IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA 7

Civil Appeal No 16 of 2022

Between

Tan Beng Hui Carolyn

… *Appellant*

And

The Law Society of Singapore

… *Respondent*

GROUNDS OF DECISION

[Civil Procedure — Appeals — Forum]
[Courts and Jurisdiction — Jurisdiction — Appellate]
[Legal Profession — Professional conduct — Breach — Penalty]

Tan Beng Hui Carolyn
v
Law Society of Singapore

[2023] SGCA 7

Court of Appeal — Civil Appeal No 16 of 2022
Sundaresh Menon CJ, Judith Prakash JCA and Belinda Ang Saw Ean JCA
12 September 2022

22 February 2023

Belinda Ang Saw Ean JCA (delivering the grounds of decision of the court):

Introduction

1 Ms Tan Beng Hui Carolyn ("the Appellant") appealed against the decision of a judge of the General Division of the High Court ("the Judge") in HC/OS 432/2021 ("OS 432"). Before the Judge, the Appellant sought to review and set aside the decision of the Council of the Law Society ("the Council") to impose a penalty of $10,000 for her breaches of the Legal Profession (Professional Conduct) Rules 2015 ("PCR"). The Judge dismissed her application, which was made under s 95 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"), finding that the penalty imposed was appropriate and justifiable.

2 We dismissed the appeal on 12 September 2022. We now set out our reasons for dismissing the appeal, which mainly turned on a preliminary issue

before us. The appeal was made to the Court of Appeal and the preliminary issue, which was one of jurisdiction, was whether the Appellant ought to have brought her appeal to the Appellate Division of the High Court instead of to the Court of Appeal. The Appellant maintained that her appeal arose from a case relating to administrative law, such that the appeal to the Court of Appeal was correct, based on para 1(*a*) of the Sixth Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"). The Respondent, the Law Society of Singapore, disagreed; it argued that the appeal should have been made to the Appellate Division since the appeal was simply against the order of the Judge dismissing the Appellant's application made under s 95 of the LPA. We held that the appeal ought to have been made to the Appellate Division. Aside from the jurisdictional point, the appeal was also plainly unmeritorious. We elaborate on this view later in these grounds.

Background of events leading to the decision of the Council to impose a penalty

3 The Appellant is an advocate and solicitor of the Supreme Court of Singapore. Whilst acting as an advocate and solicitor in a matter before the General Division of the High Court in HC/OS 1100/2017 ("OS 1100") in September 2018, the Appellant made several allegations against the lawyers for the other parties, as well as against the judge, Dedar Singh Gill JC (as he then was) ("Gill JC"). Unsurprisingly, complaints were duly made against the Appellant and that led to an investigation by the Respondent.

4 By OS 1100, the Appellant's law practice, Tan & Au LLP, had commenced an interpleader action in respect of moneys held by Tan & Au LLP as stakeholder against seven respondents who had claimed an interest in the moneys. Tan & Au LLP was both the applicant (the "Applicant") and the

solicitors on record for the Applicant in the interpleader action. The 1st, 4th and 5th respondents in OS 1100 were represented by Central Chambers Law Corporation ("CCLC"). The 2nd, 3rd and 6th respondents in OS 1100 were represented by Yeo-Leong & Peh LLC ("YLP") (now known as Adsan Law LLC). The complaints lodged against the Appellant were by the solicitors of both CCLC and YLP. In these grounds of decision, we refer to the six solicitors as the Complainants.

5 The allegations against Gill JC were made during the hearing of OS 1100 in September 2018. On 13 September 2018, after the cross-examination was completed, the Complainants brought to Gill JC's attention, in chambers, that Tan & Au LLP had included in their Bundle of Documents a document that was not in evidence. Gill JC directed that the new document was not to be admitted. Shortly thereafter, Tan & Au LLP filed a recusal application against Gill JC. In support of the recusal application, the Appellant filed a supporting affidavit the following day (the "Recusal Affidavit"), where she made certain allegations against Gill JC as well as some of the Complainants. The allegations formed the subject matter of the complaints against her.

6 On 17 September 2018, Tan & Au LLP filed their Bundle of Documents, which still contained the new evidence on page 98 (which was subsequently ordered to be struck out by the court) ("Page 98"). Notably, CCLC also invited Tan & Au LLP to expunge portions of the Recusal Affidavit; this was on the basis that those portions contained allegations against other solicitors, made without giving the other solicitors an opportunity to respond. Tan & Au LLP declined to remove the impugned portions. CCLC then applied to court to strike out these paragraphs (the "First Striking Out Application"). The solicitors from YLP also sought to expunge Page 98, as Gill JC had directed its exclusion. The Appellant declined to remove the impugned portions of the Recusal Affidavit.

