Tang Kin Hwa v Traditional Chinese Medicine Practitioners Board
[2005] SGHC 153

Case Number : OM 23/2004

Decision Date : 02 September 2005

Tribunal/Court : High Court

Coram : Andrew Phang Boon Leong JC

Counsel Name(s) : T Subramaniam and Gulab Sobhraj (Sobhraj Tay Low Subra and Teo) for the applicant; Rebecca Chew Ming Hsien and Mark Cheng Wai Yuen (Rajah and Tann) for the respondent

Parties : Tang Kin Hwa — Traditional Chinese Medicine Practitioners Board

Professions – Medical profession and practice – Traditional Chinese Medicine Practitioners Board convening inquiry committee to investigate complaint made against acupuncturist – Whether members of inquiry committee displaying bias in conduct of investigation – Applicable tests for bias

Professions – Medical profession and practice – Whether acupuncturist forging signature in supporting documentation for application for registration as physician under Traditional Chinese Medicine Practitioners Act – Whether acupuncturist furnishing inaccurate particulars in application for registration as physician under Traditional Chinese Medicine Practitioners Act – Whether registration obtained by fraudulent or incorrect statement – Whether amounting to improper acts or conduct – Appropriate sanction to administer – Sections 19(1)(a), 19(1)(j) Traditional Chinese Medicine Practitioners Act (Cap 333A, 2001 Rev Ed)

2 September 2005

Andrew Phang Boon Leong JC:

Introduction

1 Traditional Chinese medicine ("TCM") is becoming increasingly popular and attempts are being sought to integrate it with more conventional methods of medical treatment. This is all to the good. However, the industry is still developing and its operational oversight is still in its relative infancy. It therefore needs to be afforded the maximum latitude to ensure its success – not only for its practitioners or even for the industry as a whole but also, and more importantly, for the overall benefit of Singapore in all its multifarious aspects. However, it is imperative that all this must be achieved within an appropriate legal structure.

2 To this end, the Singapore Parliament enacted the Traditional Chinese Medicine Practitioners Act (Cap 333A, 2001 Rev Ed) ("the Act"). This Act was intended to provide the legal framework that would facilitate the growth of the industry. Unfortunately, the present proceedings focus on those parts of the Act which deal with situations that are of a more negative nature. In particular, they concern an appeal against the suspension of the appellant's registration as an acupuncturist for a period of two years which was imposed on him by the Traditional Chinese Medicine Practitioners Board ("Board") commencing from the date of the notice to this effect to him. The appellant was suspended as he was found guilty of improper acts or conduct under s 19(1)(*j*) of the Act. The proceedings leading to the suspension may be summarised as follows.

3 A complaint was preferred by Dr Tan Kia Choo ("Dr Tan") against the appellant. In brief compass, the complaint comprised two main elements. The first was that the appellant had submitted a document that contained a forged signature to the Board. This document was a certificate of employment ("COE") which accompanied an application by the appellant to the Board for registration as an acupuncturist. The second concerned the appellant's application itself (dated 28 February

2001). In particular, it was alleged that the appellant placed in his application inaccurate particulars which allegedly misled the Board into believing that he was a full-time TCM physician in the employ of ECM Chinese Medical Centre ("ECM").

4 The Board convened an investigation committee ("IC") to inquire into the abovementioned complaint. In so far as the terms of reference by the Board to the IC were concerned, it should be noted, in addition, that the Board was also to consider whether, following from the two main elements in the complaint set out in the preceding paragraph, the appellant's registration as an acupuncturist had been obtained by a fraudulent or incorrect statement and, if so, whether it should then recommend to the Board to exercise its discretion to cancel the appellant's registration pursuant to s 19(1)(*a*) of the Act (the full text of the provision is set out below at [102]).

5 Briefly put, the IC found that the complaint against the appellant was justified and recommended to the Board that the appellant's registration as an acupuncturist under the Act be cancelled in the light of a contravention of s 19(1)(*a*), which, as already mentioned, involves the obtaining of a registration under the Act by a fraudulent or incorrect statement.

6 However, as already alluded to above, the Board decided that the appellant's conduct fell within the scope of s 19(1)(*j*) instead (the full text of the provision is set out below at [102]). It then decided to suspend the appellant's registration as an acupuncturist for a period of two years commencing from the date of the notice to him. It should be mentioned that that suspension has not yet taken effect because of the appellant's appeal in the present proceedings. According to s 19(5) of the Act, "[a] decision to cancel or suspend the registration of a registered person shall take effect on the date the decision has been communicated to him *or, where an appeal against the decision is made to the High Court, the date of the decision of the Court*" [emphasis added].

A preliminary point — the nature of the present proceedings

7 There could be no doubt as to the precise nature of the present proceedings. Although it was by way of a rehearing, it was nevertheless an appeal. This much is made clear by s 21 of the Act itself, which reads as follows:

> **Appeal**
>
> **21.**—(1) Any person who is aggrieved by a decision of the Board under section 19 (1) or (2) may, within 30 days of the date of the decision or within such further period as the High Court may allow, appeal to the High Court against the decision.
>
> (2) There shall be no appeal from a decision of the High Court.

8 Hence, counsel for the Board, Ms Rebecca Chew, was correct in pointing out that the general principles relating to an appellate court's consideration of the lower court's or tribunal's decision (here, of the Board) would obtain (citing the Singapore decisions of *Arts Niche Cyber Distribution Pte Ltd v PP* [1999] 4 SLR 111 at [30] and *Er Joo Nguang v PP* [2000] 2 SLR 645 at [65]). These principles indeed constitute trite law but, in most instances at least, principles become trite law precisely because they are so fundamental that they are taken as givens. This is one such instance.

9 In particular, it is clear that the appellate court will be slow to disturb the lower court's findings of fact, particularly since the latter would have had the opportunity of observing the witnesses first-hand and is therefore presumed to have a much clearer view of the credibility and

demeanour of the witnesses concerned.

The allegation of bias

Introduction

10 I deal, first, with the allegation by the appellant of apparent bias on the part of three members of the IC. Although raised as only a preliminary issue at the actual hearing before the IC, it is of the first importance for it goes to one of the very pillars of the enterprise of law itself. As counsel for the appellant, Mr T Subramaniam, aptly put it, it is embodied within that time-honoured Latin phrase "*Nemo judex in causa sua*". Put plainly, it embodies a clearly fundamental principle of natural justice. And it is this: that *no person should be a judge in his or her own cause* (that other great pillar of natural justice being, of course, "*audi alteram partem*" – that every one has a right to be heard and that none ought therefore to be condemned unheard). Indeed, this principle falls under the rubric of "*natural* justice" because it is so basic that no system of adjudication can afford to ignore it. It embodies the concept of impartiality and objectivity. Because of it, we can rest assured that the adjudicator (whether he or she be a judge or arbitrator or member of any other legally constituted tribunal) will deliver his or her judgment fairly and justly. Simply put, this principle embodies the basic concept of *impartiality*, whereas the right not to be condemned unheard embodies another basic concept, that of *fairness*. Lord Denning, delivering the Privy Council decision of *B Surinder Singh Kanda v Government of the Federation of Malaya* [1962] AC 322, put it succinctly as follows (at 337):

> The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: Nemo judex in causa sua: and Audi alteram partem. They have recently been put in the two words, Impartiality and Fairness. But they are separate concepts and are governed by separate considerations.

11 Indeed, any system is only as good as the persons who administer it. In so far as a *legal* system is concerned, the necessity for impartiality and objectivity is a given. Otherwise, respect for the law will be forfeit. Public confidence in the legal system will be eroded and disintegration and chaos will ensue. More than that, all that is noble and fine and which undergirds the law will be tarnished and destroyed. This cannot, and must not, be allowed to happen. Lord Denning MR, in my view, put in well, when he observed, in the English Court of Appeal decision of *Metropolitan Properties Co (FGC) Ltd v Lannon* [1969] 1 QB 577 at 599: "Justice must be rooted in confidence: and confidence is destroyed when right-minded people go away thinking: 'The judge was biased.'"

12 More specifically in the context of the present proceedings, if the allegation of bias were true, it would pollute the warp and woof of the very proceedings of the IC itself. The taint would be indelible.

13 Even more specifically, the allegations of bias were levelled against more than half of the members who constituted the IC. These were extremely serious allegations indeed, particularly if we take into account the fact that the report by the IC was a pivotal document in the present proceedings, containing the principal findings upon which the Board arrived at its final decision to suspend the appellant's registration as an acupuncturist.

14 At this juncture, it should be noted that whilst the abovementioned principle of natural justice is easily grasped in its essence by all, the actual test to be applied is not as clear-cut as it ought to be. Hence, I deal with this important legal issue first before proceeding to deal with the

particular allegations of bias in the present case (as to which see [46]–[51] below).

The two tests

15 There appear, in fact, to be two tests adopted by the courts in so far as *apparent* bias is concerned (it should be noted that there is *no* issue of *actual* bias in the present proceedings). One is more stringent than the other. The first – and less stringent – one is what has been termed the "*reasonable suspicion* of bias" test. The other has been termed the "*real likelihood* of bias" test. There has, as we shall see, been no small disagreement across the Commonwealth as to which test should prevail.

The Singapore position

16 The position in *Singapore* appears to be as follows. The Singapore Court of Appeal, in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 2 SLR 310, adopted, *inter alia*, the statement of principle laid down by Ackner LJ in *Regine v Liverpool City Justices, ex p Topping* [1983] 1 WLR 119. It was of the view (at 338, [83]) that the issue was whether "a reasonable and right-thinking person sitting in court and knowing the relevant facts would have any reasonable suspicion that [in that particular case] a fair trial for the appellant was not possible". This adoption of the "reasonable suspicion of bias" test can also be found in, for example, the Straits Settlements Court of Appeal decision of *Alkaff & Company v The Governor-in-Council* [1937] MLJ 211 and the Singapore High Court decision of *De Souza Lionel Jerome v AG* [1993] 1 SLR 882.

17 In a later decision, the Singapore Court of Appeal, in *Tang Liang Hong v Lee Kuan Yew* [1998] 1 SLR 97 at [46], the court affirmed the general principle (the "reasonable suspicion of bias" test) laid down in its earlier decision as set out in the preceding paragraph. However, it also referred (at [47]) to the test laid down in the House of Lords decision in *R v Gough* [1993] AC 646 ("*Gough*"), where (in the view of the court) "a more stringent test of apparent bias has been adopted"; this was, of course, the "real likelihood of bias" test, albeit as modified by the use of the term "real danger of bias" instead. However, the court held (at [48]) that "[f]or the purpose of this appeal, it is not material which of the two tests we apply in determining this issue [of apparent bias]". The court added that "whichever of the tests the court applies, the court must ascertain the relevant facts and circumstances on which the alleged apparent bias is founded" (see *ibid*).

