IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 06

Civil Appeal No 52 of 2019

Between

Lee Pheng Lip Ian

… *Appellant*

And

(1) Chen Fun Gee
(2) Venkataraman Anatharaman
(3) Yeow Kok Leng Vincent
(4) Tan Jin Hwee
(5) Singapore Medical Council

… *Respondents*

In the matter of HC/OS 514 of 2018

Between

Lee Pheng Lip Ian

… *Plaintiff*

And

(1) Chen Fun Gee
(2) Venkataraman Anatharaman
(3) Yeow Kok Leng Vincent
(4) Tan Jin Hwee
(5) Singapore Medical Council

… *Defendants*

JUDGMENT

[Administrative law] — [Judicial review] — [Leave]

TABLE OF CONTENTS

Lee Pheng Lip Ian
v
Chen Fun Gee and others

[2020] SGCA 06

Court of Appeal — Civil Appeal No 52 of 2019
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Tay Yong Kwang JA
27 November 2019

10 February 2020 Judgment reserved.

Tay Yong Kwang JA (delivering the judgment of the court):

Introduction

1 This an appeal against a High Court Judge's decision to dismiss an application for leave to commence judicial review proceedings. The genesis of the application lies in the 13 extensions of time ("EOT") sought and granted during the course of a preliminary inquiry conducted under the disciplinary framework of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("MRA").

2 The appellant, Dr Lee Pheng Lip Ian ("the Appellant"), operated a private clinic by the name of Integrated Medicine Clinic ("the Clinic"). The Clinic had been offering some services which were alleged to be in contravention of the relevant regulations. When the Clinic's licence was due for renewal, the Ministry of Health ("the MOH") refused to renew the Clinic's licence unless the Clinic complied with the relevant regulations. The MOH also

referred the matter to the Singapore Medical Council ("SMC"). A Complaints Committee ("CC") was subsequently appointed to carry out a preliminary inquiry. The inquiry took close to four years. At the end of the inquiry, the CC concluded that a formal inquiry before a Disciplinary Tribunal ("DT") should be held. During the course of conducting the preliminary inquiry, the CC sought 13 extensions of time ("EOTs"), all of which were granted by the chairman of the Complaints Panel ("Chairman of CP").

3 In the proceedings in the High Court, the Appellant sought a number of orders, all with the aim of putting an end to the disciplinary process that has been instituted to inquire into the complaints made against him. The Appellant's case before us is not substantially different from the one below. The crux of the Appellant's case is as follows. The CC's inquiry exceeded the statutory deadline of three months. Of the 13 EOTs sought and granted, eight were applied for after the expiry of the extended deadlines and six were said to bear no rational connection to the basis on which the EOTs were sought. It was alleged that the CC and the Chairman of CP did not comply with the relevant provisions of the MRA. As a result of these lapses, the Appellant's Clinic lost its licence and he suffered financial prejudice.[1]

4 Having deliberated on the parties' submissions, we dismiss the appeal. We are of the view that the Appellant has failed to satisfy the Court that his case meets the threshold for judicial review.

Facts

The parties

[1] Appellant's case, paras 2–3.

5 As stated, the Appellant operated the Clinic. The Clinic was licensed under the Private Hospitals and Medical Clinics Act (Cap 248, 1999 Rev Ed) ("PHMCA").

6 The first respondent is the Chairman of CP. The second to third respondents are members of the CC that was appointed to inquire into the complaints made against the Appellant. The fifth respondent is the SMC.[2] The respondents will hereinafter be referred to collectively as "the Respondents".

Non-compliance of the Appellant's clinic with the regulations

7 The Clinic's licence had to be renewed every two years.[3] Sometime in January 2013, the Appellant applied to renew the Clinic's licence, which was due to expire on 8 March 2013.[4] On 3 April 2013, the MOH sent a letter to the Clinic noting that it offered some non-mainstream services in addition to mainstream medical services within the same premises, allegedly in contravention of the Private Hospitals and Medical Clinics Regulations (Cap 248, Rg 1, 2002 Rev Ed) ("PHMC Regulations"). The Clinic was therefore not eligible for renewal of its licence until it complied with the PHMC Regulations.[5]

8 Over the course of 2013, the MOH and the Appellant exchanged correspondence over the Clinic's alleged non-compliance with the PHMC Regulations and other matters. During this time, the MOH granted the Appellant short-term renewal of the Clinic's licence – six-month periods at a time – subject

---

2 ROA Vol I at [2] ("Judgment").

3 Judgment at [8]; ROA Vol II(B), p 17.

4 ROA Vol II(B), p 14.

5 ROA Vol II(B), p 15.

to certain conditions including compliance with the PHMC Regulations.[6]

9 On 31 July 2013, the MOH notified the SMC that the Appellant was offering some non-mainstream services in addition to mainstream medical services and that the MOH was concerned over the appropriateness of the medical management of some of the Clinic's patients.[7]

10 On 11 September 2013, the Appellant wrote to the Minister for Health ("the Minister") to dispute the MOH's position that certain services offered by the Clinic were non-mainstream.[8] The MOH responded, acknowledging the letter to the Minister and informing the Appellant that the SMC was reviewing the matter and suggesting that the Appellant await the outcome of the SMC's deliberations.[9] Further correspondence took place among the MOH, the SMC and Appellant.

