IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 1

Civil Appeal No 9 of 2020 (Summons No 44 of 2020)

Between

Iskandar bin Rahmat

… *Appellant*

And

Law Society of Singapore

… *Respondent*

In the matter of Originating Summons No 716 of 2019

Between

Iskandar bin Rahmat

… *Applicant*

And

Law Society of Singapore

… *Respondent*

JUDGMENT

[Legal Profession] — [Disciplinary proceedings] — [Review application]
[Courts and Jurisdiction] — [Jurisdiction] — [Disciplinary jurisdiction]

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Iskandar bin Rahmat
v
Law Society of Singapore

[2021] SGCA 1

Court of Appeal — Civil Appeal No 9 of 2020 (Summons No 44 of 2020)
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA, Judith Prakash JCA, Steven Chong JCA and Quentin Loh JAD
22 October 2020

8 January 2021 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the majority consisting of Judith Prakash JCA, Steven Chong JCA, Quentin Loh JAD and himself):

Introduction

1 All advocates and solicitors are officers of the Supreme Court and are subject to its control pursuant to ss 82 and 83 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA"). Complaints against a solicitor are made to the Law Society of Singapore ("the Law Society") and are to be dealt with according to the processes set out in Part VII of the LPA. The disciplinary process culminates in an application made to "a court of 3 Judges of the Supreme Court" constituted under s 98(7) of the LPA ("the C3J"). But before then, the complaint must be assessed by various bodies constituted under the LPA. Each of these assessments is done sequentially. Where any of these bodies

declines to refer it to the next stage, an aggrieved complainant may apply for that decision to be reviewed by a judge.

2 In the present case, such a complaint was considered by an Inquiry Committee which issued a report recommending that the complaint be dismissed. The Council of the Law Society ("the Council"), after considering the report, determined that no formal investigation was necessary and dismissed the complaint. The complainant applied to a judge ("the Judge") under s 96 of the LPA to review the Council's determination. The Judge, having done so, affirmed the Council's determination.

3 The question before us in this application is whether such a decision of the Judge can be appealed to this court. Relying on an earlier decision of this court in *Law Society of Singapore v Top Ten Entertainment Pte Ltd* [2011] 2 SLR 1279 ("*Top Ten Entertainment*"), the Law Society argues that we do not have the jurisdiction to hear an appeal against a decision of a judge in disciplinary proceedings under the LPA. The Law Society has therefore applied to strike out the appeal filed by the complainant against the Judge's decision. In our judgment, on this point, *Top Ten Entertainment* was wrongly decided and there is in fact a right of appeal to this court against a decision made pursuant to s 96 of the LPA. We therefore dismiss the application to strike out the appeal for the reasons that we set out below.

Background

4 In 2015, Mr Iskandar bin Rahmat ("Mr Iskandar") was tried on two charges of murder under s 300(*a*) of the Penal Code (Cap 224, 2008 Rev Ed). Mr Iskandar was represented at trial by six counsel, who are advocates and

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solicitors of the Supreme Court and had been appointed as his defence counsel pursuant to the Legal Assistance Scheme for Capital Offences.

5 On 4 December 2015, Tay Yong Kwang J (as he then was) convicted Mr Iskandar on both charges and sentenced him to suffer death (see *Public Prosecutor v Iskandar bin Rahmat* [2015] SGHC 310). Mr Iskandar's appeal against his conviction and sentence was dismissed on 3 February 2017 (see *Iskandar bin Rahmat v Public Prosecutor and other matters* [2017] 1 SLR 505). He was represented by different counsel on appeal.

6 On 14 February 2018, Mr Iskandar wrote to the Law Society to file a complaint against his trial counsel alleging that they had failed to comply with his instructions in the conduct of his defence. He followed up on the initial complaint with two further letters dated 5 April 2018 and 7 May 2018. The Inquiry Committee was appointed on 3 August 2018. As part of the inquiry, the Inquiry Committee obtained written explanations from the trial counsel and heard from four of them at a hearing on 23 October 2018. The Inquiry Committee also spoke to Mr Iskandar at Changi Prison Complex, where he is held, on 10 December 2018 and 10 January 2019. Mr Iskandar raised nine allegations regarding the conduct of the trial but the details of these allegations are not relevant for the purposes of the present application.

