to ensure fairness to a respondent solicitor so that unduly prejudicial or unreliable evidence is not admitted. Such a construction of s 259 of the CPC is fair and will not lead to any absurdity or undermine the purpose of s 259, which is to protect accused persons from unfair prejudice arising from the use of witness statements.

31 The respondent's further submissions argue, among other things, that:

(a) In OS 1206/2019, the Judge did not decide on the admissibility of the Contested Statements in disciplinary proceedings. The *Ultra Vires* Argument and Confidentiality Argument were, however, raised before

and ruled upon by the Judge. While this generally would mean that the latter two arguments might be precluded by the doctrine of issue estoppel, it is nonetheless appropriate for this court to re-examine them because there is "fresh evidence" available in the form of the witnesses' evidence that was adduced during the DT Hearing. Further, there is no bar at all to this court considering the CPC Argument.

(b) As to the Applicability Question, the Broad Interpretation of s 259 of the CPC is the correct one.

(c) As for the Interface Question, the decisions in *Phyllis Tan* and *Rayney Wong* are not inconsistent with the Broad Interpretation of s 259 of the CPC. Neither decision had to deal with the scope of s 259 of the CPC nor did they lay down an absolute rule that all relevant evidence is admissible. Instead, *Phyllis Tan* held (at [126]) that under the EA, "all relevant evidence is admissible *unless specifically expressed to be inadmissible*" (emphasis added). In the instant situation, the Contested Statements have in fact been "specifically expressed to be inadmissible" by reason of s 259 of the CPC.

(d) Applying the Broad Interpretation of s 259 of the CPC, the Contested Statements are inadmissible in the present disciplinary proceedings as none of the exceptions in s 259 apply. In the circumstances, there is no evidence to prove the applicant's case. This court should not make an order under s 98(8)(*b*) of the LPA that a fresh hearing be conducted because (i) the applicant should not be afforded a fresh chance to mount its case against the respondent; (ii) the respondent deserves finality and should not be put through the ordeal of a second disciplinary hearing; and (iii) a fair trial is in any case impossible

because the contents of the incriminatory Contested Statements are discussed in the DT Decision, which is already in the public domain.

Issues to be determined

32 In light of the parties' positions as outlined above, the principal issues that arise for our consideration are as follows:

(a) The preliminary issue is whether the Contested Statements are admissible in the present disciplinary proceedings ("Issue 1").

(b) Depending on the outcome of Issue 1, two alternative scenarios may result:

(i) Issue 2.1: If the Contested Statements are found to be *admissible*, we will then consider whether the Charges have been proved beyond a reasonable doubt and whether there is due cause for disciplinary action under s 83(1) of the LPA. If the answer to both questions is "yes", the appropriate sanction will need to be considered.

(ii) Issue 2.2: If any of the Contested Statements are found to be *inadmissible* (and thus wrongly admitted by the DT), the next question is how this court should proceed. As to this:

(A) We should first determine whether after excluding the inadmissible Contested Statements, the Charges have been proved beyond a reasonable doubt and whether there is due cause for disciplinary action under s 83(1) of the LPA. If the answer to both questions is "yes", we may then decide the appropriate sanction.

(B) If the answer to the first inquiry is in the negative, then the question arises as to whether we should acquit the respondent or make an order under s 98(8)(*b*) of the LPA to set aside the determination of the DT and direct (I) the DT to rehear and reinvestigate the matter; or (II) the applicant to apply for the appointment of a new disciplinary tribunal to hear and investigate the matter.

33 We proceed to consider the matter in this broad sequence, elaborating on the respective sub-issues at the appropriate points.

Issue 1 – Whether the Contested Statements are admissible

34 The applicant correctly submits that *as a general matter*, the EA governs the admissibility of evidence in disciplinary proceedings pursuant to r 23(1) of the DT Rules (see *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [13]), which provides:

> **Application of Evidence Act**
>
> **23.**—(1) The Evidence Act (Cap. 97) shall apply to proceedings before the Disciplinary Tribunal in the same manner as it applies to civil and criminal proceedings.

35 As we have noted, the respondent has raised three Arguments in order to challenge the admissibility of the Contested Statements – namely, the *Ultra Vires* Argument, the Confidentiality Argument and the CPC Argument. In respect of each argument, we first consider whether the respondent is estopped by the doctrine of *res judicata* from raising that argument, and if not, we go on to examine its merits.

The *Ultra Vires* Argument and the Confidentiality Argument

36 The parties' positions as to whether the *Ultra Vires* Argument and the Confidentiality Argument are precluded by the doctrine of *res judicata* have already been summarised at [29(a)] and [31(a)] above. In essence, we agree with the applicant that these two arguments are precluded by issue estoppel.

37 The respondent filed OS 1206/2019 to seek the declaratory reliefs set out at [16(b)] above. It will be evident from the nature of the reliefs sought that the central purpose of OS 1206/2019 was to render the Contested Statements inadmissible in the disciplinary proceedings. While the Judge in OS 1206/2019 correctly declined to rule on the *admissibility* of those statements, she nonetheless ruled on the identical points raised in the *Ultra Vires* Argument and the Confidentiality Argument.

38 In particular, the respondent contended in OS 1206/2019 that in recording the Contested Statements, the CAD had exercised its power under s 22 of the CPC for the improper purpose of investigating professional misconduct. This, in essence, is the respondent's *Ultra Vires* Argument. In rejecting it, the Judge found that SIO Lie's "true and dominant purpose of recording the [respondent's Statement] was to investigate a criminal offence, namely motor insurance fraud" (see *Shanmugam Manohar v AG* at [75]). Similarly, as regards Ng's Further Statement and Krishna's Statement, the upshot of the Judge's assessment was that SIO Lie was primarily focussed on investigating the respondent's and the Firm's possible involvement in motor insurance fraud rather than on whether there had been any professional misconduct on their part (see *Shanmugam Manohar v AG* at [58]–[75]). It was open to the respondent to challenge this finding on appeal but he did not, in the final analysis, do so.

39 In these circumstances, having regard to the four requirements laid down in *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157 at [14]–[15], we are satisfied that issue estoppel bars the respondent from challenging that finding in the present OS. There is identity of subject-matter between OS 1206/2019 and the present OS because the same issue has been raised in both sets of proceedings, namely, whether the CAD had improperly recorded the Contested Statements for the primary purpose of investigating professional misconduct. The Judge's finding on that issue is a final and conclusive judgment on the merits of the respondent's allegations. Further, it was a finding made by a court of competent jurisdiction and both the respondent and the applicant were parties to OS 1206/2019.

40 The respondent is similarly barred from raising the Confidentiality Argument. The Judge has already held in OS 1206/2019 that the statements were confidential but that their disclosure by the CAD and the AGC to the applicant was justified in the public interest (see *Shanmugam Manohar v AG* at [81]–[95]).

41 Despite this, the respondent contends that it is nonetheless "just and equitable" that we re-examine both these arguments having regard to fresh evidence that became available in the form of the witnesses' testimonies adduced during the DT Hearing. The respondent submits that this is a "special circumstance" that justifies excluding the application of issue estoppel in the present case.

42 In *Beh Chew Boo v Public Prosecutor* [2021] SGCA 44 ("*Beh Chew Boo*") at [39], the Court of Appeal reiterated the principle that the doctrine of issue estoppel may be excluded in certain special circumstances where new, relevant evidence subsequently becomes available:

> 39 … Where cause of action estoppel applies, the bar is absolute in relation to all points decided unless fraud or collusion is alleged. On the other hand, **issue estoppel is less rigid, in that there might be an exception to it in the special circumstance that there has become available to a party further material relevant to the correct determination of a point involved in the earlier proceedings, provided that the further material in question could not by reasonable diligence have been adduced in those earlier proceedings**. This may be further contrasted with the *Henderson* extended doctrine of *res judicata*, which accords a higher degree of flexibility to the court to look at all the circumstances of the case, including whether there is fresh evidence that might warrant re-litigation or whether there are *bona fide* reasons for a matter not having been raised in the earlier proceedings.
>
> [emphasis in bold added]

43 In our judgment, the respondent cannot derive any assistance from the foregoing remarks in *Beh Chew Boo*. To explain, the "fresh evidence" that the respondent mainly relies upon is SIO Lie's oral testimony at the DT Hearing. Importantly, as observed at [51] below, the testimony given by SIO Lie at the said hearing is entirely in line with the evidence he *had already given* in OS 1206/2019, especially in relation to his purpose in recording the Contested Statements. SIO Lie's oral testimony at the DT Hearing raises nothing new and it does not in any way change the analysis of the *Ultra Vires* Argument and the Confidentiality Argument. In the premises, we do not think that this "fresh evidence" can be said to give rise to any special circumstances warranting the exclusion of issue estoppel.