18 It appears, therefore, that the present Singapore position is one that endorses the "reasonable suspicion of bias" test but which has left open the question as to whether or not that test ought to be superseded by the allegedly more stringent "reasonable likelihood of bias" test or (to utilise the terminology in *Gough*) the "real danger of bias" test. It should be noted, however, that there are Singapore decisions where it at least appears that both tests have been perceived as being interchangeable (see, for example, *Re Singh Kalpanath* [1992] 2 SLR 639 and *Re the Medical Registration Act (Cap 174)* [1994] 1 SLR 176). This last-mentioned point is important inasmuch as it is suggested below that there are sound reasons for the argument to that effect that both tests are, in substance, the same (see [34]–[44]).

19 It is interesting to note that counsel for *both* parties in the present proceedings accepted *Re Singh Kalpanath* ([18] *supra*) as embodying the correct principles to be applied. *However*, as I have pointed out in the preceding paragraph, this particular case in fact embodies *both* the tests mentioned above. If each test had in fact led to different results on the facts of the present case, a choice would clearly have had to have been made between them unless some form of synthesis between the two tests could have been achieved.

The issues

20 Fortunately, as we shall see, it is immaterial on the facts of the present case which of the two tests referred to above is adopted. It is therefore unnecessary for the purposes of the present proceedings to set out a definitive view. However, it might nevertheless be helpful to outline the legal topography across Commonwealth jurisdictions for at least four reasons.

21 First, *Gough* has in fact been criticised in a number of Commonwealth jurisdictions.

22 Secondly, and mainly in response to the criticisms just mentioned, there have in fact been developments in the English law itself since *Gough* was decided and which have modified the principles laid down in that very case itself.

23 Thirdly, it is hoped that this outline will aid future Singapore courts which are confronted squarely with a conflict between these two tests. As I point out (at [19] above), the fact that counsel in the present case cited a (Singapore) decision that utilised both tests interchangeably despite the continued controversy as well as the acknowledgment by the Singapore Court of Appeal itself (at [17] above) of this controversy make it clear that, at some future point in time, the Singapore courts will have to resolve this conflict (see also [45] below).

24 Fourthly, I proffer the tentative view that there is in fact no conflict between these two tests in any event.

25 It might be helpful, as an initial step, to set out briefly the main holdings in *Gough* itself.

The holding in Gough

26 In *Gough*, Lord Goff of Chieveley, who delivered the leading judgment, preferred the term "*real danger* of bias" [emphasis added] as opposed to the term "real likelihood of bias", although he saw "no practical distinction" between these two ways of stating the test (see [17] *supra* at 668). The learned law lord was also of the view that the focus here was on the concept of "possibility" as opposed to probability (see *ibid* at 665 and 668); indeed, he also referred (*ibid* at 668) to "a real *possibility* of bias" as well [emphasis added]. This particular focus will also be significant for reasons that will become apparent in a moment. It is useful, in my view, to set out Lord Goff's very helpful and perceptive summary of the law at this juncture, as follows (see *ibid* at 670):

> In conclusion, I wish to express my understanding of the law as follows. I think it possible, and desirable, that the *same test* should be applicable in all cases of apparent bias, whether concerned with justices or members of other inferior tribunals, or with jurors, or with arbitrators. Likewise I consider that, in cases concerned with jurors, the same test should be applied by a judge to whose attention the possibility of bias on the part of a juror has been drawn in the course of a trial, and by the Court of Appeal when it considers such a question on appeal. *Furthermore, I think it unnecessary, in formulating the appropriate test, to require that the court should look at the matter through the eyes of a reasonable man, because the court in cases such as these personifies the reasonable man*; and in any event the court has first to ascertain the relevant circumstances from the available evidence, knowledge of which would not necessarily be available to an observer in court at the relevant time. *Finally, for the avoidance of doubt, I prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias.* Accordingly, having ascertained the relevant circumstances, the court should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the relevant member of

the tribunal in question, in the sense that he might unfairly regard (or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration by him; though, in a case concerned with bias on the part of a justices' clerk, the court should go on to consider whether the clerk has been invited to give the justices advice and, if so, whether it should infer that there was a real danger of the clerk's bias having infected the views of the justices adversely to the applicant. [emphasis added]

Criticisms of Gough in other jurisdictions

27 It should be noted, however, that the "real danger of bias" test set out by Lord Goff in *Gough* has not proven to be universally popular. It has, to put it bluntly, been criticised in other Commonwealth jurisdictions. In one sense, this is to be welcomed, for English law, having been "exported" to so very many colonies in the past, has now to be cultivated with an acute awareness of the soil in which it has been transplanted. It must also be closely scrutinised for appropriateness on a more general level – that of general persuasiveness in so far as logic and reasoning are concerned. This is the essence of the ideal of developing an autochthonous or indigenous legal system sensitive to the needs and mores of the society of which it is a part. Only thus can the society concerned develop and even flourish. I have pointed out elsewhere the debt that is owed to the late Professor G W Bartholomew in first propounding this concept of autochthony (see *CHS CPO GmbH v Vikas Goel* [2005] 3 SLR 202 at [87]). The concept itself may appear simple. However, its profound intangible impact cannot be underestimated; still less its practice, which is probably the most difficult aspect of all.

28 It is therefore to be welcomed that English law is no longer accepted blindly. This is not to state that it has not served jurisdictions such as Singapore, even outstandingly well. But there ought to be departures where either local conditions and/or reason and logic dictate otherwise. Indeed, the essence of the former is embodied within s 3(b) of the Application of English Law Act (Cap 7A, 1994 Rev Ed).

29 It would appear that, in so far as the principle embodied in *Gough* is concerned, the principal difficulty lies in the context of logic and reasoning as opposed to local suitability. This is nowhere better exemplified than in the leading Australian High Court decision of *Webb v The Queen* ("*Webb*") (1993–1994) 181 CLR 41 (reference might also be made to the decisions of the same court in the earlier cases of *The Queen v Watson, ex p Armstrong* (1976) 136 CLR 248 (which the court in *Webb* also referred to), as well as *Johnson v Johnson* (2000) 201 CLR 488 and *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337). The court in *Webb* refused to follow *Gough* and, instead, criticised it. One principal point of criticism was that the emphasis on the *court's* view of the facts placed, correspondingly, inadequate emphasis on the *public* perception (see also *In re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700 at [59]). The court also pointed to decisions to the contrary that clearly adopted the "reasonable suspicion of bias" test – in, *inter alia*, Scotland (see, for example, *Bradford v McLeod* [1986] SLT 244 and *Millar v Dickson* [2002] SLT 988). A further reason given in *Webb* (centring on jury perception) need not concern us here as there is no jury trial in Singapore. It might nevertheless be noted that *Gough* has been endorsed in the Malaysian context (see, for example, the Malaysian Federal Court decisions of *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1; *Allied Capital Sdn Bhd v Mohamed Latiff bin Shah Mohd* [2001] 2 MLJ 305; and *Mohamed Ezam bin Mohd Nor v Ketua Polis Negara* [2002] 1 MLJ 321; as well as the Malaysian High Court decision of *Tan Kim Hor v Tan Chong & Motor Co Sdn Bhd* [2003] 2 MLJ 278) as well as in the New Zealand context (see, for example, the New Zealand Court of Appeal decisions of *Auckland Casino Ltd v Casino Control Authority* [1995] 1 NZLR 142 (where it was observed, at 149, that there was "little if any practical difference" between the tests in *Gough* and *Webb*) and *Riverside Casino Ltd v Moxon*

[2001] 2 NZLR 78, as well as the New Zealand Privy Council decision of *Man O'War Station Ltd v Auckland City Council (Judgment No 1)* [2002] 3 NZLR 577; this is in apparent contrast to earlier decisions such as *R v Papadopoulos (No 2)* [1979] 1 NZLR 629).

Modifications of Gough in England in response to the criticisms

30 The criticisms of *Gough* (briefly referred to above) were, in fact, later acknowledged by the House of Lords itself in its later decision in *Porter v Magill* [2002] 2 AC 357 at [100]. However, the House was of the view that "it is now possible to set this debate to rest" (*per* Lord Hope of Craighead at [102]). Lord Hope adopted the approach laid down by the English Court of Appeal in *In re Medicaments and Related Classes of Goods (No 2)* ([29] *supra*). In this last-mentioned case, Lord Phillips of Worth Matravers MR, delivering the judgment of the court, acknowledged the various controversies involved in the case law as well as the need (since 2 October 2000) to take into account the Strasbourg jurisprudence with respect to European Community law. In the event, the learned Master of the Rolls summarised the court's conclusions as follows (at [85]):

> When the Strasbourg jurisprudence is taken into account, we believe that a modest adjustment of the test in *R v Gough* is called for, which makes it plain that it is, in effect, no different from the test applied in most of the Commonwealth and in Scotland. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased.

31 Lord Hope then proceeded to observe thus in *Porter v Magill* (at [103]):

> I respectfully suggest that your Lordships should now approve the modest adjustment of the test in *R v Gough* set out in that paragraph [of Lord Phillips MR's judgment, reproduced in the preceding paragraph]. It expresses in clear and simple language a test which is in harmony with the objective test which the Strasbourg court applies when it is considering whether the circumstances give rise to a reasonable apprehension of bias. It removes any possible conflict with the test which is now applied in most Commonwealth countries and in Scotland. I would however *delete* from it *the reference to "a real danger". Those words no longer serve a useful purpose here, and they are not used in the jurisprudence of the Strasbourg court. The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.* [emphasis added]

32 The test in *Porter v Magill* was referred to in, *inter alia*, the subsequent English Court of Appeal decision of *Taylor v Lawrence* [2002] 3 WLR 640 (see especially at [60]) as well as in the House of Lords decision in *Regina v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [2000] 1 AC 119. Interestingly, though, the Judicial Committee of the Privy Council considered that it was not prepared to restate the law for New Zealand without having had the benefit of the view of the New Zealand Court of Appeal (see the *Man O'War Station* case ([29] *supra*) at [10]), and it appears that the point has not been settled yet in the New Zealand courts itself (see, for example, the New Zealand Court of Appeal decision of *Erris Promotions v Inland Revenue* [2003] NZCA 163).