The preliminary inquiry into the complaints made against the Appellant

11 On 14 February 2014, the SMC lodged a complaint against the Appellant by way of a letter to the Chairman of CP.[10] The CC was appointed on 8 May 2014.[11] The CC directed the SMC Investigation Unit to carry out an investigation into the complaint. On 1 September 2014, the SMC sent the notice of complaint to the Appellant.[12] On 20 October 2014, the Appellant sent a letter

---

6 Judgment at [10]–[15]; see *eg*, ROA Vol II(B), pp 16 and 22.

7 Judgment at [10].

8 ROA Vol II(B), p 23.

9 Judgment at [13].

10 Judgment at [16].

11 Judgment at [17].

12 ROA Vol II(E), p 32.

to the SMC Investigation Unit to offer an explanation. In the meantime, correspondence between the Appellant and the MOH and the Appellant and the SMC continued well into 2015.[13]

12 On 11 March 2015, the MOH informed the Appellant that it would not be renewing the Clinic's licence upon its expiry on 16 March 2015. The decision was based on the inspection findings from February 2013 to March 2015 that the Clinic had repeatedly not complied with the licensing requirements under the PHMCA and its subsidiary legislation in prescribing certain treatment.[14] The Clinic's licence expired on 16 March 2015. On 27 March 2015, the Appellant appealed against the MOH's decision not to renew the licence in a letter to the Minister.[15]

13 Sometime in April 2015, the MOH provided the SMC with additional information relating to the Appellant's prescription of testosterone and administration of bio-identical hormone replacement therapy ("BHRT"). This additional information was not treated as a second complaint and was investigated alongside the initial complaint made in 2014. The additional information was placed before the CC in June 2015.[16] We will hereinafter refer to the initial complaint in 2014 and the additional information collectively as "the Complaint". The Complaint concerned the Appellant's:[17]

---

13 Judgment at [17]–[18].

14 Judgment at [19].

15 Judgment at [20].

16 ROA Vol III(A), pp 88–89.

17 ROA Vol III(A), p 87.

(a) offering of non-mainstream services such as complementary, alternative medicine and low-evidence based services (including nutritional and/or environmental medicine); and

(b) prescription of BHRT and a wide range of plant products, in addition to the prescription of thyroxine, growth hormones and cortisol.

14 On 18 May 2015, the Appellant wrote a letter to the Minister requesting a reply to his earlier letter of 27 March 2015. On 29 May 2015, the MOH informed the Appellant that it had requested the SMC to form an advisory committee to consider his appeal and that he would be notified of the outcome in writing.[18] Eventually, on 24 April 2017, the MOH wrote to the Appellant informing him that the Minister had decided to allow the Appellant's appeal and had directed that the Clinic's licence be renewed for six months subject to the condition that the Appellant complied strictly with the MOH's guidelines on the provision of non-evidence-based medicine. Instructions were also provided to the Appellant on how he could renew the Clinic's licence. The Appellant, however, did not restart the Clinic.[19]

15 On 12 February 2018, the CC informed the Appellant that it had completed the inquiry into the Complaint against the Appellant and had ordered a formal inquiry into the Complaint to be held by a DT.[20]

16 The CC therefore took close to four years since its appointment on 8 May 2014 to complete its inquiry on 12 February 2018. During this period, the

---

18 Judgment at [23].

19 Judgment at [29]–[30].

20 Judgment at [33].

CC applied in writing to the Chairman of CP for 13 EOTs. All 13 EOTs were granted. Eight out of the 13 EOTs were made after the expiry of the extended deadlines to complete the inquiry.[21]

The decision of the High Court

17 The Appellant commenced these judicial review proceedings in the High Court by way of Originating Summons 514 of 2018 ("the OS"). In the OS, the Appellant sought leave to apply for the following orders:

(a) a quashing order to quash all applications by the CC to the Chairman of CP pursuant to s 42(2) of the MRA for EOT for the CC to complete its inquiry into the Complaint (as defined at [13] above);

(b) a quashing order to quash all decisions of the Chairman of CP granting EOT pursuant to s 42(2) of the MRA to the CC to complete its inquiry;

(c) a quashing order to quash the CC's decision that an inquiry into the Complaint be held by a DT; and

(d) a prohibiting order to prohibit the SMC from referring the Complaint to the Chairman of CP.