She responded by e-mail on 20 September 2018 (the "20 September 2018 E-mail") to one Mr David Kong ("Mr Kong"), who was a solicitor of YLP. In the 20 September 2018 E-mail, the Appellant claimed that she had left several messages for Mr Kong, and her calls had not been returned. Additionally, she accused YLP of suppressing the truth from their clients, and at the same time, informed them that Tan & Au LLP would be filing the Amended Bundle of Documents. We set out an extract of the 20 September 2018 E-mail:

> *We regret he had failed to return our call.*
>
> *This shows a lack of courtesy.*
>
> *We wanted to inform him that we cannot doctor a document that had been tendered to court as you now suggest.*
>
> *The proper course is to file an Amended Bundle.*
>
> *It is not a forgery but the truth.*
>
> **Why do you seek to suppress the truth from your own clients?**
>
> *In any case the document complained of is from David's client and has been exhibited elsewhere.*
>
> *You are just making a mountain out of a molehill and creating an unnecessary fuss.*

7 After the 20 September 2018 E-mail was sent, Mr Kong filed an affidavit to refute the allegation, stating that he did not receive any calls from the Appellant. YLP also took out a separate application to remove Page 98 of the Bundle of Documents (the "Second Striking Out Application"). On 25 September 2018, the Striking Out Applications and the Recusal Application were heard. Both Striking Out Applications were allowed, while the Recusal Application was dismissed. After the hearing, Tan & Au LLP requested further

arguments on 28 September 2018 (the "Request for Further Arguments"), wherein another allegation against Mr Kong was made. The Appellant alleged that Mr Kong had lied on oath and committed perjury when he said on affidavit that he did not receive any calls from the Appellant, as the Appellant had indeed made several phone calls to him and left several messages. The Appellant also lodged a police report on 27 September 2018, essentially repeating the same allegation that Mr Kong had committed perjury by stating in his affidavit that he had not received any of the calls referred to in the Appellant's 20 September 2018 E-mail (the "Police Report"). Annexed to the Police Report were screenshots from a call log and a chat log showing that there were calls and messages sent on 13 September 2018.

8 Gill JC declined the Appellant's Request for Further Arguments on 10 October 2018. Crucially, Gill JC agreed that in Mr Kong's affidavit, he was clearly referring to the fact that no calls had been made on 20 September 2018, and not that none had been made on 13 September 2018. This was in response to the allegation in the Appellant's 20 September 2018 E-mail that Mr Kong "had failed to return [their] call". Likewise, Mr Kong's affidavit was also referring to the messages supposedly left on 20 September 2018. When questioned by Gill JC, the Appellant confirmed that she did not make any calls on 20 September 2018.

9 On 12 October 2018, Tan & Au LLP filed the Applicant's Closing Submissions in OS 1100, repeating the same allegations that had been raised in support of the Request for Further Arguments (see [7] above). Again, YLP and CCLC invited Tan & Au LLP to expunge the allegations in the Applicant's Closing Submissions. Again, Tan & Au LLP declined and YLP and CCLC obtained Gill JC's order for these paragraphs to be struck out.

10 As alluded to at [3] above, the Complainants lodged 13 complaints with the Respondent on 26 October 2018. The allegations were made against the Appellant and her husband, another solicitor, Mr Au Thye Chuen ("Mr Au"). Both are partners with Tan & Au LLP. The complaints were numerous, and the Inquiry Committee (see [11] below) considered there to be six categories of complaints dealing with various breaches of the PCR. Four of the categories pertained to the following complaints:

(a) Category 1 complaints: these related to the Appellant's allegations that Mr Kong had committed perjury by lying on oath that he had not received any calls or messages from the Appellant. The Complainants claimed that these were false allegations, and the Appellant was as such in breach of rr 7(1) and 7(2) of the PCR.

(b) Category 3 complaints: these complaints related to the Appellant's and Mr Au's conduct in filing Page 98 in the Applicant's Bundle of Documents in breach of the court's previous directions, and in reproducing in the Applicant's Closing Submissions a paragraph which had been expunged for quoting Page 98. These were allegedly a breach of r 13 of the PCR.

(c) Category 4 complaints: the Appellant and Mr Au allegedly breached r 13 of the PCR as they did not treat the court with respect in making false and grave allegations against Gill JC in the Recusal Affidavit and in the Applicant's Closing Submissions.

(d) Category 6 complaints: the Appellant and Mr Au allegedly failed to provide other solicitors with the opportunity to respond to the allegations made against them in the Request for Further Arguments and

in the Applicant's Closing Submissions, which breached r 29 of the PCR.

11 An Inquiry Committee ("IC") was convened. The IC issued a report on 30 July 2019 (the "IC Report") following a hearing held on 17 July 2019. The IC's findings were as follows:

(a) Category 1 complaints: the IC noted that the complaints were that the allegations of perjury were false. However, for the purpose of determining whether there was a breach of r 7 of the PCR, which is that it is not proper for a lawyer to make allegations about another lawyer, it was not relevant whether the allegations were true or not. Although the Appellant did not make the allegations maliciously, and did not knowingly make a false statement that she had left messages for Mr Kong on 20 September 2018 (when she likely had those from 13 September 2018 in mind), it remained the case that the Appellant had repeatedly made serious allegations against various parties, particularly Mr Kong, in less than courteous language. The IC was of the view that there was no cause of sufficient gravity for the matter to be referred to a Disciplinary Tribunal ("DT"), but the Appellant should be ordered to pay a penalty as she had acted in breach of rr 7(1) and 7(2) of the PCR.