44 Prior to *Beh Chew Boo,* the Court of Appeal in *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 ("*RBS*") also had occasion to consider the ambit of the exception to issue estoppel, albeit only in the context of civil cases. At [186]–[190], the court explained that the said exception is tightly

circumscribed. It laid down five cumulative conditions (at [190]) for this exception to arise:

(a) First, the decision said to give rise to issue estoppel must directly affect the future determination of the rights of the litigants.

(b) Second, the decision must be shown to be clearly wrong.

(c) Third, the error in the decision must be shown to have stemmed from the fact that some point of fact or law relevant to the decision was not taken or argued before the court which made that decision and could not reasonably have been taken or argued on that occasion.

(d) Fourth, there can be no attempt to claw back rights that have accrued pursuant to the erroneous decision or to otherwise undo the effects of that decision.

(e) Fifth, it must be shown that great injustice would result if the litigant in question were estopped from putting forward the particular point which is said to be the subject of issue estoppel – in this regard, if the litigant failed to take advantage of an avenue of appeal that was available to him, it will usually not be possible for him to show that the requisite injustice nevertheless exists.

45 We note that at [127]–[128] of *RBS,* there is some suggestion in the Court of Appeal's remarks that the doctrine of *res judicata* should be applied with greater stringency in civil cases compared to criminal cases (to the extent that the doctrine is at all applicable in either type of case). There, the court recognised that the considerations at play in the two types of cases may be quite different. Although the interest of finality in litigation bears considerable weight and importance in all cases, there is a particular concern in criminal cases where

the life and liberty of accused persons are at stake, to scrutinise the State's exercise of its coercive powers in the criminal justice system.

46 This might suggest, by extension, that in order to invoke an *exception* to issue estoppel, the applicable requirements in criminal cases should be less stringent than in civil cases. Even if this were so, we cannot conceive of a situation where a litigant could invoke any such exception without, at the minimum, meeting conditions (b) and (e) set out at [44] above, which go towards the correctness of the earlier order and a demonstration of substantial injustice.

47 In the present case, we are concerned with disciplinary proceedings, which are *quasi-criminal* in nature (see *Law Society of Singapore v Chiong Chin May Selena* [2013] SGHC 5 at [28]). Nevertheless, even if we were to apply a less stringent test for permitting an exception to issue estoppel, it is clear that neither condition (b) or (e) at [44] above would be met. First, the Judge's decision in OS 1206/2019 cannot be said to be "clearly wrong". On the contrary, as explained at [49]–[52] below, we agree with the Judge's findings that the Contested Statements were not recorded in the improper exercise of investigative powers and were disclosable in the public interest (notwithstanding their confidentiality). Second, if the respondent had been truly dissatisfied with the Judge's findings, he ought to have pursued his appeal against the Judge's decision in OS 1206/2019. However, he abandoned that course of action. Having done so, it does not lie in his mouth to now claim that he would suffer "great injustice" in not being allowed to pursue the point.

48 We are therefore satisfied that no exception to issue estoppel arises in the present case. The respondent is accordingly barred by issue estoppel from

raising the *Ultra Vires* Argument and Confidentiality Argument in these proceedings.

49 For completeness, even if the respondent had not been barred, we consider that these arguments would, in any event, have failed on their merits.

50 It is not disputed that the power to record statements under s 22 of the CPC is conferred upon the police for the purpose of investigating criminal offences. Whilst the AGC's directions to the CAD on 31 August 2017 may have suggested an interest in investigating professional misconduct, it is ultimately the purpose of the police officer exercising the power under s 22 of the CPC which is material.

51 As to that, the available evidence showed that SIO Lie had exercised *his* own judgment in recording the Contested Statements, and his dominant purpose was to investigate motor insurance fraud given his view that the evidence of improper conduct on the part of the respondent and/or the Firm might be suggestive of their wider involvement in such fraud. Having considered the affidavit evidence of SIO Lie and his oral evidence, we are satisfied that the Judge was correct to accept this explanation. Further, SIO Lie's oral testimony *at the DT Hearing* itself (being the "fresh evidence" which the respondent now refers to), is also entirely consistent with his affidavit evidence in OS 1206/2019. The respondent's *Ultra Vires* Argument is therefore without merit.

52 As regards the Confidentiality Argument, we accept that generally, statements recorded in the course of police investigations under s 22 of the CPC are confidential. However, this is a general rule, and is subject to the exception that disclosure may be permitted where it is in the public interest (see, for

instance, *Woolgar v Chief Constable of Sussex Police* [2000] 1 WLR 25 at 36). On the present facts, it was well within the bounds of the public interest for the CAD and the AGC to disclose the Contested Statements to the applicant in order to facilitate the investigation and prosecution of the respondent's alleged professional misconduct.

53 We accordingly dismiss the respondent's *Ultra Vires* Argument and Confidentiality Argument.

The CPC Argument

Whether the respondent is precluded by res judicata from raising the CPC Argument

54 As far as the CPC Argument is concerned, we are satisfied that the respondent *is* entitled to raise this in the present OS. At its core, this is an argument that s 259 of the CPC ought to govern the admissibility of the Contested Statements in these disciplinary proceedings.

55 To begin with, this specific argument does not appear to have been raised in OS 1206/2019. In any event, the Judge specifically declined to decide on the admissibility of the Contested Statements in the disciplinary proceedings (see *Shanmugam Manohar v AG* at [34]–[35]). The Judge considered that this issue should first be considered by the disciplinary tribunal hearing the complaint against the respondent, and thereafter be reviewed (if necessary) by a court dealing with the matter under either ss 97 or 98 of the LPA. In the circumstances, there was no final and conclusive judgment on the merits of the CPC Argument which could give rise to issue estoppel.

56 We also do not consider it an abuse of process for the respondent to raise the argument now. We agree entirely with the Judge that the admissibility of

evidence in disciplinary proceedings is an issue for the DT and the Court of Three Judges to decide having regard to the disciplinary framework prescribed in the LPA. The CPC Argument was not a point that should reasonably have been raised or decided in the context of a pre-emptive application for declaratory relief. It was quite reasonable for it to be taken in the course of resisting the present application.

57 The applicant contends that in OS 1206/2019, the respondent had argued that the CAD's and AGC's disclosure of the Contested Statements to the applicant had effectively prevented him from challenging the admissibility of the statements. The applicant claims that since the Judge rejected this argument in OS 1206/2019, the CPC Argument is also barred by issue estoppel. We disagree. In fact, that argument was raised in the context of the respondent's objections to the Contested Statements being disclosed to the applicant. In that context, the Judge had found the respondent's argument in OS 1206/2019 to be *irrelevant* to whether the CAD's and the AGC's disclosure was justified in the public interest (see *Shanmugam Manohar v AG* at [93]). There was no question raised as to the *admissibility* of the Contested Statements in the disciplinary proceedings and there was certainly no specific or definitive pronouncement by the Judge as to whether s 259 of the CPC governs that question at all in disciplinary proceedings.

The Questions in respect of s 259 of the CPC

58 We therefore proceed to consider the merits of the CPC Argument. As mentioned at the outset of this judgment, the critical question to be decided is whether the Narrow Interpretation or the Broad Interpretation of s 259 of the CPC is to be preferred (see [3] above). We will therefore answer the Applicability Question first (see [26(a)] above), before considering the Interface

Question (see [26(b)] above), in light of that answer. Once both legal Questions are resolved, we then apply the law to the facts to determine whether, as the respondent contends, the Contested Statements are inadmissible in the present disciplinary proceedings.

(1) The Applicability Question

59 Section 259 of the CPC is a statutory provision. As such, whether it affects the admissibility of witness statements in *all* proceedings generally or in criminal proceedings only is essentially a matter of statutory interpretation. It should be noted that by the phrase "all proceedings", we generally mean any proceeding in which evidence may legally be taken by a court. That said, the types of proceedings we are primarily concerned with are criminal, civil and disciplinary proceedings.

60 As set out by the Court of Appeal in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [37], the process of purposive statutory interpretation consists of three steps:

(a) First, ascertain the possible interpretations of the 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.