18 The High Court Judge who heard the matter ("the Judge") declined to grant leave for judicial review and dismissed the OS. The Judge considered the

---

21 Judgment at [34].

main issue in the arguments before him to be whether s 42(2) of the MRA is a directory or a mandatory provision.[22] Section 42 is in the following terms:

> **42.**—(1) A Complaints Committee shall, within 2 weeks after its appointment, commence its inquiry into any complaint or information, or any information or evidence referred to in section 44(5), and complete its inquiry not later than 3 months after the date the complaint or information is laid before the Complaints Committee.
>
> (2) Where a Complaints Committee is of the opinion that it will not be able to complete its inquiry within the period specified in subsection (1) due to the complexity of the matter or serious difficulties encountered by the Complaints Committee in conducting its inquiry, the Complaints Committee may apply in writing to the chairman of the Complaints Panel for an extension of time to complete its inquiry and the chairman may grant such extension of time to the Complaints Committee as he thinks fit.
>
> (3) …

19 The Appellant contended that s 42(2) is a mandatory provision in two respects: (i) the time when a CC is to apply for EOT and (ii) the reasons for the application and the grant of the EOT. This would mean that non-compliance with s 42(2) invalidates a CC's application for EOT or the grant of EOT by the Chairman of CP.[23] As some of the EOTs were applied for and granted out of time (in that they were applied for and granted after the expiry of the extended period) and the CC and the Chairman of CP did not satisfy the statutory reasons for the application and the grant of the EOTs, the disciplinary process must be put to an end.

20 The Judge stated that the MRA does not stipulate a long-stop date by which a CC has to complete its inquiry. Although he accepted that the intent

---

22 Judgment at [49].

23 Judgment at [51].

behind s 42(1) and (2) was for inquiries to be completed expeditiously, he did not think that the CC's failure to seek EOT before the deadline led to the disproportionate consequence that the CC could no longer continue its inquiry. Similarly, he held the view that Parliament did not intend for the inadequacy of a CC's reasons for applying for EOT to invalidate the CC's application for EOT or the grant of EOT by the Chairman of CP. In his opinion, applications for and grants of such EOT under s 42(2) cannot be challenged on the grounds of illegality and irrationality. It follows that EOT applications and grants cannot be challenged under the precedent fact principle of review.[24]

21 The Judge held that while mere statutory non-compliance did not furnish grounds for judicial review, a medical practitioner could nevertheless seek an order to end the process if the medical practitioner suffers substantial prejudice as a result of any alleged non-compliance, even if the non-compliance relates to a provision that is directory in nature.[25] On the facts, the Judge found that the Appellant did not suffer substantial prejudice. He held that the SMC and the CC were not responsible for MOH's decision to refuse to renew the Clinic's licence or the Minister's decision to allow the Appellant's appeal or any interval or delay in between.[26] He also held that it was premature to conclude that even if the Appellant truly could not contact his patients to be his witnesses, he would be prejudiced in presenting his case before a DT. Evidence from the Appellant's patients would not necessarily address the question as to whether the

---

24 Judgment at [83].

25 Judgment at [86].

26 Judgment at [91].

Appellant's management plans or remedies were generally accepted by the profession.[27]

22 On 24 April 2019, upon the application of the Appellant, the Judge ordered that disciplinary tribunal proceedings against the Appellant be stayed pending the determination of this appeal and that the costs of that application be costs in the appeal.

The decision of the Court of Appeal

23 The Appellant put the following arguments before us:[28]

(a) The Judge failed to apply the test for leave and instead delved into the merits. The Appellant's arguments were evaluated by the Judge in detail and rejected on the basis of the greater weight ascribed to various competing considerations.[29] On the evidence and arguments before the Judge, the Appellant clearly crossed the leave threshold.

(b) The Judge erred in adopting a binary mandatory or directory classification, with the result that directory provisions are immune from judicial review unless substantial prejudice can be shown. The proper approach, endorsed by this Court and binding on the Judge, is for a multi-faceted inquiry to be undertaken in considering what consequences Parliament intended should flow from any particular non-compliance with the legislation. This involves an examination of:[30]

---

27 Judgment at [99]–[101].

28 Appellant's case, paras 21–24.

29 Appellant's case, para 30.

30 Appellant's case, para 58.

(i) the underlying mischief sought to be addressed by the provision engaged;

(ii) whether there was substantial compliance with the provision;

(iii) whether the non-compliant proceedings were in good faith;

(iv) whether there were other consequences of non-compliance and invalidity; and/or

(v) whether there was prejudice to the Appellant.

(c) Parliament's intention was that judicial review could lie in circumstances where the CC's proceedings have been unfair or unreasonable to the medical practitioner.

(d) The Judge was wrong to determine that the Appellant did not suffer substantial prejudice.[31] The MOH refused to renew the Clinic's licence and this was the result of the delay caused by breaches of s 42 of the MRA.[32] The prejudice is both financial and in the conduct of the Appellant's defence.

Threshold for leave to commence judicial review

24 There are three requirements that must be satisfied before an applicant may be granted leave to commence judicial review proceedings (*Wong Souk*

---

31 Appellant's case, para 119.

32 Appellant's case, paras 132–135.

Yee v Attorney-General [2019] 1 SLR 1223 at [85] and *AXY and others v Comptroller of Income Tax* [2018] 1 SLR 1069 ("*AXY*") at [33]):

> (a) the subject matter of the complaint has to be susceptible to judicial review;
>
> (b) the applicant has to have sufficient interest in the matter; and
>
> (c) the materials before the court have to disclose an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the applicant.