33 The present English position (as *modified*) therefore appears to be as follows: The more stringent test still stands. In other words, the rejection of the (less stringent) "reasonable suspicion of bias test" continues. *However*, the more stringent test is no longer to be framed in terms of a "real danger of bias". Neither, so it seems, is it to be framed in terms of a "real likelihood of bias". The

operational terminology would appear to be that of "a real possibility". There is, nevertheless, no apparent difference in substance amongst these three phrases, certainly between the latter two. In other words, the English position, at least, is that the standard of proof is not one that is based upon the probability of bias but, rather, on the *possibility* of bias. Indeed, the preferred terminology of "a real possibility" of bias is wholly coincident with the standard of proof just mentioned.

Is there a difference between the two tests?

34 Notwithstanding the traditional distinction drawn been the "reasonable suspicion of bias" test and the "real likelihood of bias" test (now the "real possibility of bias" test under present English law), it might, in the first instance, be argued that in most cases, it would make no difference whether the "reasonable suspicion of bias" test or the "real likelihood of bias" test is applied (see, for example, the *Tang Liang Hong* case ([17] *supra*); *per* Staughton J in *Tracomin SA v Gibbs Nathaniel (Canada) Ltd* [1985] 1 Lloyd's Rep 586 at 596 as well as the *Locabail* case ([40] *infra*); *cf In re Medicaments and Related Classes of Goods (No 2)* ([29] *supra* at [47])). But might one be able to go further and argue, contrary (for example) to the decision in *Webb*, that there is no (even conceptual) difference between these two tests?

35 There appears to be some local case law that at least indirectly supports the proposition that there is no difference, in substance, between the two tests (see [18] above), although no detailed arguments were in fact canvassed.

36 It is also clear that both tests are premised on an *objective* basis. More significantly, the elements contained in both tests are not irreconcilable in substance (even leaving aside considerations centring around the Strasbourg jurisprudence referred to earlier).

37 In the English High Court decision of *Cook International Inc v BV Handelmaatschappij Jean Delvaux* [1985] 2 Lloyd's Rep 225, Leggatt J was of the view (at 231) that whilst contrasting the "reasonable suspicion of bias" test with the "real likelihood of bias" test was appropriate based on a plain reading of those two respective tests, nevertheless "as [he] read the authorities, the contrast is between reasonable suspicion of bias on the one hand, and the *appearance* of a real likelihood of bias on the other" [emphasis added]. The learned judge proceeded to observe that "[e]xpressed in that fashion, it appears to me that there is little indeed between the two tests" (see *ibid*). This in fact takes care of the concern of Deane J in *Webb* ([29] *supra* at 72) to the effect that the "real likelihood of bias" test is concerned with actual bias as opposed to the appearance of bias. And the oft-cited words of Lord Hewart CJ in the English Divisional Court decision of *The King v Sussex Justices, ex p McCarthy* [1924] 1 KB 256 at 259 that "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" therefore apply not only to the "reasonable suspicion of bias" test but also to the "real likelihood of bias" test as well.

38 The following observations by Cross LJ in the English Court of Appeal decision of *Hannam v Bradford Corporation* [1970] 1 WLR 937 at 949 (endorsed in *R v Liverpool City Justices, ex p Topping* ([16] *supra* at 123) should also be noted:

> To my mind, there really is little (if any) difference between the two tests which are propounded in the cases which have been cited to us. *If a reasonable person who has no knowledge of the matter beyond knowledge of the relationship which subsists between some members of the tribunal and one of the parties would think that there might well be bias, then there in his opinion a real likelihood of bias.* Of course, someone else with inside knowledge of the characters of the members in question might say: "Although things don't look very well, in fact there is no

real likelihood of bias." That, however, would be beside the point, because the question is not whether the tribunal will in fact be biased, but whether a reasonable man with no inside knowledge might well think that it might be biased. [emphasis added]

39 The common substance of both tests appears, in a nutshell, to be this: The key question is whether or not there was a perception on the part of a reasonable person that there would be a real likelihood of bias. It is important to underscore a point already made above (at [33]) to the effect that the concept of "likelihood" entails "possibility", as opposed to the higher standard of proof centring on "probability". This seems to me, in substance and effect, to be just another way of stating that, under such circumstances, there is a "reasonable suspicion" on the part of the person concerned. In other words, whilst the concept of "reasonable suspicion" is indeed of a less stringent standard, this lower standard is reflected in the concept of "possibility" (or "likelihood") instead of "probability". At this point, there appears to me to be no difference in substance between the "reasonable suspicion of bias" and "real likelihood of bias" tests. As I point out below (at [44]), one must also guard against gratuitous semantic confusion. What matters, in the final analysis, is a practical approach that takes into account not only the possible meanings of the word and phrases in question but also the context in which they appear. Looked at in this light, I am afraid that the word "real" in the "real likelihood of bias" test has, with respect, led to some confusion. It does not, read in context, mean "actual" as, for example, was the view of Deane J in Webb (see above at [37]). After all, the test pertains to apparent, as opposed to actual, bias in the first instance.

40 As importantly, and turning to the principal criticism levelled against *Gough* in *Webb* (at [29] above), I also do *not* think that the contrast between the "reasonable suspicion of bias" and the "real likelihood of bias" tests is exemplified in any way by a contrast between *perspectives*. In particular, I think that one ought not to draw a sharp distinction between the court's perspective on the one hand and that of the public on the other. Both are two sides of the same coin. Or, to put it more accurately, both are *integral parts of a holistic process*. It is undoubtedly the case that the court will in fact have to ascertain what the perspective of the public is and, to that extent, "personifies" the reasonable man. This is a practical reality that cannot be ignored, even though it might not be perceived to be ideal. On the other hand, it is equally clear, in my view, that the court *cannot* replace, as it were, the reasonable man and, to that extent, it is wrong to state that the public perception will either be ignored or otherwise receive inadequate emphasis. Indeed, in the English Court of Appeal decision of *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at [17], Lord Bingham of Cornhill CJ, Lord Woolf MR and Sir Richard Scott V-C, delivering the judgment of the court, were of the view that:

> In the overwhelming majority of cases we judge that application of the two tests would anyway lead to the same outcome. *Provided that the court, personifying the reasonable man*, takes an approach which is based on broad common sense, *without inappropriate reliance on special knowledge, the minutiae of court procedure or other matters outside the ken of the ordinary, reasonably well informed member of the public*, there should be no risk that the courts will not ensure both that justice is done and that it is perceived by the public to be done. [emphasis added]

41 The observation just quoted in fact meets the concerns of Deane J in *Webb* ([29] *supra* at 73), where the learned judge expressed the view that, under the "real likelihood of bias" test, "a detailed knowledge of the law or knowledge of the character or ability of the members of the relevant court" was required, although it should be noted that the English Court of Appeal (albeit differently constituted) cast some doubt on the above proposition on a subsequent occasion (see *In re Medicaments and Related Classes of Goods (No 2)* ([29] *supra* at [65]). With respect, however, I would prefer the approach adopted in the quotation just mentioned instead.

42 Besides, the practical fact of the matter is that there is, and can be, no precise or mathematical formula that can be applied in situations of alleged apparent bias. Indeed, Lord Bingham of Cornhill CJ, Lord Woolf MR and Sir Richard Scott V-C, delivering the judgment of the English Court of Appeal in *Locabail (UK) Ltd v Bayfield Properties Ltd* ([40] *supra*) observed thus (at [25]):

> It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided.

43 Hence, while it is desirable to have an appropriate point of departure in so far as the test as to whether or not there has been apparent bias, one ought not fall prey to fine semantical formulations and/or distinctions. One has always to view the substance and not merely the form of the terminology utilised. In an ideal world, form and substance would be integrated. However, this is not always the case. When there is an apparent dissonance between form and substance, it is imperative to focus on the substance and not be distracted unduly by the form. Such an approach in fact enables the court to bring both form and substance into better alignment with each other. The present controversy between the "reasonable suspicion of bias" and "real likelihood of bias" tests is no exception. I have, in fact, already explained (at [39] above) why both tests are in fact the same in substance. I want, at this juncture, to focus instead on the dangers of "semantic hairsplitting".

44 The dangers and confusion that are engendered by focusing on the form of words as opposed to their substance is nowhere better illustrated than in the search for a proper formulation in so far as the degree of probability with respect to the test for remoteness of damage in contract law is concerned. In particular, the leading House of Lords decision in *Koufos v C Czarnikow Ltd, The Heron II* [1969] 1 AC 352 ("*The Heron II*") ought to be referred to. In brief, the law lords utilised a very wide variety of expressions or phrases in their respective attempts to capture what seemed to them to be a proper formulation. Lord Reid preferred the term "not unlikely", whilst rejecting terms such as "liable to result", "a serious possibility" and "a real danger" (see especially at 383 and 388). Lord Morris of Borth-Y-Gest preferred the term "likely or was liable to result" (see at 397). In a similar vein, Lord Hodson preferred the term "liable to result" (see at 410–411), whilst Lord Pearce preferred the terms "a serious possibility" and "a real danger" (see at 414–415). Lord Upjohn, on the other hand, preferred the terms "a real danger" or "a serious possibility" (see at 425). The term "on the cards" was, however, emphatically rejected by the House. There is here a more than passing analogy with the difficulties experienced in the attempt to arrive at a formulation in so far as the test for apparent bias is concerned. However, the semantical complexity as well as at least possible confusion in *The Heron II* itself prompted Lord Denning MR, in the English Court of Appeal decision of *H Parsons (Livestock) Ltd v Uttley Ingham & Co Ltd* [1978] QB 791 to state (at 802) that "I cannot swim in this sea of semantic exercises". At this juncture, one can see the dangers of "semantic hairsplitting" for what they (unfortunately) are.

45 Whilst I am of the view that there is no difference in substance between the two tests, it must be emphasised that the issue as to whether or not this view is indeed correct and, if not, which test should prevail in the Singapore context has yet to be decided. Indeed, a definitive view ought to be expressed by the Singapore Court of Appeal itself. Principles of natural justice are so fundamental that any interpretation or elaboration of them must have no less than the imprimatur of the highest court of the land.

The allegations of bias in the present case

46 Turning to the *actual* allegations of apparent bias in the present case, it will be seen that these allegations are without basis, *regardless* of which test is applied. However, one preliminary

point needs to be addressed, if nothing else, because of the nature of the point itself.

