Manjit Singh s/o Kirpal Singh and another *v* Attorney-General
[2013] SGHC 62

Case Number : Originating Summons No 107 of 2013

Decision Date : 15 March 2013

Tribunal/Court : High Court

Coram : Vinodh Coomaraswamy JC

Counsel Name(s) : The applicants in person; Low Siew Ling and Khoo Boo Jin for the Attorney-General; P E Ashokan for the Law Society of Singapore (watching brief).

Parties : Manjit Singh s/o Kirpal Singh and another — Attorney-General

Administrative Law – Judicial review – Leave application under O 53 of the Rules of Court

Legal Profession – Disciplinary proceedings – Chief Justice's discretion to revoke Disciplinary Tribunal under s 90(3)(a) of the Legal Profession Act

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 28 of 2013 was dismissed by the Court of Appeal on 19 August 2013. See [2013] SGCA 45.]

15 March 2013

Vinodh Coomaraswamy JC:

1 Mr Manjit Singh s/o Kirpal Singh and Mr Sree Govind Menon are advocates and solicitors of the Supreme Court of Singapore. Mr Singh was admitted to practise in 1977. [note: 1] Mr Menon was admitted to practise in 1998. [note: 2]

2 Mr Singh and Mr Menon sought leave under O 53 r 1 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) to apply for judicial review arising from their request to the Chief Justice to exercise his power under s 90(3)(*a*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the Act") to revoke the appointment of a Disciplinary Tribunal ("DT") inquiring into charges of misconduct against them. They represent themselves in these proceedings and before the DT.

3 I heard Mr Singh's and Mr Menon's application for leave on 18 February 2013. I concluded that the contentions which they advanced to support their application for leave were unarguable. I dismissed their application with costs. They indicated to me an intention to appeal. I now set out my reasons for dismissing their application.

Introduction

Ms Rankine complains to the Law Society

4 In December 2010, one Ms Bernadette Adeline Rankine complained of professional misconduct by Mr Singh and Mr Menon. She lodged her complaint formally with the Law Society of Singapore. The Law Society duly initiated the statutory procedure under the Act (see [99] below) to inquire into Ms Rankine's complaint. In due course, the Law Society applied to the Chief Justice under s 89(1) of the Act to appoint a DT to hear and investigate the matter. In response, on 13 February 2012, [note: 3]

the Chief Justice exercised his power under s 90(1) of the Act to appoint a DT.

5 The precise grounds of Ms Rankine's complaint are not material to the application before me. What is material is that on 23 November 2012, Ms Rankine unreservedly withdrew her complaint against Mr Singh and Mr Menon. She did so in writing, by a letter bearing that date addressed to the Law Society. She signed her letter before a commissioner for oaths. She copied her letter to the DT Secretariat, to the Law Society's counsel and to the applicants. Ms Rankine concluded her letter by inviting the Law Society to discontinue the disciplinary proceedings against Mr Singh and Mr Menon.

6 The Law Society did not respond to Ms Rankine's invitation. Instead, at a directions hearing on 3 January 2013, the Law Society's counsel indicated to the DT that the Law Society intended to continue the disciplinary proceedings. Mr Singh and Mr Menon did not, at that time, object to this. But on 7 January 2013, they initiated correspondence with the Law Society [note: 4]. The purpose of this correspondence was to inquire how and why the Law Society had come to its decision to continue the disciplinary proceedings against them despite Ms Rankine's unreserved withdrawal of her complaint. On 11 January 2013, they initiated a parallel correspondence with the Chief Justice. The purpose of this correspondence was to urge the Chief Justice to exercise his power under s 90(3)(a) of the Act to revoke the appointment of the DT on the ground that Ms Rankine had unreservedly withdrawn her complaint. [note: 5] I will go through this correspondence in detail in [58] - [75] below. The Chief Justice did not revoke the DT's appointment. That is how this application arose.

Mr Singh and Mr Menon apply for judicial review

7 Before me, Mr Singh and Mr Menon challenge the Chief Justice's response to their request on two grounds:

(a) The Chief Justice's failure to revoke the DT's appointment was unreasonable in the *Wednesbury* sense (see *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 ("*Wednesbury*")).

(b) Alternatively, the Chief Justice was precluded by apparent bias from acting on Mr Singh's and Mr Menon's request to him to exercise his power under s 90(3)(a) of the Act.

8 The applicants brought their application by *ex parte* originating summons, as is required: see O 53 r 1(2). The applicants duly served their application and supporting material on the Attorney-General, as is also required: see O 53 r 1(3). The Attorney-General attended the hearing and opposed the application.

9 Before I could deal with the merits of the leave application, however, I had to deal with two preliminary applications. The first was the Law Society's application to hold a watching brief. The second was the applicants' application for me to recuse myself on grounds of apparent bias.

Two preliminary applications

Law Society seeks to hold a watching brief

10 At the very outset of the hearing, counsel for the Law Society asked for my permission to hold a watching brief for his client. He accepted that the Law Society is not a party to the application and is accordingly not entitled to be served with the papers, to attend the hearing or to address the Court. He confirmed that he did not seek a right to be heard but only to attend in chambers on the hearing of the application. He invited me to exercise my inherent power to allow the Law Society, as

a non-party with an interest in the matter, to do so. He submitted that the Law Society's interest arose for three reasons: (1) because the Law Society initiates all disciplinary proceedings against advocates and solicitors; (2) because the disciplinary proceedings underlying this application were now ongoing but had been stayed at the applicants' request; and (3) because the ultimate objective of the applicants was to secure an order revoking this DT's appointment. [note: 6]

11 The Attorney-General did not object to the Law Society's request.

12 The applicants objected to the Law Society's request. Mr Singh drew my attention to O 53 r 4 of the Rules of Court. That rule gives a right to be heard to a person who wishes to oppose an application under O 53 r 2(1) and who appears to be a proper person to be heard, even though the documents have not been served on him. The applicants submitted that because there was no equivalent rule giving a non-party a right to be heard on an application under O 53 r 1, I had no discretion to permit the Law Society to attend the hearing. [note: 7]

13 I pointed out to Mr Singh that the Law Society was seeking only to attend and not to be heard. Mr Singh submitted that that made no difference. First, he submitted, I had no discretion to allow the Law Society to hold a watching brief in the absence of an express provision which granted me the discretion to do so on an application under O 53 r 1. [note: 8] Second, to recognise a discretion to allow even an *interested* non-party merely to attend an application under O 53 r 1 would result in the Courts being flooded with interested non-parties inviting the court to exercise that discretion. [note: 9] Third, the Law Society had no interest in the initial, leave stage of judicial review proceedings, save possibly in respect of an interim stay of the proceedings. [note: 10] So counsel for the Law Society ought to be permitted to attend only that part of the hearing which related directly to his client's interest. Finally, even if I had a power to allow Law Society's counsel to hold a watching brief, I should not exercise it because of the prejudice the applicants would suffer. This prejudice, Mr Singh submitted, was that counsel for the Law Society might be unfairly coloured in his prosecution of the disciplinary proceedings by becoming aware of material which was relevant to the application for leave to bring judicial review proceedings, but which was quite irrelevant to the disciplinary proceedings. [note: 11]

14 In *Lee Hsien Loong v Review Publishing Co Ltd and another and another suit* [2007] 2 SLR(R) 453 ("*Lee Hsien Loong*"), Sundaresh Menon JC (as the Chief Justice then was) considered whether the Court had a general discretion to permit a non-party to attend a hearing in chambers. The non-party in that case was – like the Law Society – seeking only to be present and not to be heard. Menon JC started from the premise that hearings in chambers are private and so non-parties have no entitlement to be present. But he held that he had a very wide discretion to allow a non-party who could establish a sufficient interest in the proceedings to be present (at [8]). In exercising the discretion, the Court will have regard to all the circumstances including the non-party's interest in the litigation, the litigants' interests, the non-party's reasons for seeking permission and the court's interest in preserving and upholding its authority and dignity (at [13]). On the facts of that case, Menon JC held that the non-party was within the class of persons in whose favour the discretion might be exercised but declined to exercise the discretion in favour of the non-party. Menon JC's analysis is undoubtedly correct and I adopt it.

15 The question, in the specific context of O 53 r 1, is whether Mr Singh's submission is correct that the presence of O 53 r 4 of the Rules of Court in relation to an application under O 53 r 2 excludes by implication this general discretion on an application under O 53 r 1. I cannot accept that submission.

16 I express no view on whether the effect of O 53 r 4 is by implication to preclude the court from granting a non-party permission to be *heard* on a leave application under O 53 r 1. But it seems to me that the purpose of O 53 r 4 is to *give* a right to a non-party on an application under O 53 r 2 rather than to *take away* a right from a non-party on other applications. O 53 r 4 gives a non-party who fulfils its criteria a right that the non-party would not normally have in ordinary civil proceedings. Given that, I cannot see how O 53 r 4 can be read to eliminate by implication the court's undoubted general discretion to permit a non-party to attend any hearing in chambers. There is a difference of substance between a non-party being heard on an application and a non-party attending an application. A non-party who is heard on an application is given an opportunity to influence the court's decision. It is easy to see why a non-party, being a party by definition uninvolved in the matter, ought not to be able to exert that influence in the absence of an express rule. A non-party who attends a hearing, on the other hand, cannot influence the court's decision at all. There is no reason in principle why O 53 r 4 should have the implied effect that Mr Singh attributed to it.

17 I exercised my discretion in the Law Society's favour. My general discretion to allow counsel for the Law Society to hold a watching brief in chambers on the hearing of the entirety of the leave application was unaffected by any specific considerations in the context of O 53 r 1. I considered Mr Singh's floodgates argument to be fanciful. I was satisfied that the Law Society had an interest in the application by reason of its undeniable statutory role in the ongoing disciplinary proceedings. I was not persuaded by the applicants' argument that the Law Society's interest was limited to the applicants' prayer to stay the disciplinary proceedings pending the substantive judicial review application. The Law Society is by statute entrusted with the heavy duty of having the carriage of all aspects of the disciplinary procedure under the Act. All of the relief which the applicants sought leave to apply for on a principal application under O 53 r 2 touched on the underlying disciplinary proceedings, not just their prayer for a stay pending a principal application. The Law Society therefore had a legitimate interest in attending for the entirety of the hearing before me.

18 I was also satisfied that the Law Society's presence would not cause the applicants any prejudice, let alone any material prejudice. The submission that counsel for the Law Society's prosecution of the applicants would be unfairly coloured by knowledge of the information presented at the leave application was without merit. Mr Singh did not assert that any of the information to be presented before me was confidential. He also did not point to any specific prejudice that the Law Society's knowledge of this material – which was, on Mr Singh's own submission, irrelevant to the disciplinary proceedings – would cause to Mr Singh and Mr Menon there. [note: 12] And if counsel for the Law Society chose to attend the hearing of the leave application and as a result burdened his mind with material which was neither confidential to the applicants nor relevant to the disciplinary proceedings, the only prejudice would be to the Law Society itself, not to the applicants.

19 I therefore allowed counsel for the Law Society to hold a watching brief for the entirety of the hearing before me. He did not address the court at all save in respect of his application to hold a watching brief. On one other occasion, [note: 13] he attempted to address the court, but I reminded him that he had no right to do so. He desisted. To the extent that it is necessary to record it, I took no cognisance of the little that he said.

20 Since giving my decision on 18 February 2013, paragraph 13A of the Supreme Court Practice Directions has come into force with effect from 1 March 2013. Paragraph 13A reads as follows:

> **13A. Attendance at hearings in Chambers**
>
> (1) For the avoidance of doubt, the general rule is that hearings in chambers in civil

proceedings are private in nature, and that members of the public are not entitled to attend such hearings.

(2) However, subject to any written law, the Court may, in its discretion, permit interested parties, such as instructing solicitors, foreign legal counsel and parties to the matter, to attend hearings in chambers. In exercising its discretion, the Court may consider a broad range of factors including: (a) the interest that the person seeking permission has in the matter before the Court; (b) the interests of the litigants; (c) the reasons for which such permission is sought; and (d) the Court's interest in preserving and upholding its authority and dignity.

21 The content of the new paragraph 13A(2) mirrors the language of Menon JC (as the Chief Justice then was) in *Lee Hsien Loong*. It does not change the law. It simply restates the law. I have aligned myself with that law and concluded that nothing specific in the context of O 53 displaces it.

Application to recuse myself

22 The next preliminary point was one which Mr Singh raised. He submitted, on behalf of Mr Menon and himself, that I should recuse myself on grounds of apparent bias [note: 14] and refer their leave application to be determined by another judge. [note: 15] Neither Mr Singh nor Mr Menon suggested that I should not hear and determine the recusal application [note: 16] (cf. *El-Farargy v El-Farargy* [2007] EWCA Civ 1149 at [32]). Therefore, I did so.