25 As stated many times before, the requirement to obtain leave for judicial review is intended to filter out groundless or hopeless cases at an early stage and its aim is to prevent waste of judicial time as well as to protect public bodies from harassment. Thus, notwithstanding the modest threshold for granting leave, the courts have not hesitated to dismiss unmeritorious judicial review applications even at the leave stage: *AXY* at [34].

26 The thrust of the Appellant's arguments on the issue of threshold was that the Judge transgressed into the merits of the application. According to the Appellant, his arguments were "evaluated in detail and rejected on the basis of the greater weight ascribed to various competing considerations".[33] There was also some suggestion that the Judge had made factual determinations at the leave stage.[34]

---

33 Appellant's case, para 30.

34 Appellant's case, para 35.

27 The Judge's approach in this case was to take the Appellant's case at its highest. The Judge assumed that the CC and Chairman of CP had not complied with the relevant provisions of the MRA for the purpose of his analysis (see [38] of the Judgment). Having considered the case before him on this basis, the Judge decided that the case was unmeritorious and thus denied leave. The inferences drawn were based on the documentary evidence and there would be little room for dispute. We do not think that such an approach is objectionable.

28 It is also not uncommon that an application for leave in judicial review proceedings is disposed of on its merits even at the leave stage. Sometimes, this happens because all the parties involved consent to a hearing on merits in order to save time and costs. Indeed, where all relevant parties and information are before the Court and the parties are prepared to make full arguments, the distinction between the leave and the merits stages becomes artificial. In the High Court hearing in this case, the parties filed affidavits and the arguments took place over some two and a half days.[35] If the Judge had granted leave for judicial review, it is difficult to see what new materials or arguments could have been presented at the subsequent merits stage.

Grounds for judicial review

29 We turn now to the grounds for judicial review. The Appellant premises his application on two points:

(a) first, that there has been non-compliance with s 42(2) of the MRA; and

---

[35] Appellant's case, para 18,

(b) second, that he has suffered substantial prejudice.

Non-compliance with section 42 of the Medical Registration Act

30 Section 42(1) of the MRA (set out at [18] above) stipulates the timeframe of three months in which a CC has to complete its inquiry. Section 42(2) of the MRA then provides that in the event that the CC is of the opinion that it will not be able to complete its inquiry within the stipulated three-month period due to the complexity of the matter or serious difficulties encountered, the CC may apply in writing to the Chairman of CP for EOT. The Chairman of CP may grant such EOT as he thinks fit.

31 The Appellant's case focused on s 42(2) of the MRA: (a) non-compliance with the time within which a CC is to apply for EOT; and (b) non-compliance with the reasons for EOT.[36] He argued that the consequence of non-compliance of s 42(2) is that the disciplinary proceedings must end.

32 The issue of statutory non-compliance is a facet of the ground of illegality. Substantive illegality concerns the lack of legal authority or jurisdiction to hear a matter or to exercise a power. Where statutory non-compliance deprives the public body of legal authority altogether, the decision is rendered invalid in law. This would include cases where the adjudicating body is not properly constituted in law, for example, where a member is not qualified to sit in that adjudicating body. The other aspect of illegality is procedural illegality. This pertains to non-compliance with the process set out by law for the orderly conduct of a matter. Here, the inquiry is often about whether the procedure that has been breached is a mandatory or a merely directory one and,

---

[36] Appellant's case, paras 64–87.

if directory, whether any prejudice is suffered by the party in question. The pivotal issue in each case is whether justice has been done.

33 The Appellant argued that the Judge was wrong to adopt the mandatory-directory distinction in his analysis of s 42(2) of the MRA. The Appellant contended that this binary distinction led the Judge to conclude that the applications by the CC for, and the decisions by the Chairman of CP to grant, EOTs under s 42(2) cannot be reviewed.[37] On this basis, the Appellant proposed a multi-factorial framework to be applied to determine if there are grounds for judicial review (see [23(b)] above).

34 The Respondents submitted that the Appellant's contention was an objection of form over substance. The ultimate question was the determination of what Parliament intended the consequences of non-compliance to be and it was this issue that the Judge applied his mind to.[38]

35 We agree with the Respondents. The mandatory-directory distinction is merely a manifestation of the broader question of whether non-compliance affects the validity of an act or decision. This Court has on several occasions clarified that the various "tests" or "approaches" adopted in the cases all go towards the central and ultimate question of determining what Parliament intended the consequences of non-compliance to be, in particular, whether non-compliance invalidates an act or decision.