(A) STATUTORY TEXT AND CONTEXT OF S 259 OF THE CPC

61 Beginning with the statutory text, which has been set out at [2] above, s 259(1) of the CPC lays down a general rule that any police statement given by "a person other than the accused" (meaning a witness) in the course of investigations is "inadmissible in evidence" unless it falls within certain specified exceptions. Section 259(2) of the CPC is concerned with statements being used as evidence in the prosecution of an offence *relating to* the making or contents of the statement (such as perjury). Subsection (2) is not of critical importance for present purposes and our focus is on s 259(1) of the CPC.

62 Limiting oneself to the text of s 259(1) of the CPC, the words "inadmissible in evidence" is neither expressly stated to apply to all proceedings generally, nor expressly limited to criminal proceedings only. However, the generality and seeming breadth of the exclusionary rule suggests a preference for the construction that such evidence is inadmissible in *all* proceedings unless otherwise provided.

63 The applicant contrasts the terms of s 259(1) with other statutes. In particular, it refers to s 36(1) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) and s 40A(1)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed). The applicant points out that unlike s 259 of the CPC, both these provisions *expressly* provide that complaints or information obtained and/or disclosed under the respective statutes are not to be "admitted in evidence in any civil or criminal proceeding". It is said that this supports the inference that s 259 of the CPC is confined in its application to criminal proceedings. We do not find the reference to these two provisions to be helpful in the present context because

s 259 of the CPC must be interpreted in the light of *its* purpose, structure and scheme and its own legislative context.

64 Rather more significant for our purposes is the *scope* of the general rule in s 259(1) of the CPC and the specific exceptions in subsections (1)(*a*) to (*e*). On a close examination of those sub-sections, it becomes clear to us that the Broad Interpretation ought to prevail.

65 Five specific exceptions are provided to the general rule of inadmissibility in s 259(1) of the CPC – namely, where the witness statement:

> **(*a*)** is **admitted under section 147 of the Evidence Act** (Cap. 97);
>
> **(*b*)** is used for the purpose of **impeaching his credit in the manner provided in section 157 of the Evidence Act**;
>
> **(*c*)** is **made admissible as evidence in any criminal proceeding by virtue of any other provisions in this Code [*ie*, the CPC] or the Evidence Act or any other written law**;
>
> **(*d*)** is made **in the course of an identification parade**; or
>
> **(*e*)** falls within **section 32(1)(a) of the Evidence Act**.
>
> [emphasis added in bold]

66 We begin with s 259(1)(*c*) of the CPC, which is phrased in very wide terms. It covers any witness statement which is made admissible "in any criminal proceeding by virtue of any other provisions in [the CPC] or the Evidence Act or any other written law". This is hereafter referred to as the "s 259(1)(*c*) exception".

67 Crucially, if the scope of s 259 of the CPC is confined to *criminal proceedings only*, the general rule of inadmissibility in subsection (1) would be rendered otiose and would be entirely overridden by the s 259(1)(*c*) exception. In essence, the general rule would be meaningless because the effect of the

s 259(1)(*c*) exception is that any witness statement which is *admissible in criminal proceedings* would effectively *remain so* anyway. In other words, it denudes the general exclusion of witness statements of all its force so as to render the section as a whole virtually superfluous. This seems to us to be a powerful argument against the Narrow Interpretation.

68 Further, the exceptions in s 259(1)(*a*), (*b*) and (*e*) of the CPC are respectively founded upon ss 147, 157 and 32(1)(*a*) of the EA. *On their own*, those provisions of the EA apply to all proceedings generally pursuant to s 2(1) of the EA (see *Chua Boon Chye v Public Prosecutor* [2015] 4 SLR 922 at [26]).

69 If s 259(1) of the CPC were applicable only to criminal proceedings, the only effect of the statutory exceptions in s 259(1)(*a*), (*b*) and (*e*) of the CPC would be to provide for the admissibility of witness statements *in criminal proceedings* pursuant to ss 147, 157 and 32(1)(*a*) of the EA. Yet, the s 259(1)(*c*) exception would already provide for such admissibility since this would be pursuant to "any other provisions in the Evidence Act" that would render a witness statement admissible in *criminal proceedings*. This would seem to include ss 147, 157 and 32(1)(*a*) of the EA. The result of the Narrow Interpretation is therefore that the exceptions in s 259(1)(*a*), (*b*) and (*e*) of the CPC would also be rendered otiose by the s 259(1)(*c*) exception.

70 These difficulties fall away on the Broad Interpretation of s 259. If s 259 of the CPC was held to apply to *all* proceedings, the rule in subsection (1) would render witness statements generally inadmissible in *civil and/or disciplinary proceedings*, but in the context of criminal proceedings only, the s 259(1)(*c*) exception would be controlling and could render such statements admissible for the reason given at [67] above. Further, in *all proceedings*, the other specified

exceptions in subsections (1)(*a*), (*b*), (*d*) and (*e*) may also apply to render a witness statement admissible.

71 It is a well-established canon of statutory interpretation that Parliament does not legislate in vain (see *Tan Cheng Bock* at [38]). In our view, the Narrow Interpretation is untenable because on this reading, the s 259(1)(*c*) exception would render otiose and meaningless the general rule of inadmissibility set out in subsection (1) and some of the other exceptions in subsections (1)(*a*), (*b*) and (*e*). We find it implausible that Parliament could have intended such an unworkable result. The Broad Interpretation, on the other hand, ensures that there is substance to the general rule of inadmissibility in s 259(1) of the CPC and each of its specified exceptions.

(B) SPECIFIC LEGISLATIVE PURPOSE OF S 259 OF THE CPC

72 Importantly, the Broad Interpretation of s 259 also furthers what, in our judgment, are the legislative purposes behind the provision.

73 The Second Reading speech for the Criminal Procedure Bill (Bill No 11/2010) ("CPC 2010 Bill") does not discuss the specific legislative purposes behind s 259 of the CPC. We therefore consider local and foreign case authorities that have inferred the specific purposes of the relevant provisions, before setting out our conclusions.

74 Prior to the enactment of the current version of the CPC in 2010, the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("1985 ed CPC") was in force. Notably:

(a) section 22 of the CPC is adapted from s 121 of the 1985 ed CPC;

(b) section 258 of the CPC is adapted from s 122(5) of the 1985 ed CPC and ss 21, 24, 29 and 30 of the Evidence Act (Cap 97, 1997 Rev Ed) which was in force prior to 2010; and

(c) section 259 of the CPC is adapted from s 122 of the 1985 ed CPC.

75 Sections 122(1) to 122(5) of the 1985 ed CPC read:

> **Admissibility of statements to police**
>
> **122.—(1) Except as provided in this section**, **no statement made by any person** to a police officer in the course of a police investigation made under this Chapter **shall be used in evidence** other than a statement that is a written statement admissible under section 141.
>
> **(2) When any witness is called for the prosecution or for the defence**, other than the accused, the court shall, on the request of the accused or the prosecutor, refer to **any statement made by that witness to a police officer** in the course of a police investigation under this Chapter and may then, if the court thinks it expedient in the interests of justice, direct the accused to be furnished with a copy of it; and the statement **may be used to impeach the credit of the witness in the manner provided by the Evidence Act [Cap. 97]**.
>
> **(3) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27** [concerning facts discovered in consequence of information received] **or 32 (*a*) of the Evidence Act** [concerning statements relating to the cause of death].
>
> **(4) When any person is charged with any offence in relation to the making or contents of any statement** made by him to a police officer in the course of a police investigation made under this Chapter, **that statement may be used as evidence in the prosecution**.
>
> **(5) Where any person is charged with an offence any statement**, whether it amounts to a confession or not or is oral or in writing, made at any time, whether before or after that person is charged and whether in the course of a police investigation or not, by that person to or in the hearing of any police officer of or above the rank of sergeant **shall be admissible at his trial in evidence** and, if that person tenders

> himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:
>
> **Provided that the court shall refuse to admit such statement** or allow it to be used as aforesaid **if** the making of the statement appears to the court to have been caused by any **inducement, threat or promise** having reference to the charge against such person, proceeding from a person in authority and sufficient, in the opinion of the court, to give such person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.
>
> [subsections (6), (7) and (8) have been omitted]
>
> [emphasis added in bold]

76 Although there are some differences between the current and previous versions of the CPC which deal with the admissibility of witness statements, the broad thrust of the provisions remains largely the same in that s 259 of the CPC (as did s 122(1) of the 1985 ed CPC) lays down a general rule of inadmissibility subject to certain specified exceptions. The discussion in the case law as to the specific purposes of s 122 of the 1985 ed CPC is therefore potentially relevant to the interpretation of s 259 of the CPC.