(b) Category 3 complaints: the IC accepted that the filing of the Applicant's Bundle of Documents with Page 98 included may have been due to an error, and that there was no intention to breach Gill JC's direction knowingly and deliberately. However, this did not explain why the Applicant's Closing Submissions reproduced a paragraph that had earlier been expunged for quoting Page 98. It remained the case that the Appellant had repeatedly acted in breach of the court's directions and

orders to expunge Page 98. The IC therefore recommended a formal investigation by a DT against the Appellant and Mr Au on a charge of breaching r 13 of the PCR.

(c) Category 4 complaints: the IC considered that it was not within its purview to comment on whether the allegations made against Gill JC were false. Further, the making of allegations against Gill JC did not, in itself, amount to a breach of the PCR, as it was inevitable that allegations of bias would be made in recusal applications. Nevertheless, it considered that allegations of bias on the part of a judge are grave and should not be made without clear justification. The IC recommended a formal investigation by a DT against the Appellant and Mr Au on a charge of breaching r 13 of the PCR.

(d) Category 6 complaints: the IC noted that the Appellant and Mr Au's acknowledgement that they had not given the Complainants the opportunity to respond to the allegations made against them in the Request for Further Arguments and the Applicant's Closing Submissions. The IC referred a charge to a DT for a breach of r 29 of the PCR in respect of the allegations made against Mr Kong in their Request for Further Arguments and in the Applicant's Closing Submissions.

12 Following the issuance of the IC Report, the Respondent sent a letter to the Appellant on 18 November 2019 (the "18 November 2019 Letter") with the IC Report enclosed, and informed the Appellant that the Respondent had adopted the IC's findings and determinations. In respect of the Category 1 complaints in particular, the Respondent stated that it had considered the IC Report and determined that no formal investigation by a DT was necessary, but

that the Appellant should be given a warning, a reprimand or be ordered to pay a penalty of not more than $10,000. The Appellant was asked if she wished to be heard before the Council made its decision.

13 A DT was appointed to address the charges referred to it against the Appellant according to the Council's recommendations. As for Mr Au, the DT found that there was a reasonable doubt as to whether he was present at the hearing in chambers on 13 September 2018. There was also no direct evidence that he was involved in drafting the relevant documents where the allegations were raised. The charges against him were therefore dismissed.

14 The first charge (the "First Charge") the DT found the Appellant to be guilty of was with respect to the disrespectful remarks made against Gill JC that formed the subject of the Category 4 complaints. The Appellant therefore breached r 13(2) of the PCR which is the duty to be respectful of a court. This charge was made out, save for one statement stated in the charge. This matter, however, is not the subject of the Appellant's appeal.

15 The second charge concerned the allegations made against Mr Kong and other solicitors, as stated in Tan & Au LLP's Request for Further Arguments and the Applicant's Closing Submissions. These relate to the Category 6 complaints. The Appellant sought to challenge this on appeal. The second charge (the "Second Charge") read as follows:

> That you, [the Appellant], are charged that you are guilty of a breach of Rule 29 of the [PCR], in that, you, permitted documents to be filed on behalf of your client Tan & Au LLP in [OS 1100] containing the following allegations against other legal practitioners, in particular:
>
> (1) On or about 28 September 2018, you permitted a letter from the Applicant to the Registrar of the Supreme Court of Singapore to be filed [*ie*, the Request for Further Arguments]

> which contains the following allegation against David Kong Tai Wai:-
>
> > Mr David Kong had lied on oath that [the Appellant] did not call him. He has committed perjury and/or false statements under oath …
>
> (2) On or about 12 October 2018, you permitted Closing Submissions to be filed which contains allegations against Chooi Yue Wai Kenny, David Kong Tai Wai, Fong Kai Tong Kelvin and Twang Kern Zem, that: -
>
> > … When Counsel for the Applicant asked whether there were other messages, Counsel for the 2nd, 3rd and 6th Respondents [*ie*, Mr Chooi, Mr Kong and Mr Fong] had kept silent and the silence is telling. In an inexplicable move, the Judge accepted an evidence [*sic*] from the Bar of Mr Twang Kern Zern, counsel of 1st, 4th and 5th Respondents relating to his testimony that he received a message from the Interpleader although the Interpleader Counsel had disputed the content as the Interpleader only communicated with the Counsel's clerical staff.
>
> without allowing the said other legal practitioners the opportunity to respond to the said allegations, and by doing so, you have been guilty of improper conduct or practice as an advocate and solicitor within the meaning of s 83(2)(*b*) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