47 I note that it was alleged by the appellant that Dr Tan bore a grudge against him and that that was the primary motivation for proffering the complaint against him. It appeared to be admitted by counsel for both parties that this was in fact the case. Indeed, in her submissions, counsel for the Board referred to the affidavit of Mr Ng Cheong Kim, the chairman of the IC, who had not only deposed that the IC was "aware of the problems between both parties"[note: 1] but also that the IC had "made a conscious decision not to be unduly influenced by [the complainant's] evidence".[note: 2] Mr Ng further deposed that it was clear from the IC's report to the Board that the IC "had arrived at its findings of fact and conclusions largely based on the evidence of other witnesses who had appeared before" the IC and that "[l]ittle or no reliance was in fact placed on [the complainant's] evidence".[note: 3] In any event, the germane issue in the present proceedings is whether or not, *according to the objective application of the relevant provisions and principles of law*, the complaint against the appellant was *justified*. If the appellant's conduct is in fact *legally objectionable*, the Board (and, I might add, this court) has no choice but to administer the law and the consequent legal sanctions appropriate to the case at hand. But what it *does* mean is that this court must, in the light of the alleged grudge just mentioned, be especially careful in its finding and decision in so far as the allegations of apparent bias against certain members of the IC are concerned.

48 The allegations against two of the members, Mr Ng Cheong Kim (the chairman) and Mr Tan Khye Hua, may be dealt with briefly. This is because the allegations were, in my view, bereft of any merit whatsoever. They were based on the argument that the complainant was, in the words of counsel for the appellant, "well-known to" them. When asked by this court what "well-known to" meant precisely, counsel for the appellant said that it meant "personal acquaintance". However, mere personal acquaintance without more cannot constitute bias. If not, much discourse of social life would be at least mildly fractured at best, impossible at worst. Indeed, when pressed for a response, counsel for the appellant candidly admitted that the case of bias based on such a dilute ground could not really be sustained. I pause here to note that counsel for the appellant did not attempt to evade or gloss over the weak points in his case and this is a good example of how advocates ought to conduct their respective cases.

49 However, the allegation against a third member, Mr Ang Liang, was not as straightforward. Put succinctly, it was argued by counsel for the appellant that Mr Ang Liang was close to a Saint John's Brigade officer, Mr Chua Wee Kwang and that Mr Chua, in turn, was close to Dr Tan. He further alleges that Mr Chua and Dr Tan had colluded to attempt to remove the appellant from his position as a Saint John's Brigade officer over allegations of problems with the marking of examination scripts within that organisation. I accept, however, the argument of counsel for the Board, Ms Chew, to the effect that this allegation was misconceived. In particular, I note, first, that Mr Ang Liang had as little connection with Dr Tan as the other two members of the IC mentioned above. Secondly, it appears that the only dealings Mr Ang Liang had with Mr Chua Wee Kwang were strictly professional in nature and stemmed from their common membership in the School Advisory Committee of Clementi North Primary School.

50 There was yet another (more general) allegation of bias. It was that the *conduct* of the IC proceedings left much to be desired. In particular, the IC was stated to have favoured Dr Tan over the appellant by truncating the testimony of the latter and of his witnesses. It was also alleged that the IC had ensured that the cross-examination of Dr Tan (who, it will be recalled, was no friend of the plaintiff) was brief and biased in his (Dr Tan's) favour. Counsel for the appellant in fact took me through parts of the transcript where this was alleged to have happened. In each instance, however, counsel for the Board managed to demonstrate to my satisfaction why the particular allegation of bias in question was in fact misconceived. A tabulation of the various instances with arguments by both

counsel can be found in *Appendix A* of this judgment. It bears repeating that I accepted counsel for the Board's explanations and analyses with regard to each instance of alleged bias contained in this Appendix.

51 It follows, therefore, that the allegations of bias are wholly without basis. Although I have expressed the view that there is no difference in substance between the "reasonable suspicion of bias" and "real likelihood of bias" tests, it is clear that even if one accepts that there is a difference and that the latter is hence more stringent than the former, it would make no difference to the result. It is clear that, even applying the more stringent test, it could not be argued that there had been apparent bias on the facts of the present case.

The alleged forgery

52 The brief factual background has already been set out earlier. To recapitulate, the complainant had alleged that the second signature in "Document A" (the COE with regard to the appellant) was not his but was forged. This second signature was to be found beside the signature of the Justice of the Peace ("JP"). It is important to note that it was common ground between both counsel for the appellant as well as counsel for the Board that this signature was clearly forged. *The sole issue was who was responsible for it.*

53 The appellant contended that when he had handed in Document A together with his application form, this signature was clearly absent, whereas the Board contends that the situation was the exact opposite inasmuch as the second signature was already present in the copy of the COE (*ie*, in Document A) at the time it was submitted by the appellant together with his application form. A copious amount of testimony during the proceedings before the IC centred on this particular issue and, indeed, both counsel took up much time during the present proceedings as well to canvass this issue.

54 There was a further signature of the complainant which was crucial to the very validity of the original COE itself. In this regard, the JP's signature was to authenticate the copy of the certificate as a true certified copy, as Document A was clearly not the original copy but a copy thereof. The third signature was of course the second (*forged*) signature of the complainant referred to in the preceding paragraph.

55 It was, once again, common ground between counsel for the appellant and counsel for the Board that this first signature (by the complainant) was genuine, although the circumstances under which it was signed were controverted by both parties. In brief, the purposes for which this signature was obtained were in dispute between the parties. However, it is unnecessary to canvass which view was in fact the correct one. Indeed, to do so would distract us from the main issue at hand: Who was responsible for the second forged signature? Nevertheless, there remained, in my view, *yet another* issue which was of no mean significance. *What purpose did the second (forged) signature serve and, in particular, what was its legal effect on the copy of the COE itself (*ie, *Document A)?* In this last-mentioned regard, counsel for the appellant was of the view that this second signature was in fact *redundant or superfluous* inasmuch as it was unnecessary to either the validity, or the authentication of a copy, of the COE itself. Counsel for the Board did not want to speculate on the purpose for this second signature. It is significant, however, that she did not take a clear stand in the opposite direction either. It seems clear, in my view, that *the second (forged) signature was indeed redundant or superfluous and did not impact on the validity of the original COE or the authenticity of the copy of the original COE*.

56 It may conduce towards clarity to reiterate the overall sequence as well as number of

signatures with regard to both the original copy of the COE as well as the copy thereof (here, Document A).

57 The validity of the original copy of the COE was confirmed by the (first, and genuine) signature of the complainant.

58 The *copy* of the COE (*ie*, *Document A*) was attested to by the JP's signature (the genuineness of which is not in doubt). This copy would of course contain the first (and genuine) signature referred to in the preceding paragraph.

59 What, then, was the purpose for the *second* (and *forged*) signature (overall, the *third* signature), which was affixed beside the JP's signature? Herein lies a puzzle that both counsel were unable to suggest a solution to and which will, I fear, remain a mystery.

60 The only assistance, if any, was the fact that whenever *copies* of a COE were authenticated by the same JP's signature, there would *invariably* be a *second* signature by the signatory of the original COE beside it. In so far as COE's relating to *other employees* were concerned, these were in fact handled by the *appellant* himself. In other words, the appellant would sign the original copy of the COE, thus conferring upon it the necessary validity. The *copy* would then be authenticated by the JP through his signature. *The appellant would then append a second signature beside the JP's signature*, which would be the *third* signature, overall, in so far as the *copy* of the COE was concerned.

61 In *these* proceedings, the *same* approach appeared to have been followed, save that since it was the *appellant's* COE, he could not sign it himself. Hence, the *Dr Tan* signed the original copy of the COE instead, thus conferring upon it the necessary validity. This correlates to the *first* signature, *overall*, referred to above (see [57]). The *copy* of this particular COE (here, *Document A*) was then authenticated by the JP's signature (this correlates to the *second* signature, *overall*, referred to above (see [58])). There was also present a *third* signature, *overall*, which was referred to above. Following the apparent practice with respect to copies of the other employees' COE's, this particular signature ought to have been the *Dr Tan's*. *However*, as we have seen, this signature was in fact *forged*. *It is important to emphasise, once again, however, that the fact that this signature was forged had no legal effect whatsoever on the authenticity of the copy of the COE (here, Document A) simply because it neither added to nor detracted from the authenticity of the copy itself*. In other words, this extra (forged) signature (the third, overall) was *wholly redundant or superfluous*.

62 However, the fact that the forged signature had no legal effect whatsoever on Document A itself, whilst having a *possible* impact on the present proceedings, does *not necessarily* mean that the person or persons who *effected the forgery* are innocent of improper conduct. This is why the *main* issue already referred to above (centring on *who was responsible* for the forgery) is of the *first importance*. It is to that issue to which my attention now turns.

63 It has already been mentioned that an enormous amount of evidence was adduced during the IC hearing with regard to the issue as to *who* was responsible for the forged signature in Document A. I do not propose to go into the details all over again, although counsel for both parties did refer extensively to the evidence adduced at first instance.

64 What is clear is that the present court would be very slow in overturning the findings of the IC to the effect that the *appellant* had been responsible for the forged signature unless it could be demonstrated to its satisfaction that that finding was clearly against the weight of the evidence or

was otherwise wrong in law (and see [8] above).

65 Counsel for the appellant raised two principal points in argument. The first was that the testimony of the employee of the Board, Ms Zou Yu Min, who confirmed that when the appellant had submitted the copy of the COE (*ie*, Document A) which she had personally received, there had been *two* signatures on it (including the forged signature) was inherently improbable as this had taken place two years prior to the IC hearing and that there was a clear unlikelihood of a person being able to recall that there were two signatures in one particular document in the midst of a sea of other documents. I pause here to note that there was also a *third* signature, which was the JP's signature, but that is not in issue here. Hence, the two signatures referred to at the present are, respectively, the genuine signature of the complainant and the forged signature of the complainant, the latter of which was affixed next to the JP's signature. Counsel for the appellant thus argued that this left open the possibility that Document A had been tampered with from the beginning. He also argued that the corroborative evidence by another employee of the Board was wholly unpersuasive as she had only seen the document concerned two weeks prior to the IC hearing itself.

66 The second argument relied upon by counsel for the appellant was that the evidence of the Board's expert, Ms Lee Gek Kwee (of the Health Sciences Authority ("HSA")), to the effect that she was, *inter alia*, unable to confirm whether the second signature in Document A was that of the complainant and that it was therefore likely to be a forgery did not prove who the perpetrator of the forgery was (if it was in fact a forgery which had not been positively stated by Ms Lee herself). He reiterated the argument to the effect that the second (forged) signature could have been inserted into Document A later by someone who had access to documents in the Board. He further argued that the appellant had wanted further investigation by the Board with regard to this last-mentioned argument but that the IC had been dismissive of this request. The IC had, instead, challenged the appellant to lodge a police report and that this had in fact been subsequently done.