77 In *Yohannan v R* [1963] MLJ 57 at 58 ("*Yohannan*"), FA Chua J held that the object of s 122 of the 1985 ed CPC was to *protect the accused against the risk of untruthful witnesses.* Subsequently, Kan Ting Chiu J held in *Public Prosecutor v Sagar s/o Suppiah Retnam* (Unreported: CC 6/1994) (*"Sagar"*) that the purpose of the provision was to *regulate the use of police statements so as to protect an accused person.* Kan J stated (at 22–23) as follows:

> … [Section 122 of the 1985 ed CPC] was enacted to regulate the use of police statements, and the protection it gives to an accused person should only be removed by clear and unequivocal amending legislation and not through a sidewind.

78 An apparently different view was taken in *Public Prosecutor v Sng Siew Ngoh* [1996] 1 SLR 143 ("*Sng Siew Ngoh*") by Yong Pung How CJ (hearing a Magistrate's Appeal). At [44], Yong CJ disagreed with *Sagar* and observed that "the purpose of section 122 is not so much to regulate police behaviour but to ensure that reliable evidence is given". Respectfully, however, this may not have been the point of the holding in *Sagar* in that the provision was thought to be directed at regulating "the use of police statements" and not "police behaviour" generally. Yong CJ also rejected (at [25]–[26]) any suggestion based on the Indian case authorities that s 122 of the 1985 ed CPC was directed at protecting accused persons from "overzealous" or "unreliable" police officers. Yong CJ further elaborated (at [27] and [58]–[60]) that the purpose of the provision was simply to ensure that evidence given out of court to police officers would only be admissible if there was either a good foundation for their *reliability* (because they fell within the exceptions to the hearsay rule) or there were *other policy considerations* (because they fell within the exceptions listed in ss 122(2), 122(3) and 122(5)).

79 It seems therefore that two related purposes underlining s 259 of the CPC have emerged in the local case law – first, the protection of accused persons from the risk of untruthful witnesses; and second, ensuring that only reliable evidence is admitted (by permitting the use of witness statements, which constitute hearsay evidence, only under limited conditions). In short, s 259 seeks to advance these purposes by regulating and limiting the use that may be made of witness statements recorded by the police.

80 The applicant contends that s 259 of the CPC is concerned with protecting accused persons from "overzealous police officers" by regulating the admissibility of unreliable hearsay evidence. It submits that this has no relevance in the context of disciplinary proceedings because a respondent

solicitor is not in the position of an accused person against whom unreliable witness statements are sought to be admitted. The applicant therefore argues that the Narrow Interpretation would better advance the specific legislative purpose of the provision.

81 The AGC, on its part, submits that there are two specific purposes underlying s 259 of the CPC. First, the provision seeks to encourage the free disclosure of information by witnesses. Second, it serves to protect accused persons from the prejudice of unreliable witness statements.

82 As against this, the respondent says that the "public policy" behind s 259 of the CPC is to protect witnesses "who are prepared to give evidence for the purpose of criminal proceedings". He suggests that witnesses may not be as willing to assist in criminal investigations if they knew that their police statements might be used in other proceedings. This seems to us to overlap with the first of the purposes identified by the AGC.

83 In our judgment, as discussed in *Yohannan, Sagar* and *Sng Siew Ngoh,* s 259 of the CPC is intended, at least in part, to protect accused persons and to ensure that only reliable evidence is admitted against them. As indicated at [79] above, this is achieved by regulating the use and limiting the admissibility of witness statements to certain specified situations. This is rooted in the fact that such statements constitute hearsay evidence, which is admissible only in limited circumstances. In the context of criminal proceedings, this would further the purpose of protecting accused persons by helping to ensure a fair trial. We do not, however, agree with the applicant that this is the *only* purpose underlying the provision. Rather, s 259 of the CPC can also be seen to be justified by *other purposes* which may be discerned on a closer analysis of the provision and its surrounding statutory context. One of these is to promote the free and candid

disclosure of information by witnesses, a purpose which the AGC and the respondent have also identified.

84 Before developing this point, we address the considerable reliance that the applicant and the AGC have placed on the case law relating to the Indian Criminal Procedure Code ("Indian CPC"). Section 162 of the Indian CPC has been regarded as the provision corresponding to s 122 of the 1985 ed CPC (see *Criminal Procedure in Singapore and Malaysia* (Tan Yock Lin and S Chandra Mohan gen eds) (LexisNexis, Looseleaf Ed, 2020) at paras 1355-1400). However, it is important to note that there are material differences in the wording of the two provisions. We reproduce s 162 of the Indian CPC here for ease of reference:

> **Statements to police not to be signed: Use of statements in evidence**
>
> **162.(1) No statement made by any person to a police-officer in the course of an investigation under this Chapter shall**, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, **be used for any purpose (save as hereinafter provided)** ***at any inquiry or trial in respect of any offence under investigation at the time when such statement was made***:
>
> Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination:
>
> Provided, further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the

> public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.
>
> (2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Evidence Act, 1872 or to affect the provisions of section 27 of that Act.
>
> [emphasis in bold and bold italics added]

85 In *Sarkar: The Code of Criminal Procedure* vol 1 (SC Sarkar, PC Sarkar, Sudipto Sarkar eds) (LexisNexis, 12th Ed, 2018) ("*Sarkar*") at p 814, the Indian position on the specific purposes behind s 162 of the Indian CPC is summarised as follows:

> …**The object [of s 162 of the Indian CPC] is to protect the accused against both overzealous police officers and untruthful witnesses** [*Baliram,* AIR 1945 N1; *Afab Md,* AIR 1940 A 291, 299] and to recognise the danger of placing confidence on the record more or less imperfectly or inaccurately made by police officers unacquainted with the law of Evidence [*Isab,* 28 C 348]. **Another object of the section is to "encourage the free disclosure of the information or to protect the person making the statement from a supposed unreliability of police testimony as to the alleged statement or both"** [*Pakala Narayam,* 43 CWN 473, 480, PC : 66 IA 66, 78 : 40 CrLJ 364]. The intention is to protect the accused against the user of the statements of witnesses made before the police presumably on the assumption that the statements were not made under circumstances inspiring confidence. **The section and the proviso are intended to serve primarily the interest of the accused** [*Tahshildar Singh v State of UP,* AIR 1959 SC 1012: 1959 CrLJ 1231 : 1959 *Supp* (2) SCR 875]. …
>
> [emphasis added in bold]

86 The learned authors of *Sarkar* (at p 821) continue:

> **The prohibition** [in s 162 of the Indian CPC] **only applies to the use of the [witness] statement "at any inquiry or trial in respect of any offence under investigation". It has no application, for example, in a civil proceeding … [*Khatri v State of Bihar*,** AIR 1981 SC 11068 ; 1981 CrLJ 597 : (1981) 2 SCC 493 (SC)]…
>
> [emphasis added in bold]

87 The applicant and the AGC both rely on the Indian case authorities and academic texts to contend that because s 162 of the Indian CPC is applicable only to criminal proceedings, this favours the Narrow Interpretation of s 259 of the CPC. In *Khatri v State of Bihar,* AIR 1981 SC 1068 ("*Khatri*"), for example, the Supreme Court of India noted (at 7-9) that s 162 of the Indian CPC *expressly* states that statements given to the police in the course of investigations shall not "be used for any purpose, save as hereinafter provided, *at any inquiry or trial in respect of any offence under investigation at the time when such statement was made*" (emphasis added). The Supreme Court of India went on to state that the provision was essentially meant to protect accused persons from (a) "being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time…may be in a position to influence the maker of it"; and (b) "prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths". Such protection was, however, thought to be unnecessary in any proceeding other than the "inquiry or trial in respect of the offence under investigation". It was accordingly held that s 162 of the Indian CPC did not apply in the context of civil proceedings.

88 In our judgment, however, the Indian position does not in the final analysis support the Narrow Interpretation of s 259 of the CPC. First, unlike s 162 of the Indian CPC, there is no express language in s 122 of the 1985 ed CPC (or s 259 of the CPC) to confine the general rule of inadmissibility of witness statements to "any [criminal] inquiry or trial in respect of any offence under investigation at the time when such statement was made". To that extent, the reasoning in the Indian case authorities (like *Khatri*) is simply not applicable to the present case.