16 For the Second Charge, the Respondent contended before the DT that the phrase "silence is telling" in the Applicant's Closing Submissions meant that the Complainants, particularly Mr Chooi, Mr Kong and Mr Fong, had something to hide. The DT was unable to accept the Respondent's view. While it reflected a regrettable choice of phrase, the point made was more an observation about the proceedings than an allegation against other solicitors. But with respect to the allegation made against Mr Kong in the Request for Further Arguments, the DT was of the view that there could be no doubt that the Appellant had alleged that Mr Kong had lied on oath. It was no answer to the charge that Mr Kong had the opportunity in his affidavit of 21 September 2018 to respond to the allegation. Although Mr Kong responded to the Appellant's 20 September 2018 E-mail through his affidavit, the Request for

Further Arguments filed by the Appellant continued to assert that Mr Kong's response was false, and that Mr Kong was lying on oath. Hence, the Second Charge was made out in so far as the Appellant's allegation against Mr Kong in the Request for Further Arguments was concerned. Accordingly, the DT found that there was a breach of r 29 of the PCR, which states that a legal practitioner must not permit an allegation to be made against another legal practitioner in any document filed on behalf of the first legal practitioner's client in any court proceedings, without the other practitioner being given the opportunity to respond to the allegation. We pause here to mention that Mr Kong unexpectedly passed on sometime in February 2019.

17 For completeness, we add that the charge relating to the Category 3 complaints was dismissed by the DT.

18 Following the DT's report, the Council accepted the DT's findings, and, after hearing the Appellant, determined that a penalty of $10,000 should be imposed on the Appellant for breaching rr 7(1) and 7(2) of the PCR for the allegations against Mr Kong (*ie*, the subject of the Category 1 complaints), r 13(2) of the PCR for making disrespectful statements to the court (*ie*, the subject of the Category 4 complaints and the First Charge), and r 29 of the PCR for failing to give Mr Kong an opportunity to respond to the allegations (*ie*, the subject of the Category 6 complaints and the Second Charge). The Council's decision was communicated to the Appellant in a letter dated 8 April 2021 (the "8 April 2021 Letter"). Prior to the Council's determination, the Appellant was given the chance to respond and did submit two written mitigation statements dated 9 November 2020 and 3 March 2021, as well as an oral mitigation before the Council on 25 March 2021.

19 By way of OS 432, the Appellant applied under s 95 of the LPA to have the court review and set aside the decision of the Council to impose a global penalty of $10,000, as conveyed to the Appellant in the 8 April 2021 Letter.

Decision below

20 The Judge dismissed the Appellant's application in OS 432 to review and set aside the penalty imposed by the Respondent. Before the Judge, the Appellant initially confirmed that her case was restricted to a determination as to the merits on the question of what the appropriate penalty to be imposed on the Appellant should be. Much later in the proceedings, the Appellant changed her approach and broadened the challenge to setting aside the Council's determination on the breaches (see [23] below).

21 The Judge observed that the scope of the application under s 95 of the LPA was confined to a review of the appropriate penalty. OS 432 was not a challenge of the Council's determination on the existence of sufficient cause for formal investigation as it was not brought under s 96 of the LPA, nor was it a substantive review of the DT's findings and decision as it was not brought under s 97 of the LPA.

22 As for the penalty imposed, there were three distinct breaches of rr 7, 13 and 29 of the PCR. These were not trifling breaches, as they arose from separate acts impacting different interests. The penalty imposed was in accordance with the relevant sentencing precedents and was justified by the relevant aggravating factors. The Appellant was a senior lawyer, and her conduct in the proceedings evidenced a lack of remorse. Her mitigation statements before the DT dated 9 November 2020 and 3 March 2021 still contained discourteous comments

which reflected her lack of contrition. Hence, the Judge saw no reason to disturb the penalty imposed.

23 During the hearing, the Judge also observed that the Respondent's 8 April 2021 Letter did not accurately capture the nature of the Appellant's breach of r 7 of the PCR (the Category 1 complaints which were not referred to the DT). The breach was with respect to her making allegations against Mr Kong; it was not for the making of "false allegations" as the 8 April 2021 Letter seemed to suggest. The Respondent subsequently issued a letter dated 7 February 2022 to rectify its earlier letter (the "Clarification Letter"). The Appellant filed further submissions to respond to the Clarification Letter. In her further submissions, she enlarged the scope of her arguments to seek a review of the Council's determination on the breach of r 7 of the PCR. She argued that the Council had conflated her allegation of criminal conduct (*ie*, perjury committed by Mr Kong) with an allegation of professional misconduct against Mr Kong. As the Judge saw it, there was no basis for the Appellant to seek such a review. In any event, there was no conflation to speak of and the Judge rejected the submission as being without merit. The Judge held that the Appellant's breach of r 7 was not due to her filing of a police report but because of her repeated allegations against Mr Kong in the 20 September 2018 E-mail, the Request for Further Arguments and the Applicant's Closing Submissions.

The court to which the appeal should have been made

24 We turn to address the two issues before us, starting with the preliminary question of which court this appeal ought to have been made to.