36 In *Ng Swee Lang and another v Sassoon Samuel Bernard and others* [2008] 2 SLR(R) 597, this Court stated that (at [23]):

---

37 Appellant's case, paras 52 and 57.

38 Respondents' case, para 39.

> We do not think that the Judge was wrong in drawing an analogy between the mandatory/directory classification and the jurisdictional/non-jurisdictional classification. All he meant to say was that the modern approach is to consider whether it is the intention of Parliament to invalidate an act done in breach of a statutory provision. …

37 In *Chai Choon Yong v Central Provident Fund Board and others* [2005] 2 SLR(R) 594 ("*Chai Choon Yong*"), this Court similarly stated that (at [45]):

> It was not wrong of Ang J to draw guidance from the above test. There is no real conflict between Lord Woolf's approach and Bennion's. Lord Woolf disapproved of the mandatory/directory dichotomy only in so far as it focused merely on determining whether the words like "shall" or "may" were used. His exhortation to also consider the Legislature's intention is sound, as it advocates a more holistic and flexible approach to statutory interpretation. The three questions he posed sprang from his overall focus on the intended consequences of any irregularity. They were not meant to be a rigid test, as Lord Woolf himself qualified that the questions to be considered will depend upon the facts of the case. …

38 The court is therefore effectively engaging in an exercise of statutory interpretation of the relevant statutory provision in its attempt to decipher what Parliament's intention was in respect of the consequences of non-compliance. In the process, the court also considers whether there has been substantial compliance or whether it was a case of egregious breach.

39 Section 42(2) is silent on the consequences of non-compliance. We agree with the Judge that it would not serve any purpose to interpret s 42(2) to mean that non-compliance would invalidate a CC's application for EOT or the Chairman of CP's grant of EOT. This is because if an application for EOT is invalidated in this manner, the same complaint could be placed before a newly constituted CC, with the result that the disciplinary process is prolonged and the existing delay is exacerbated. In our judgment, non-compliance with s 42(2) does not lead to the result contended for by the Appellant. However, as

discussed below, we do not think there was non-compliance with s 42(2) on the facts of this case.

Time within which an EOT must be applied for

40 Both ss 42(1) and (2) of the MRA seek to ensure that complaints are processed expeditiously. Section 42(1) directs a CC to complete its inquiry within three months but the period for completion may be extended under s 42(2) due to the complexity of the matter or the serious difficulties encountered by the CC in conducting its inquiry. When the Medical Registration Bill 1997 (No. 2 of 1997) was introduced in 1997, Parliament intended to "improve the inquiry process so that complaints can be processed expeditiously": *Singapore Parliamentary Debates, Official Report* (25 August 1997) vol 67 at cols 1562–1563 (Yeo Cheow Tong, Minister for Health). In our opinion, s 42(1) and (2) serve the public interest in several aspects. It ensures that valid complaints against errant medical practitioners are dealt with swiftly. Where the complaints come from patients or their families who have suffered from some malpractice or misconduct, the swift outcome in the disciplinary process assuages their suffering and gives some closure. The swift outcome also ensures that an errant or an incompetent medical practitioner receives due punishment and in serious cases, is suspended or even not permitted to practise any more so that further harm to the public is stopped. It also benefits medical practitioners that complaints made against them are determined swiftly to minimise the likely anxiety and distraction that accompany the disciplinary process. This is particularly important if the complaint is eventually dismissed and the medical practitioner is found not guilty of any malpractice or misconduct because his reputation and competence may be in question as a result of a complaint.

41 The Appellant argues that the EOT was invalid because, on eight occasions, the CC applied for EOT after the expiry of the extended periods and were therefore out of time. He pointed out two instances where the applications for EOT were described by him as "flagrant non-compliance". The second EOT application was made on 30 January 2015, 84 days after the expiry of the first extended period. The third EOT application was made on 19 June 2015, 43 days after the expiry of the extended period.[39] The Appellant contended that the long delay resulting from the various applications for EOT significantly undermines the legislative intent behind ss 42(1) and 42(2) which was to ensure that the CC's inquiry would not last more than three months or, if extended, a reasonable time.

42 Section 53 of the Interpretation Act (Cap 1, Rev Ed 1999) provides:

> **Construction of power of extending time**
>
> **53.** Where in any written law a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend the time, unless the contrary intention appears, the power may be exercised by the court or other authority although the application for the extension is not made until after the expiration of the time prescribed.

There is nothing in s 42(2) of the MRA to suggest that the CC must apply before the expiry of the stipulated or the extended period or that the Chairman of CP's power to grant EOT cannot be exercised after the expiration of the same. We think therefore that the CC may apply for EOT after the initial or the extended deadline to complete its inquiry and the Chairman of CP may grant such applications for EOT.

---

[39] Appellant's Case, para 93.

43 For completeness, s 27 of the Interpretation Act provides that "where a written law confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires". There is therefore also no impediment to the Chairman of CP exercising his power to grant EOT on successive occasions.

44 Additionally, unlike s 86(3) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA"), the MRA does not stipulate a final deadline which cannot be further extended. During the Second Reading of the Medical Registration (Amendment) Bill (Bill 22 of 2009) on 11 January 2010, a suggestion was made to set a "time-frame" for the complete processing of complaints: *Singapore Parliamentary Debates, Official Report* (11 January 2010) vol 86 at cols 1946–1948 (Ang Mong Seng, Member of Parliament). The then Minister for Health agreed that all complaints should be deal with speedily but did not take up the suggestion of a "time-frame". Instead, he reiterated that there are provisions to limit the time taken by CCs and that the SMC may vary the time for a CC to complete its inquiry: *Singapore Parliamentary Debates, Official Report* (11 January 2010) vol 86 at cols 1954–1955 (Khaw Boon Wan, Minister for Health). Parliament did not thereafter legislate a long-stop date or set a definite "time-frame" by which a CC has to complete its inquiry.