89 Pertinently, s 162 of the Indian CPC also does not contain any clause which is equivalent to the s 259(1)(*c*) exception. Confining the general rule of inadmissibility in s 162 of the Indian CPC to criminal proceedings only would therefore not give rise to the same difficulties that the Narrow Interpretation of s 259(1) of the CPC would, as explained at [64]–[71] above.

90 Aside from this, while we think the result in *Khatri* was entirely justified by reason of the express terms of s 162 of the Indian CPC, to the extent that the court ventured beyond the textual analysis to come to its conclusion, with the greatest respect, we find the reasoning adopted in *Khatri* unpersuasive. The court there noted (at 8-9) that there was potential prejudice stemming from the risk that witnesses might be tempted to make untrue statements against persons who were already facing criminal investigations and that this would not apply in context of other non-criminal proceedings. However, if such a risk exists, it must operate at the time the statement is made and we are unable to see how that risk is somehow overcome or mitigated by the time the statement comes to be used subsequently even if that is in some other setting, such as in civil proceedings.

91 We are therefore unable to accept the applicant's and the AGC's reliance on the Indian position in support of the Narrow Interpretation. As explained at [83] above, we accept that s 259 of the CPC is at least partly intended to protect accused persons. We reiterate, however that this does not exclude the possibility that other specific purposes may also exist.

92 As mentioned earlier, one other such purpose is the promotion of the public interest in encouraging the free and candid disclosure of information by witnesses to law enforcement agencies ("Disclosure Purpose"). In our judgment, part of the rationale of s 259 of the CPC is to accomplish this by

assuring witnesses that statements given in confidence to law enforcement agencies under s 22 will generally not be admitted and thereby revealed in subsequent court proceedings. This serves to encourage witnesses to assist candidly in investigations. This rationale has in fact been suggested by local academics. In SY Chen and L Leo in *The Law of Evidence in Singapore* (Sweet & Maxwell Asia, 2018, 2nd Ed) ("*The Law of Evidence in Singapore*") at [7.083], the learned authors suggest that the reasons behind s 259 of the CPC "[appear] similar to that offered to explain why [witness statements] are not disclosed to the defence as a matter of course". That explanation was given by the Minister for Law Mr K Shanmugam during the parliamentary debates for the CPC 2010 Bill, as follows (*Singapore Parliamentary Debates*, Official Report (19 May 2010) vol 87 at cols 563–564):

> Ms Lee asked why witness statements are not provided to the defence [as part of the new criminal case disclosure regime]. **Witness statements are not provided to the defence for public policy reasons**. The police rely quite substantially on the assistance of the public to solve crimes. **If witnesses know that statements that they have given in the course of investigations may be supplied to the accused or his counsel, they may not be inclined to come forward**. We also cannot rule out the possibility that threats may be made to witnesses or that they may be otherwise suborned …
>
> [emphasis in bold added]

93 We also note that in the context of criminal proceedings, the admissibility of statements given by *accused persons* is governed by a separate provision – namely, s 258 of the CPC. That provides that any statement made by a person charged with an offence is generally admissible in evidence at his criminal trial as long as the statement was given voluntarily. In our judgment, the Disclosure Purpose is consistent with and explains to some degree the difference in treatment (in criminal proceedings) between the statements of witnesses and accused persons under ss 259 and 258 of the CPC respectively. Witness statements are generally inadmissible under s 259 of the CPC because

of the concern that the prospect of revealing their contents in court proceedings could discourage witnesses from coming forward to assist law enforcement agencies. However, where the maker of the statement is the accused person, this is not an operative concern.

94 This second purpose underlying s 259 of the CPC seems to us to favour a more expansive construction of the provision. Specifically, the public interest in the free disclosure of information would be better served by assuring witnesses that their police statements will not be used in *any* court proceedings generally. In the applicant's further submissions, it submits that confining s 259 of the CPC to criminal proceedings would not have a "chilling effect" on the free disclosure of information by witnesses because s 22(2) of the CPC confers on the person being questioned a privilege against self-incrimination. This, however, runs into two difficulties. First, the overarching point is that the interest of securing the willing assistance of witnesses would be advanced by restricting the use of their statements in any setting and against *any* person. Such a witness might fear reprisals if the contents of his statement became known, or might prefer, for whatever reason, not to have the extent of his involvement in such matters widely known, at least to the extent this is possible. None of this has anything to do with the privilege against self-incrimination. Second, such a witness would also not want his statement to be used against himself. The privilege against self-incrimination allows a person not to say anything that might expose him to a "criminal charge, penalty or forfeiture". It is somewhat doubtful whether this privilege applies to answers that might expose the witness to civil liability or disciplinary sanction (see, in this regard, *Riedel-de Haen AG v Liew Keng Pang* [1989] 1 SLR(R) 417 at [7] and *Guccio Gucci SpA v Sukhdav Singh and other suits* [1991] 2 SLR(R) 823 at [6], [8] and [21]). The applicant itself appears to impliedly concede that the privilege does not. Yet, these are matters which a witness may also reasonably be concerned about and which

may very well deter him from coming forward to assist candidly in investigations against some other person. The better view therefore is that the objective of encouraging the free disclosure of information supports the Broad Interpretation of s 259 of the CPC over the Narrow Interpretation.

95 It is also significant, in our view, that witness statements are recorded by law enforcement agencies pursuant to a coercive power of investigation conferred by s 22 of the CPC. A person questioned under that provision is legally bound to "state truly what he knows of the facts and circumstances of the case, except that he need not say anything that might expose him to a criminal charge, penalty or forfeiture". A refusal to answer might amount to an offence under s 179 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code"). A witness who is acquainted with the facts relating to another person's suspected criminal offence may therefore be compelled under s 22 of the CPC, and under pain of punishment, to disclose what he knows of the case.

96 If s 259 of the CPC were confined in its application to criminal proceedings, a witness would have no particular protection from the use of his police statements in other civil and/or disciplinary proceedings. The admissibility of the witness statement would simply be governed by the general provisions and principles of the EA. As a general rule, that statute contemplates that all relevant evidence is generally admissible unless specifically provided otherwise.

97 Having conferred a coercive power upon law enforcement agencies for the specific purpose of investigating criminal offences under s 22 of the CPC, the legislature has gone on in s 259 to set out how the information obtained can be used in subsequent proceedings. Seen in this light, *another purpose* of s 259

of the CPC is to place limits on the use of information obtained from witnesses pursuant to the exercise of coercive police powers ("Limitation Purpose").

98 It seems to us that evidence, which an individual has been *compelled* by the State to give in connection with criminal investigations against another, should not be capable of being used by others in civil proceedings against that individual as though it were similar to any other piece of evidence under the EA. The public interest for which the evidence was coercively brought into existence (namely, the investigation and prosecution of *criminal offences*) would not apply at all in such other proceedings. Although regulatory bodies may (in many respects) be acting in the public interest in disciplinary proceedings, the point remains that the public interest in investigating and prosecuting criminal offences is simply not applicable in the disciplinary context. In our judgment, this is a further factor in favour of the Broad Interpretation of s 259 of the CPC.

99 It is true that despite the general rule of inadmissibility in s 259(1) of the CPC, a witness may nonetheless find that his statement is admissible in court proceedings pursuant to one of the statutory exceptions. These exceptions are, however, restricted in scope to specific circumstances, such as the use of a witness statement under s 157 of the EA for the narrow purpose of impeaching the witness's credit. The possibility of admitting a witness statement in criminal proceedings pursuant to the s 259(1)(*c*) exception is also confined to limited circumstances where there is either (a) a specific provision in the CPC or other written law expressly permitting its admission in criminal proceedings because of some overriding public interest; and/or (b) an applicable hearsay exception under the EA. The latter point follows from the fact that witness statements constitute hearsay evidence and they are therefore generally only admissible under the EA pursuant to one of the hearsay exceptions in that statute (see

especially, ss 32(1)(*a*) to 32(1)(*k*) of the EA). Even when the s 259(1)(*c*) exception is engaged, however, it would nonetheless generally not apply to the prejudice of the statement-maker himself. We are thus of the view that the interaction between the general rule of inadmissibility in s 259(1) of the CPC and the specified exceptions sits comfortably with (and does not unduly detract from) the Disclosure and Limitation Purposes underlying the provision.