25 The Appellant maintained that this appeal was before the correct court. The appeal related to administrative law because she was seeking a review of

the administrative action undertaken by the Respondent. She relied on *Iskandar bin Rahmat v Law Society of Singapore* [2021] 1 SLR 874 ("*Iskandar*") for the proposition that the disciplinary jurisdiction exercised by a Judge under ss 95, 96 and 97 of the LPA is part of the civil jurisdiction of the court and can form the subject matter of an appeal to the Court of Appeal. Further, there is a very strong public interest in ensuring that allegations of misconduct are fully ventilated before the Court of Three Judges.

26 In contrast, the Respondent argued that the present case did not fall within any of the categories set out in the Sixth Schedule to the SCJA, and accordingly the appeal should not have been made to the Court of Appeal. In any event, the Judge did not err in finding that the court's determination under s 95 was confined to determining what the appropriate penalty should be, and the Appellant could not rely on s 95 of the LPA to request the court to review the merits of the substantive decision of the IC or the DT. On the issue of the correct appellate court to hear the present appeal, OS 432 was commenced by the Appellant pursuant to s 95 of the LPA for the court to review the penalty ordered by the Council. The court's role was limited to affirming, varying, or setting aside the penalty that had been imposed. The review under s 95 was based on a statutory right to review which was separate and distinct from the Appellant commencing judicial review proceedings in respect of the Respondent's actions. Notably, OS 432 was not filed under O 53 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC 2014"), which requires a party to obtain leave to commence judicial review proceedings. The Judge did not have to consider any legal issues relating to administrative law or apply any judicial review principles to the present case. Hence, the correct court to hear the appeal should be the Appellate Division.

27 We were unable to agree with the Appellant that her appeal fell within para 1(*a*) of the Sixth Schedule to the SCJA, as OS 432 was not a case relating to administrative law.

28 Sections 29C(1) and 29C(2) of the SCJA provide that an appeal against a decision of the General Division in the exercise of its original or appellate civil jurisdiction is to be made to the *Appellate Division* and not to the Court of Appeal, unless the Sixth Schedule to the SCJA or any other written law provides otherwise. Paragraph 1(*a*) of the Sixth Schedule to the SCJA provides that where an appeal "arises from a case relating to constitutional or administrative law (even if the appeal does not raise any issue relating to constitutional or administrative law)" it should be made to the Court of Appeal. In *Dongah Geological Engineering Co Ltd v Jungwoo E&C Pte Ltd* [2022] 1 SLR 1134 ("*Dongah*") at [11]–[16], the court held that a review of an adjudication determination by an adjudication panel constituted under the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) (the "SOPA") would not constitute an administrative review or, in turn, a case relating to administrative law. A review of a SOPA adjudication determination is unrelated to the regulation of the exercise of public powers by public authorities (*Dongah* at [15]). Although the principles applied in such a review may possibly be similar or akin to those typically applied in administrative law, ultimately something more is required to engage paragraph 1(*a*) of the Sixth Schedule (*Dongah* at [15]).

29 The Appellant sought to distinguish *Dongah* from the present case, on the basis that *Dongah* concerned an adjudicator holding parties to their private law contractual obligations, whereas the present case concerned "wider public considerations" relating to the right of Law Society members to make allegations of criminal misconduct by other members. We did not have to decide

whether this was an appropriate way to delineate when a case relates to administrative law. This is because, as we explain from [36] below, this case was *not* about any purported right to make allegations of criminal conduct to begin with.

30 In its further submissions, the Respondent referred us to the case of *Seow Fook Sen Aloysius v Rajah & Tann Singapore LLP* [2022] SGCA 40 ("*Seow Aloysius*"). At [13], the court held that a case that engages paragraphs 1(*a*) to 1(*e*) of the Sixth Schedule is one where, at the least, there is "some reasonable relationship … between the specified subject matter and the 'case' from which the appeal arises, whether with regard to the *legal issues* therein or the *application* of the law to its facts, ***in the court below***, so that either or both of which may arise for consideration ***in the appeal***" [emphasis in original]. The Appellant did not address *Seow Aloysius* in its written or oral submissions, and we consider it unnecessary to comment further on the decision. As alluded to above, this present case simply did not give rise to any administrative law issues.

31 The Appellant's reliance on *Iskandar* was also misplaced. In *Iskandar*, the issue before the court was whether there was a right of appeal against decisions made under Part VII of the LPA, and the court concluded that there is a right of appeal based on the disciplinary jurisdiction exercised by a Judge under ss 95, 96 and 97 of the LPA:

> 86 … It is evident to us that proceedings under s 96 are not akin to suspension or disbarment proceedings because the Judge is statutorily empowered to review the Council's determination but not to investigate the solicitor's conduct or impose penalties herself (see [22(b)] and [30] above). In the context of an appeal brought against such a decision, the Court of Appeal would only be concerned with the question of whether the High Court Judge's decision is correct. A court hearing such an appeal against a decision made under s 96 would not be in a position to exercise the same powers as the Disciplinary Tribunal or the C3J. It may disagree with the Judge, if it finds