7 In its report dated 7 February 2019, the four-member Inquiry Committee unanimously recommended that no formal investigation by a Disciplinary Tribunal was necessary and the complaint should be dismissed. The Law Society informed Mr Iskandar by a letter dated 20 March 2019 that the Council had considered the findings of the Inquiry Committee and determined that no formal investigation was necessary, and the Law Society would not take further action on the complaint.

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The decision below

8 On 7 June 2019, Mr Iskandar filed HC/OS 716/2019 pursuant to s 96 of the LPA seeking a review of the Council's determination and an order directing the Law Society to apply to the Chief Justice for the appointment of a Disciplinary Tribunal. Mr Iskandar's contention was that the Inquiry Committee had breached the rules of natural justice and reached the wrong conclusion on the merits of all nine heads of complaint.

9 The Judge dismissed the application on 10 October 2019 (see *Iskandar bin Rahmat v Law Society of Singapore* [2020] SGHC 40 ("GD") at [2]). As the Council had adopted the reasons of the Inquiry Committee, the Judge observed that while she was not reviewing the Inquiry Committee's conclusions directly, she was effectively required to assess the Inquiry Committee's report to consider if the Council's determination should be departed from: GD at [9]. The Judge held that the one-day delay on the part of the Inquiry Committee in issuing its report did not occasion any prejudice to Mr Iskandar and did not invalidate the report, and Mr Iskandar's allegations that there had been breaches of natural justice were unfounded: GD at [12]–[13]. The Judge also considered in detail the merits of the nine allegations put forward by Mr Iskandar regarding the conduct of his trial and affirmed the Inquiry Committee's finding that there was no *prima facie* case of ethical breach or other misconduct by his trial counsel that warranted formal investigation and consideration by a Disciplinary Tribunal. She observed that, contrary to the allegations, the prosecution and the trial defence team had been praised for "their highly professional attitude and their full cooperation with the process of justice" by the trial judge: GD at [82]. Mr Iskandar filed an appeal in CA/CA 9/2020 against the Judge's decision.

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The present application

10 On 18 March 2020, the Law Society filed CA/SUM 44/2020 to strike out the appeal on the basis that there is no right of appeal against any order made by a review judge under ss 95, 96 and 97 of the LPA. The Law Society rested its case on the decision of this court in *Top Ten Entertainment* ([3] *supra*). It submitted that the court's analysis was principled and ought to be followed. Mr P Padman ("Mr Padman"), counsel for the Law Society, highlighted that by the time of an appeal against the order of a judge under s 96, the complaint would have been heard by a Review Committee, investigated by an Inquiry Committee, considered by the Council, and reviewed by a judge. He submitted that in these circumstances, an appeal to the Court of Appeal seemed wholly unnecessary and extravagant.

11 Mr Iskandar opposed this application on the ground that the Law Society had failed to address the merits of his appeal and that *Top Ten Entertainment* was wrongly decided. He argued that the court in *Top Ten Entertainment* did not have the benefit of counsel's submissions on the issue of a right of appeal and its conclusion was therefore unsafe. He also contended that the court was wrong to conclude that proceedings under Part VII of the LPA did not fall within the civil jurisdiction of the High Court as the application had been commenced by originating summons and the Law Society had submitted to the jurisdiction of the High Court. Finally, he highlighted that there was nothing in the LPA to exclude a right of appeal against a decision pursuant to s 96.

12 On 15 September 2020, the Court of Appeal heard CA/SUM 5/2020 ("SUM 5"), which was an application in a different appeal, CA/CA 227/2019 ("CA 227"), to strike out that appeal. That was a complainant's appeal against the decision of a judge pursuant to s 97 of the LPA to affirm the Disciplinary

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Tribunal's determination, after a formal investigation into a complaint against a solicitor, that no cause of sufficient gravity for disciplinary action existed. The solicitor had applied to strike out the appeal on the authority of *Top Ten Entertainment*. Prior to the hearing, the court directed the parties (being the complainant and the solicitor) to file submissions on two questions:

> (a) Is the Court of Appeal seised of jurisdiction to hear the appeal in CA 227, with particular reference to the two threshold requirements set out in *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 ("*Re Nalpon Zero*")?
>
> (b) Is the Supreme Court's disciplinary jurisdiction over advocates and solicitors part of the civil jurisdiction of the court, with particular reference to ss 16(1) and 16(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA")?