45 The conclusion to be drawn from the above discussion is that the three-month period stipulated in s 42(1), when read alongside s 42(2), is not to be understood as a strict imperative for which non-compliance would result in invalid proceedings. Instead, the timelines are directory, expressing Parliament's general expectation that complaints will be processed expeditiously. We conclude therefore that applications for and the grant of EOT made after the expiry of the initial stipulated period or the extended periods are

permissible and do not invalidate the disciplinary proceedings so that they can no longer continue.

Reasons for the application and the grant of EOT

46 The MRA puts in place a largely self-regulated disciplinary process for the medical profession. The Chairman of CP is tasked with supervising the inquiry process. Section 42(2) of the MRA takes into account the practical realities of such a self-regulated disciplinary regime involving CC members who have other professional responsibilities. Each CC may also have to inquire into complaints against more than one medical practitioner. It is therefore necessary that s 42(2) affords a CC the recourse to apply for EOT and confers on the Chairman of CP the discretion to extend the timeline for the completion of a CC's inquiry.

47 Section 42(2) of the MRA does not create an independent right for the medical practitioner who is the subject of a complaint to challenge the procedural decisions taken by the CC and the Chairman of CP. The CC's applications for EOT are made to the Chairman of CP without the need to notify the medical practitioner. When making his decision, the Chairman of CP does not have to seek the medical practitioner's views nor even notify him about the grant of EOT. The medical practitioner has no right to be heard on whether EOT should be granted by the Chairman of CP and it follows that he should not have the right to object to EOT, whether in principle or in length of extension, if it is granted. Section 42(2) therefore regulates the relationship between the CC and the Chairman of CP where the Chairman of CP is the decision maker in the supervision of the timelines of the inquiry. Further, complexity of a matter and serious difficulties are matters of degree and of judgment, dependent very much on the particular facts and circumstances of each case. Viewed in this light, the

requirements under s 42(2) should not be understood as a strict legislative imperative for which non-compliance results in the invalidation of the CC's inquiry or the Chairman of CP's exercise of discretion to grant EOT. We therefore agree with the Judge that non-compliance with s 42(2) does not furnish any ground for judicial review.

48 The CC's decision to apply for EOT or the Chairman of CP's exercise of discretion to grant EOT is not completely unfettered despite the presence of the words "may grant such extension of time to the [CC] as he thinks fit" in s 42(2). If the discretion is shown to have been exercised in bad faith or with malice, it may be invalidated. However, to the extent that the criticism is that the CC or the Chairman of CP did not state expressly the statutory grounds (complexity of the matter or serious difficulties encountered) mentioned in s 42(2) in its applications or in the grant of EOT, we do not think this alone gives ground for judicial review.

49 The Appellant's major contention in this case was that the CC did not state expressly in the EOT applications that the matter before it was complex or that it was facing serious difficulties in conducting its inquiry. Neither did the Chairman of CP state expressly the reasons for his decision to grant the EOTs. The Appellant alleged therefore that the CC really had no justification for seeking the 13 EOTs which caused the inquiry to take almost four years to complete.[40] In respect of the Chairman of CP, the submission was that he was "simply rubber-stamping any and all applications for EOTs, without any regard to their underlying merits".[41] The Appellant also relied on the fact that when he

---

40 Appellant's case, paras 100–103.

41 Appellant's case, para 109.

sought interrogatories on whether the Chairman of CP had ever declined to grant EOT, the Chairman of CP declined to answer that question.

50 It is on this basis that the Appellant alleged that the EOTs were not sought and granted in good faith because the CC and the Chairman of CP did not reasonably hold the opinion that more time was needed due to the complexity of the matter or any serious difficulties encountered. According to the Appellant, the non-compliance was so indefensible "as to amount to bad faith".[42]

51 We note in passing that the Appellant's submissions used the terms "bad faith" and "lack of good faith" interchangeably although "bad faith" and "malice" are the terms used in s 68 of the MRA (which we will touch on briefly below). For the present case, we proceed on the basis that "bad faith" and "lack of good faith" bear the same meaning in the Appellant's submissions.

52 Much as we sympathise with the Appellant on the length of time taken in the inquiry, we disagree that bad faith was proved on the facts of this case. Looking at the exchange of emails between the CC and the Chairman of CP, the CC did provide reasons for the need for EOT. From the relevant emails dated 8 July 2014 to 12 December 2017,[43] it could be seen that the CC was faced with multiple complaints to inquire into at the material time. In some of the emails, the CC informed the Chairman of CP that the investigation unit required more time to complete its investigations. In April 2015, the SMC received "additional information" from the MOH regarding the Appellant's prescription of BHRT

---

42 Appellant's case, paras 95–96.

43 ROA Vol III(A), pp 114, 148, 151, 154, 157, 160, 163, 166, 169, 172, 175, 181 and 178.

(see [13] above). This would have enlarged the scope of the Complaint that the CC had to inquire into and consequently take up more time. In response to each request for EOT, the Chairman of CP sent his approval to the SMC. While he did not mention his reasons for granting EOT, he reproduced the CC's emails requesting EOT. Bearing in mind these emails are essentially an internal set of communications, it could be reasonably inferred that he applied his mind to and agreed with the reasons stated in the various requests. While reciting the statutory formula of "complexity of the matter or serious difficulties" provided in s 42(2) in each application for and grant of EOT may help to show that both the CC and the Chairman of CP were aware of the grounds for EOT, the absence of mention of the statutory formula in the correspondence does not lead inevitably to the conclusion that s 42(2) was forgotten or ignored in the process of applying for and granting of EOT. The Court looks at the substance of what was said and done, not the mere perfunctory regurgitation of statutory provisions.