(C) GENERAL LEGISLATIVE PURPOSE OF THE CPC

100 We turn to consider the general legislative purpose of the CPC in the light of the Broad Interpretation, the Disclosure Purpose and the Limitation Purpose.

101 The applicant and the AGC take the common position that the general legislative purpose of the CPC is to govern *criminal proceedings only*, and not all proceedings generally. They draw on various features of the CPC and the extraneous materials in support of this proposition.

102 First, the applicant and the AGC both highlight that in the Second Reading speech for the CPC 2010 Bill (*Singapore Parliamentary Debates*, Official Report (18 May 2010) vol 87 at col 408), the Minister for Law, Mr Shanmugam, described the CPC as such:

> The CPC sets out the procedures to be observed in the conduct of criminal cases in Singapore. It is a fundamental part of our Criminal Justice System.

103 It is also emphasised that the legislation itself is titled the "Criminal Procedure Code" and its long title states that it is "[a]n Act relating to criminal procedure". In addition, s 4 of the CPC featured heavily in both the applicant's and the AGC's further submissions. The provision states:

> **Trial of offences under Penal Code or other laws**
>
> 4.—(1) Offences under the Penal Code (Cap. 224) must be inquired into and tried according to this Code.
>
> (2) Offences under any other written law must also be inquired into and tried according to this Code, subject to any law regulating the manner or place of inquiring into or trying those offences.

104 According to the applicant and the AGC, s 4 clearly demarcates the scope of the CPC as covering only (a) offences under the Penal Code; and (b) offences "under any other written law". On this basis, it is said that civil and/or disciplinary proceedings were simply not contemplated as falling within the purview of the CPC. Reading s 4 and s 259 of the CPC together, the AGC goes even further to argue that the reference in s 259 to witness statements being "inadmissible" can only mean inadmissible "in the proceedings that s 4 provides the CPC applies to".

105 Whilst these legislative features and are relevant to determining the general purpose of the CPC, we respectfully consider that the way in which the applicant and the AGC have framed that purpose is unduly narrow. The CPC is made up of no less than 22 Parts, each dealing with various aspects of the conduct of criminal cases from the point of police investigations to the time of charging, conviction/acquittal and sentencing. The CPC additionally deals with criminal appeals, motions and revisions and other miscellaneous matters which may arise in criminal cases.

106 In our judgment, the better formulation of the CPC's general purpose is to *govern the conduct of criminal proceedings generally.* In this context, it makes provision for such matters as police powers, the arrest and charging of accused persons, pre-trial procedures, the passing of judgment and sentencing, criminal appeals, motions and revisions.

107 We consider that this general purpose of the CPC coheres neatly with the Broad Interpretation of s 259, the Disclosure Purpose and the Limitation Purpose. In *Tan Cheng Bock* (at [41]), the Court of Appeal affirmed that as a matter of statutory interpretation, the court should approach the legislation as a coherent whole and work on the basis that the specific purpose of a provision is "subsumed under, related or complementary to" its general purpose. In this regard, the Disclosure Purpose and Limitation Purpose of s 259 may be seen as "related" and "complementary" to the general purpose of the CPC, since these purposes are to promote the free disclosure of information on the part of witnesses by protecting their liberty and regulating the use of information obtained from them pursuant to the exercise of coercive police powers of investigation that are vitally important for the successful prosecution of criminal cases.

108 We accept that as set out in s 4, the CPC is generally concerned with criminal proceedings. But this does not militate against the Broad Interpretation of s 259 of the CPC. The point of the Broad Interpretation is not to regulate the conduct of proceedings other than criminal proceedings. On the contrary, its central point is to regulate the use of police statements taken *under powers conferred by the CPC* by limiting the use of such statements outside of criminal proceedings which are regulated by the CPC. This also coheres with the point of interpretation that we have discussed at [64]–[71] above – namely, that the Narrow Interpretation of s 259 of the CPC would lead to critical parts of the provision being rendered otiose.

109 The applicant also refers to the interplay between the EA and the CPC. It contends that the CPC was never contemplated to govern the admissibility of evidence in non-criminal proceedings. Instead, the provisions which govern the admissibility of evidence in both criminal and civil proceedings are to be found

only in the EA. We do not doubt that as a general matter, the EA is meant to deal with the rules of evidence in all types of proceedings. Indeed, s 2(1) of the EA states just as much:

> **Application of Parts I, II and III**
>
> **2.**—(1) Parts I, II and III shall apply to all judicial proceedings in or before any court, but not to affidavits presented to any court or officer nor to proceedings before an arbitrator.
>
> (2) All rules of evidence not contained in any written law, so far as such rules are inconsistent with any of the provisions of this Act, are repealed.

110 However, as we have explained, the real point of the Broad Interpretation is not to govern the conduct of other proceedings, but rather to restrict the use of statements obtained by the exercise of coercive powers found in the CPC. Otherwise the very mischief identified by the AGC and the applicant would arise in a different context: that the fruit of the powers conferred exclusively for the purposes of the CPC would be capable of being used in other types of proceedings when such use was never contemplated under the CPC itself.

(D) CONCLUSION ON THE APPLICABILITY QUESTION

111 For these reasons, we conclude that the Broad Interpretation of s 259 is correct. In the result, that provision applies to exclude the admissibility of witness statements in all proceedings save as provided in the exceptions to that section.

(2) The Interface Question

112 We have stated at [34] that *as a general matter*, the EA governs the issue of admissibility in disciplinary proceedings pursuant to r 23(1) of the DT Rules.

In *Rayney Wong* and *Phyllis Tan,* the court examined the principles of admissibility under the general scheme of the EA.

113 Given our conclusion that the Broad Interpretation of s 259 is correct, the next question is how this affects the principles governing the admissibility of evidence under the EA, set out in *Rayney Wong* and *Phyllis Tan.*

114 In *Rayney Wong,* a number of solicitors engaged a private investigation firm to conduct a sting operation, in which the appellant solicitor was recorded offering referral fees in exchange for conveyancing work. Disciplinary charges were brought against the appellant. The appellant contended that the evidence against him had been illegally obtained, but the disciplinary committee rejected this and held that the evidence was admissible. The appellant sought leave to commence judicial review proceedings seeking, among other things, an order that the disciplinary committee's rulings be quashed. The High Court refused leave and the appellant's appeal to the Court of Appeal was dismissed. Amongst other things, the Court of Appeal articulated (at [40]) the general principle under the EA that *all relevant evidence is admissible* and held that this also applied to improperly obtained evidence *unless it operated unfairly at trial*. The court further clarified that the question of unfairness was not concerned with *how* the evidence was obtained, but with whether its prejudicial effect at trial might exceed its probative value.

115 In *Phyllis Tan*, the respondent solicitor was similarly recorded (in another private sting operation) offering referral fees in exchange for conveyancing work and disciplinary proceedings were commenced against her. The solicitor was found guilty of professional misconduct under the LPA. On the facts of the case, it was found that the evidence against the respondent solicitor had not been obtained by entrapment or illegal means. In any event, the

law on entrapment and illegally obtained evidence in criminal proceedings was held (at [59]) not to apply to disciplinary proceedings. This was because primacy had to be accorded to the legal profession's standards of conduct over any improper conduct that was engaged in while procuring evidence to uphold those standards.

116 Nonetheless, this court did consider (at [52]) the admissibility of illegally obtained evidence in criminal proceedings, and held (at [124]–[126]) that under the EA, the overarching principle is that "all relevant evidence is admissible unless specifically expressed to be inadmissible". The court may only exclude evidence where its prejudicial effect exceeds its probative value (see also *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 120 ("*Kadar*") at [51]–[53]). It thus concluded that the court has no discretion to exclude illegally obtained evidence because of the manner in which it was obtained.

117 Neither *Phyllis Tan* nor *Rayney Wong* expressly considered the Applicability Question or the admissibility in disciplinary proceedings of witness statements obtained pursuant to coercive police powers.

118 The respondent, however, attempts to rely upon the holding in *Phyllis Tan* (at [126]) that "all relevant evidence is admissible unless *specifically expressed to be inadmissible*" (emphasis added) to support his objection to the use of the Contested Statements. According to the respondent, witness statements have "specifically [been] expressed to be inadmissible" by reason of s 259 of the CPC.