23 I make the following point at the outset. Like every judge, I take with utmost seriousness my solemn oath to perform my constitutional judicial duties "without fear or favour, affection or ill-will" (Art 97 read with para 6 of the First Schedule of the Constitution of the Republic of Singapore). It is therefore my invariable practice, as it must be of every judge, to consider at the earliest point in time when a matter is placed before me whether there is any reason for me to recuse myself on grounds of actual bias, apparent bias or for any other reason. In considering this issue, I consciously address my mind to any connection I might have or be seen to have with the subject-matter, with the parties, with the witnesses, with counsel or in any other material respect. Mr Singh's and Mr Menon's application was no exception. Before they appeared before me on 18 February 2013, I undertook this exercise with regard to their application. Further, because the applicants were two advocates and solicitors and because I have only recently left practice, I specifically considered prior to the hearing whether I had had any interaction with Mr Singh or Mr Menon while in practice which could give rise to bias or the appearance of bias. I could think of none. [note: 17] I did not, therefore, recuse myself before the hearing commenced on 18 February 2013.

Application made at earliest opportunity

24 After I had disposed of the Law Society's application to hold watching brief on the morning of 18 February 2013, Mr Singh applied to me to recuse myself. He did so on behalf of himself and Mr Menon. He began by submitting that the hearing was the earliest opportunity for them to make this application. He said that he learned only in the late afternoon of Friday, 15 February 2013 [note: 18] that I had been assigned to hear their application for leave the following Monday, 18 February 2013. He added that his first inclination was to seek directions from the duty judge. [note: 19] But, by coincidence, I was also the duty judge for the week beginning 18 February 2013. [note: 20] So, he submitted, the applicants had no alternative but to raise this matter at the hearing itself, to me.

25 I had some difficulty with Mr Singh's submission. The fact that I was the duty judge for the

week beginning 18 February 2013 did not explain why Mr Singh did not follow through on his initial inclination to seek directions urgently from the duty judge on 15 February 2013, Quentin Loh J.

26 It also did not explain why Mr Singh did not give advance notice of his application and the grounds for his application to all concerned. An applicant who intends to invite a judge to recuse himself should, upon forming that intention, give immediate notice to those concerned of both the intention and the grounds. In this case, the applicants could have foreshadowed their application and the grounds for it by letter to the Registry with a copy to the Attorney-General in the late afternoon of 15 February 2013. Indeed, they could have done so at any time up to 10.00 am on Monday, 18 February 2013. They should have done so.

27 Be that as it may, I did not consider that any of this was a basis on which to shut the applicants out from applying to me to recuse myself. I therefore heard and considered carefully their submissions. I also permitted Mr Singh and Mr Menon to put forward the factual basis for their application from the bar in the course of their submissions rather than on affidavit despite the concerns of the Attorney-General. [note: 21]

Mr Singh's four grounds for recusal

28 The applicants' position on recusal appeared to be that any person with any connection to Mr GP Selvam, to VK Rajah JA or to his wife, Mrs Rajah, was precluded by apparent bias from hearing their leave application. Mr Selvam has been appointed by the Chief Justice to preside over the disciplinary proceedings at which Mr Singh's and Mr Menon's application for leave is directed. The basis on which the applicants allege VK Rajah JA and Mrs Rajah are connected to the disciplinary proceedings underlying their application is set out in the judgment of Choo Han Teck J in *Re Manjit Singh s/o Kirpal Singh and another* [2012] 4 SLR 81 ("*Manjit Singh (No 1)*"). I need not and do not repeat here those allegations. I also need not and do not express any view on the truth of those allegations. To give the applicants the benefit of every doubt on the facts and the law, I heard and determined Mr Singh's recusal application on the basis that he could succeed in making out apparent bias on my part if he could establish circumstances connecting me in a material way to Mr Selvam, VK Rajah JA or Mrs Rajah.

29 Mr Singh submitted to me that I should recuse myself on the following four grounds: [note: 22]

(a) Aspects pertaining to Mr Singh and me. Mr Singh submitted that, when I was in practice at Shook Lin & Bok LLP, I was engaged in a matter in which there had been an acrimonious exchange of correspondence with him. In his submissions, he named Shook Lin & Bok LLP's client [note: 23] and he named the junior partner [note: 24] at Shook Lin & Bok LLP on the file. In the course of that correspondence, he alleged that I took the position that I "would not have anything to do with [Mr] Manjit Singh and would not be communicating with him." [note: 25] Mr Singh told me that for me to have taken that kind of a position against him was sufficient to cause real concern to him [note: 26] that I could "dissect [my] mind" and ensure that justice was not only done but was seen to be done. [note: 27]

(b) Aspects pertaining to Mr G P Selvam and me. Mr Selvam was a judge of the High Court, serving on the High Court bench from 1991 to 2001. Mr Punch Coomaraswamy, my late father, was also a judge of the High Court, serving from 1984 to 1993. Mr Singh submitted that, while Mr Selvam was still a High Court judge but after my father had retired, Mr Singh attended before Mr Selvam on a chambers matter. Mr Singh submitted that he saw my father sitting in Mr Selvam's

inner chambers. [note: 28] Mr Singh asked me to have regard to the need for me to have distance and objectivity in hearing the leave application in light of my father's friendship with Mr Selvam. [note: 29]

(c) Aspects pertaining to V K Rajah JA and his wife and me. Mr Singh told me that he saw me and VK Rajah JA together with some ladies at the basement of Paragon Shopping Centre on a weekend morning. [note: 30] He also told me that VK Rajah JA and I would know whether those ladies were our respective wives. [note: 31] He said that this took place while I was still at the bar. On the basis of his sighting, Mr Singh queried me as to whether I know VK Rajah JA and his wife. [note: 32]

(d) Aspects especially within my personal knowledge. Mr Singh told me that whether I should recuse myself does not depend only on the material he raised to support his application. That, he submitted, is necessarily limited by what *he* knows about me. He submitted that I was duty-bound as a judicial officer to consider all material known to me – whether or not raised by him – in order to satisfy myself whether I should or should not decline to hear his application. [note: 33]

30 Mr Menon supported Mr Singh's application and associated himself with all of Mr Singh's submissions. [note: 34]

31 Mr Singh made it clear on a number of occasions that he did not allege actual bias on my part, but only apparent bias. But Mr Singh made it equally clear that he stopped short of alleging actual bias only because he did not yet have at hand the letter which he said I had written to him in order to prove actual bias, not because he accepted that such an allegation would be unfounded. [note: 35]

Law on apparent bias

32 Justice must not only be done, but must manifestly and undoubtedly be seen to be done. Nobody can gainsay that proposition, least of all those directly involved in the administration of justice. But this does not mean that a judge should recuse himself upon mere allegations of apparent bias.

33 Sundaresh Menon JC (as he then was) stated the legal test for apparent bias in *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 at [91]: are there circumstances which would give rise to a reasonable suspicion or apprehension in a fair-minded reasonable person with knowledge of the relevant facts that the decision-maker was biased? Philip Pillai J adopted and applied this test in *Lim Mey Lee Susan v Singapore Medical Council* [2011] 4 SLR 156 at [52] ("*Lim Mey Lee Susan*"). As for the characteristics of the "fair-minded reasonable person", Pillai J at [54] adopted and applied the reasoning of Silber J at first instance, quoted with approval by Lord Philips MR in *R v West Midlands and North West Mental Health Review Tribunal* [2004] EWCA Civ 311 at [6]:

> . . . It is unnecessary to delve into the characteristics to be attributed to the fair-minded and informed observer. What can confidently be said is that one is entitled to conclude that such an observer will adopt a balanced approach. This idea was succinctly expressed in *Johnson v Johnson* [2000] 200 CLR 488, 509 at paragraph 53 by Kirby J when he stated that "a reasonable member of the public is neither complacent nor unduly sensitive or suspicious" (per Lord Steyn in *Lawal v Northern Spirit Limited* [2003] ICR 856,862 [14]).

34 The following further principles are also relevant:

(a) An application to a judge to recuse himself must be based on credible grounds: *per* Andrew Phang and VK Rajah JJA in *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [148].

(b) "A claim that there is apparent bias on the part of a judge must be based on facts that are substantially true and accurate. The fact that an allegation of bias has been made against a judge is not enough; otherwise a party could secure a judge of his choice by merely alleging bias or apparent bias on the part of another or other judges.": *Tang Liang Hong v Lee Kuan Yew and another and other appeals* [1997] 3 SLR(R) 576 at [51] ("*Tang Liang Hong*").

(c) The applicant bears the onus on the application: *Locabail (UK) Ltd v Bayfield Properties and another* [2000] 2 WLR 870 ("*Locabail*") at [21].

(d) In determining the application, the judge must have regard to the quality of the allegation. "He would be as wrong to yield to a tenuous or frivolous objection as he would to ignore an objection of substance": *Locabail* at [21].

(e) To apply the test for apparent bias, "all that is necessary is to ask whether, in the light of the judge's actual knowledge at the time of the hearing and of any other relevant facts established by the evidence", the test is satisfied. There is no duty on the judge to make inquiries into matters that are not known to him: *Locabail* at [55].

35 I determined the applicant's submissions bearing these principles in mind.

Mr Singh's first ground: an acrimonious matter with him

36 The applicants' application that I should recuse myself was unsound in law and in fact.

37 I deal first with Mr Singh's first ground – aspects pertaining Mr Singh and me. As stated at [23] above, before the hearing in this matter commenced, I considered whether there were any factors at all that should lead me to decline to hear the matter. I concluded then that there were none.

38 When Mr Singh, in the course of his submissions, named a specific client [note: 36] and a specific junior partner at my former firm, [note: 37] that jogged my memory about the matter which Mr Singh mentioned. I could remember the existence of the matter and the client. I could also remember that it was not a substantial matter for me and that I therefore assigned it to the junior partner. [note: 38] I could also remember that I left it to him to run the matter from beginning to end. But even with the assistance of the details which Mr Singh supplied, I could not remember what the matter was about, I could not remember interacting with Mr Singh in connection with it and I could not remember the correspondence exchanged in it. [note: 39] I could not even remember when it took place. All I could say was that it must have taken place more than six years ago because that was when the junior partner who handled the matter left my former firm.

39 I also have no recollection whatsoever of the acrimonious letter said to have been written in that matter to Mr Singh. He informed me that he did not have a copy of the letter because the file was no longer with him. He suggested that I was in a better position than he was to obtain a copy of that letter. [note: 40] That is not correct: having left my former firm, I quite rightly no longer have direct or indirect access to any of its client-confidential material. In any event, a judge who is asked to recuse himself "has no obligation to disclose what he does not know. Nor is he bound to fill any gaps in his knowledge which, if filled, might provide stronger grounds for objection to his hearing . . . the case": *Locabail* at [26]. The same is true of matters of which the judge no longer has any

recollection. I made this precise point to Mr Singh in the course of submissions, though I did so as a matter of common sense, without reference to authority. [note: 41]

40 The applicants' main point under this head appeared to be that even if I had no recollection of the letter, *they* recollected the letter and that caused each of *them* to harbour deep concerns about my objectivity. [note: 42] Indeed, Mr Singh in terms invited me to hold as follows: "All right, Mr Singh, I cannot say that the concerns are proved, but I can understand your concerns sufficient for me to say to do justice, I will remit the file to another High Court Judge". [note: 43] But that is not the test for apparent bias. When I pointed this out to Mr Singh, he simply asserted again that the reasonable observer would indeed find sufficient concerns. [note: 44] So it is to that test which I now turn.

41 In my view, even if a letter as described by Mr Singh was issued to him, I have no doubt that the test for apparent bias would not be satisfied. The fair-minded reasonable person would bear in mind the following:

(a) Mr Singh told me that one of his admitted weaknesses is that he does not associate in any way with persons for whom he does not have full regard or respect. [note: 45] He told me that it was for that reason that he had kept a distance from me when we were both at the bar. But Mr Singh did not suggest that I was ever aware of his feelings towards me. Nor does he suggest that I have ever on any occasion – other than in the one letter said to have been written – expressed or manifested any animosity or lack of regard or respect towards him. That is correct: I had and have no reason to do so.

(b) Lawyers not infrequently do write strongly-worded letters to one another. They quite often rely on hyperbole for effect. But they do all of this as professionals carrying out their duties to their clients, on instructions from their clients. Able advocates never share their client's hostility to the opposing party or to opposing counsel, no matter how acrimonious the correspondence may appear on its surface to be.

(c) Mr Singh himself, an undoubtedly able advocate, is equally undoubtedly well aware of all of this. He has no doubt written and received many of these letters in the course of his practice without any transient or enduring personal animosity in the writer or the recipient.

(d) Other than its existence and the junior partner handling it, I have no recollection of the matter which Mr Singh raised or of any acrimonious letter written in the course of that matter.

(e) I had and have [note: 46] no general feeling of transient or lingering personal animosity towards Mr Singh whether during that matter, arising from that matter or from that letter or otherwise. [note: 47] "How can there be . . . any real apprehension or likelihood of bias, if the judge does not know of the facts that, in argument, are relied on as giving rise" to the grounds for apparent bias?: *Locabail* at [55].

(f) The matter in question took place more than six years ago. "The greater the passage of time between the event relied upon . . . and the case in which the objection is raised, the weaker (other things being equal) the objection will be": *Locabail* at [25].

42 For all these reasons, I was satisfied that a letter said by Mr Singh to have been written over six years ago, even if it existed, and the matter in which it was said to have been written do not constitute circumstances which would give rise to a reasonable suspicion or apprehension in a fair-

minded reasonable person with knowledge of the relevant facts that I was biased against Mr Singh or Mr Menon.