13 Judgment was reserved in that application. On the same day, Mr Ravi s/o Madasamy ("Mr Ravi") was appointed as counsel for Mr Iskandar in the present appeal. Mr Ravi informed the court that Mr Iskandar wished to intervene in SUM 5 as that application engaged the same issues as the Law Society's present application. While Mr Iskandar's request to intervene was denied, we allowed Mr Ravi to file further written submissions and the Law Society to reply to the same.

14 Mr Ravi submitted that the appeal should not be struck out. First, he argued that this court was not bound by *Top Ten Entertainment* ([3] *supra*). Second, he argued that pursuant to Arts 4 and 93 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) and principles he said existed within the proper conception of the rule of law, the court had the power

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to hear the appeal. He also appeared to draw an analogy with the scope of judicial review over proceedings under the LPA that was upheld in the context of decisions of the Review Committee in *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 ("*Deepak Sharma*"). Third, he argued that the present appeal could be distinguished from *Top Ten Entertainment* on the facts. Mr Ravi also addressed the questions directed to the parties in CA 227 and submitted that the threshold requirements set out *Re Nalpon Zero* had been fulfilled. The decision in question was a decision of the High Court, as it was a decision made by a "Judge" and there was nothing that indicated that the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") did not apply. Mr Ravi also contended that the decision, as one that involved the Inquiry Committee and not the Disciplinary Tribunal, did not involve the "disciplinary jurisdiction" of the court but fell within its civil jurisdiction.

15 In reply, Mr Padman placed great reliance on the authority of *Top Ten Entertainment* and *Re Nalpon Zero*, which he submitted clearly established that a judge hearing an application under s 96 of the LPA was a specially constituted court exercising a unique disciplinary jurisdiction, and not the civil jurisdiction of the High Court. There was therefore no right of appeal to the Court of Appeal.

16 We heard the parties on 22 October 2020 and reserved judgment. On 2 January 2021, the Supreme Court of Judicature Act (Amendment) Act 2019 (Act 40 of 2019) ("the SCJA Amendment Act") came into force and certain provisions of the SCJA discussed below were repealed. Section 31(3) of the SCJA Amendment Act provides that where an appeal has been brought to the Court of Appeal before 2 January 2021, s 13 (which amends the provisions that govern the jurisdiction of the Court of Appeal) does not apply, and so the amendments occasioned by the SCJA Amendment Act do not apply to this appeal. In any event, in our judgment, the amendments do not change the

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analysis of the jurisdiction of the court because the relevant provisions remain substantially the same. In this judgment, references to the SCJA are to the version in force at the time of the appeal hearing and, where relevant, the provisions of the SCJA in force after 2 January 2021 are referred to as "the post-amendment SCJA".

The issue before the court

17 The issue before us is a narrow one: does the Court of Appeal have jurisdiction to hear an appeal against a decision of a judge made pursuant to s 96 of the LPA?

18 Section 96 is found within Part VII of the LPA, which is entitled "Disciplinary Proceedings". While we have previously examined the provisions in Part VII as a whole, we think that in an attempt to achieve a measure of coherence and consistency across Part VII, previous judgments might have conflated some of the provisions in question and analysed the various tribunals and courts vested with certain jurisdiction under the LPA in a way that might not have been compatible or consistent with the plain language of the statute. Our analysis here focuses on s 96 although we consider that it will also inform the proper analysis of ss 95 and 97 of the LPA. These provisions employ similar language and generally provide for the power of review by "a Judge" (henceforth referred to as such). We will make reference to other provisions that fall within Part VII of the LPA where appropriate but caution that the precise implications for the processes established under those provisions should be determined conclusively on a future occasion when it is necessary to do so, in the light of our holding here.

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19 For clarity, Mr Iskandar's allegations against his trial counsel and the substantive merits of the appeal are not before us at this time. This application concerns only the jurisdiction of the court, which is an issue of law. Given our decision not to strike out the appeal, the substantive case against Mr Iskandar's trial counsel will be dealt with when the appeal is properly before us.