119 In our judgment, the Broad Interpretation of s 259 is not inconsistent with the principles laid down in *Phyllis Tan* and *Rayney Wong*. Given our

holding that s 259 of the CPC bars the admissibility of witness statements save as expressly provided there, that must be the starting point in determining whether a witness statement obtained by the exercise of police powers is admissible as evidence in any proceedings. We agree with the respondent that in such circumstances, the provisions of the EA become relevant where they fall within one of the exceptions specified in s 259 of the CPC. This has nothing to do with any question of illegally obtained evidence. Rather, it follows from the construction we have placed on s 259 of the CPC.

120 Even if a witness statement is found to be admissible under one of the said exceptions, the court retains a residual discretion to exclude it where its prejudicial effect exceeds its probative value. This should at least be the case for criminal and disciplinary proceedings, following *Rayney Wong* (at [40]) and *Phyllis Tan* (at [124]–[126]) (see also, *Kadar* at [51]–[53] and [55]). In *ANB v ANC and another and another matter* [2015] 5 SLR 522 (at [28]–[31]), the Court of Appeal said that it would leave for a future occasion the question of whether this exclusionary discretion exists in the context of civil proceedings and whether the same balancing test (where the prejudicial effect of the evidence is weighed against its probative value) ought to apply. Since this issue is not before us, we leave it open as well.

Conclusion on Issue 1 – Applying the law to the facts

121 Before we apply the Broad Interpretation of s 259 of the CPC to the present facts, we briefly examine its interplay with s 258. Section 258 of the CPC is concerned with the admissibility of statements made by an accused person who is being tried for an offence in criminal proceedings. As against that person, any statement made by him shall be admissible at his criminal trial.

122 On the other hand, s 259 of the CPC is best understood as being concerned with the admissibility of police statements given by a person other than the person referred to in s 258. Hence, when s 259(1) of the CPC refers to any statement given by "a person other than the accused", this simply refers to a person (a) from whom a statement has been recorded in the course of investigations (this is expressly provided); and (b) against whom no criminal proceedings are brought arising from that investigation (in contradistinction with a person who is the subject of s 258).

123 In that light, we turn to the present disciplinary proceedings. The respondent's Statement and Krishna's Statement clearly fall within the scope of s 259(1) of the CPC. Their statements were recorded in the course of police investigations, but no criminal proceedings were ever brought against either of them. Their police statements are therefore made by "a person other than the accused" and are generally inadmissible in the present case. There are, of course, five statutory exceptions to this general rule. The applicant did not attempt to rely on any of them even though we had specifically drawn the attention of the applicant's counsel to these exceptions at the hearing of this OS. In the circumstances, we proceed on the basis that none of the exceptions apply. The respondent's Statement and Krishna's Statement are accordingly inadmissible in evidence.

124 As for Ng's Further Statement, we do not think it strictly necessary to delve into the applicability of ss 258 or 259 of the CPC or any other admissibility provisions under the EA. Whichever statutory provisions are applicable, the applicant has failed to properly justify the admissibility of Ng's Further Statement.

125 We are willing to assume, in the applicant's favour, that the admissibility of Ng's Further Statement is governed by the general provisions of the EA (see r 23(1) of the DT Rules). Even then, however, the applicant has failed to invoke any ground of relevancy and admissibility under the EA that might allow Ng's Further Statement (which constitutes *hearsay evidence*) to be admitted. In the circumstances, we find that his statement is simply inadmissible in the present disciplinary proceedings.

126 If, however, we had to consider the applicability of ss 258 and 259 of the CPC, it seems to us that the position is somewhat nuanced. Here, the applicant seeks to admit Ng's Further Statement in disciplinary proceedings against another person (namely, the respondent). In our view, s 258 of the CPC does not apply to that statement because the present OS simply does not involve criminal proceedings against Ng himself.

127 At the same time, we are not persuaded at this time that s 259 of the CPC applies to Ng's Further Statement. The statement was recorded from Ng on 14 September 2017, after Ng had already been convicted and sentenced for one count of abetment of cheating. Nevertheless, it seems to us that Ng's Further Statement remains outside the ambit of s 259 of the CPC because it had been recorded in the course of investigations in relation to a criminal offence that Ng had been tried for. In this sense, it does not seem apt to consider Ng to be a "person other than the accused" within the meaning of those words in s 259(1) of the CPC.

128 If ss 258 and 259 of the CPC are indeed inapplicable, the applicant would be correct in arguing that the admissibility of Ng's Further Statement is to be governed by the general provisions of the EA pursuant to r 23(1) of the DT Rules. The applicant would, however, nonetheless continue to face the

difficulty already identified at [125] above. Ng's Further Statement therefore remains inadmissible.

Issue 2 – Consequential orders

129 It follows from our conclusion on Issue 1 that the DT ought not to have admitted the Contested Statements into evidence. The next question that arises is how we should proceed. The options available to us have been set out at [32(b)] above. In broad terms:

(a) If, despite the exclusion of the Contested Statements, the Charges have been proven beyond a reasonable doubt and there is due cause for disciplinary action under s 83(1) of the LPA, we may go on to decide on the appropriate sanction.

(b) However, if that is not the case, then we need to consider whether the appropriate course is to acquit the respondent or to make an order under s 98(8)(*b*) of the LPA to set aside the determination of the DT and direct (i) the DT to rehear and reinvestigate the matter; or (ii) the applicant to apply for the appointment of a new disciplinary tribunal to hear and investigate the matter.

130 Section 98(8)(*b*) of the LPA states:

> (8) The court of 3 Judges —
>
> (a) shall have full power to determine any question necessary to be determined for the purpose of doing justice in the case, including any question as to the correctness, legality or propriety of the determination of the Disciplinary Tribunal, or as to the regularity of any proceedings of the Disciplinary Tribunal;
>
> **(b) may make an order setting aside the determination of the Disciplinary Tribunal and directing —**

> (i) **the Disciplinary Tribunal to rehear and reinvestigate the complaint or matter**; or
>
> (ii) the Society to apply to the Chief Justice for **the appointment of another Disciplinary Tribunal** to hear and investigate the complaint or matter; …
>
> [emphasis added in bold]

131 It is clear to us, first, that the DT's determination that the Charges have been proved beyond a reasonable doubt (and that there is cause of sufficient gravity for disciplinary action) cannot stand. This is because that determination was based primarily on evidence which was wrongly admitted. Without the Contested Statements, there is insufficient evidence (in the form of affidavit evidence or oral testimony) from the applicant's witnesses to show that the respondent had (a) paid referral fees to Ng; and/or (b) failed to directly communicate with the Clients at the appropriate junctures. The next question is whether the respondent should be acquitted or be required to face a fresh hearing.

132 As the applicant points out, an order that a disciplinary tribunal's determination be set aside and that the matter be sent for a fresh hearing is not unprecedented. An analogous situation arose in *Law Society of Singapore v Yeo Khirn Hai Alvin and another matter* [2020] 4 SLR 858, where the High Court set aside the determination of a disciplinary tribunal due to the defective nature of the charges against the solicitor in question. Although the solicitor argued there that it would be unjust for him to be subject to a fresh hearing, the High Court found (at [98]–[99]) that ordering a fresh hearing (under s 97(4)(*b*)(ii) of the LPA) was "consistent with the legislative framework and the public interest that complaints against lawyers are fully heard and investigated".

133 In *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*"), the Court of Appeal considered the applicable principles in deciding whether a retrial or an

acquittal should be ordered upon the quashing of a criminal conviction. At [274], [277]–[278] and [296]–[298], the Court of Appeal endorsed the following propositions laid down in the decision of the Privy Council in *Dennis Reid v The Queen* [1980] AC 343 ("*Dennis Reid*"), which classified potential cases according to two extremes:

(a) At one extreme are cases where "the evidence adduced at the original trial was insufficient to justify a conviction" ("category one" cases). In such cases, save in circumstances so exceptional that they cannot be readily envisaged, an acquittal and not a retrial should be granted.

(b) At the other extreme are cases where "the evidence against the appellant at the original trial was so strong that a conviction would have resulted" ("category two" cases). In such cases, *prima facie*, the more appropriate course is to dismiss the appeal and affirm the conviction.

(c) Cases that fall between the two extremes ("category three" cases) include the following situations: where critical exculpatory evidence is no longer available; where the fairness of the trial below is compromised by the trial judge's conduct; or where the length of time before the putative retrial is disproportionate to the appellant's sentence and/or ongoing period of incarceration. The following non-exhaustive factors are relevant to deciding whether a retrial or acquittal should be ordered in such circumstances:

(i) The seriousness and prevalence of the offence.