Mr Singh's second ground: aspects pertaining to Mr GP Selvam and me

43 Mr Singh's second ground relied on aspects pertaining to Mr GP Selvam and me. To support this ground, Mr Singh relied on my late father's relationship with Mr Selvam. My late father, Mr Punch Coomaraswamy, retired from the bench in 1993 and passed away in 1999. He was a colleague of Mr Selvam on the High Court bench. They no doubt kept in touch even after my father retired in 1993 and before Mr Selvam retired in 2001. They may even have met, as alleged by Mr Singh. But I was not aware then and am not aware now of any meetings they might have had before, during or after that period. I do not and cannot know whether, as Mr Singh says, my father was in Mr Selvam's inner chambers on the occasion that Mr Singh cites – or indeed on any other occasion.

44 Indeed, Mr Singh put forward no facts concerning *my* relationship (as opposed to *my father's* relationship) with Mr GP Selvam [note: 48] which would or could constitute circumstances satisfying the test for apparent bias. He did not do so because he could not do so. He could not do so because there are none. My own relationship with Mr Selvam is and has always been purely professional. I have never interacted with him socially. I would not presume to call him a friend or even a friend of the family. [note: 49]

45 Mr Singh's second ground, therefore, is no ground at all. There was zero factual basis under this head for the test of apparent bias to be applied to.

Mr Singh's third ground: aspects pertaining to VK Rajah JA and Mrs Rajah and me

46 Mr Singh's third ground relied on aspects pertaining to VK Rajah JA and Mrs Rajah and me. Mr Singh put forward only one positive circumstance which could conceivably satisfy the test of apparent bias. That was Mr Singh's alleged sighting on a weekend morning at the basement of the Paragon Shopping Centre [note: 50] (see [29(c)] above). I told Mr Singh specifically and categorically that no such meeting ever took place. [note: 51] Mr Singh did not accept what I told him. He told me: "I hear Your Honour, but I am sorry to say, I did see Mr Rajah, I did see Your Honour and I did see the ladies." [note: 52] He declined to withdraw his assertion. [note: 53]

47 Instead, he queried me whether there were other circumstances not known to him in my relationship with VK Rajah JA and his wife which could give rise to apparent bias. [note: 54] There are none. I am now a judicial commissioner of a court below that of VK Rajah JA. Our relationship past and present has always been purely professional. We never – not even once – interacted socially when I was at the bar. That is why I can say with certainty that I have never met VK Rajah JA as alleged by Mr Singh. Even now, our social interaction is limited to formal or semi-formal events organised for members of the judiciary. As for Mrs Rajah, I have met her on perhaps three occasions before joining the bench and perhaps two occasions after. [note: 55] All of our interchanges have comprised purely perfunctory exchanges of pleasantries. My wife has no separate relationship of any kind with Mrs Rajah. [note: 56]

48 Mr Singh's third ground for suggesting apparent bias was no ground at all. An application to recuse based on apparent bias must be based on credible grounds, not on conjecture or on misapprehensions. Further, "[a] Judge is not obliged to withdraw based on facts which are inaccurate, false or devoid of substantiation" (see *Tang Liang Hong* at [51]). Once again, there was zero factual

basis under this head for the test of apparent bias to be applied to.

Mr Singh's fourth ground: other aspects uniquely within my personal knowledge

49 Mr Singh's fourth ground relied on aspects within *my* personal knowledge which might affect my objectivity but which were not within *his* personal knowledge. He connected this final ground to each of his preceding three grounds, [note: 57] but relied on it as an independent ground as well. This ground is not a valid ground on which to invite a judge to recuse himself for apparent bias. Because judicial officers are bound by their judicial oath (see [23] above), the onus on a recusal application lies on the party making the application: *Locabail* at [21]. A party who raises a ground such as Mr Singh's fourth ground shirks that onus.

50 Despite this, I indulged Mr Singh and Mr Menon. I disclosed the facts and circumstances set out above on each of the three preceding grounds which Mr Singh raised. I have already explained why none of them could conceivably have satisfied the test of apparent bias. There were no other grounds known to me but unknown to Mr Singh for Mr Singh's fourth catch-all ground to catch.

51 In the result, I declined to recuse myself from hearing the applicants' leave application.

Leave to appeal my refusal to recuse myself

52 Immediately after I made known my decision not to recuse myself, the applicants indicated their intention to appeal to the Court of Appeal against my decision. The applicants needed leave to appeal because their recusal application was an interlocutory application within the meaning of paragraph (e) of the Fifth Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) read with s 34(2)(d) of that Act. Given the importance of this matter to the applicants personally and professionally, I did not wish to stand in their way in case I had gone wrong in my decision. So I granted them leave to appeal. The Attorney General did not object.

53 I leave this section of my judgment by noting that nothing that either Mr Singh or Mr Menon had said to me in the course of their submissions on their recusal application moved me from a position of neutrality on the matters before me.

The Leave Application

Evidence before the Court

54 With the two preliminary points disposed of, I now turn to the applicants' leave application itself. In determining this application, I took into account all of the evidence in all of the affidavits placed before me. The applicants also placed before me, but only towards the end of their submissions, four recent letters which they had not exhibited to any of their affidavits. I took these letters into account also, on the applicants' undertaking that the letters would be exhibited to a fresh affidavit to be filed at the earliest opportunity. These letters have since been exhibited to the 4th affidavit of Mr Menon filed on 19 February 2013.

55 I now set out the factual background leading up to and subsequent to the applicants' leave application, the relief sought by the applicants and my determination of the application.

Factual background

DT gives directions on 3 January 2013

56 On 3 January 2013, the DT held a hearing for directions. The applicants and counsel for the Law Society attended this hearing. Counsel for the Law Society informed the DT at the outset about Ms Rankine's letter. He further informed the DT that he had taken instructions from the Law Society as to whether it wished to proceed with the disciplinary proceedings in view of Ms Rankine's letter. He told the DT that the Law Society had instructed him to proceed with the charges against the applicants. [note: 58] The applicants did not object. They did not allege that the Law Society's decision to proceed with the inquiry despite Ms Rankine's withdrawal was irrational, *ultra vires* or otherwise contrary to law. They did not assert a right to have the DT proceedings terminated by reason only that Ms Rankine had voluntarily withdrawn her complaint. They did not even reserve their right to take these points at some later time or before some other forum. Their only complaint was that they had not brought their diaries with them because they had not been told in advance – unlike on a previous occasion – that they would need to take dates. [note: 59]

57 The DT suggested some dates and gave them an opportunity to check their diaries with their office by telephone. [note: 60] The applicants did so. With the applicants' consent, therefore, the DT directed that the hearing take place from 13 to 23 February 2013. [note: 61]

58 On 3 January 2013, the DT also gave directions on the Law Society's renewed application to the DT for leave to prefer an additional charge against the applicants. [note: 62] The applicants accepted that the Law Society had the right to make that application and to have it assessed by the DT. [note: 63] They did not suggest that it was wrong in law for the Law Society even to *apply* for leave to prefer an additional charge against them. They did not suggest that the genesis of this additional charge against each of them was in any way tainted. They did not reserve their position on these issues. Mr Singh's only concern was to ensure that the Law Society gave him a copy of its written submissions dated 20 May 2012. [note: 64] Counsel for the Law Society indicated that that would be the only material that the Law Society would rely upon at the hearing of its application. [note: 65] The DT gave procedural directions for the exchange of submissions and fixed a date to hear the Law Society's application. [note: 66] The applicants consented to these directions. [note: 67]

Correspondence with the Law Society and Chief Justice

59 Over the weekend between 3 January 2013 and 7 January 2013, the applicants' position evolved. On 7 January 2013, the applicants wrote to the Law Society. [note: 68] They drew the Law Society's attention to Ms Rankine's unreserved withdrawal of her complaint dated 23 November 2012. They complained that neither Ms Rankine nor they were either consulted or heard before the Law Society took the decision to proceed with the matter against them. They concluded their letter by asking the Law Society to state precisely by which of its organs or officers that decision had been made, the procedure by which that decision had been made and the statutory provision under which that decision had been made. They also asked the Law Society to supply copies of all documents evidencing the process by which that decision had been made.

60 On 11 January 2013, the applicants wrote to the Chief Justice. [note: 69] They put before the Chief Justice their letter dated 7 January 2013 to the Law Society. They drew the Chief Justice's attention to the matters raised in that letter and to s 90(3)(a) of the Act. They expressed the view that neither the interests of justice nor of the legal profession would be served by "persecuting" [note: 70] them or pursuing the proceedings in circumstances where Ms Rankine had withdrawn her complaint and where the possibility of future adjustments after the DT's decision would not provide them any

comfort. They humbly urged the Chief Justice to exercise his power under s 90(3)(a) of the Act and revoke the appointment of the DT in the circumstances of this case.

61 On 11 January 2013, the Law Society responded to the applicants. [note: 71] The Law Society pointed out that it had a statutory duty under s 89(1) of the Act to apply to the Chief Justice to appoint a DT to hear and investigate a complaint which merited formal investigation. The Law Society pointed out that once appointed, a DT has a statutory duty under section 89(1) of the Act to hear and investigate the matter before it. The Law Society pointed out that a DT remained subject to its statutory duty even if a complainant withdrew her complaint after its appointment. The Law Society concluded by inviting the applicants to raise to the DT any issues or points they had about the continuation of the DT despite Ms Rankine's withdrawal of her complaint. The applicants received this letter on 14 January 2013. [note: 72]

62 On 15 January 2013, the applicants responded to the Law Society's letter of 11 January 2013. [note: 73] They noted that the Law Society's position was that the proceedings continued because the DT was statutorily bound to do so. They said that this conveyed the impression that the Law Society did not make the decision of its own volition. They rejected this position as a matter of law. They asserted that there was no statutory basis for this position. They cited two authorities which they said contradicted the Law Society's view of the law. They pointed out that the Law Society's position was new and was inconsistent with the position taken by its counsel on 3 January 2013. The applicants' point was that the Law Society's decision was conveyed to the DT as an exercise of volition. It will be remembered that Law Society's counsel had informed the DT then that the Law Society had first *considered* whether it *wished* to proceed with the disciplinary proceedings and had then instructed him to do so [note: 74] (see [56] above). The applicants reiterated their complaint that they had had a right to be heard by the Law Society before it had decided to proceed with the disciplinary proceedings against them.

63 On the same day, 15 January 2013, the applicants wrote to the Chief Justice. They enclosed a copy of their response to the Law Society of that date. [note: 75] They reiterated that they urged the Chief Justice to exercise his power under s 90(3)(a) of the Act to revoke the appointment of the DT.

64 On 17 January 2013, [note: 76] counsel for the Law Society wrote to the Chief Justice responding to the points made by the applicants in their letter dated 15 January 2013. Counsel for the Law Society pointed out that the Act did not contain any specific provision empowering the Law Society to "withdraw or discontinue" the DT proceedings. [note: 77] He reiterated the Law Society's position that it had no power to "seek termination or revocation" of the DT's appointment [note: 78] and that the only power to revoke the appointment of the DT was the power vested in the Chief Justice under s 90(3) of the Act. [note: 79] He took the position that the proper course for the applicants would be to make submissions to the DT on the effect of Ms Rankine's withdrawal of her complaint. [note: 80]

65 On 21 January 2013, the applicants wrote to the Chief Justice. [note: 81] They responded to the letter from counsel for the Law Society to the Chief Justice dated 17 January 2013. They pointed out that the Law Society undoubtedly has the power to apply to a DT to withdraw [note: 82] or discontinue [note: 83] an inquiry pending before it. They also pointed out that the Law Society undoubtedly has the power to invite the Chief Justice to exercise his power under section 90(3)(a) of the Act to revoke the appointment of a DT. They expressly took the position that it was wrong *in law*

for the disciplinary proceedings to continue in light of Ms Rankine's withdrawal of her complaint. [note: 84] They objected *in limine* to the DT's decision even to *hear* the Law Society's renewed application to prefer an additional charge. [note: 85] They took the position that the *legislative objective* of s 90(3)(a) is "to ensure that justice is served," [note: 86] requiring "all relevant considerations to be reviewed." [note: 87]

66 On 22 January 2013, [note: 88] the Law Society wrote to the applicants. They received this letter on 23 January 2013. In this letter, the Law Society referred to its counsel's letter dated 17 January 2013 to the Chief Justice as setting out its position. The Law Society declined to furnish to Mr Singh and Mr Menon any information or documents about its internal decision-making processes. The Law Society once again invited the applicants to take up with the DT their points arising from Ms Rankine's withdrawal of her complaint.

67 On 24 January 2013, [note: 89] the applicants wrote to the Chief Justice again. They complained that the Law Society was acting beyond its powers even to seek to prefer an additional charge against them. [note: 90] They asserted that s 90(3) "empowers the Chief Justice to review any issue of law concerning an additional charge in the consideration as to whether the DT should be revoked." [note: 91] They asserted that the Chief Justice ought to revoke the appointment of the DT because it was clear that the premise at law for the additional charge was not proper. They said that the appropriate "relief should be granted at the earliest". [note: 92] They concluded by asking the Chief Justice for an urgent response and in any event by 30 January 2013 in light of the DT hearing then scheduled to commence on 13 February 2013.