Our decision

The disciplinary framework in the LPA

20 Part VII of the LPA sets out a calibrated framework where complaints in respect of the conduct of regulated legal practitioners, whom we refer to as "solicitors", are escalated through various bodies constituted under the LPA before they may be referred to the C3J. Complaints against Legal Service Officers, non-practising solicitors and regulated non-practitioners are dealt with through a separate, though somewhat similar, process (see ss 82A and 82B of the LPA).

21 In broad terms, the disciplinary process against solicitors may be summarised as follows (see also *Deepak Sharma* ([14] *supra*) at [28]–[32]):

(a) When a complaint is made, the Council shall refer the complaint to the Chairman of the Inquiry Panel ("the Chairman") (see ss 85(1) and 85(1A)). The Chairman shall constitute a Review Committee to review the complaint and the Review Committee may direct the Council to dismiss the matter if it considers that the complaint is frivolous, vexatious, misconceived or lacking in substance or, in any other case, may refer the complaint back to the Chairman (see ss 85(6) and 85(8)).

(b) If the complaint is referred back to the Chairman, the Chairman shall constitute an Inquiry Committee to inquire into the complaint or

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information (see s 85(10)). The Inquiry Committee shall report its findings and recommendations to the Council and the Council shall consider the report and then determine whether: (a) a formal investigation is not necessary; (b) no cause of sufficient gravity exists for a formal investigation but the solicitor should be given a warning, reprimanded, ordered to comply with remedial measures or ordered to pay a penalty; (c) there should be a formal investigation by a Disciplinary Tribunal; or (d) the matter should be referred back to the Inquiry Committee for reconsideration or a further report (see ss 86(1), 86(7) and 87(1)). We highlight that the Inquiry Committee in general makes recommendations to the Council and it is the Council that decides whether to accept those recommendations or not (see s 86(7) and 87(2)). One exception to this is where the Inquiry Committee finds that the complaint is frivolous or vexatious, in which case it may make an adverse costs order against the complainant (see s 85(19)). Such an order may be reviewed by a judge on the complainant's application and such a judge may affirm, vary or set aside that order or make other orders as to costs as may be just (see ss 85(19A), 85(19B) and 85(19C)). Curiously, it is not clear if the powers of such a judge are confined to matters of costs or whether it extends to directing that the Inquiry Committee's determination that the complaint is frivolous or vexatious be reconsidered by that or some other Inquiry Committee.

(c) The matter ordinarily does not proceed to the next stage unless the Council determines that a formal investigation is necessary, in which case it shall apply to the Chief Justice to appoint a Disciplinary Tribunal to hear and investigate the matter (see s 89(1)). The Disciplinary Tribunal will record its findings in relation to the facts and determine whether: (a) no cause of sufficient gravity for disciplinary action exists;

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(b) while no cause of sufficient gravity for disciplinary action exists, the solicitor should be reprimanded, ordered to comply with remedial measures or ordered to pay a penalty; or (c) cause of sufficient gravity for disciplinary action exists (see s 93(1)).

(d) Where the Disciplinary Tribunal determines that cause of sufficient gravity for disciplinary action exists, the Law Society shall make an application for an order that the solicitor be struck off the roll, suspended, ordered to pay a penalty or censured. This application is heard by the C3J (see ss 98(1) and 98(7)).

22 Under this "stepped process" (*Deepak Sharma* at [33]), a complaint will generally be considered by three bodies – the Review Committee, the Inquiry Committee and the Disciplinary Tribunal – before an application is made to the C3J for the matter to be disposed of. Where the committee or tribunal determines that the complaint should advance to the next stage in the process, such a determination *must* be given effect: see s 85(10) in the case of the Review Committee, s 87(2)(*a*) in the case of the Inquiry Committee, and s 94(1) in the case of the Disciplinary Tribunal. However, at each stage in this process, the committee or tribunal may direct or recommend that a complaint be dismissed or decline to refer it to the next stage, thus possibly bringing the proceedings to an end. For that reason, the LPA expressly provides for certain avenues, in the case of a determination of the Inquiry Committee and the Disciplinary Tribunal, to review the findings and recommendations of the committee or tribunal:

(a) Upon considering a report of the Inquiry Committee or of the Disciplinary Tribunal recommending the imposition of a penalty but not referring the matter to the next stage (being either the Disciplinary Tribunal or the C3J as the case may be), the Council may agree with