> it appropriate, and affirm the Council's decision or direct the Law Society to apply to the Chief Justice for the appointment of a Disciplinary Tribunal, but it cannot itself dispose of the matter. To the extent that disbarment or suspension proceedings are *sui generis*, the proceedings before the High Court and the Court of Appeal do not encroach on the jurisdiction of the C3J.
>
> 87 For those reasons, we consider that the disciplinary jurisdiction exercised by a Judge under ss 95, 96 and 97 of the LPA is part of the civil jurisdiction and ***can form the subject of an appeal to the Court of Appeal***.
>
> [emphasis added in bold italics]

32 Clearly, the reference to the Court of Appeal in that case (at [87]) was in relation to the existence of a right of appeal where the underlying matter is a review of the disciplinary tribunal's decision by a High Court Judge. The court in *Iskandar* was not addressing the issue of the correct appellate court that should hear the appeal. Moreover, *Iskandar* was heard on 22 October 2020. This was before the creation of the new Appellate Division of the High Court which came into existence in January 2021. The issue of whether the Court of Appeal was the correct forum *vis-à-vis* the Appellate Division did not arise for the court's determination. The Appellant's reliance on *Iskandar* was taken out of context.

33 Turning to the present case, OS 432 was an application made pursuant to s 95 of the LPA. It was not commenced by way of a judicial review for which the Appellant would have needed to obtain leave as *per* O 53 r 1 of the ROC 2014. The reliefs sought by the Appellant in OS 432 were to review and set aside the decision of the Council, which were not the reliefs provided by judicial review (*ie*, mandatory order, prohibiting order, and quashing order).

34 We also noted that the grounds of the Appellant's application in OS 432 pertained to the merits of the Council's determination, rather than the legality

of it. In her view, Mr Kong did commit perjury. According to her the Council "reversed the Burden of Proof" in finding that the Appellant had made a false allegation against Mr Kong. Her assertions do not relate to the legality of the Council's determination and do not give rise to administrative law issues.

35 Moreover, the Appellant also sought to challenge the appropriateness of the penalty. This would evidently entail a substantive review of the merits of the Council's determination, as the court could potentially substitute the penalty imposed. The basis of this penalty review is statutory and not found in administrative law judicial review powers, and the inquiry also differs from that in judicial review.

36 Before us, the Appellant raised several contentions, including the contention that the Council acted *ultra vires* and/or outside of its jurisdiction by disciplining the Appellant for making a police report in relation to a criminal offence. This would therefore be an administrative law issue as it pertained to the illegality of the Council's determination.

37 We agreed with the Judge that the Council did not sanction the Appellant for the very act of making a police report. It did so for, among other reasons, the less than courteous language which she consistently used in her e-mail correspondence against the Complainants, the Request for Further Arguments, the Applicant's Closing Submissions as well as the Police Report (see above at [6]–[9]). The argument that she was being penalised for making a police report was a mischaracterisation of the nature of the charge against her. The upshot is that there was no issue of illegality in the Council's exercise of jurisdiction.

38 We were not persuaded by the Appellant's submissions that she did not make false allegations because she did make calls on 13 September 2018 and

Mr Kong failed to return her calls, and that he had committed perjury by stating that he had not received calls. Based on the chronology of events, Gill JC first ruled on 13 September that the impugned Page 98 should be removed (see [5] above). Yet, on 17 September, the Appellant filed the Bundle of Documents containing Page 98 (see [6] above). The Complainants then invited her to remove Page 98 on 20 September, to which the Appellant replied by way of the 20 September 2018 E-mail, claiming that she had left several messages for Mr Kong. As Gill JC has similarly observed, it was in the context of the Appellant's 20 September 2018 E-mail that Mr Kong deposed in his affidavit that he had received no calls. He was therefore referring to the fact that he received no calls on 20 September, not that he had received no calls a week earlier on 13 September. The Appellant's allegation of perjury against Mr Kong was untenable.

39 In a related vein, we noted that there was no prejudice to the Appellant from the removal of the word "false" in the Clarification Letter. The Council's determination plainly stated that the falsity of the allegation was not the crux of the complaint; it was the lack of professional courtesy which the Appellant had continuously exhibited. This was made clear in the IC Report (see [11(a)] above). We were also of the view that the Council was quoting from the original complaints in using the word "false"; its inclusion in the Respondent's 8 April 2021 Letter was at best a clerical error that did not prejudice the Appellant. Therefore, the Appellant's claim of prejudice encompassing notions of breach of natural justice was misconceived. She had wrongly asserted that the Respondent decided on the issue of falsehood and then changed its mind in the Clarification Letter after the Judge's comments. The IC made it explicit that it was not deciding on falsity, and this is also set out at para 38 of Mr Gopalan's (the Respondent's representative's) affidavit.

40 In any event, we did not think that an allegation of prejudice, without more, rendered this case one relating to administrative law. The fact that a judge may apply principles such as natural justice to set aside an order does not make a case an administrative law case. Our conclusion is that the present appeal did not arise from a case relating to administrative law.

41 For the reasons stated, the appeal should have been made to the Appellate Division. The appeal was made to the wrong court.

The appeal has no merit

42 Besides the preliminary issue, we considered the other arguments raised by the Appellant that the Judge had erred. We did not consider any of them to be meritorious. The Judge was right not to vary the penalty or to set aside the Council's decision.