(ii) The expense and the length of time needed for a fresh hearing to be held.

(iii) The consideration that an appellant ought not to be condemned to undergo a trial for the second time through no fault of his own unless the interests of justice require that he should do so.

(iv) The length of time that will have elapsed between the offence and the new trial if one is to be ordered.

(v) Whether there was evidence which tended to support the appellant at the original trial which would no longer be available at the new trial.

(vi) The relative strengths of the case presented by the Prosecution and appellant at the original trial.

(d) Ultimately, the question as to whether a retrial or an acquittal ought to be ordered is a matter which calls for the exercise of "the collective sense of justice and common sense" of the court.

134 Although *AOF* and *Dennis Reid* concerned criminal proceedings, the foregoing principles provide useful guidance as to how we should exercise our power under s 98(8)(*b*) of the LPA. Indeed, both the applicant and the respondent rely upon the aforementioned principles in their further submissions.

135 Applying these principles (with any necessary modifications to suit the present context), the threshold question is whether this is a "category one" case as described in *AOF*, in which event the respondent should be acquitted rather than be subject to a fresh hearing. The respondent argues that this is a "category one" case while the applicant contends otherwise.

136 In our view, the present situation is *not* such a case. It is helpful to first clarify the scope of a "category one" case. The Court of Appeal in *AOF* (at [277(c)]) adopted the definition used in *Dennis Reid* – namely, that a "category one" case arises when the conviction is set aside because "the evidence adduced at the original trial was insufficient to justify a conviction". This is stated in very broad terms and arguably could include the present situation in that without the Contested Statements, we have found there is insufficient evidence to prove the Charges beyond a reasonable doubt.

137 However, on a more careful reading of *AOF* (at [274]–[285]), it would be more accurate to characterise a "category one" case falling at an extreme end where the court quashes a conviction on appeal *simply (or solely) because* the available evidence was not sufficient to prove the charge. In such a straightforward situation, there is no doubt that ordering a retrial would be impermissible because it would unfairly burden the accused person while effectively allowing the Prosecution to have the opportunity to run its case again. *Dennis Reid* itself involved such a straightforward situation – a retrial was not ordered because the accused person's murder conviction had been set aside on the ground that the prosecution's evidence (which was the identification of the accused by a single eyewitness) was insufficient.

138 "Category one" cases do not, in our judgment, include the more nuanced situation where the available trial evidence (on which the impugned guilty verdict was originally obtained) had been wrongly admitted in the first place, or is incomplete because evidence was wrongly excluded by the trial judge. In *AOF* itself (at [283]–[285]), the Court of Appeal referred to the High Court decision in *Beh Chai Hock v PP* [1996] 3 SLR(R) 112 ("*Beh Chai Hock"*). There, Yong Pung How CJ found that the trial judge had mistakenly failed to hold a *voir dire* to determine the admissibility of the accused's police statement.

The statement was therefore wrongly admitted, and without it there was insufficient evidence to justify the conviction, which was set aside. The Court of Appeal in *AOF* endorsed Yong CJ's decision to order a retrial on the basis that it was "not that the Prosecution had relied on unsatisfactory evidence to prove its case", but that "the fairness of the trial below had been compromised by the conduct of [the trial by] the trial judge".

139 Seen in this manner, it becomes clear that the present situation is not a "category one" case. On the present facts, the DT incorrectly held on the first day of the DT Hearing that the Contested Statements were admissible. As the applicant emphasises, it subsequently led evidence at the hearing *on the basis of the DT's determination.* Had the DT correctly excluded the said statements, the applicant may very well have conducted its case differently. In all likelihood, it would have sought to elicit evidence of the respondent's alleged misconduct directly from its witnesses instead of relying upon the contents of the Contested Statements. This is not an extreme "category one" case where evidence that had properly been led at the DT Hearing was simply insufficient. Instead, the DT's determination is being set aside because the hearing had not been properly conducted owing to the incorrect admission of certain evidence (that subsequently had a material impact on the DT's verdict). In the premises, the present case falls between the two extremes identified in *AOF* and the factors listed in *AOF* should therefore be examined in coming to a decision as to whether an acquittal or a fresh hearing should be ordered (see [133(c)] above).

140 Examining these factors, we are amply satisfied that the interests of justice warrant an order for this matter to be remitted for a fresh hearing. The alleged professional misconduct here is serious. The 1st and 2nd Charges allege that the respondent paid referral fees for five separate cases over a period of more than two years between December 2013 and February 2016. Furthermore,

the 3rd and 4th Charges allege that the respondent had failed to directly communicate with each of the five Clients at the outset of his engagement. If true, this could constitute a serious dereliction of duty by the respondent and evince a blatant disregard for the interests of his referred clients.

141 It is also significant, in our view, that the respondent failed to proffer any alternative version of events in his defence. He has been content to rely on technical arguments relating to the admissibility of evidence without putting forth any substantive defence to the Charges. As held in *AOF* (at [277(d)(vi)]), the relative strength of the parties' cases is a relevant factor. In the circumstances, there is clearly a strong public interest in having a fresh hearing so that the respondent's alleged misconduct can properly investigated. This is necessary to uphold the high standards of the legal profession and to retain public confidence in the honesty, integrity and professionalism of its members (see *Rayney Wong* at [51]).

142 We further observe that the expense and time required to conduct a fresh hearing should not be significant. The original DT Hearing was only fixed for three days and ended on the second day. It is also not the case that important evidence which was originally in existence or available to the respondent at the original DT Hearing would no longer exist or be available at the new hearing. In this sense, the respondent would not suffer any undue prejudice if a fresh hearing is ordered. Indeed, the respondent did not even call any evidence in his defence at the original DT Hearing.

143 We therefore conclude that a fresh hearing should be held in order to properly investigate the complaint against the respondent. We agree with the applicant that out of an abundance of caution, a new disciplinary tribunal should be appointed. The fresh hearing would be conducted on a substantially different

footing given that the applicant would likely need to elicit evidence directly from its witnesses as to the respondent's alleged misconduct. The appointment of a new disciplinary tribunal would help avoid any perception of prejudgment by the original DT. It cannot be gainsaid that justice must not only be done but be seen to have been done.

144 The respondent contends that if a fresh hearing is ordered, a fair trial is impossible because the DT Decision is already in the public domain and it mentions the contents of the Contested Statements. That being the case, it is said that even a new disciplinary tribunal would find it difficult to completely ignore the findings set out in the DT Decision. We fail to understand how this can possibly be said to be the case. The new Disciplinary Tribunal would consider the evidence on its merits and come to its view on that basis. This is routinely done even in criminal proceedings. We therefore do not see any merit in the respondent's objection.

Concluding remarks

145 Whilst s 259 of the CPC imposes a general rule of inadmissibility on witness statements in all proceedings, its practical effect in the legal professional disciplinary context ought not to be overstated. First, the general rule of inadmissibility in s 259(1) of the CPC is subject to the express statutory exceptions. More importantly, s 259 of the CPC ultimately deals only with the *admissibility* of evidence in court proceedings. It does not bar the *disclosure* of information, the legality of which remains governed by other aspects of the law.

146 This means that where professional misconduct happens to be uncovered in the course of criminal investigations, law enforcement agencies may well be able lawfully to disclose the information obtained to regulatory bodies (as was done in the present case). Whilst witness statements recorded in

the course of police investigations under s 22 of the CPC are generally confidential, we have affirmed at [52] above that there is a public interest exception to this general rule. Specifically, law enforcement agencies may be able to justify such disclosure on the basis that it is in the public interest to facilitate the investigation and prosecution of professional misconduct. Ultimately, whether any specific disclosure can be justified will depend on the facts at hand.

147 Once the regulatory body is in possession of the relevant information, it is open to it to commence disciplinary proceedings against the allegedly errant lawyer and to construct its case in the ordinary way (by calling witnesses from whom the relevant evidence may be elicited at a disciplinary hearing). Where any of the statutory exceptions in s 259(1) of the CPC apply, the witness statements in question may also be adduced.

148 We therefore set aside the DT's Decision. Pursuant to s 98(8)(*b*)(ii) of the LPA, we direct the applicant to apply to the Chief Justice for the appointment of another disciplinary tribunal to hear and investigate the complaint against the respondent. We reserve the costs of the present proceedings pending the outcome of the fresh proceedings.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

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