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this, in which case it must then impose a suitable penalty under s 88(1) or s 94(3)(*a*). In that event, under s 95(1), the *solicitor* may apply to a Judge to set aside that order. That Judge may affirm or vary the penalty or set aside the order. Notably, such a decision of a Judge is referred to in s 88(4)(*a*) as a decision of "the court". It should be noted that in this context, a Judge's decision is a determination as to the merits on the question of what the appropriate penalty should be. This is the effect of s 95(3), under which a Judge may affirm, vary or set aside the penalty and make a costs order, and s 95(4)(*b*) read with s 95(5) under which the penalty may be enforced. It may also be noted that under s 95(2), a Judge shall hear the matter in chambers or may order that it be heard in open court.

(b) If the Council considers the report of the Inquiry Committee and determines that a formal investigation is unnecessary or no cause for a formal investigation exists under ss 87(1)(*a*) or 87(1)(*b*), then under s 96(1), the *complainant* may apply to a Judge for an order directing the Law Society to apply to the Chief Justice for the appointment of a Disciplinary Tribunal. Here, too, it is evident from s 96(4) that a Judge dealing with such an application deals with the merits of the Council's determination and may either affirm that determination or direct the Council to apply for the appointment of a Disciplinary Tribunal.

(c) If the Disciplinary Tribunal determines that no cause of sufficient gravity for disciplinary action exists or that no cause exists but the solicitor should be reprimanded or ordered to pay a penalty, then under s 97(1), the complainant, the solicitor or the Council may apply to a Judge for a review of that determination. This is an avenue that stands apart from that noted at [22(a)] above. It also stands apart from both the

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avenues noted in the preceding sub-paragraphs because it lays down a mode of relief that appears to be directed not at the decisions of the *Council* following its consideration of the reports of an Inquiry Committee or a Disciplinary Tribunal. Rather, it is directed at a decision of the Disciplinary Tribunal that no cause of sufficient gravity exists to warrant the matter proceeding to the C3J and it seemingly applies at a stage before the Council has come to a determination as to whether it will accept that view of the Disciplinary Tribunal. We will analyse this further below. Under s 97(4)(*a*), the Judge will have full power to determine any question necessary for the purpose of doing justice in the case, including the correctness, legality or propriety of the Disciplinary Tribunal's determination or the regularity of its proceedings. Section 97(4)(*b*) seems to us to contemplate that a Judge may make an order directing that the matter move on to the C3J, or directing the Disciplinary Tribunal to rehear the matter, or directing the Society (presumably the Council) to seek the appointment of another Disciplinary Tribunal in the event the determination of the Disciplinary Tribunal is set aside.

(d) Section 97(1) needs to be broken down further as it covers four distinct situations based on four determinations that a Disciplinary Tribunal may have made. It is necessary to set them out separately, although in each case, the application is made to a Judge:

(i) A determination under s 93(1)(*a*) is a determination that no cause of sufficient gravity exists for any sanctions at all.

(A) In that event, it is unclear whether the Council has the power to disagree with that determination. Section 94(2) states that in that event, "it shall not be necessary

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for the *Society* to take any further action in the matter unless so directed by the *court*" [emphasis added]. It seems likely that the Society may but is not obliged on its own motion to advance the matter. Although the reference here is to the Society, it seems to us that this, in fact, refers to the Council. Moreover, although the application under s 97(1) is made to a Judge, the relevant order is described in s 94(2) as one made by "the court".

(B) Turning next to the complainant, it is clear in this situation that the complainant may bring an application essentially for the matter to go further and the relevant powers of the Judge hearing that application are set out in s 97(4).

(C) Logically, the solicitor would not be the one making any application in this situation.

(D) We reiterate that although the opening words of s 97(4)(*b*) appear to confer a broad discretion on a Judge to make "such orders as the Judge thinks fit", we think that the better view, having regard to the express terms of s 97(4)(*b*), is that a Judge may either order that the matter be advanced to the C3J or that the Disciplinary Tribunal rehear and reinvestigate the matter or that a different Disciplinary Tribunal be established for this purpose. It seems to us to run contrary to the entire scheme of Part VII of the LPA that a Judge could, in effect, substitute the findings of a Disciplinary Tribunal. We elaborate on this below.