68 It suffices for the moment to note the following points about the applicants' correspondence with the Chief Justice. It was the applicants who, by their very first letter dated 11 January 2013, chose to seek out the Chief Justice in order to urge him to exercise his power under s 90(3)(a). They did not take the position in any letter that the Chief Justice should not deal with their request, whether on grounds of apparent or actual bias or on any other grounds. They said in their letters of 11 January 2013 and 21 January 2013 that they were available at short notice to address the Chief Justice. [note: 93] But they did not take the position that the Chief Justice was obliged to hear them. They did not take the position that the Chief Justice was obliged to respond. They did not take the position that if the Chief Justice did so, he was obliged to respond within a specified or a reasonable time. They did not take the position that the Chief Justice was obliged to give reasons for his response. They did not take the position that the Chief Justice was obliged in law to revoke the DT's appointment in light of Ms Rankine's withdrawal and the Law Society's failure to put any contrary material before him. Until their letter dated 21 January 2013, they did not take the position that the DT's decision simply to hear the Law Society's renewed application to prefer an additional charge caused them any prejudice in itself.

Mr Singh and Mr Menon apply for leave to bring judicial review proceedings

69 At 11.10 am on 4 February 2013, [note: 94] Mr Singh and Mr Menon filed their application under O 53 r 1(2) of the Rules of Court supported by the required statement and affidavit.

70 At 4.15 pm on the same day, [note: 95] Mr Singh and Mr Menon received a letter from the DT Secretariat. [note: 96] The letter conveyed the Chief Justice's response to Mr Singh and Mr Menon. The letter began by confirming that all the correspondence between the parties up to 4 February 2013 had been placed before the Chief Justice as requested. The letter concluded by conveying the

Chief Justice's view "that the proceedings that are now before the Disciplinary Tribunal in relation to the matters for which [it] was constituted should take their course" and that the applicants may raise any issues "pertaining to any determination of the [DT] in connection with the additional charge or otherwise . . . in accordance with the applicable procedures set out in the [Act]".

71 On 13 February 2013, the DT commenced its hearing. The applicants sought an adjournment of the hearing until after this application had been heard. The DT President, relying on the Chief Justice's letter dated 4 February 2013, indicated that he was not inclined to adjourn the proceedings. [note: 97] The applicants then withdrew from the DT hearing. They appeared urgently before the duty registrar and then before the duty judge, Quentin Loh J. They asked Loh J to stay the DT proceedings until this application had been heard. [note: 98] The Attorney-General was not informed of this urgent application and was therefore not heard. [note: 99] The Law Society was aware of this application and its counsel was heard on it. [note: 100] After hearing arguments, Quentin Loh J granted what was expressed to be a stay of the DT proceedings until the hearing of the applicants' leave application fixed for 18 February 2013. [note: 101]

72 On 14 February 2013, the applicants wrote to the Chief Justice. [note: 102] They drew to his attention the events of 13 February 2013. They asked the Chief Justice once again to exercise his power under s 90(3)(a) of the Act and revoke the appointment of the DT.

73 On 15 February 2013, the applicants wrote again to the Chief Justice. They accused the DT President, Mr Selvam, of bias. [note: 103] For the first time, they drew to the Chief Justice's attention certain events which occurred on 21 May 2012 in relation to the additional charge which the Law Society was seeking to prefer against them. Their fundamental point was that because of these events, amongst others, they were concerned that they would not get a fair hearing before the DT. [note: 104] They criticised the DT President for, amongst other reasons, not hearing them on 3 January 2013 after counsel for the Law Society conveyed the Law Society's intention to proceed with the inquiry. But it will be remembered that the applicants neither objected to the Law Society's position nor reserved their right to do so (see [56] above).

74 On 15 February 2013, the DT Secretariat wrote a letter to Mr Singh and Mr Menon. [note: 105] The letter informed them that the Chief Justice, "having considered the matter, does not revoke the appointment of the Disciplinary Tribunal".

75 On 18 February 2013, Mr Singh and Mr Menon replied to the Chief Justice. They took the position that "Section 90(3) is a substantive provision of law passed by Parliament for an appropriate person to grant access to justice and reliefs for withdrawn complaints taken with the benefit of legal advice and on the record since 23rd November 2012." [note: 106] They stated their view that s 90(3) is an overriding substantive power which the Chief Justice can exercise at any time, and was not subservient to procedures or to the DT proceedings. They took the position that they disagreed with the Chief Justice's view of the law and would "pursue all rights in law".

76 That is where the correspondence rested when I heard Mr Singh's and Mr Menon's application on 18 February 2013.

Relief sought

77 The relief which Mr Singh and Mr Menon sought leave to apply for comprised the following 7

prayers [note: 107] :

(1) That leave be granted to the Applicants to apply for a Mandatory Order (mandamus) compelling the Honourable Chief Justice to exercise his power under Section 90(3) of the Legal Profession Act.

(2) That the exercise of the statutory power under Section 90(3) of the Legal Profession Act gives regard at law for the enforcement of a right conferred by written law passed by Parliament.

(3) That in the exercise of the statutory power, the Honourable Chief Justice being empowered at anytime, do revoke the appointment of DT 2/2012.

(4) All such orders as are necessary to do justice.

(5) That DT 2/2012 be stayed pending the determination of the Applicants' application for a Mandatory Order.

(6) Costs of this application be costs as is appropriate and just, save that the Applicants do not seek any order of costs against the AGC required by law to participate.

(7) Such further and/or other reliefs as this Honourable Court deems fit and just.

78 I shall refer to these prayers by the numbers which the applicants assigned to them.

79 Prayer 1 sought leave to apply for an order to compel the Chief Justice to exercise his power under s 90(3) of the Act. When the applicants filed their application at 11.10 am on 4 February 2013, the Chief Justice had not yet exercised his power either way under s 90(3) of the Act. I therefore read prayer 1 as a prayer for a mandatory order to compel the Chief Justice simply to exercise his power whereas Prayer 3 was a prayer for a specific mandatory order to compel the Chief Justice to exercise his power in a particular way: by revoking the appointment of the DT. But after the application was filed, the Chief Justice *did* exercise his power under s 90(3) as conveyed by the DT Secretariat's letter dated 4 February 2013, albeit not in the manner the applicants prayed for in prayer 3. It seemed to me that what the applicants needed in light of subsequent events was no longer leave to apply for an order in terms of prayer 1 but leave to apply for an order to quash the Chief Justice's exercise of his power under s 90(3) on 4 February 2013.

80 I therefore inquired at the outset of the substantive hearing whether the applicants still sought leave to apply for an order in terms of prayer 1, given the supervening events. [note: 108] Mr Singh's position was that they did. He submitted, first, that I ought to approach his leave application on the facts as they stood on 4 February 2013, not as they stood on 18 February 2013. I address this submission at [134] below. He submitted, further, that the DT Secretariat's letter dated 4 February 2013 did not, in terms, convey an exercise of the Chief Justice's power under s 90(3) of the Act one way or the other. What Mr Singh was looking for, it appears, was either a statement that "The Chief Justice exercises his power under s 90(3)(a) of the Act and revokes the appointment of the DT" or a statement that "The Chief Justice declines to exercise his power under s 90(3)(a) of the Act to revoke the appointment of the DT". At this point in the hearing, Mr Singh had not yet placed before the court the DT Secretariat's letter dated 15 February 2013 (the contents of which are briefly described at [74] above) doing precisely that.

81 Mr Singh did, however, accept that it was possible on one view to read the DT Secretariat's

letter of 4 February 2013 as conveying the Chief Justice's exercise of his power under s 90(3) even though that was not Mr Singh's view. He therefore sought leave to amend the omnibus prayer 4 by adding a specific prayer on an alternative case. His proposed amendment was to add the following words to prayer 4: "In the event Prayer 1 is not granted because of the delayed response of the Chief Justice sent after the OS was filed, there be an order that the decision of the Chief Justice given on 4th February, received at 4.15, be quashed". [note: 109] The Attorney-General did not object to the application. [note: 110] I therefore granted the applicants leave to amend the leave application in those terms. For the purposes of the leave application and any appeal from it, the Attorney-General confirmed that no objection would be taken to the discrepancy between the amended leave application and the unamended statement in support of it. But the Attorney-General took the position that, if leave were granted, the applicants would need to seek leave of court at the substantive judicial review application to align their statement with the leave that had been granted on the basis of the amended originating summons. [note: 111]

82 The applicants also agreed to withdraw prayer 2 at the leave stage. [note: 112] The Attorney-General pointed out that prayer 2, despite being worded ostensibly as a prayer for an order, was in substance a prayer for a declaration. [note: 113] An applicant under O 53 needs leave to make a principal application for a mandatory order, a prohibiting order or a quashing order but not to make a principal application for a declaration: *Vellama d/o Marie Muthu v Attorney-General* [2012] 4 SLR 698 at [32] ("*Vellama*"). The applicants therefore did not need at the leave stage to include prayer 2, and I did not at the leave stage need to deal with it. They therefore withdrew prayer 2, while reserving their right to seek that declaration on any principal application that I might give them leave to make. [note: 114]

Whether leave to apply for judicial review should be granted

83 It is well-established that leave to apply for judicial review is not granted unless the court is satisfied that: (a) the matter complained of is susceptible to judicial review; (b) the applicants have sufficient interest in the matter; and (c) the material before the court discloses an arguable case or a *prima facie* case of reasonable suspicion in favour of granting the public law remedies sought by the applicant: *Lim Mey Lee Susan* at [3]; *Vellama* at [10]; *Jeyaretnam Kenneth Andrew v Attorney-General* [2012] SGHC 210 at [5].

Susceptible to judicial review

84 At the hearing, the Attorney-General accepted that the exercise by the Chief Justice of his power under s 90(3)(a) of the Act was susceptible to judicial review. [note: 115] This concession must be correct. As the Court of Appeal said in *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR(R) 133 at [41] - [42] ("*Lai Swee Lin Linda*"), when a decision is made in the exercise of a power, one of the tests – and usually the decisive test – for whether that decision is susceptible to judicial review is whether the source of the power is public law. That test will typically be satisfied if the source of the power is statute or subsidiary legislation. In this case, the power of the Chief Justice in question is his statutory power under s 90(3)(a) of the Act to revoke the appointment of a DT. Accordingly, the exercise of that power must, at least in principle, be susceptible to judicial review.

85 However, I am aware that this conclusion could be seen to conflict with the decision of Choo J in *Manjit Singh (No 1)* ([28] above). He determined at first instance the applicants' earlier judicial review proceedings. There, the applicants sought leave to apply to quash the Chief Justice's exercise of his power under s 90(1) of the Act to appoint Mr Selvam to be the President of the DT. Choo J

dismissed the applicants' application for leave. One of the grounds Choo J gave for dismissing the application was that the Chief Justice's exercise of his power under s 90(1) was not susceptible to judicial review. Choo J gave two reasons for this conclusion:

(a) The Chief Justice, in appointing Mr Selvam, was acting in a judicial capacity. Orders made in the Chief Justice's judicial capacity are not subject to judicial review, because judicial review does not lie against decisions of the High Court. Even if the Chief Justice was acting in an administrative rather than judicial capacity, his was a "ministerial" act, which means that it did not involve the exercise of any discretion or judgment. "Ministerial" acts are not subject to judicial review (at [6]).

(b) The statutory disciplinary scheme enacted by Parliament in the Act – and in particular s 91A of the Act – made it clear that the appointment of the President of a DT is not susceptible to judicial review (at [7]).

86 The applicants appealed against the decision of Choo J. The Court of Appeal dismissed the appeal, indicating it would deliver its grounds separately. Mr Singh submitted to me that his impression in the course of argument was that the Court of Appeal was of the view that the exercise of the Chief Justice's power under s 90(1) of the Act was susceptible to judicial review. [note: 116] I do not wish to pre-empt – or worse, cut across – anything the Court of Appeal might say regarding this aspect of Choo J's decision. But I do not consider that Choo J's reasoning concerning s 90(1) of the Act leads to the conclusion that the Chief Justice's exercise of his power under s 90(3)(a) of the Act is not susceptible to judicial review.

87 First, whatever the case may be when the Chief Justice exercises his power to appoint a DT under s 90(1) of the Act, he does not act in a judicial capacity when he exercises his power under s 90(3)(a) of the Act to revoke the DT's appointment. Neither do I think that his exercise of the s 90(3)(a) power is merely "ministerial". Choo J relied, for his decision on s 90(1) of the Act, on the Court of Appeal's decision in *Lim Mey Lee Susan*. In that case, the Court of Appeal characterised the Singapore Medical Council's appointment of members of a Disciplinary Committee as "ministerial" because it is obliged by statute to appoint a Committee once certain statutory prerequisites are satisfied (at [19(e)]). The only discretion it has is in the selection of the Committee's members (at [47]-[48]). By contrast, section 90(3)(a) of the Act gives the Chief Justice what is clearly a power. It does not impose an obligation. And, with respect, I do not in any event read *Lim Mey Lee Susan* as authority for the proposition that "ministerial" powers are not susceptible to judicial review.