67 Not surprisingly, counsel for the Board controverted both the aforementioned arguments. First, she argued that the appellant had never denied that there was not a second signature on the copy of the COE until after the report from the HSA had been received. She pointed out, further, that the corroborative evidence referred to above (at [65]) was merely in respect of the acceptance of the application form. To this extent, however, such evidence would be neutral in so far as this particular issue was concerned. Most importantly, perhaps, counsel for the Board pointed out that if the forgery had not in fact been perpetrated by the appellant, the only reasonable explanation would have been that someone at the Board had perpetrated it and that there had been a conspiracy. However, in her view, a conspiracy theory was inherently improbable. In this regard, she argued that one would have thought that if there had in fact been a conspiracy against the appellant, he would have lodged a police report *prior to* the IC hearing and it was in that context that the IC had suggested that the appellant lodge a police report. Counsel for the Board further argued that it did not lie in the mouth of the appellant to assert that the Board should have conducted internal investigations when the appellant was not prepared to answer questions regarding alleged tampering of the document. Pertinently, counsel for the appellant had not cross-examined Dr Tan concerning the conspiracy theory.

68 Secondly, counsel for the Board argued that the Board's decision on the point relating to the alleged forgery had not been based solely on the evidence of its expert witness. She further pointed out that the appellant's own expert had concurred with the findings of the Board's expert.

69 Counsel for the appellant, in response, argued that the appellant had only raised the issue that the COE originally submitted had only one signature after the report from the HSA had been received because he had thought that the original reference was to *another* document (Document C)

which was a completely different document and which he had personally asked Dr Tan to sign a second time. Once, he argued, he had discovered that the reference was in fact to Document A, he had raised the argument that there had only been one signature in Document A as originally submitted.

70 As can be seen, there were many arguments proffered by both sides. The main arguments had a common thread which focused on the concept of improbability. On the one hand, the appellant argued that it was inherently improbable that the person who received his documentation (including the copy of the COE) could recall seeing two signatures on the copy of the COE submitted (one of which was of course forged), given the number of applications submitted and (more importantly) the lengthy interval between the date on which she received the application and the IC hearing itself.

71 On the other hand, counsel for the Board argued that if the appellant was right in arguing that the copy of the COE he submitted had only *one* signature (*ie*, was sans the forged signature), then the second (forged) signature must necessarily have been inserted by someone at the Board. This would have entailed a conspiracy which was inherently improbable.

72 It is axiomatic that the burden of proof lies on the appellant to prove the elements of his case. Even though his argument is not an implausible one, the argument that there had been a conspiracy against him is unconvincing. This is particularly the case in view of the fact that I had earlier rejected the appellant's arguments of alleged bias on the part of the three members of the IC (see [46]–[50] above). It was clearly acknowledged by counsel for both parties to the present proceedings that Dr Tan and the appellant did not get along. However, there has been no evidence adduced, in my view, that supports the argument that Dr Tan had somehow influenced one or more members and/or employees at the Board to "fix" the appellant. On the contrary, counsel for the Board referred to the transcript of proceedings that included the appellant's own testimony and that (more importantly) revealed, convincingly in my view, that there was indeed no real basis for the appellant's allegation that a conspiracy against him had indeed taken place.[note: 4]

73 I have also earlier held that the addition of the second (forged) signature was strange because it would have made no difference to the authenticity of the document which was dependent on the JP's signature. This, in turn, militates against the appellant's argument to the effect that there had been a conspiracy against him and simultaneously supports counsel for the Board's argument that the argument centring on a conspiracy is inherently improbable, perhaps even incredible.

74 I therefore find that the second (forged) signature was affixed by the appellant. As I have alluded to above, what puzzles me is why the appellant adopted this particular course of action. In this regard, I do accept the argument by counsel for the Board to the effect that the appellant had been given more than ample opportunity to explain why there appeared to be a practice of affixing two signatures whenever the COE concerned was signed by the JP, but that he had not availed himself of the opportunity to do so. It could well have been the case that the appellant had thought that a similar procedure had to be applied to his own COE, except that, unlike the COE's of other employees at ECM, he could not affix this second signature beside that of the JP's. This second signature would have to be that of Dr Tan. Perhaps he had thought that it was a mere formality and affixed Dr Tan's signature himself (hence, the resultant forgery). Perhaps he had fallen out with Dr Tan by that time and had therefore "fixed" the problem himself. Perhaps, for reasons which, with respect, appear to be unwarranted and in the final analysis unfortunate, the appellant thought that it was an exercise in futility to speak up at the IC hearing itself. If so, this is unfortunate because we ought always at least commence with a presumption of good faith. Further, even if bad faith should rear its ugly head, it would be placed on the record and, in all probability, be corrected by an appellate tribunal.

75 Unfortunately, this is all speculative. The court deals with real events, not speculative possibilities. Even more unfortunately, the appellant did not avail himself of the opportunity to proffer an explanation. This was probably because this would have been inconsistent with his argument (made throughout) that he was in no way responsible for the second (forged) signature. However, this second signature must have been affixed by someone. It could not have appeared out of thin air. And, as I have already held, it is more probable than not that the appellant, rather than someone else at the Board, was responsible for this particular (forged) signature.

76 What remains to be decided, however, is whether or not the fact that the second (forged) signature was redundant or superfluous ought to make a difference in so far as any sanction imposed under the Act is concerned. I will return to that issue after considering the next substantive issue, which centres on the alleged inaccurate particulars that were filed by the appellant in his application form.

The alleged inaccurate particulars in the appellant's application form

77 Counsel for the appellant proceeded on a two-pronged approach here, either of which would have allowed his client to succeed on this particular issue. It will be recalled that the Board had found that the appellant had misrepresented himself by including inaccurate particulars in his application form for registration as an acupuncturist. In particular, he represented himself as a *full-time* TCM practitioner who had *practised a total of 26 sessions comprising 182 hours*. This, so the Board found, could not have been the case since he was employed as *a manager in charge of the administration of ECM Clinic*.

78 The first argument was a more factually-centred one. It was simply that the particulars stated in the application form were *true*. Nothing more, and nothing less. The appellant's argument ran along the following lines. Although he did in fact take charge of the administration of the clinic, counsel for the appellant maintained that he was nevertheless *simultaneously on standby for at least seven hours during each of the 26 sessions mentioned*. This resulted in a total of 182 hours that was recorded in his application form.

7 9 *Even if* the appellant *truly and subjectively believed in* the fact that this constituted the practice of TCM, an *objective* approach must nevertheless prevail. Indeed, although we will never be able to *completely* mediate the tension between the subjective and objective elements in the factual matrices we encounter, there must, on balance, always be a preference for the objective. It is the objective element in the law that furnishes it with its legitimacy, especially in the eyes of the public. The very concept of fairness and justice connotes – indeed, embodies – the concept of objectivity. The underlying idea is that of fairness and justice to *all, regardless of one's situation or station in life*. This is why the nobility of the law is no mere cliché but, rather, an ideal that we can trust in constantly.

80 There would otherwise be *practical* problems as well: How would the court be able to ascertain whether or not the *subjective* belief of the appellant was true? Surely, not by virtue of the appellant's own (unsubstantiated) assertion. It would also be opening Pandora's Box inasmuch as even objectively strained or even unjustified assertions could be proffered by persons registering (or, as is the case here, already registered) under the Act. How, then, would the Board decide? If subjective beliefs were all that the Board had to go on in so far as its criteria for determination were concerned, it would, logically, have to admit virtually all and sundry. Surely, this could not have been the intention of the Singapore Legislature. Indeed, the whole point of the Act was to *regulate* the practice of TCM in the *public interest*. To achieve this aim, this brings us, full circle, back to the *objective* approach as *only objective criteria* would furnish the Board with a viable means of achieving

the purpose just enunciated.

81 Applying the objective approach to the appellant's claims in the present case, it is clear that the appellant was *not* practising TCM during the time when he was on *standby*. Indeed, no real evidence was adduced to explain what being "on standby" actually meant. It is clear, nevertheless, that, despite his claims to having treated patients, the appellant was not practising TCM. Isolated cases of treatment (and these appeared extremely rare in any event) cannot constitute the practice of TCM. This is not merely a literal approach. The underlying spirit of the *practice* of TCM must surely entail a *systematic as well as actual* treatment of patients.

82 In the circumstances, too, it is curious, to say the least, that the appellant would claim to be practising TCM "full time". This was clearly not so in relation to the whole context of his job (which was centred on *management*) and still less so in relation to even the 26 sessions he was "on standby".

83 The second prong of the appellant's approach towards the present case was that he *had in fact practised as a TCM practitioner, regardless of the actual details stated* and that, therefore, he had not misrepresented himself as alleged by the Board.

84 There were at least two elements in this second prong of the appellant's approach. The first element was related to the first prong and has been briefly touched on above. It is that the appellant *actually treated patients*. *However*, the same argument that militated against the first prong applies with equal force here. In other words, even if it were accepted that the appellant did actually treat patients, these cases were far too sporadic and isolated to constitute the *practice* of TCM as such. I also bear in mind the fact that there was tremendous controversy engendered with respect to each instance of alleged treatment of patients by the appellant.

85 The second element centred on *more ostensibly legal issues* – in particular, the *legal interpretation or construction* of not only the Act but also the germane subsidiary legislation made thereunder in relation to whether or not the appellant could, *legally*, be considered as practising TCM and, hence, outside the purview of that part of the complaint presently considered. Indeed, counsel for the appellant argued that *even if* the appellant were not considered to have actually treated patients, he would nevertheless fall within the scope of the Act itself. Not surprisingly, counsel for the Board argued, vigorously, to the contrary.

86 Counsel for the appellant referred to the definition of "*practice of traditional Chinese medicine*" in s 2 of the Act, which reads as follows:

> "*practice of* traditional Chinese medicine" means *any of* the following acts or activities:
>
> (*a*) acupuncture;
>
> (*b*) the diagnosis, treatment, prevention or alleviation of any disease or any symptom of a disease or the prescription of any herbal medicine;
>
> (*c*) the regulation of the functional states of the human body;
>
> (*d*) the preparation or supply of any herbal medicine on or in accordance with a prescription given by the person preparing or supplying the herbal medicine or by another registered person;

(*e*) the preparation or supply of any of the substances specified in the Schedule;

(*f*) the processing of any herbal medicine; *and*

(*g*) *the retailing of any herbal medicine*,

on the basis of traditional Chinese medicine

[emphasis added]

87 In particular, counsel for the appellant referred to *para (g)* above and argued that the appellant had in fact prescribed medicine for patients. It is admitted that the above paragraphs are *disjunctive* (see the phrase "any of" which gives a different colour and meaning to the word "and" in para (f)). However, it is clear that para (g) refers to the "*retailing*" of any herbal medicine that was consistent with the basis of TCM ("herbal medicine" being also defined in s 2 of the Act) and, indeed, counsel for the appellant appeared to acknowledge this as well.