43 We begin with the scope of review under s 95 of the LPA. We noted that the Judge had observed that the court's role was only to review the appropriateness of the penalty imposed by the Respondent, and that the court was not to examine the merits of the findings made, referring to the court's observations in *Iskandar*. We would clarify that although the court is not to engage in a full merits review under s 95 of the LPA, in so far as it would not be conducting a re-hearing of the dispute, the court does have the jurisdiction to scrutinise the basis of the Council's decision, such as whether the facts before the IC warranted the IC's findings, and in the event that the findings were wrong in law or in fact, to determine whether the Council's acceptance of the IC's findings should be set aside. This is consistent with *Law Society of Singapore v Ang Boon Kong Lawrence* [1992] 3 SLR(R) 825 at [10], where the court rejected the Law Society's argument that the court had no jurisdiction under

s 95 of the Legal Profession Act (Cap 161, 1990 Rev Ed) ("LPA (1990 Rev Ed)") to enquire into an Inquiry Committee's conduct of the matter, but only the Council's determination. The court found that it had such jurisdiction, since the Council was statutorily bound under s 87 of the LPA (1990 Rev Ed) to consider the Inquiry Committee's report and would regard it as one of the most important factors in its determination as a matter of practice. The court thus held that if the Inquiry Committee's recommendations were wrongly or improperly arrived at, this may be a reviewable matter as the Council may have taken extraneous matters into consideration. We would also emphasise that under ss 95(3)(*a*) and 95(3)(*b*) of the LPA, the court can *vary* or *set aside* the penalty. This would necessarily involve an examination of the merits of the underlying decision. As we have observed in *Iskandar* at [33], this contrasts with the power granted to the court under s 97 that does not encompass the power to decide on any penalty. In our view, the court's power and scope of review under s 95 is not so circumscribed.

44 We now return to the substance of the appeal. The Appellant raised a new contention that she was falsely charged for the breaches of rr 7(1) and 7(2) of the PCR. The charge that the Appellant had answered to, as stated in the 18 November 2019 Letter and the 8 April 2021 Letter, was confined to *false allegations of perjury*. When the Respondent issued the Clarification Letter, it removed the word "false", which fundamentally changed the charge against the Appellant. This amounted to a breach of natural justice, as the Appellant was denied a fair opportunity to put her own case to correct or contradict the Respondent's allegations against her. The Judge also wrongfully allowed the Respondent to amend the charge. We have dealt with this contention above at [39]. Given our conclusion there, it could not be said that there was any deficiency in the Respondent's process that prejudiced the Appellant.

45 Further, there was also no breach of the rules of natural justice in the conduct of the Council or that of the court below; the Appellant had the opportunity to be heard. Before the Council, the Appellant was given the opportunity to make a mitigation plea and she did make use of this opportunity. Before the Judge, the Appellant was not denied the opportunity to respond. In fact, after Mr Gopalan's affidavit was filed in OS 432, the Appellant responded with another affidavit filed on 30 June 2021. The Appellant was also given the opportunity to present her case before the Judge.

46 In addition, the Appellant alleged that Mr Gopalan's affidavit contained multiple instances of hearsay, particularly in paragraph 8. However, she did not particularise why paragraph 8 of the impugned affidavit was hearsay. We could not agree that it was. Paragraph 8 of Mr Gopalan's affidavit set out a short summary of the events leading up to the filing of the complaints. This included what happened in OS 1100, and the established timeline of events, all of which are included in the Notes of Evidence and Notes of Argument of Gill JC (these being the Notes of Evidence from the hearing on 13 September 2018 and the Notes of Argument from the hearing on 10 October 2018), and in the IC Report which contains the same undisputed timeline. Even if Mr Gopalan had no personal knowledge of what happened in the OS 1100 hearings, we agreed with the Respondent that, in this case, the Notes of Evidence are public records made by a public officer in the discharge of his official duty, which fall within the exception to the hearsay rule under s 37 of the Evidence Act (Cap 97, 1997 Rev Ed). In *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("*Udeh Kumar*"), the Court of Three Judges held that the minute sheets recorded and signed by various district judges constituted entries into a public record by public officers in the discharge of their official duties, and were thus relevant and admissible under s 37 of the Evidence Act.

Gill JC's minute sheets were no different. Like the court in *Udeh Kumar*, we observed that s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) defines "public officer" to mean the holder of any office of emolument in the service of the Government, which would include a Judicial Commissioner, and that s 76(*a*) of the Evidence Act defines "public documents" to include the documents recording the acts of public officers (including judicial officers) in Singapore, which would include Notes of Evidence and Notes of Argument.