88 Second, I do not think that s 91A of the Act can govern whether the exercise of the Chief Justice's power under s 90(3)(a) of the Act is susceptible to judicial review. Section 91A in terms excludes judicial review only in respect of acts done and decisions made by a DT. What the applicants challenge before me is not any act or decision of the DT, but an act or decision of the Chief Justice. Section 91A may be relevant to this application insofar as it sheds light on the underlying policy of the statutory disciplinary scheme. But it would be taking purposive statutory interpretation too far to read s 91A as excluding judicial review of the Chief Justice's decisions under s 90(3)(a).

Sufficient interest

89 Again, the Attorney-General did not dispute that the applicants have sufficient interest in the matter. Subject to the point I make at [116] below, this must be right. The applicants are the subject of the disciplinary proceedings in question and their professional reputations and status are very much at stake.

Arguable case or prima facie case of reasonable suspicion

Origins of the test

90 The final requirement is that the applicants must establish an arguable case or a *prima facie* case of reasonable suspicion in favour of granting the public law remedies which they seek.

91 I have always found curious the phrase "a *prima facie* case of reasonable suspicion". The concept of a "*prima facie* case" and the concept of "reasonable suspicion" are two legal concepts which are usually presented by way of contrast to each other in the criminal law not the civil law. Further, "reasonable suspicion" implies that there is an unknown *fact* which an applicant suspects on reasonable grounds to be true but is unable to establish at a *prima facie* level. Judicial review permits a party to challenge administrative action on grounds of illegality, irrationality or procedural impropriety (per Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410D ("*CCSU*").) The basis for bringing the challenge on any one of these grounds in the typical judicial review case will involve questions of law, not fact, and will be patent, not latent. In applying for leave in the typical case, the suspicions of the applicant or the Court about the facts will be wholly irrelevant, whether reasonably held or otherwise.

92 To understand this formulation of the test in context, I go back to its origins. The first Court of Appeal decision in Singapore to adopt this formulation is *Chan Hiang Leng Colin and others v Minister for Information and the Arts* [1996] 1 SLR(R) 294 at [21] ("*Colin Chan*"). The Court of Appeal drew this formulation from the decision of the House of Lords in *Inland Revenue Commissions v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 at 643. In that case, the applicant federation suspected that the tax authorities had granted an income tax amnesty to a particular class of income tax defaulters for an improper motive: as capitulation to threats of industrial action by trade unions. The federation therefore sought a declaration that the amnesty was *ultra vires* and an order of mandamus to require the tax authorities to collect the unpaid income tax from the defaulters covered by the amnesty.

93 To make out its case at the leave stage, the federation produced evidence which it asserted showed the significantly harsher treatment which the tax authorities had meted out to two other categories of tax defaulters who did not have trade union backing. Lord Diplock accepted that this evidence had "made out a *prima facie* case, albeit a somewhat flimsy one" of the differing treatment of the three classes of tax defaulters. This gave rise to a "reasonable suspicion" that the tax authorities had been motivated by ulterior reasons extraneous to good management (at 643). For that reason, he held that the federation had been correctly found to have standing to bring judicial review proceedings challenging the amnesty as *ultra vires*. In the factual context of that case, it was appropriate for Lord Diplock to have spoken of a "*prima facie* case of reasonable suspicion" (at 643G): the only grounds on which the applicants argued that the tax authorities' amnesty was *ultra vires* was by reason of a hidden improper motive. But I have some difficulty in transposing this formulation of the test to the usual application for leave to bring judicial review proceedings where the grounds for alleging an act was illegal, irrational or procedurally improper will ordinarily be manifest.

94 For this reason, I prefer the formulation which expresses the test at the leave stage as "an arguable case". Lord Diplock used this test as an equivalent alternative formulation to a "*prima facie* case of reasonable suspicion" (at 644A). The Court of Appeal in *Colin Chan* too saw no difference between an "arguable case" and a "*prima facie* case of reasonable suspicion" (at [22]-[25]).

95 I am mindful that, whichever formulation of the test I adopt, it is intended to be a means of

filtering out groundless or hopeless cases at an early stage, to prevent a waste of judicial time and to protect public bodies from harassment: *Lai Swee Lin Linda* at [23]. To serve its purpose, the test must be given some meaning. But at the same time, I am mindful that, however the test may be expressed, it is a "very low threshold": *Vellama* at [29].

96 I now examine the relief which the applicants seek to see whether the material before me discloses an arguable case that the Chief Justice's response to the applicants' invitation under s 90(3)(*a*) of the Act is vitiated as the applicants allege.

Applicants' legal position on 18 February 2013

97 Although the applicants' legal position evolved over time in the course of the events I have summarised at [56]-[75], at the heart of the applicants' legal position as it stood on 18 February 2013 on all of the prayers they were pursuing were the following stark propositions of law:

(a) Section 90(3)(*a*) of the Act gives interested persons the right to ask the Chief Justice to revoke the appointment of a DT and imposes a duty on the Chief Justice to consider the material put before him and to act on any such application. [note: 117]

(b) If the Chief Justice receives a request to exercise his power under s 90(3)(a) of the Act on grounds that the complainant has voluntarily withdrawn her complaint, and there is no contrary material placed before the Chief Justice, then the Chief Justice is *obliged* to revoke the DT's appointment. [note: 118] Every other decision by the Chief Justice is unreasonable in the *Wednesbury* sense. [note: 119]

98 Mr Singh's submission gives rise to two subsidiary issues of law. First, do the applicants have an arguable case on their interpretation of s 90(3)(*a*) of the Act? Second, do the applicants have an arguable case that when a complainant to the Law Society voluntarily and unreservedly withdraws her complaint, and there is no material to contradict that, the disciplinary proceedings *must* be revoked?

Statutory scheme for processing complaints

99 I begin my analysis of these two questions of law by summarising the statutory procedure set in motion when a complainant makes a complaint to the Law Society against an advocate and solicitor under s 85(1) of the Act. If the complaint fulfils the formal requirements of s 85(1), the Law Society is obliged to refer the complaint to the Chairman of the Inquiry Panel: s 85(1A). The Chairman of the Inquiry Panel is obliged to constitute a Review Committee to review the complaint: s 85(6). Unless the Review Committee finds that the complaint is frivolous, vexatious, misconceived or lacking in substance, it is obliged to refer the matter back to the Chairman of the Inquiry Panel (s 85(8)), who is obliged to constitute an Inquiry Committee to inquire into the complaint: s 85(10). If the Inquiry Committee decides, after inquiry, that a formal investigation by a DT is necessary, it is obliged to make that recommendation to the Law Society and to recommend the charges to be preferred against the advocate and solicitor: s 86(7)(*a*). The Law Society is then obliged to apply to the Chief Justice to appoint a DT: s 87(2)(*a*) read with s 89(1). The Chief Justice then exercises his power under s 90(1) to appoint a DT.

Effect in law of withdrawal of a complaint

100 Disciplinary proceedings against an advocate and solicitor do not come to an automatic end when the complainant withdraws the complaint, no matter how voluntarily or unreservedly. The

charges which the Law Society formulates are conceptually distinct from and independent of the original complaint. Even if the complaint is withdrawn, the charges are not by that fact alone withdrawn. The proceedings before the DT do not by that fact alone cease. The DT continues to be under a statutory duty formally to investigate the charges. This position is well-established by the decisions of the Court of Three Judges in *Re Shan Rajagopal* [1994] 2 SLR(R) 60 (at [15]) and *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 (at [27]). As explained in *Re Shan Rajagopal* at [15], "the withdrawal of the complaint cannot affect the jurisdiction of the Disciplinary Committee to hear and investigate 'the matter' which, as the Disciplinary Committee rightly pointed out, refers to the charges formulated by the Law Society and not the original complaint."

101 All of this must be correct. The Law Society prefers charges against an advocate and solicitor not to vindicate the complainant's private rights or to protect the complainant's private interests. The Law Society prefers charges against an advocate and solicitor because it is in the public interest and in the profession's interest for a DT to receive evidence and determine whether or not the advocate and solicitor is guilty of professional misconduct on those charges. When a complainant withdraws her complaint, no matter how voluntarily or unreservedly she does so, it does not follow that it ceases by that fact alone to be in the public interest and in the profession's interest for the DT to make that determination.

102 Of course, if a complainant withdraws her complaint, the Law Society may in practice face evidential difficulties in proving its case on the charges preferred before the DT. This can happen because the complainant may be unavailable to give evidence or may, although compellable to give evidence, be reluctant to do so. In other cases, the Law Society may well remain able to discharge its burden of proof to the requisite standard without the complainant's evidence. So a withdrawal will quite correctly lead the Law Society to reassess whether it can discharge its burden of proof and whether it continues to be in the public or the profession's interest to prosecute the charges preferred against the advocate and solicitor. But all of this is for the Law Society to assess and reassess on a case by case basis and from time to time on the advice of counsel. None of this supports the applicants' proposition that upon the withdrawal of a complaint which is both voluntary and unreserved, the Chief Justice *must* revoke the appointment of the DT seised of the charges.

103 The transcript of the proceedings before the DT on 3 January 2013 shows that the Law Society knew that the complainant had withdrawn the complaint, took that into account and nevertheless decided to proceed with the charges against the applicants. It was undoubtedly entitled to do so. The DT proceeded to fix dates for the hearing where it would receive evidence and proceed to a determination. It was likewise undoubtedly entitled to do so.

Section 90(3)(a) of the Legal Profession Act

104 For convenience, I set out here s 90(3) of the Act:

> (3) The Chief Justice may at any time –
>
> (*a*) revoke the appointment of the Disciplinary Tribunal;
>
> (*b*) remove any member of the Disciplinary Tribunal; or
>
> (*c*) fill any vacancy in the Disciplinary Tribunal.

105 The Act has, since its inception in 1966, contained a provision that the Chief Justice has a

power to appoint and to revoke the appointment of a DT (or Disciplinary Committee), or to remove any member thereof, or to fill any vacancy therein. In the original incarnation of the Act, passed by Parliament on 21 December 1966 and assented to by the President on 31 December 1966, this provision was found in s 94(2). Parliament has amended and renumbered this provision over the years since. But it has remained unchanged in substance throughout the history of the Act.

Nature and operation of s 90(3)

106 It is, in my judgment, impossible to argue that s 90(3)(*a*) of the Act imposes a substantive obligation on the Chief Justice to revoke the appointment of a DT, such obligation to be exercised upon an active consideration of the underlying facts. This proposition remains unarguable even if the substantive obligation in question is circumscribed as tightly as the applicants submit (see [97(b)] above).

107 First of all, s 90(3) is deliberately expressed in the language of a power. It cannot be recast by interpretation or by circumstances as an obligation or a duty. My summary of the statutory machinery at [99] above shows very clearly that Parliament understood the distinction. Parliament subjected the Law Society or its organs at every step to an *obligation*. Parliament granted the Chief Justice under s 90(3)(a) a *power*. I reminded Mr Singh in the course of the submissions that he had to be careful to distinguish duties from powers and discretions and not to elide the difference. [note: 120] However, his entire submission was based on the circumstances set out at [97(b)] above somehow transforming the Chief Justice's power to revoke a DT's appointment under s 90(3)(a) into a duty to revoke the DT's appointment, in the sense that anything other than a revocation in those circumstances would be *Wednesbury* unreasonable.

108 I asked Mr Singh whether he could produce any authority to support this proposition. He could not. [note: 121] In fact, he submitted that he need not. The Act, he said, imposes a *duty* on the Chief Justice under s 90(3)(a) not to make a decision contrary to the material put before him. [note: 122] But that begs the question. It also contradicts the statutory language. In the face of the statutory language and in the absence of any authority to support Mr Singh's submission, I must reject his proposition as unarguable.

109 Second, section 90(3) is procedural in nature. Its purpose is merely to put at the Chief Justice's disposal certain procedural powers. These are the usual procedural powers which Parliament makes available to a person whenever it grants that person a power to appoint some inferior body or tribunal. In other words, the powers conferred by s 90(3) are nothing more than the procedural corollaries of the Chief Justice's power under s 90(1) to appoint a DT. This package of procedural powers is hardly unique. Thus, under the Accountants Act (Cap 2, 2005 Rev Ed), the Oversight Committee has the power – and, in certain circumstances, the obligation – to appoint a Disciplinary Committee (s 48(5)). Correspondingly, it has the power to revoke the Disciplinary Committee's appointment, to remove a member thereof, or to fill any vacancy therein (s 49(5)). Likewise, under the Medical Registration Act (Cap 174, 2004 Rev Ed), the Medical Council's power to appoint a Disciplinary Tribunal under s 50(1) comes together with its power to revoke that appointment, to remove members or to fill vacancies under s 50(5). There are many other examples, including ss 31C(1) and 31C(6) of the Architects Act (Cap 12, 2000 Rev Ed); ss 27(1) and (3) of the Professional Engineers Act (Cap 253, 1992 Rev Ed); and Regulations 5(1) and 5(2) of the Work Injury Compensation (Medical Board) Regulations (Cap 354, Rg 6, 2010 Rev Ed).

110 There is, admittedly, nothing in the Parliamentary speeches and debates on the Act which considers expressly the nature of the Chief Justice's powers under s 90(3). The truth is that

Parliament paid no attention to the meaning and operation of s 90(3) of the Act. But, in my view, that reinforces the view that Parliament intended s 90(3) to be no more than it appears on plain reading to be: that is, the package of procedural powers necessarily associated with a power to appoint a DT.