88 More importantly, counsel for the Board pointed out that the appropriate reference ought, *instead*, be to the definition of the "*prescribed* practice of traditional Chinese medicine", which was also to be found in s 2 of the Act, and which reads as follows:

> "*prescribed* practice of traditional Chinese medicine" means any type of practice of traditional Chinese medicine that has been *declared by the Minister by order made under section 14 (1)* as a prescribed practice of traditional Chinese medicine. [emphasis added]

89 Counsel for the Board then quite appropriately referred me to *s 14(1)* of the Act (which is the substantive provision which must be read with the definition of "prescribed practice of traditional Chinese medicine" set out in the preceding paragraph). It was *this* provision, she argued, that set out the substantive requirements with regard to *registration* as a practitioner under the Act itself. Indeed, an even cursory perusal of the provisions of the Act itself will reveal that this is indeed the case (note here may also be taken of s 24 which relates to the *unlawful* engagement in the prescribed practice of TCM and the criminal sanctions associated therewith). However, because s 14(1) of the Act ought to be read in context, it would be helpful to set out the entire section in full, as follows:

> **Prescribed practices of traditional Chinese medicine**
>
> **14.**—(1) The Minister may from time to time, by order published in the *Gazette*, declare any type of practice of traditional Chinese medicine as a prescribed practice of traditional Chinese medicine if he is of the opinion that it is in the public interest for that type of practice of traditional Chinese medicine to be regulated under this Act.
>
> (2) Any person who desires to carry out any prescribed practice of traditional Chinese medicine shall make an application for registration to the Board in accordance with the regulations made under this section.
>
> (3) The Board may, subject to the regulations made under this section, register a person to carry out any prescribed practice of traditional Chinese medicine.
>
> (4) The Minister may, in respect of each prescribed practice of traditional Chinese medicine, make regulations to provide for or with respect to the following matters:

(*a*) different classes of registration;

(*b*) the form and manner of application, and the application fee, for each class of registration;

(*c*) the qualifications and other requirements for each class of registration;

(*d*) the conditions and duration of each class of registration;

(*e*) the circumstances in which a class of registration may be altered or renewed and the fees payable in respect thereof;

(*f*) the course, qualifying examination and evaluation for the purpose of any class of registration, the fees payable for such course, examination and evaluation, and the conditions upon which an applicant may be exempted from such course, examination or evaluation;

(*g*) the practice and conduct of registered persons, including the carrying out of the prescribed practice of traditional Chinese medicine, the use of any means of giving publicity to their practice and the use of titles and qualifications;

(*h*) the exemption of persons or classes of persons from registration; and

(*i*) incidental, supplementary or transitional matters in respect of the declaration of any type of practice of traditional Chinese medicine as a prescribed practice of traditional Chinese medicine.

90 As counsel for the Board further pointed out, one would then have to look at the relevant subsidiary legislation, having regard to the content and scope of s 14(1) itself (reference may also be made to the *criminal* penalties prescribed under s 24 of the Act with regard to unlawful engagement in the "*prescribed* practice of traditional Chinese medicine"). In this regard, the relevant provision is to be found in the Traditional Chinese Medical Practitioners (Prescribed Practices of Traditional Chinese Medicine) (Consolidation) Order (Cap 333A, O 1, 2002 Rev Ed). It is short but to the point. The relevant provision is para 2, which reads as follows:

2. The Minister hereby declares the following acts or activities as *prescribed practices* of traditional Chinese medicine for the purposes of the Act —

(*a*) acupuncture;

(*b*) the diagnosis, treatment, prevention or alleviation of any disease or any symptom of a disease or the prescription of any herbal medicine on the basis of traditional Chinese medicine; *and*

(*c*) the regulation of the functional states of the human body on the basis of traditional Chinese medicine.

[emphasis added]

91 As counsel for the Board correctly pointed out, the focus was on the *treatment* of patients as opposed to the mere prescription of medicine. Counsel for the Board further argued that the word

"and" italicised above imports a normal *conjunctive* meaning. Whilst not an unpersuasive argument, it does not appear entirely clear that that this construction ought to be adopted simply because the reference is to "prescribed *practices*", the emphasis here being on the reference to the plural rather than the singular. Further, in s 2 of the Act itself, the "prescribed practice of traditional Chinese medicine" means, as we have seen (at [88]), "*any type* of practice of traditional Chinese medicine that has been declared by the Minister by order made under section 14(1) as a prescribed practice of traditional Chinese medicine".

92 Be that as it may, it is my view that there must be a *regular as well as systematic* element before a person can be said to be involved in the *practice* of TCM. This accords with a practical and commonsensical view of matters. However, the regular as well as systematic element was clearly missing in so far as the appellant in the present case was concerned. The alleged instances of practice were far too isolated and this was even before one examined the actual *content* of the alleged treatments themselves. I should add that none of the specific instances suggested, either expressly or impliedly, that they were merely representative of a broader (and, more importantly, systematic as well as regular) practice. If, of course, counsel for the appellant's argument for a conjunctive meaning as set out in the preceding paragraph is accepted, the conclusion I have just arrived at would be cemented even further. All this is sufficient, in my view, to resolve the question. However, in deference to counsel for the appellant's efforts on behalf of his client, I now proceed to consider an additional argument tendered by him.

93 Counsel for the appellant sought to rely on another set of subsidiary legislation under the Act – in particular, Reg 6(1)(*e*) of the Traditional Chinese Medicine Practitioners (Registration of Traditional Chinese Medicine Physicians) Regulations (Cap 333A, Rg 5, 2002 Rev Ed), which reads as follows:

> **Full registration as traditional Chinese medicine physician**
>
> **6.**—(1) The following persons may be granted full registration as a traditional Chinese medicine physician:
>
> …
>
> (*e*) a person who is allowed by the Board to apply for full registration under regulation 8 (5).

94 In particular, counsel for the appellant argued that the appellant was a person who was "allowed by the Board to apply for full registration under regulation 8 (5)". *Regulation 8(5)* itself reads as follows:

> Where the Board is satisfied with the performance of the registered person during the period of observation and upon proof that the registered person has completed such training or fulfilled such other condition as required by the Board, the Board may allow the registered person to apply for full registration.

95 With respect, however, this argument really puts the proverbial cart before the horse. Even if counsel for the appellant's argument here were accepted, this would *presuppose* that the appellant had in fact satisfied the Board that he was qualified to be registered under the Act. *In this regard, the inaccurate details in his application form merely served to undermine the foundation of his attempt to bring himself within the purview of Regulation 6 read with Regulation 8(5)*.

96 Despite the valiant (and oft-times somewhat creative) attempts by counsel for the appellant

to rationalise away the submission by the appellant of the inaccurate or erroneous particulars in his application form to the Board on both factual as well as legal grounds, I found them to be, in the final analysis, unconvincing.

97 What does appear of some at least limited relevance is this: To what extent, if any, did the appellant *hold a genuine belief that he had honestly furnished the Board with satisfactory details*? If he did, would this exonerate him from all possible blame and, if not, would it possibly go to the severity of the sanction that would be levelled against him?

98 I have already elaborated upon the *signal importance* of an *objective* approach above (see [79]). Although stated in a slightly different context, the *general* principle still holds and applies equally to the present issue. In other words, it is, in my view, legally immaterial whether or not the appellant held a genuine *subjective* belief that he had honestly furnished the Board with satisfactory details in his application form. There are good reasons for adopting such an (objective) approach. I have dealt with these reasons earlier on in this judgment (see generally above at [79]–[80]) and will therefore not repeat them once again here.

The appropriate sanction

99 The Board agreed with the IC's findings of fact to the effect that there had indeed been a forgery of the second signature effected by the appellant on the copy of the COE (Document A) and that appellant had also inserted inaccurate details in his application form for registration as an acupuncturist.

100 However, before proceeding to consider the issue of the sanction that ought to be administered against the appellant, it is important to ascertain first under what precise provisions of the Act the appellant's conduct falls. That is the logical first step.

101 Although the IC recommended action under s 19(1)(*a*) of the Act, the Board decided to invoke s 19(1)(*j*) instead.

102 The relevant provisions in fact read as follows:

> **Power of Board to cancel registration, etc.**
>
> **19.**—(1) The Board may cancel the registration of a registered person if the Board is satisfied that he —
>
> (*a*) has obtained his registration by a fraudulent or incorrect statement;
>
> …
>
> (*j*) has been guilty of any improper act or conduct which renders him unfit to remain on the Register …

103 *However*, whilst the Board had no option but to cancel the registration of the appellant if it was satisfied that he (the appellant) fell within the scope of s 19(1)(*a*), it had more flexibility if it was satisfied that the appellant fell within the scope of s 19(1)(*j*) instead. This is evident from s 19(2), which reads as follows:

> Where a registered person is liable to have his registration cancelled on any of the grounds referred to in subsection (1) (*e*) to (*k*), the Board may, instead of cancelling his registration, take

one or more of the following measures:

(*a*) caution or censure him;

(*b*) impose on him a penalty not exceeding $10,000;

(*c*) order that his registration be subject to such conditions as may be imposed by the Board for a period not exceeding 3 years;

(*d*) suspend his registration for a period not exceeding 3 years.

104 It is clear that conduct under s 19(1)(*j*) would encompass less serious forms of contraventions of the Act which merit less drastic sanctions.

105 It is equally clear, however, that more serious conduct falling within the purview of s 19(1)(*a*) would almost invariably fall within s 19(1)(*j*) although, of course, the converse would not necessarily follow.

106 Looked at literally, the conduct of the appellant on both counts in the present case (*viz*, with regard to the forged signature and the inaccurate details inserted in his application form for registration as an acupuncturist) could conceivably have fallen within the scope of s 19(1)(*a*). Indeed, as already mentioned, this is precisely what the IC had found.

107 Although, consistent with my findings above, the conduct of the appellant on both counts was not, on balance, fraudulent, it is at least arguable that, on a literal construction of s 19(1)(*a*), his registration had been obtained by an "*incorrect* statement" – unless it is argued that, despite the word "or" in s 19(1)(*a*), the word "incorrect" must be read with, as well as take its colour from, the word "fraudulent" in the same provision. If, indeed, the conduct were *fraudulent*, there would be a possible *penal* sanction under s 26 of the Act as well, which reads as follows:

Fraudulent registration, etc.