53 We mentioned s 68 of the MRA at [51] above. The section provides:

> **No action in absence of bad faith**
>
> **68.** No action or proceedings shall lie against the Medical Council, a Complaints Committee, a Disciplinary Tribunal, the Health Committee or any other committee appointed by the Medical Council or any member or employee thereof for any act or thing done under this Act unless it is proved to the court that the act or thing was done in bad faith or with malice.

54 In the High Court hearing, the Respondents argued in their written submissions that the Appellant in his application for leave for judicial review must also prove that the acts of the CC, the Chairman of CP and the SMC were done in bad faith or with malice. However, this contention was not expanded on during oral submissions and the Appellant did not respond on this point. Accordingly, although the Judge expressed doubt that s 68 precludes or limits

the commencement of judicial review proceedings, in the absence of full arguments from the parties and in the light of what he had decided elsewhere in his judgment, he declined to say more about s 68.

55 In the Appellant's Case, the Appellant pointed out that the Judge had already dismissed a similar argument in an earlier decision in *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 (at [44] to [49]) which was cited to the Judge in the present case. In that earlier decision involving the LPA, the Judge held that a review committee's findings and decisions were susceptible to judicial review notwithstanding s 106 of the LPA which is materially similar to s 68 of the MRA.

56 On a plain reading of s 68 of the MRA, it is at least arguable that the commencement of any action or proceedings under the MRA is limited to the grounds of bad faith or malice. As mentioned earlier, the Appellant made assertions of "bad faith" or "lack of good faith" to justify his contention that the disciplinary process should be invalidated, although he did not expressly confine his case exclusively to these assertions. The Judge's ruling in the earlier decision concerns another statute although the provision in question is in materially similar terms to s 68 of the MRA. However, as s 68 was not the focus of the arguments before us and is not material to this judgment, we reserve our decision on its effect until an appropriate case comes before us.

Substantial prejudice

57 The Appellant argued that his livelihood was destroyed as a result of the delay caused by the CC and the Chairman of CP because the MOH's decision

not to renew the Clinic's licence depended on the SMC's deliberations.[44] This in turn affected adversely his financial ability to defend himself[45] as well as his ability to contact his former patients as witnesses.[46]

58 In our view, the financial prejudice faced by the Appellant was partly due to his own doing. We refer to MOH's letter to the SMC dated 10 April 2015:[47]

> …
>
> 2 [The Clinic] was first licenced by the Ministry on 10 March 2004. On 19 August 2013, the Ministry wrote to [the Appellant] to inform that the clinic license would be renewed for 6 months from 09 Sept 2013 to 08 March 2014 subject to the licensing conditions that BHRT would not be carried out at [the Clinic]. [The Appellant] was also required to provide a letter of undertaking, he also appealed to be allowed to continue BHRT for existing patients as it would not be fair and safe to his patients to stop receiving treatment abruptly. … The Ministry acceded to [the Appellant]'s request on the condition that [the Appellant] has to justify its continued use with proper documentation of his clinical assessments. Specifically, [the Appellant] has to document his efforts to wean the patients off BHRT.
>
> 3 [The Clinic] was given four cycles of 6 license periods between 09 Mar 2013 to 16 Mar 2015 as the Minstry [*sic*] was monitoring the clinic's compliance with the Licensing conditions closely. Despite the Ministry's reminders over the past 2 years, the Ministry still found [the Appellant] continuing to prescribe BHRT inappropriately. The latest inspections on 10 Feb 2015 and 09 Mar 2015 showed that Dr Lee did not exhibit intention to wean his patients off BHRT.

59 The Appellant was informed that the services offered by the Clinic

---

44 Appellant's case, paras 129, 132–133.

45 Appellant's case, para 143.

46 Appellant's case, para 146.

47 ROA Vol III(A), p 111.

would affect the Clinic's licence renewal in 2013. However, it was only in 2015 that the MOH refused to renew the Clinic's licence. Despite having enjoyed the short conditional renewal of the Clinic's licence, the Appellant refused to temporarily cease the services which were the cause of MOH's concern. The Appellant was also given the opportunity to continue BHRT with his existing patients until treatment could be stopped safely. It was also not the case that the Appellant was denied any chance of challenging the characterisation of the services he offered as "non-mainstream" or the appropriateness of BHRT. The Appellant corresponded with the MOH continually and even appealed to the Minister. It would have been reasonable for the Appellant to adjust his business to suit the requirements of the relevant regulations until such time when his challenge could be fully ventilated. The Appellant would have been able to continue with his practice. In the circumstances, the CC, the Chairman of CP and the SMC could not be blamed for the alleged prejudice arising from the non-renewal of the Clinic's licence.