111 Third, it would be entirely contrary to the statutory disciplinary scheme under the Act and contrary to the legal profession's privileged status as a self-regulating profession for s 90(3)(a) to confer any substantive power on the Chief Justice to revoke the appointment of a DT on an active consideration of the underlying facts in ongoing disciplinary proceedings. To do so would be to usurp the role of the Law Society and the DT. The Act clearly places squarely on the Law Society – and on the Law Society alone – the entire obligation to inquire into a complaint, to initiate disciplinary proceedings if merited, to frame the charges to be presented in the disciplinary proceedings and to have the carriage of those disciplinary proceedings. The Act also clearly places squarely on the DT – and on the DT alone – the entire obligation to arrive at a determination whether the charges presented by the Law Society have been made out to the requisite standard of proof.

112 The Act cannot have intended it to be part of the Chief Justice's function under the statutory disciplinary scheme which it so carefully constructed to weigh in at any time on a Law Society's prosecution on the invitation of an interested party, to consider the underlying facts and to exercise his power under s 90(3)(a). More specifically, if the complaint underlying a set of disciplinary proceedings is withdrawn, it cannot be part of the Chief Justice's function under s 90(3)(a), as Mr Singh submitted, to consider material put before him, to hold a hearing or call for further material [note: 123] and to determine judicially or quasi-judicially [note: 124] what the effect of the withdrawal is on the ongoing disciplinary proceedings. It is for the Law Society to make that decision on the advice of counsel in the exercise of its prosecutorial discretion. If the Law Society chooses to proceed, and if an appropriate application is made by the respondent, it is open then to the DT to consider the effect of the complainant's withdrawal. If no application is made, or if one is made and determined against the respondent, it is the DT's statutory duty to go on to assess on the evidence whether misconduct as charged has or has not been established. And if any challenges are to be made to any of the DT's acts or decisions, s 91A requires the respondent to postpone those challenges until after the DT has made a determination on the merits, and even then to raise those challenges only before either a High Court judge under s 97 or the Court of 3 Judges under s 98. Parliament clearly did not intend that its carefully-constructed statutory disciplinary scheme could be avoided by permitting a respondent to put before the Chief Justice at any time during ongoing disciplinary proceedings an application to revoke a DT's appointment, whether on grounds of the complainant's withdrawal or otherwise, and thereby to terminate those proceedings.

113 For all of the foregoing reasons, I consider it unarguable that Parliament could have intended that, just because an interested person asks the Chief Justice to exercise his power under s 90(3)(a), the Chief Justice must make a positive decision whether or not to exercise that power, let alone decide that he will exercise that power one way or the other. That is simply not the Chief Justice's function in the statutory disciplinary scheme under the Act.

The Chief Justice's procedural obligations

114 Having said all this, it is true that there is nothing in the language of s 90(3)(a) or elsewhere in the Act to stop a person from asking the Chief Justice to exercise his power under that section, and even to put material before him to support that request. That is what the applicants did here. What is the effect of that?

115 One possible view of the Chief Justice's power under s 90(3)(a) of the Act is that it cannot be invoked in this way. The holders of that view would argue that the statutory disciplinary scheme

established by the Act comprises discrete steps by which a disciplinary matter proceeds from a complaint to a conclusion through a series of specific decisions on the merits taken by a series of decision-makers entrusted by statute with the obligation to make each specific decision. Each step has been designed by Parliament to balance the interests of the complainant, the interests of the respondent and the interests of the public and of the profession, represented by the Law Society. Parliament never intended s 90(3)(a) to operate in parallel to that carefully-constructed scheme and to offer a person – no matter how strong or close his interest to the disciplinary proceedings in question – a route to bypass the statutory scheme and approach the Chief Justice directly to seek the revocation of a DT upon a consideration of the underlying facts of a particular case. Just as the Chief Justice cannot *appoint* at DT under s 90(1) on the request of any interested party, the Chief Justice cannot exercise his power to *revoke* a DT under s 90(3)(a) on the request of any interested party or even of his own motion. Only the Law Society, as the body entrusted by statute with the carriage of disciplinary proceedings, can ask the Chief Justice to exercise his powers under either s 90(1) or s 90(3). On this view, the Chief Justice would not only have no *obligation* to revoke a DT's appointment on the invitation of anyone but the Law Society, he would act *ultra vires* the Act if he did so. This view would also have a consequence on the issue of *locus standi* to bring judicial review proceedings: on this view, only the Law Society would have the necessary standing.

116 The applicants do not subscribe to this view. Without deciding the point, I accepted for the purposes of this application that the Chief Justice may legitimately exercise his power under s 90(3)(a) if approached directly – as he was here – by someone with an interest in the underlying disciplinary proceedings other than the Law Society. On that assumption, the Chief Justice has three options when he receives such an invitation. He can expressly exercise his power to revoke. He can expressly decline to exercise his power to revoke. Or he can decline to decide whether or not to exercise his power to revoke. All three options are open to him because s 90(3)(a) creates a power and does not impose a duty, as I have explained at [107] above.

117 If the Chief Justice chooses to act on the request and revokes the DT's appointment, it could well be argued that he must comply with certain procedural obligations. The facts of this case do not make it necessary for me to decide what those obligations might be. It suffices to say that it would be odd if the law permitted the Chief Justice to exercise his power to revoke the appointment of a DT under s 90(3)(a) capriciously or arbitrarily or in bad faith. It would equally be odd if the law permitted the Chief Justice to do so without hearing the Law Society, if it was not the party making the request. It is not necessary for me to go any further.

118 But if, as here, the Chief Justice does not exercise his power under s 90(3)(a) to revoke the appointment of the DT, there is absolutely no basis in principle or in precedent to say that he is subject to any procedural obligations. This must be so whether he expressly decides not to exercise his power or whether he declines to decide whether or not to exercise his power. In both situations, the result is that the statutory disciplinary process designed by Parliament simply takes its course uninterrupted.

119 I am tempted to say that the Chief Justice does not have any procedural obligations because he acts in an administrative, not a judicial capacity. After all, Mr Singh conceded on several occasions that the Chief Justice does not act in his judicial capacity in exercising his powers under s 90(3). [note: 125] But I doubt that labels such as "administrative" and "judicial" are conclusive as to the content of the procedural obligations imposed on the decision-maker. I have regard to the observations of the House of Lords in *Ridge v Baldwin* [1964] AC 60 (*per* Lord Evershed at 86, and *per* Lord Hodson at 130). So I would say, instead, that the Chief Justice has no obligation to hear arguments from interested parties or to give any consideration to any arguments which interested parties may unilaterally place before him on such an application. That, in turn, must mean that he has

no obligation to give reasons for choosing any of the three options open to him. This is simply because, as I have said, it is not his function under the statutory disciplinary scheme to evaluate under s 90(3)(a) the underlying facts of any procedural or substantive aspect of disciplinary proceedings pending before a DT.

Applicants' conception of section 90(3)(a) is erroneous

120 The initial approach of the applicants in their correspondence with the Law Society and the Chief Justice is entirely consistent with the principles I have sketched out above. Until their letter dated 21 January 2013 (see [64] above), they took the position that it was the Law Society which had acted unreasonably in continuing to pursue the charges despite Ms Rankine's unreserved withdrawal. They approached the Chief Justice not on the basis that he had an *obligation* to exercise his power under s 90(3)(a) to revoke the DT's appointment as a matter of justice but as *supplicants*, asking him in his discretion to exercise his power to revoke the DT's appointment.

121 All that changed on 21 January 2013 when the applicants took the legal position that the *legislative objective* of s 90(3)(a) is "to ensure that justice is served," [note: 126] requiring "all relevant considerations to be reviewed". [note: 127] Before me, the applicants' legal position evolved further. As stated at [97(b)] above, the applicants' premise before me was that when a lawyer facing disciplinary charges invites the Chief Justice to exercise his discretion under s 90(3)(*a*) of the Act on the ground that the complainant has voluntarily withdrawn her complaint, and there is no contrary material before the Chief Justice, then the Chief Justice *must* revoke the DT's appointment or face a successful challenge to his decision on grounds of *Wednesbury* unreasonableness.

122 This is a startling proposition which has only to be stated to be rejected. It is devoid of authority, contrary to principle and contrary to the statutory disciplinary scheme under the Act. It is devoid of merit. For the reasons I have set out above, I hold that both of the applicants' essential propositions of law at [97(a)] and [97(b)] above are so wrong as to be unarguable.

The Chief Justice's responses to the applicants

123 I now consider the Chief Justice's responses to the applicants' invitation for him to exercise his power under s 90(3)(*a*) of the Act in light of the principles above.

Chief Justice's response conveyed on 4 February 2013

124 The relevant part of the letter sent by the DT Secretariat to the applicants on 4 February 2013 reads as follows [note: 128]:

> The Honourable the Chief Justice is of the view that the proceedings that are now before the Disciplinary Tribunal in relation to the matters for which DT 2 of 2012 was constituted should take their course.

125 This letter clearly conveyed the Chief Justice's express decision not to exercise his power under s 90(3)(a) of the Act to revoke the DT's appointment. The applicants, however, insisted that because the letter did not expressly use that precise form of words, all that the Chief Justice actually did on 4 February 2013 was to make no decision at all. Even if that were the correct interpretation of this letter, it would be well within the Chief Justice's power to do so. It is one of the three options legitimately open to him (see [117] above). He is not obliged to decide expressly whether or not to exercise his power. He is perfectly entitled to decline to consider that issue at all and thereby let the disciplinary proceedings take their statutory course uninterrupted. Neither course of action by the

Chief Justice can be said, even arguably, to be unreasonable in the *Wednesbury* sense.

126 Whether the Chief Justice expressly decided not to exercise his power under s 90(3)(a) or declined to decide whether or not to exercise that power, neither approach "is so outrageous in its defiance of logic or accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it or [such] that no reasonable person could have come to such a view": see Lord Diplock in *CCSU* at 410G and locally, Judith Prakash J in *Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board and another* [1997] 1 SLR(R) 52 at [78]. As explained at [100]-[103] above, it is clear law that withdrawal of a complaint does not automatically terminate the disciplinary proceedings arising from it. And as explained at [112] above, it is not the Chief Justice's function under s 90(3)(a) to consider and review the facts underlying the Law Society's exercise of its prosecutorial discretion in ongoing disciplinary proceedings. And s 90(3)(a) is not the right provision to invoke if a respondent wishes to challenge any acts or decisions of the Law Society or the DT, whether during the disciplinary proceedings or after their conclusion. Far from satisfying the test of *Wednesbury* unreasonableness, the Chief Justice's response was in my view an entirely reasonable and sensible position to take, however one reads his response of 4 February 2013.

127 The applicants argued that I should not try to justify the Chief Justice's decision, or lack of decision, on his behalf given that he did not himself give his reasons for his decision. They argued that, without knowing his reasons, they had no way to assess whether his decision (however one chooses to characterise it) was sensible or reasonable. But the Chief Justice is not obliged to give reasons when exercising his power under s 90(3)(a), so there is nothing objectionable in itself about the absence of reasons in his response. Further, unreasonableness in the *Wednesbury* sense is not an inquiry into whether the Chief Justice's response *was* sensible or reasonable; rather, it is an inquiry into whether a sensible or reasonable decision-maker *could have* responded in the same way. Far be it from me to attempt to justify the Chief Justice's response on his behalf. I simply find that his response was clearly one which a sensible or reasonable decision-maker could also have arrived at.

128 The applicants then argued that, by saying that the disciplinary proceedings should "take their course", the Chief Justice had abandoned a position of neutrality and was now a participant in the fray, egging the DT on to find the applicants guilty of misconduct. [note: 129] I am wholly unable to see how the Chief Justice's response could conceivably be given that meaning. To say that the disciplinary proceedings should take their course simply means that the DT should fulfil its statutory duty and come to a determination on the law, after hearing evidence and submissions, as to whether misconduct was or was not made out.

Chief Justice's response conveyed on 15 February 2013

129 If the form of words adopted in the DT Secretariat's letter to the applicants dated 4 February 2013 was not sufficient for the applicants, the form of words adopted in its letter dated 15 February 2013 must have been. The relevant part of that letter reads as follows [note: 130]:

> The Honourable the Chief Justice, having considered the matter, does not revoke the appointment of the Disciplinary Tribunal. Issues, if any, pertaining to any act done or decision made by the Disciplinary Tribunal may be raised in accordance with the applicable procedures set out in the Legal Profession Act at the appropriate time.

130 The Chief Justice here is deciding clearly and expressly not to revoke the DT's appointment. This letter removed any uncertainty the applicants might have had about the Chief Justice's decision, if any genuinely existed following his earlier letter of 4 February 2013. For reasons already explained,

it is unarguable that this decision not to revoke was unreasonable in the *Wednesbury* sense.

131 The applicants' position, however, is that this letter should be disregarded because it came after this leave application was commenced. I will deal with this argument next when I consider the applicants' prayers in turn.