26. Any person who **—**

(*a*) procures or attempts to procure registration or a certificate of registration or a practising certificate, by knowingly making or producing or causing to be made or produced any false or fraudulent declaration, certificate, application or representation, whether in writing or otherwise;

(*b*) wilfully makes or causes to be made any false entry in the Register;

(*c*) forges or alters a certificate of registration or practising certificate;

(*d*) fraudulently or dishonestly uses as genuine a certificate of registration or practising certificate which he knows or has reason to believe is forged or altered; or

(*e*) buys, sells or fraudulently obtains a certificate of registration or practising certificate,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

108 The Board, however, adopted what was, in my view, a realistic approach to the situation at

hand. It was, apparently, influenced, *inter alia*, by the fact (in so far as the issue of the forged signature was concerned) that the legal effect of the document to which it was affixed (Document A) had in no way been adversely impacted. Indeed, as I have pointed out, this second (forged) signature neither added to nor detracted from the validity and authenticity of that particular document itself. However, that being said, the fact that a *forged signature* had in fact been affixed to the document in question could not be ignored. In the circumstances, such conduct could fall within the purview of s 19(1)(*a*) and certainly falls within the purview of s 19(1)(*j*), as explained above.

109 Nevertheless, although literally falling within the purview of s 19(1)(*a*), it would appear a little harsh and incongruous for the appellant to have his registration cancelled without more. Indeed, an explanation of the reasons for affixing what turned out to be an ineffectual and superfluous (albeit forged) signature might have cast a different (and even possibly favourable light) on the case for the appellant. However, as we have seen, it is a matter for speculation as to why such a curious practice of affixing a second signature had been implemented in the first instance (see above at [73]–[75]). In the circumstances, I find, in so far as the affixing of the forged signature by the appellant was concerned, that, this constituted an improper act or conduct which clearly, then, fell within the scope of s 19(1)(*j*). Given the special and (one might add) curious circumstances surrounding the affixing of this forged signature, the Board adopted, in my view, a wise course of action in finding that the conduct of the appellant fell within s 19(1)(*j*) instead. In this regard, it should be noted that if the appellant's registration had been cancelled under s 19(1)(*a*) (a *mandatory* sanction), he could have applied to the Board for his name to be re-registered. However, he would have had to wait *at least three years* in order to do so and, if he were refused, would have to wait *an additional year* before applying once again. The salient provisions are contained within s 23 of the Act, which reads as follows:

> **Restoration of registration**
>
> **23.** —(1) A person whose registration has been cancelled under section 19 may apply to the Board for his name to be re-registered.
>
> (2) The Board may, after considering all relevant circumstances, and upon the compliance by the applicant of all conditions imposed by the Board, if any, and the payment of the prescribed fee, re-register him.
>
> (3) No application for re-registration shall be made to the Board —
>
> (*a*) before the expiration of 3 years from the date of the cancellation; and
>
> (*b*) more than once in any period of 12 months.

110 The sanction of suspension does not have such drastic consequences. Section 19(6) of the Act reads as follows:

> While the registration of a registered person for the carrying out of a prescribed practice of traditional Chinese medicine remains suspended, he shall not be regarded as a registered person in respect of that prescribed practice of traditional Chinese medicine for the purposes of this Act, *but on the expiry of his suspension, his rights and privileges under this Act shall be revived.* [emphasis added]

111 Turning to the inaccurate particulars in the appellant's application for registration as an acupuncturist, I have already held that the complaint in this regard had been made out against the

appellant. However, it is clear, on a balance of probabilities, that the appellant did hold an honest belief that the particulars he had inserted were accurate, given his view of what the practice of TCM was. As I have pointed out, however, the subjective belief of the appellant is immaterial for it is the *objective* view of what the practice of TCM was which matters. To hold otherwise would be to invite the very chaos which I have pointed out could *not* have been the intention of the Singapore Legislature (see at [2] above). Hence, as was the situation with the forged signature, this particular complaint also (literally, at least) falls within the scope of s 19(1)(*a*). However, the appellant's honest (albeit subjective) belief, whilst insufficient to exonerate him from the complaint levelled against him, might be relevant to the adoption of a relatively more lenient approach, if that is both appropriate and available. In the circumstances, I find that the Board adopted, once again, a wise course of action in finding that the conduct of the appellant in this particular instance fell within s 19(1)(*j*) instead. Unlike the complaint pertaining to the forged signature, however, I could not ascertain the precise reasons for the adoption of such an approach. Nevertheless, for the reasons I have just given, there were in fact sufficient reasons for the Board adopting the position it did.

112 It is clear that by endorsing the Board's course of action to proceed under s 19(1)(*j*) instead of s 19(1)(*a*) with regard to both complaints (*viz*, those pertaining to the forged signature and the inaccurate particulars in the appellant's application form), I have already taken any mitigating circumstances inherent in these complaints into account. Would it then be incorrect to have regard to these circumstances when assessing the actual sanction meted out by the Board (which was the suspension of the appellant's registration for two years)?

113 In my view, it is not inappropriate to take such mitigating circumstances into account. To do so would not entail conferring upon the appellant a "double benefit". It is true that those circumstances were taken into account by the Board in bringing the proceedings within the purview of s 19(1)(*j*), instead of s 19(1)(*a*), of the Act – an approach with which I have held is correct. *However*, that relates to *the appropriate provision* under which the conduct of the appellant would most appropriately fall. This is *separate and distinct from the appropriate sanction* that ought to be administered in the circumstances of the case. Justice and fairness are not incompatible and would in fact be served by the consideration of such mitigating circumstances in relation to the issue of the sanction to be imposed.

114 However, there are *other* circumstances that must *also* be taken into account for the purposes of deciding what sanction against the appellant would be appropriate in the circumstances.

115 In this regard, counsel for the Board also emphasised – and, quite correctly, in my view – the *significant element of public interest* involved in the TCM sector in general and the present proceedings in particular. She cited a learned article by Prof Tan Yock Lin entitled "Sentencing for Legal Professional Misconduct" (2000–01) Sing L Rev 62, where (at p 70) the learned author observes thus:

> [T]he focus on public protection is correct and important if only to the overthrow of any renewed theory of sentencing based on the privilege of the practice of law. There might still be some temptation to reason that the problem of disciplinary sentencing is one of reserving the privilege of the practice of law to a select company and that misconduct warrants withdrawal of the privilege. On this theory, disciplinary action is about withdrawing a privilege. But quite rightly, appeal to or reliance on this theory is hardly, if ever, taken seriously.
>
> …
>
> The focus on protection of the public also correctly and usefully draws attention to the collective

> implications of the individual misconduct for public confidence in the ability of the profession to discharge its duties and responsibilities. Professions work adequately only if they inspire confidence, the more so a profession that is founded or bottomed on the reposing of trust and confidence.

116 It is true that the views expressed in the above article relate to the legal profession. However, the *general principles* are, in broad outline, the *same*. If the integrity of, *inter alia*, the process of application and its concomitant documentation were undermined, this would simultaneously defeat the very *raison d'être* of the Act itself. This would also serve as the thin end of the wedge. The regulation of TCM is in its infancy. The practice of TCM itself nevertheless contains potential that will be invaluable not only to the individual's physical and mental well-being but also to the economy as well. Indeed, TCM practice constitutes not only a recognised part of medical services in Singapore but is also an important part thereof. As far back as the second reading of the Traditional Chinese Medicine Practitioners Bill (No 30 of 2000) ("the Bill") itself, the Parliamentary Secretary to the Minister for Health, Mr Chan Soo Sen, observed thus (see *Singapore Parliamentary Debates, Official Report* (14 November 2000) vol 72 at col 1126):

> [A]lthough Western medicine is the main form of healthcare in Singapore, Traditional Chinese Medicine (TCM) enjoys considerable popularity as a complementary form of healthcare. It has been estimated that about 45% of the population had ever consulted a TCM practitioner in the past. About 12% of the daily outpatient attendances opt to see TCM practitioners. Hence, TCM is a significant factor in the healthcare scene in Singapore.

117 Significantly, too, the Nanyang Technological University has recently launched a degree course in TCM.

118 It is therefore imperative that the regulatory framework of TCM practice be observed scrupulously in order to maintain and enhance the standards necessary for both the development of the industry itself as well as to safeguard the interests of patients generally. Indeed, high standards and efficient regulation are important in order that public confidence in the practice of TCM remains unshaken. Again, during the second reading of the Bill, Mr Chan Soo Sen observed ([116] *supra* at col 1130) that "statutory regulation of TCM practice is necessary to safeguard patients' interest and safety" and that "[w]e have to ensure that TCM practitioners are properly trained and qualified before they are allowed to practise".

119 At its best, the hope is that TCM will complement, and in some respects even surpass, so-called modern (I hesitate to use the word "western") medicine. This hope will be all but dashed if forgeries as well as inaccuracies (no matter how "innocently" effected) appear even at the incipient stage of an applicant's documentation. In *addition* to safeguarding individual rights (including the rights of patients), there is also an overarching *public interest* that requires protection as well. Fairness to the appellant has already been accorded (in so far as the grounds of complaint are concerned) by not levelling against him charges entailing the most draconian sanction prescribed under the Act, which is the total cancellation of his registration. To this end, the Board has seen fit to proceed under a less stringent limb of s 19 (*ie*, s 19(1)(*j*)). It is true that the sanction meted out ought, as already mentioned, to be commensurate with this reduced ground of complaint. Nevertheless, justice and fairness to the defendant must be *balanced* together with the *wider public interest*. The attempt to achieve such a balance is, admittedly, a delicate exercise. However, it can – and must – be effected.

120 I also bear in mind the argument by counsel for the Board to the effect that the court's role, in so far as the imposition of sanctions by a disciplinary body is concerned, is more one of oversight

and must therefore be restrained (citing the Privy Council decision of *Rajasooria v Disciplinary Committee* [1955] 1 WLR 405). Nevertheless, the respect I ought to pay to the sanction thus imposed by the relevant disciplinary body (here, the Board) is not, *ipso facto*, to be ossified into a blind deference or "rubber-stamping" without more. In other words, the sanction thus imposed must be justified from both legal as well as factual points of view.

121 In this regard, I bear in mind, further, the fact that the precise sanction to be administered is not a scientific exercise (although it should be mentioned that science and the scientific method are now acknowledged as not, in certain circumstances at least, being as certain and precise as it was once thought to be). Everything depends on the exact factual matrix concerned. This may not be a wholly satisfactory proposition but is an inevitable fact of legal life simply because the facts of life themselves are complex and are almost invariably different in different situations.