60 At the hearing before us, the Appellant focused his case on the prejudice relating to the conduct of his defence. He argued that his ability to defend himself was impaired as witnesses were no longer contactable and the quality of any evidence has diminished as a result of the delay.

61 No charge has been framed yet in the disciplinary proceedings against the Appellant. However, the parties took the view that it is clear that the likely charge would concern the practice of non-evidence based medicine. Indeed, in the proceedings in the High Court, the Appellant took the view that the

Complaint would come under cl 4.1.4 of the SMC Ethical Code and Ethical Guidelines:[48]

> A doctor shall treat patients according to generally accepted methods and use only licensed drugs for appropriate indications. A doctor shall not offer to patients, management plans or remedies that are not generally accepted by the profession, except in the context of a formal and approved clinical trial.
>
> …
>
> It is not acceptable to experiment or authorise experiments or research which are not part of a formal clinical trial and which are not primarily part of treatment or in the best interest of the patient, or which could cause undue suffering or threat to the life of a patient.

62 We do not agree with the Appellant that the non-availability of patients as witnesses would prejudice the conduct of his defence substantially. In our view, key witnesses would likely be the Appellant himself and any experts that he may wish to call upon to opine on the nature of the services he offered or the appropriateness of patient management.

63 The Appellant argued that his patients' testimony would be highly relevant because under cl 4.1.4 of the SMC Ethical Code and Ethical Guidelines, a medical practitioner may avail himself of the "in the best interest of the patient" exception, which concerns unconventional therapy administered in the best interest of the patient. His patients' testimony would shed on whether the standard treatment was ineffective or whether the patients' unique circumstances warrant customised treatment.[49]

---

48 Judgment at [100].

49 Appellant's case, paras 151–153.

64 We do not agree with the Appellant. Whether something is in the best interest of a patient is either a subjective assessment on the part of the Appellant at the material time of treatment of that patient or an objective assessment of the circumstances. In either case, the Appellant's clinical notes and any justification that he could provide would be important.

65 On the contention that the passage of time may have affected the Appellant's recollection, this is a matter that can be canvassed in the disciplinary proceedings and it will be for the tribunal in question to assess the veracity of such a claim and the effect it may have on its decision. Further, in the event that the disciplinary tribunal decides that the SMC has proved the relevant charge or charges against the Appellant, it may take into consideration the delay that has occurred for the purpose of deciding the proper sanction to impose.

66 The parties spent a significant amount of time at the hearing before us discussing the case of *Regina v Chief Constable of the Merseyside Police, Ex parte Calveley and Others* [1986] 1 QB 424 ("*Calveley*"). In that case, disciplinary proceedings were brought against five police officers who were not given formal notice of the complaints under the relevant regulation. The English Court of Appeal granted judicial review on the basis that the officers suffered substantial prejudice as objective documentary evidence critical to the officers' defence had already been destroyed. This is certainly not the situation in the case before us. In our view, whether or not substantial prejudice has been suffered is highly fact-dependent. It is therefore not a productive exercise to delve into individual cases in deciding this point.

Conclusion

67 In summary, we hold:

(1) Section 42(2) is a directory provision and not a mandatory one;

(2) There is no prohibition against applying for EOT after the expiry of the original stipulated period or any extended period;

(3) There is no prohibition against the Chairman of CP granting an application for EOT after the expiry of the original stipulated period or any extended period or granting successive applications for EOT;

(4) There was no breach of s 42(2) on the facts of this case; and

(5) Any prejudice suffered by the Appellant should be canvassed before the disciplinary tribunal.

The appeal is dismissed accordingly and the stay of the disciplinary proceedings ordered by the Judge (see [22] above) is lifted forthwith.

68 For costs, the Judge awarded a global amount of $35,000 to be paid by the Appellant to the Respondents for the hearing in the High Court. That amount included the costs for an application for discovery of documents taken out by the Appellant (which was dismissed by the Judge) and an application by the Respondents for interrogatories served by the Appellant to be withdrawn (for which no order was made as it became academic as a result of the conclusions reached by the Judge). The Judge also ordered the costs of the stay of disciplinary proceedings taken out by the Appellant to be costs in this appeal (see [22] above).

69 For this appeal, the Appellant's costs schedule estimated costs at $30,000 and disbursements at $5,601.23 while the Respondents' costs schedule estimated costs at $40,500 and disbursements at $1,629.40. We order the

Appellant to pay the Respondents costs fixed at $25,000 inclusive of disbursements. The usual consequential orders on security for costs are to apply.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Tay Yong Kwang Judge of Appeal

Liew Wey-Ren Colin (Colin Liew LLC) for the plaintiff;
Thio Shen Yi SC, Niklas Wong See Keat and Thara Rubini Gopalan
(TSMP Law Corporation) for the defendants