The applicants' prayers considered

Prayer 1

132 Prayer 1 seeks leave to apply for a mandatory order to compel the Chief Justice to exercise his power under s 90(3) of the Act. As the applicants explained, at the time they filed their application and statement, the Chief Justice had not yet responded to their request. They therefore included prayer 1 on the basis that the Chief Justice did not intend to respond to their invitation for him to exercise his power under s 90(3)(a). I have explained at [79] that prayer 1 does not seek to compel the Chief Justice to respond in a particular way but seeks to compel him simply to respond. I took it therefore that the purpose of prayer 1 was to compel the Chief Justice to consider the applicants' invitation and respond to it. In my view, by 18 February 2013, prayer 1 was superfluous.

133 The applicants sought to persuade me that prayer 1 continued to be necessary on two grounds. First, they submitted that I must determine whether they should have leave to pursue prayer 1 as matters stood when they filed the leave application on the morning of 4 February 2013. They therefore invited me to disregard the Chief Justice's responses dated 4 February 2013 and 15 February 2013. I rejected this ground. In support of this submission, the applicants relied on *Vellama* at [118]. The applicants' reliance on that case is misplaced. In *Vellama*, counsel for the applicant withdrew his application for a mandatory order because the act he was seeking to compel by the mandatory order had already been carried out. But he did proceed on his prayers for associated declarations (at [14]). That must be right. A mandatory order seeks to compel a person susceptible to judicial review to do a particular act. If that act has already been done by the time the court considers the matter, there is no longer any purpose in seeking a mandatory order to make him do it again. A declaration, on the other hand, does not require anyone to do anything. It simply declares what the law is. Supervening events cannot in themselves render superfluous the question of what the law is. The court's answer may remain relevant for future cases. That is why it is said that the application for a declaration crystallises on the date it is filed.

134 The applicants had a second ground for arguing that prayer 1 continued to be necessary. They argued that even if the Chief Justice had responded to the applicants' *request*, he had not yet responded in order to comply with a *mandatory order* requiring him to respond to the Applicants' request. The applicants argued that their request by letter carries no effect at law but a mandatory order [note: 131] obliges the Chief Justice to respond. Because the Chief Justice's responses came after the applicants filed the leave application, the Chief Justice had not conceded that prayer 1 was a "properly required order" or a "properly framed prayer". [note: 132] Therefore, the applicants argued, they still needed a mandatory order to make clear to the Chief Justice that he was obliged by law to respond. [note: 133] Moreover, Mr Singh suggested that if the Chief Justice were to be served with a mandatory order, that could well concentrate his mind and he could well decide to revoke the DT's appointment. [note: 134]

135 There is no merit in this argument. A mandatory order does not create any new or superior duty. A mandatory order simply requires a person to comply with a duty which exists separately under law. The applicants' primary argument was that the Chief Justice was obliged by law to respond to

the applicants' request by letter that he exercise his power under s 90(3)(a). Assuming that to be correct, once the Chief Justice responds, the applicants have their compliance. The applicants' main point seemed to be that the Chief Justice had responded without conceding that he was obliged to respond, and therefore could be compelled by mandatory order to respond. [note: 135] But that is an argument for a declaration that the Chief Justice was obliged to respond to the applicants' request, not an argument for a mandatory order. Insofar as prayer 1 is to be construed as an application for a declaration, I need not deal with it at the leave stage for the reason I have given at [82] above. In any event, an application for a declaration to that effect, too, is unarguable. The Chief Justice has no such obligation, since s 90(3) grants powers and does not impose duties (see [107] above). Finally, the applicants put before me no basis whatsoever for their submission that the Chief Justice's decision on the applicant's request would be any different if made in compliance with a mandatory order. Indeed, the law on s 90(3)(a) is so unarguably clear that I could not see how it could be any different.

136 I therefore held that prayer 1 had, by 18 February 2013, clearly been overtaken by subsequent events. It was superfluous: it sought leave to compel the Chief Justice to do what he had already done. If the applicants do not accept my finding that the Chief Justice's response of 4 February 2013 was an express decision not to exercise his power under s 90(3)(a), then his letter of 15 February 2013 put matters beyond doubt.

Prayers 3 and 4

137 As I have said, I granted the applicants leave to amend Prayer 4 to read as follows (the underlining indicates the amendment): "All such orders as are necessary to do justice. In the event Prayer 1 is not granted because of the delayed response of the Chief Justice sent after the OS was filed, there be an order that the decision of the Chief Justice given on 4th February, received at 4.15, be quashed".

138 The amended prayer 4, in substance, seeks leave to quash the Chief Justice's decision not to revoke the DT's appointment as an alternative prayer to prayer 1. Prayer 3 seeks leave to compel the Chief Justice to revoke the DT's appointment. Both of these prayers proceed on the basis that the Chief Justice's decision not to revoke the DT's appointment is unlawful. These two prayers stand or fall together. I therefore deal with them together.

139 I have explained why it cannot be argued that the Chief Justice's decision not to revoke the DT's appointment was unreasonable in the *Wednesbury* sense. I also do not consider that, in arriving at that decision, he breached any procedural obligations. In my view there were none which applied. The power under s 90(3)(a) – being a power rather than an obligation and procedural rather than substantive – cannot oblige him to hear parties if he decides not to revoke the DT's appointment. It also cannot oblige him to give reasons if he decides not to revoke the DT's appointment.

140 The applicants, however, sought to impugn the Chief Justice's decision not to revoke the DT's appointment in one final way. They alleged apparent bias on his part. The applicants have only the following basis for their assertion of apparent bias:

(a) When Ms Rankine met a partner of Rajah & Tann LLP allegedly to discuss her complaints about the applicants, the Chief Justice was then the Managing Partner of that firm.

(b) The Chief Justice disclosed that he had no recollection [note: 136] of a matter involving Ms Rankine in which Rajah & Tann was allegedly involved, of being involved in any such matter or of ever meeting Ms Rankine. The applicants suggested that there was some significance in the fact

that his position was not phrased as an outright denial. [note: 137]

(c) The Chief Justice – when he was Attorney-General – chose deliberately to screen himself from any involvement in *Manjit Singh (No 1)* because he had been the managing partner of Rajah & Tann at the material time.

141 Again, to give the applicants the benefit of the doubt, I assume the facts as asserted by them to be true without forming a view one way or the other on those facts.

142 Each of the three grounds on which the applicants rely to draw a link between the Chief Justice and Ms Rankine so as to establish apparent bias are unarguable.

143 First, as the English Court of Appeal said in *Locabail* at [65], it is wholly unreal to assert that the mere fact that a large law firm dealt with a matter – if indeed Rajah & Tann ever dealt with Ms Rankine's matter – gives rise to an expectation that any particular partner of the firm will know something about that matter. To the same effect is dicta of our Court of Appeal in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 1 SLR(R) 791 at [83].

144 Second, there is absolutely no basis on which to suggest that the Chief Justice's disclosure by way of the DT Secretariat's letter dated 8 February 2013 is in any way inaccurate or that there is any sinister significance in the form of words chosen.

145 Finally, the Chief Justice's decision to screen himself from the Attorney-General's Chambers' involvement in the applicants' earlier judicial review proceedings in *Manjit Singh (No. 1)* is quite irrelevant. First, it is clear that the Attorney-General, as the Chief Justice then was, acted out of an abundance of caution and not because of any legal duty to recuse himself. Second, in the events which led to the application before me, it is the *applicants* who *chose* to write to the Chief Justice as supplicants asking him to exercise his powers under s 90(3)(a). They did this no doubt because the power to revoke the appointment of a DT under s 90(3)(a) is one which by statute is vested expressly in the Chief Justice. Third, the applicants did not take any point as to any apparent bias on the Chief Justice's part when they first invited him to exercise that power. In submissions, Mr Singh suggested that that should not be held against them because it is for the Chief Justice to recuse himself if he is in a position of apparent bias. [note: 138] But that amounts, once again, to an impermissible attempt by the applicants to shirk the burden of showing apparent bias (see [34(c)] and [49] above).

146 No fair-minded reasonable person could harbour a suspicion, let alone a reasonable suspicion, that the Chief Justice might be biased against the applicants. The applicants' position on the Chief Justice's apparent bias, too, is unarguable.

147 The Attorney-General and the applicants addressed arguments to me on the doctrine of necessity in administrative law and on whether the Chief Justice's power under s 90(3)(a) of the Act can be delegated. As I have reached the conclusion that the applicants' submissions on apparent bias are unarguable, it is not necessary for me to consider these additional issues.

Prayer 5

148 Prayer 5 of the applicants' leave application was premised on the applicants succeeding in securing leave to seek one or more of prayers 1, 3 and 4. It asked for an interim stay of the disciplinary proceedings pending the principal judicial review application.

149 My decision on prayers 1, 3 and 4 meant that there would be no principal judicial review application. It was therefore not necessary for me to consider prayer 5.

Conclusion on arguable case

150 In my judgment, all of the contentions advanced by the applicants to support their application for leave were unarguable. The result was that I considered that their leave application did not even meet the very low threshold of an "arguable case" for the grant of leave.

151 I therefore dismissed the application.

Stay of Disciplinary Tribunal proceedings

152 The hearing of the applicants' leave application commenced at 10.21 am [note: 139] on 18 February 2013 and continued, with the consent of the parties and without interruption, up to 7.47 pm [note: 140] the same day. The DT hearing had been scheduled to commence at 2.30 pm on 18 February 2013. But as the hearing of the leave application had not concluded by 2.30 pm on 18 February 2013, I was informed that the DT hearing had been rescheduled to commence at 10.00 am on 19 February 2013.

153 When I dismissed the leave application, the applicants immediately indicated that they intended to appeal against my decision. I began to give them directions for an expedited appeal. They asked for a stay of the DT proceedings pending the expedited appeal. [note: 141] I indicated that I was not minded to grant such a stay. The indicated that they would face difficulties proceeding with both an expedited appeal and the disciplinary proceedings. So I withdrew the directions for an expedited appeal so that the applicants would have sufficient time to consider the appeal and prepare the papers.

154 The applicants then sought from me an extension of the stay of the disciplinary proceedings which they had secured on 13 February 2013 from Quentin Loh J. They wanted a day or two to prepare to represent themselves before the DT. They would otherwise have to cross-examine Ms Rankine at 10.00 am the next day. That was a little over 12 hours after the conclusion of the hearing of their leave application.

155 Having heard arguments, I concluded that I had no jurisdiction to grant a stay of the DT proceedings. I have the power to stay only those proceedings of which I am seised. So it is strictly speaking quite incorrect to speak of me "staying" DT proceedings. There were only two ways in which I could give the applicants what they sought: first, by enjoining the DT from proceeding; or second, by quashing the DT's decision to commence the hearing on 19 February 2013 at 10.00 am. In my view, s 91A of the Act stood squarely in the way of me taking either course of action, even if I had thought it appropriate to do so without a formal application before me.

156 The applicants argued that if Loh J felt able to grant them an interim stay just the week before, and if Choo J in *Manjit Singh (No 1)* felt able to grant them a stay pending appeal on 31 May 2012, then I too should find myself able to grant them a stay. But I could not agree.

157 First, Choo J in *Manjit Singh (No. 1)* did not in terms grant a stay of the DT proceedings. He simply gave a direction, which the DT observed, that the DT hearing ought not to commence before the time for appeal had expired. [note: 142] In any event, at the time *Manjit Singh (No. 1)* was decided, the DT had not made a positive decision when to commence the hearing. [note: 143] So in

that sense, Choo J's order did not interfere with any decision or direction of the DT: a course which s 91A of the Act precludes. Choo J was quite clearly alive to the existence and effect of s 91A when he decided *Manjit Singh (No. 1)*: see [7] of his grounds of decision. Finally, it appears that it was common ground at the hearing of *Manjit Singh (No. 1)* that in the circumstances of that case, Choo J had the inherent jurisdiction to give the direction in question. [note: 144]

158 Second, although Loh J granted what was expressed to be a stay of the DT proceedings on 13 February 2013, he did so without the benefit of hearing submissions from the Attorney-General on the question of jurisdiction. Had the applicants notified the Attorney-General that they would be appearing before Loh J on 13 February 2013, he would have had the benefit of such argument. I hope it is not too presumptuous to say that, with the benefit of such argument, I believe he would have arrived at the same conclusion which I have reached.

159 I had every sympathy for the applicants. They had to represent themselves in the DT proceedings a little over 12 hours after the conclusion of their leave application. But I was compelled to hold that I had no jurisdiction to grant them the stay of proceedings that they sought or any functional equivalent. All I could do – and which I did – was to record my hope that the Law Society would not object if the applicants applied to the DT for a short adjournment to change gears from judicial review proceedings to disciplinary proceedings and to prepare to cross-examine Ms Rankine. I made it clear that my observation was directed at the Law Society and not at the DT itself, which would of course have the ultimate discretion on any adjournment. [note: 145]

Costs

160 An application for leave to apply for judicial review is nominally an *ex parte* application. But if it is dismissed, the court can order the unsuccessful applicant to pay the costs of the party opposing the application. A costs order was made against the unsuccessful applicants in *Kang Ngah Wei v Commander of Traffic Police* [2002] 1 SLR(R) 14 (at [22]) and *Jeyaretnam Kenneth Andrew v Attorney-General* [2012] SGHC 210 (at [49]).