122 Bearing in mind *both* the relevant mitigating factors already referred to in detail above *and* the (countervailing) public interest, I am of the view that the suspension of two years meted out to the plaintiff by the Board is, in the circumstances, an appropriate one. This is particularly so if we bear in mind the fact that the appellant did in fact contravene the provisions of the Act. More importantly, the *public interest* must also be given effect to.

Conclusion

123 Following from the reasons I have given above, I affirm the decision of the Board and therefore dismiss the appeal, with costs to be agreed or taxed. I should add that the Board, together with the IC, have (very commendably, in my view) taken great pains to sift the wheat from the chaff in both the factual as well as legal contexts.

124 Despite the fact that the appellant has had a substantial period of suspension imposed upon him, he should realise that setbacks are a natural part of life. And sanctions must be expected when legal requirements are contravened. But if the appellant is truly committed to the practice of TCM, he should persevere. And that entails looking with hope ahead rather than lamenting about what ought to be left behind. Unless one looks ahead, one cannot progress. Nobody ever arrived at his or her destination by walking forwards whilst looking backwards. Further, true skill and perseverance is often forged on the anvil of adversity.

125 Finally, a couple more general observations are also in order.

126 First, it is hoped that this decision will alert *all* potential applicants for registration under the Act that *all* procedures relating to documentation *must* be scrupulously adhered to. If not, the appropriate disciplinary sanctions will be meted out. There is a clear public interest involved, which I have set out above. In the light of this decision, I should think that any future (including similar) infractions of the Act would meet with sterner sanctions than those imposed in the present case.

127 Secondly, it is true that the Board can do only so much to ensure compliance with the relevant procedures (even with what, I assume, will be regular reviews of its own internal procedures). Much depends on the actions of the applicants themselves – in particular, their commitment towards the practice of TCM as a calling and not merely as a business.

Appeal dismissed.

APPENDIX A –

[Editorial Note: Click on the link to the PDF above to see the Appendix]

[note: 1] See the affidavit at para 19 in the Bundle of Affidavits ("BA1").

[note: 2] Ibid at para 20.

[note: 3] Ibid.

[note: 4] See Transcript of Proceedings, vol 2 at pp 334-338.

APPENDIX A – SPECIFIC ALLEGATIONS OF BIAS IN THE CONDUCT OF THE INQUIRY COMMITTEE PROCEEDINGS BY THE APPELLANT AND CORRESPONDING RESPONSES BY THE RESPONDENT

SPECIFIC ALLEGATIONS BY THE APPELLANT	RESPONSES BY THE RESPONDENT
Appellant's Affidavit ("AA"), para 32(a): "When the 1st Prosecution witness was handed over for cross-examination the Board members started asking her about whether the patients who registered to see me at ECM were visiting me as patients or as friends. The questions were phrased in such a way as to lead the witness to say that I did not attend to those patients and no prescriptions were made by me. This can be found at page 19 of the transcripts of the proceedings filed on 8th October 2004."	**Respondent's Submissions ("RS"), para 58:** The allegation must be read in context. Page 18 of the transcripts must also be referred to. The questions complained of by the appellant actually followed from questions asked by the respondent's counsel on registration of patients at ECM and the witness's answers to these questions. The questions complained of were in fact clarificatory in nature.
AA, para 32(b): "In questioning the 1st Prosecution witness, one of the Committee members presupposed that there is a duty roster at ECM. He appeared to ask the question as if he had knowledge of the workings of ECM (Page 20 of the transcripts)."	**RS, para 59:** The question was not completely irrelevant. The Inquiry Committee ("IC") comprised largely of TCM physicians who had knowledge as to how an institution such as ECM would function and, hence, "[t]he questions asked were based on their general knowledge of how such healthcare establishments are run". In any event, the asking of such a question might have actually assisted the appellant inasmuch as if his name had been on the duty roster of ESM as an attending physician, this would have supported his argument from experience as a TCM practitioner.

AA, para 32(c): "In the midst of my Counsel cross-examining the 2nd Prosecution witness, the Committee stopped my Counsel from asking the witness about treatment rendered by me to a cleaning lady in the office although this would have been relevant to show that I was a physician (Page 37 of the transcripts)."

RS, para 60: The continued questioning of this particular witness was unnecessary as the situation was one where the appellant had apparently assisted a staff of ECM, as opposed to treating her as a patient per se.

AA, para 32(d): "The Committee Chairman intervened when the 3rd Prosecution witness was cross-examined by my Counsel as to whether he was giving testimony in favour of the Complainant out of fear. The Chairman felt that that was not a relevant question (Page 47 of the transcripts)."

RS, para 61: Such a line of questioning was unnecessary. There were also other witnesses who had given similar evidence, but who were no longer in the employment of ECM. **Counsel for the respondent** further clarified in her **oral submissions** that the question concerned was, *in any event, allowed subsequently* (see Transcript of Proceedings, vol 1 ("TP1") at p 48).

AA, para 32(e): "When the 4th Prosecution witness was giving evidence, the Committee intervened and prevented cross examination of the witness's ability to remember facts from about 2 years prior to the hearing. This was relevant because the witness asserted that she could specifically remember that there were two signatures on the Certificate of Employment when she collected it two years prior to the hearing. This was absurd and my Counsel was attempting to test her memory in relation to other matters in the application handled by her. The Committee however intervened. (Page 67 of the transcripts)."

RS, paras 62 and 63: Counsel for the appellant in fact subjected this particular witness's memory to much testing during the IC hearing itself (see TP1 at pp 61-67). Further, the witness had confirmed that there had been 2 original signatures on the copy of the Certificate of Employment submitted by the appellant - which was, in fact, the crucial issue as opposed to the question as to whether or not she could recall after a lapse of 2 years what was the exact date of the document itself. In any event, the IC had heard both counsel for the appellant's questions and

the witness's answers with regard to the contents of the copy of the Certificate of Employment and had taken note of the witness's evidence in so far as these questions were concerned. Such evidence was in fact extensive.
In any event, as the appellant was represented by counsel throughout the proceedings, it was open to his counsel to object to any inappropriate cross-examination of the appellant's witnesses. It was equally open to counsel for the appellant to cross-examine the respondent's witnesses on any relevant aspect of the case.
In fact, allegations of impropriety in the mode and/or manner of cross-examination constitute a mere afterthought on the part of the appellant.

AA, para 32(f): *"Despite the fact* the Complainant was the main Prosecution witness and the proceedings themselves arose out of his complaint, the Committee chose not to ask him too many questions. In fact, the number of questions asked span a mere two pages in the transcripts (pages 149 to 150). It has to be noted that when my Counsel questioned the Complainant about his personal grudge, the Committee limited the questions that my Counsel could ask. And subsequently when the Committee members themselves asked him questions they did not see it fit to explore as to whether the Complainant had his own agenda."

RS, para 65: *Pages 149 and* 150 of the transcripts represented, in fact, only a small part of the proceedings – re-examination of the complainant by counsel for the respondent.
Further, there was no obligation on the part of the Committee to ask any, save only relevant, questions. It was also incumbent on the *appellant's counsel* to cross-examine the complainant.
"It is completely unfounded for the [appellant] to blame [the IC] for not questioning [the complainant] sufficiently when the [appellant] could have done so."
Counsel for the respondent did in fact point out in her **oral submissions** that there had been extensive examination-in-chief

and cross-examination with regard to the complainant which were to be found at TP1, pp 97-149 (with cross-examination commencing from pp 114 to 145). She also reiterated that the IC was really an adjudicating tribunal and that there was therefore no reason for it to elicit answers from witnesses unless there were queries in their minds not addressed by counsel. She reiterated, once more, that counsel for the appellant had had the opportunity to cross-examine the complainant.

AA, para 32(g): "In contrast to the Prosecution witnesses, my witnesses were subject to lengthy questions by the Committee members. At times my witnesses were treated like they were on trial. Miss Adeline Chiew was questioned for such a lengthy period of time by the Committee that this part of the transcripts stretches from page 206 to page 220. Similarly the Committee's questions put to Mr Soh Kah Leong occupy pages 258 to 265 of the transcripts."

RS, para 65: "[I]t is evident from the transcripts why Ms Adeline Chiew and Mr Soh Kah Leong (i.e. the [appellant's] witnesses) were subjected to lengthy questioning by the [respondent's] counsel and [the IC]. It was purely because of the way both witnesses answered questions put to them … and the contradictory and inconsistent evidence given by both witnesses. The [respondent's] witnesses on the other hand answered the questions posed to them directly. Therefore, there was no need for the [respondent's] counsel and [the IC] to subject them to further examination."
Counsel for the respondent pointed to one example of this in her **oral submissions** at TP1, p 215, where the witness concerned was not answering the question and therefore the Committee had to intervene.

AA, para 32(h): "When it came to my testimony, the Board took an unnecessarily antagonistic approach. Not only did they subject me to lengthy questioning, they also asked me irrelevant questions that were clearly intended to insult me and my knowledge of traditional Chinese medicine. I was asked questions about what I knew in terms of Chinese medicine. This was wholly unwarranted. The investigation was supposed to be about whether I practised as a physician at ECM or whether there was any forgery in relation to the Certificate of Employment. There was no need for the Investigation Committee to enter into an insulting line of questioning (Pages 358 to 372 of the transcripts)."

RS, para 67: "[The IC] had embarked on that line of questioning to determine the [appellant's] level of competence and knowledge in TCM, in an attempt to arrive at a finding that the [appellant] did in fact [practise] TCM. In fact, the [appellant] should have taken the opportunity to impress [the IC] on his so called extensive knowledge of TCM. [The IC] was in fact trying to elicit such evidence from him so that they may be able to take the position that the [appellant] is sufficiently qualified to practise TCM although he had over-stated his [practice] experience in his application. However, they were shocked to find that the [appellant's] knowledge in TCM was seriously lacking." Reference, **counsel for the respondent** argued, should also be made to Mr Ng Cheong Kim's (the Chairman of the IC's) affidavit at para 46 to this effect (see Bundle of Affidavits, vol 1 at p 13 of Mr Ng's affidavit).

AA, para 32(i): "Even the focus of the inquiry in relation to the question of whether I was practising as a Chinese Physician at ECM was slanted towards determining the number of hours that I spent in attending to patients. They failed to focus on the definition of "practising" under the Traditional Chinese Medicine Practitioners' Act which is broader. In fact my Counsel had to address the Investigation Committee on the terms of reference of hearing because of the way in which the focus had been shifted."

Similar response as with regard to the last-mentioned allegation.