47 Section 32(1)(*b*) is also an applicable exception to the hearsay rule. The court in *Udeh Kumar* also found that the district judges' minute sheets would have come within the exception under s 32(1)(*b*) of the Evidence Act, which rendered statements "made by a person in the ordinary course of a trade, business, profession or other occupation" relevant and thus admissible (*Udeh Kumar* at [13]–[14]). While s 32(4)(*b*) of the Evidence Act read with O 38 r 4 of the ROC 2014 would have required the Respondent to give notice of its intention to rely on evidence falling within s 32(1) of the Evidence Act, like the court in *Udeh Kumar* (at [14]), we were prepared to exercise our discretion under O 2 of the ROC 2014 to cure this non-compliance. The failure to give notice did not prejudice the Appellant. The Appellant had filed requests for copies of the Notes of Evidence dated 13 September 2018 and Notes of Argument dated 10 October 2018 in the course of OS 1100. Gill JC's notes were also referred to in the reports of the IC and DT. These would have given the Appellant sufficient notice of the contents of both sets of notes, which in any event originated from proceedings in which the Appellant was intimately involved as the Applicant's solicitor.

48 Earlier we touched on the Appellant's contention that the Respondent had exceeded its statutory power by disciplining and penalising the Appellant for making the Police Report against Mr Kong for the criminal offence of

perjury (see [36]–[37] above). We will now examine her contention in detail. Her point was that the Respondent was not authorised under the LPA to determine allegations of criminal conduct. Her argument was that a member of the Law Society is entitled to make a police report of an offence committed by another member. However, if the charges against the Appellant for breaches of rr 7(1) and 7(2) of the PCR were to be allowed, any member of the Law Society making a police report against another member would be deemed to be breaching the PCR. By extension of this argument, the Appellant also submitted that this could not be a breach of r 29 of the PCR, since the proper forum for Mr Kong to respond to the Appellant's allegations of the criminal offence of perjury is a forum in which he could defend himself, *ie,* in criminal proceedings.

49 As alluded to above at [37], the IC's findings were not based on the making of the Police Report as such; rather, they were based on her pattern of conduct in repeatedly making serious allegations for purposes other than making a complaint to the Law Society. It cannot be said that this finding was wrong in law.

50 Finally, on the question of whether the penalty imposed was appropriate, the penalty sum of $10,000 was a global sum in respect of *three* distinct breaches of the PCR. This was based on the IC's recommendation that the Appellant should be ordered to pay a penalty for breaches of rr 7(1) and 7(2) of the PCR (this was not referred to the DT as there was no cause of sufficient gravity), and the DT's determination that a penalty should be imposed for breaches of rr 13(2) and 29 of the PCR. Given that there were three distinct breaches of the PCR, the global sum of $10,000 was not out of line with the precedents:

(a) In *Law Society of Singapore v Looi Wan Hui* [2018] SGDT 6, the respondent's discourteous actions were found to be a breach of r 7(2) of the PCR. He faced two charges for continuing to practice using the name of another law practice without permission and for failing to finalise his exit from the said law practice, causing the law practice to have to take up a formal application to rectify the situation. The global penalty was $8,000, based on $4,000 per charge. The lack of courtesy in that case was much less serious than the repeated serious and spiteful allegations the Appellant had made against Mr Kong.

(b) In *Law Society of Singapore v Ravi S/O Madasamy* [2012] SGDT 12, the Disciplinary Tribunal ordered that the respondent pay a penalty of $3,000 for making disparaging remarks against a judge, which went against an advocate and solicitor's duty to act with due courtesy to the court before which he or she was appearing, as prescribed under r 55(*a*) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed). In that case, the mitigating factors in favour of the respondent were stronger than in the present appeal. The respondent was suffering from bipolar condition at the material time, and subsequently, was contrite over his behaviour.

51 The Appellant's lack of remorse was indeed a relevant factor. The charge was never about the making of false allegations, but that she had persistently resorted to making discourteous remarks against a fellow practitioner. The lack of remorse was therefore relevant in determining the penalty for failing to accord courtesy to a fellow legal practitioner. In fact, this pattern of conduct continued in her two written mitigation statements dated 9 November 2020 and 3 March 2021. She stated that the "Complainants tried to poison the mind of an inexperience [*sic*] Judge", and that "[the] dead man

[referring to Mr Kong] is not here to make his case. How can the dead man [*sic*] non-testimony be preferred over mine …". She also stated that "[t]here was no time to ask niceties of an evil person whom God has punished by taking his life in his prime", a statement which was not only spiteful but which also fully displayed her own self-righteousness. The Council was right in relying on these remarks as indicative of her lack of remorse. The Council was also not wrong in considering the fact that the allegations were contained in multiple documents. They were not found in the 20 September 2018 E-mail alone, but also in the other documents specifically mentioned in the IC Report. Hence, the multiple occasions on which the allegations were made, coupled with the lack of remorse on the Appellant's part, were sufficient aggravating factors that justified the Council's decision on the penalty.

52 Hence, there was no basis on which the Council's imposition of the penalty should be varied or set aside.

Conclusion

53 In summary, the appeal should have been made to the Appellate Division, and it was in any event completely without merit. We dismissed the

appeal with costs to the Respondent, fixed at $30,000 (all-in). The usual consequential orders applied.

Sundaresh Menon
Chief Justice

Judith Prakash
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

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