161 The Attorney-General applied for an order that the applicants pay the Attorney-General $5,000 towards the costs of and incidental to the applicants' unsuccessful leave application. [note: 146] I acceded to her application for two reasons. First, I considered the applicants' contentions of law advanced on the leave application to be wholly unarguable. Theirs was an application which they should never have taken out. Second, I considered the sum proposed by the Attorney-General to be eminently reasonable, given that the hearing lasted over 9 continuous hours.

162 Loh J, in granting the interim stay on 13 February 2013, reserved the costs of that interim stay application to the judge hearing the leave application. The Attorney-General made no submissions on these costs, since he was not a party to that application. The Law Society was present at that hearing but is not a party to these proceedings and so cannot be the beneficiary of a costs order here. I accordingly made no order as to the costs of that application.

163 Finally, the Attorney-General asked for costs thrown away in respect of the DT proceedings that had been delayed by the applicants' application. I declined to make any order for three reasons. First, I do not see how I can, on a leave application for judicial review, order costs thrown away in separate DT proceedings. Second, any such costs should go not to the Attorney-General but to the Law Society, which was not a party to the leave application before me. Finally, I considered that the DT would be in the best position to decide if anyone should bear those costs, who that should be and what the quantum should be. I therefore declined to make an order as to those costs thrown away.

[note: 1] Applicants' Statement dated 4 February 2013 at para 2.

[note: 2] Applicants' Statement dated 4 February 201 at para 4.

[note: 3] Applicants' Statement dated 4 February 2013 at para 11.

[note: 4] Applicants' Statement dated 4 February 2013 at pp 44-46

[note: 5] Applicants' Statement dated 4 February 2013 at para 55

[note: 6] Transcript, page 2, line 21 to page 3, line 10.

[note: 7] Transcript, page 6, lines 6 to line 20.

[note: 8] Transcript, page 7, line 22 to page 8, line 7; page 9, lines 13 to 18.

[note: 9] Transcript, page 6, line 26 to page 7, line 21.

[note: 10] Transcript, page 11, lines 3 to 9.

[note: 11] Transcript, page 8, lines 8 to 14; page 13, line 17 to page 14, line 3.

[note: 12] Transcript, page 12, line 24 to page 13, line 7.

[note: 13] Transcript, page 99, line 25 to page 100, line 1.

[note: 14] Transcript, page 25, lines 24 to 25; page 44, lines 13 to 15.

[note: 15] Transcript, page 17, line 15; page 44, lines 18 to 20.

[note: 16] Transcript, page 18, lines 3 to 5; page 44, lines 15 to 18.

[note: 17] Transcript, page 28, lines 3 to 11.

[note: 18] Transcript, page 18, lines 23 to 28.

[note: 19] Transcript, page 44, lines 6 to 10.

[note: 20] Transcript, page 25, line 21; page 44, lines 10 to 12.

[note: 21] Transcript, page 56, line 31 to page 57, line 3.

[note: 22] Transcript, page 19, lines 6 to 13.

[note: 23] Transcript, page 19, line 16.

[note: 24] Transcript, page 20, lines 10 to 11.

[note: 25] Transcript, page 19, line 22 to page 20, line 6.

[note: 26] Transcript, page 20, lines 25 to 26.

[note: 27] Transcript, page 25, lines 8 to 10.

[note: 28] Transcript, page 21, line 16 to 23.

[note: 29] Transcript, page 21, lines 23 to 28.

[note: 30] Transcript, page 22, lines 9 to 16.

[note: 31] Transcript, page 22, lines 14 to 15.

[note: 32] Transcript, page 22, lines 6 to 8.

[note: 33] Transcript, page 22, lines 23 to 31.

[note: 34] Transcript, page 45, lines 3 to 5.

[note: 35] Transcript, page 36, line 19 to page 37, line 5.

[note: 36] Transcript, page 19, line 16.

[note: 37] Transcript, page 20, lines 10 to 11.

[note: 38] Transcript, page 28, lines 16 to 18; page 34, lines 9 to 11.

[note: 39] Transcript, page 28, lines 12 to 17.

[note: 40] Transcript, page 20, lines 9 to 16; page 33, line 16 to page 34, line 2.

[note: 41] Transcript, page 77, lines 10 to 18.

[note: 42] Transcript, page 20, lines 25 to 26; page 24, line 29 to page 25, line 2; page 25, line 8; page 25, line 26; page 42, lines 19 to 20; page 44, line 16; page 45, lines 14 to 15; page 45, lines 29 to 30; page 75, line 26 to page 76, line 24.

[note: 43] Transcript, page 76, lines 28 to 31.

[note: 44] Transcript, page 77, lines 4 to 7.

[note: 45] Transcript, page 42, lines 2 to 20.

[note: 46] Transcript, page 28, lines 22 to 24; page 36, lines 7 to 8; page 36, lines 23 to 25; page 37, lines 18 to 21; page 45, lines 24 to 27; page 75, line 31 to page 76, line 2.

[note: 47] Transcript, page 75, line 31 to page 76, line 2.

[note: 48] Transcript, page 29, lines 6 to 32.

[note: 49] Transcript, page 30, lines 9 to 10.

[note: 50] Transcript, page 22, lines 9 to 16.

[note: 51] Transcript, page 71, lines 9 to 26.

[note: 52] Transcript, page 70, line 19 to page 71, line 18.

[note: 53] Transcript, page 70, line 19 to page 71, line 16.

[note: 54] Transcript, page 22, lines 6 to 8.

[note: 55] Transcript, page 31, line 8 to 15.

[note: 56] Transcript, page 31, lines 12 to 13.

[note: 57] Transcript, page 29, lines 16 to 19.

[note: 58] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 8, lines 20 to 26.

[note: 59] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 8, lines 27 to 32.

[note: 60] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 13, lines 9 to 16.

[note: 61] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 13, lines 15 to 16.

[note: 62] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 14, lines 25 to 32.

[note: 63] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 17, lines 8 to 22.

[note: 64] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 21, lines 3 to 14.

[note: 65] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 21, lines 3 to 7.

[note: 66] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 21, line 29 to page 22 line 18.

[note: 67] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 22 line 5 and line 9.

[note: 68] Applicants' Statement dated 4 February 2013, page 44.

[note: 69] Applicants' Statement dated 4 February 2013, page 37.

[note: 70] Applicants' Statement dated 4 February 2013, page 39, paras 25 to 32.

[note: 71] Applicants' Statement dated 4 February 2013, page 60.

[note: 72] Applicants' Statement dated 4 February 2013, page 62.

[note: 73] Applicants' Statement dated 4 February 2013, page 64.

[note: 74] 2nd affidavit of Manjit Singh filed on 4 February 2013, page 8, lines 20 to 26.

[note: 75] Applicants' Statement dated 4 February 2013, page 58.

[note: 76] Applicants' Statement dated 4 February 2013, page 72.

[note: 77] Applicants' Statement dated 4 February 2013, page 73, para 6.

[note: 78] Applicants' Statement dated 4 February 2013, page 73, para 12.

[note: 79] Applicants' Statement dated 4 February 2013, page 74, para 13.

[note: 80] Applicants' Statement dated 4 February 2013, page 74, para 14.

[note: 81] Applicants' Statement dated 4 February 2013, page 101.

[note: 82] Applicants' Statement dated 4 February 2013, page 106, para 35.

[note: 83] Applicants' Statement dated 4 February 2013, page 109, para 42(17).

[note: 84] Applicants' Statement dated 4 February 2013, page 107, para 40.

[note: 85] Applicants' Statement dated 4 February 2013, page 103, para 10.

[note: 86] Applicants' Statement dated 4 February 2013, page 101, para 6. See also page 107, para 39.

[note: 87] Applicants' Statement dated 4 February 2013, page 102, para 7.

[note: 88] Applicants' Statement dated 4 February 2013, page 183.

[note: 89] Applicants' Statement dated 4 February 2013, page 180.

[note: 90] Applicants' Statement dated 4 February 2013, page 180, para 4 to 12.

[note: 91] Applicants' Statement dated 4 February 2013, page 181, para 15.

[note: 92] Applicants' Statement dated 4 February 2013, page 181, para 16 to 18.

[note: 93] Applicants' Statement dated 4 February 2013, page 40, para 37; page 111, para 48.

[note: 94] 3rd affidavit of Manjit Singh filed on 7 February 2013, page 3, para 9 and 10.

[note: 95] 3rd affidavit of Manjit Singh filed on 7 February 2013, page 3, para 11.

[note: 96] 3rd affidavit of Manjit Singh filed on 7 February 2013, page 12.

[note: 97] Transcript, page 101 line 2 to 11.

[note: 98] 4th affidavit of Sree Govind Menon filed on 19 February 2013, page 8, para 4.

[note: 99] Transcript, page 48 line 3 to 18; page 325, line 9 to 18.

[note: 100] Transcript, page 68, line 10 to 14.

[note: 101] 3rd affidavit of Sree Govind Menon filed on 13 February 2013, pages 5-6, paras 17-21. See also para 4 of the applicants' letter to the Chief Justice dated 14 February 2013, which is exhibited to the 4th affidavit of Sree Govind Menon filed on 19 February 2013 at pages 8-9.

[note: 102] 4th affidavit of Sree Govind Menon filed on 19 February 2013, page 8, para 4.

[note: 103] See paras 16, 18 of the applicants' letter to the Chief Justice dated 15 February 2013. This letter is exhibited to the 4th affidavit of Sree Govind Menon filed on 19 February 2013 at pages 13-19.

[note: 104] See para 23 of the applicants' letter to the Chief Justice dated 15 February 2013.

[note: 105] See 4th affidavit of Sree Govind Menon filed on 19 February 2013 at pages 20-21.

[note: 106] See para 5 of the applicants' letter to the Chief Justice dated 18 February 2013, which is exhibited to the 4th affidavit of Sree Govind Menon filed on 19 February 2013 at page 26.

[note: 107] See Originating Summons for OS 107/2013 filed 4 February 2013

[note: 108] Transcript, page 84, line 32 to page 87, line 24.

[note: 109] Transcript, page 280, lines 30 to page 281, lines 6 to 8.

[note: 110] Transcript, page 282, line 3 to 5.

[note: 111] Transcript, page 292, line 28 to page 294, line 17.

[note: 112] Transcript, page 266, line 17 to 19.

[note: 113] Transcript, page 160, line 20 to 25.

[note: 114] Transcript, page 265, line 24 to page 266, line 27.

[note: 115] Transcript, page 277, line 4 to 15.

[note: 116] Transcript, page 15 line 17 to 29; page 64, line 22 to 29.

[note: 117] Transcript, page 103, line 8 to 19.

[note: 118] Transcript, page 113, lines 24 to 31; page 115, lines 3 to 9; page 115, line 27 to page 116, line 4; page 117, lines 17 to 27; page 130, lines 20 to 30.

[note: 119] Transcript, page 112, line 20 to 24; page 114 line 22 to page 115 line 9; page 115 line 27 to page 116 line 4; page 117 line 17 to 25.

[note: 120] Transcript, page 88, line 29 to 30.

[note: 121] Transcript, page 117 line 17 to 32; page 128 line 9 to 18.

[note: 122] Transcript, 118 line 1 to 5.

[note: 123] Transcript, page 102, line 11 to 103 line 26; page 130 line 3 to 7

[note: 124] Transcript, page 215, line 8 to 26; page 245, line 16 to 20.

[note: 125] Transcript, page 26, lines 24 to 26; page 115, lines 20 to 21; page 119, lines 1 to 16; page 120, lines 14 to 16; page 215, lines 1 to 26. Applicants' Outline Submissions dated 15 February 2013, para 20.

[note: 126] Applicants' Statement dated 4 February 2013, page 101, para 6. See also page 107, para 39.

[note: 127] Applicants' Statement dated 4 February 2013, page 102, para 7.

[note: 128] 3rd affidavit of Manjit Singh filed on 7 February 2013, page 12.

[note: 129] Transcript page 100 line 22 to 32; page 101, line 21 to 24; 124, line 14 to line 23

[note: 130] See 4th affidavit of Sree Govind Menon filed on 19 February 2013 at pages 20-21.

[note: 131] Transcript, page 87, lines 16 to 22.

[note: 132] Transcript, page 195, lines 10 to 32.

[note: 133] Transcript, page 93, lines 20 to 22.

[note: 134] Transcript, page 95, lines 9 to 12; page 209, lines 1 to 3.

[note: 135] Transcript, page 195, lines 10 to 32.

[note: 136] See the letter dated 8 Feb 2013 from the DT Secretariat, exhibited to the 3rd affidavit of Sree Govind Menon filed on 13 Feb 2013, pages 19-20.

[note: 137] Transcript, page 139, lines 4 to 19.

[note: 138] Transcript, page 298, line 10 to page 299 line 17.

[note: 139] Transcript, page 1, line 1.

[note: 140] Transcript, page 361, line 26.

[note: 141] Transcript, page 322, line 12 to page 323, line 15.

[note: 142] Transcript, page 325 line 30 to 32.

[note: 143] Transcript page 347, line 28 to page 348 line 2.

[note: 144] Transcript page 349, line 25 to page 350 line 4.

[note: 145] Transcript page 353 line 10 to page 354 line 11.

[note: 146] Transcript page 359, line 29.