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(ii) A determination under s 93(1)(*b*) is a determination that the solicitor's conduct warrants reprimand or the imposition of a penalty or remedial measures but does not warrant being referred to the C3J. In this situation too, the complainant can apply to move the matter to the C3J or the solicitor can apply to quash the penalty. It does not seem to us that the Council would need to bring an application under s 97(1) in this situation because it is expressly empowered under s 94(3) either to accept the recommendation of the Disciplinary Tribunal or, if it disagrees, to move the matter on to the C3J without needing an order of a Judge or the court. This situation, too, is governed by s 97(4) and in addition to the observations we have made in the previous paragraph, we note that there is no express provision for a Judge to vary or set aside the penalty. That is likely the case because the penalty is a matter for the determination of the Council under s 94(3) and as we have noted at [22(a)] above, that may be challenged by the solicitor in an application to the Judge under s 95(1).

(iii) An order under s 93(2) concerns a costs order that the Disciplinary Tribunal may make if it determines that some penalty short of a referral to the C3J should be imposed. The applicant would typically be the solicitor. Under s 97(4)(*b*)(iii), a Judge may make such order as to costs as may be just.

(iv) Similarly, an order under s 93(2A) concerns a costs order that the Disciplinary Tribunal may make if it determines that the complaint was frivolous and vexatious. The applicant would

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typically be the complainant. Again, a Judge has wide discretion to deal with the question of costs as has just been noted.

(e) The C3J may make an order under s 98(1), and under s 98(8), it has full power to determine any question necessary for the purpose of doing justice in the case, including the correctness, legality or propriety of the Disciplinary Tribunal's determination or the regularity of its proceedings, and may set aside the Disciplinary Tribunal's determination and direct it to rehear and reinvestigate the matter or direct the Society to apply for the appointment of another Disciplinary Tribunal.

23 We make a few brief observations on the statutory provisions. First, it seems to us that a Judge dealing with such applications may, in broad terms, make two sorts of orders:

(a) The Judge may make a decision on the merits of any determination by the *Council* to impose a penalty on a solicitor, or to decline to move a complaint to the next stage (see [22(a)] and [22(b)] above), or a determination by the Inquiry Committee as to costs in the case of a frivolous or vexatious complaint (see [21(b)] above);

(b) The Judge may make a decision under s 97(4)(*b*) that does not concern the merits of any determination by the Council, but pertains to the decision of a Disciplinary Tribunal. In this context, in our judgment, a Judge's power is limited to either ordering that the matter proceed to the C3J or that it be reconsidered by that or another Disciplinary Tribunal. This comports with the overall architecture of Part VII, where it is the Council that considers and decides on the course of action to be taken following a determination by an Inquiry Committee or a

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Disciplinary Tribunal. That determination is, of course, subject to the review of a Judge as noted in the preceding sub-paragraphs.

24 Second, under ss 96 and 97, a dissatisfied *complainant* can apply to a Judge to advance the complaint to the next stage of proceedings while under ss 95 and 97, a dissatisfied *solicitor* can apply to a Judge to review the decision to impose a sanction on him where that sanction falls short of referring the proceedings to the next stage. Third, if the committee or tribunal refers the complaint to the next stage, a solicitor has no recourse and cannot prevent that from happening. While this might appear to suggest a legislative preference for the complaint being advanced in the event of any doubt, it would be wrong to view this as prejudicial to the solicitor in some way because this ultimately concerns a matter of public interest and the C3J retains full power to set aside the Disciplinary Tribunal's determination and give further directions where appropriate. A determination by any tribunal or committee, other than the C3J, is therefore not final and the solicitor retains the right to challenge all allegations against him before the C3J. However, where a Judge hearing an application under ss 96 or 97 affirms the decision not to move the proceedings to the next stage, if there can be no appeal against that decision then the proceedings would be brought to an end at that stage.

25 Finally, we reiterate that s 97 is a somewhat anomalous provision because it contemplates the review of the decision of the Disciplinary Tribunal, rather than of the Council. Where the Disciplinary Tribunal does not find cause of sufficient gravity for disciplinary action but recommends some other sanction, the Council in this context may act under ss 94(3), 94(3A) and 94(3B) and it may either agree or disagree with the determination of the Disciplinary Tribunal without seeking the intervention of a Judge under s 97(1). In that event, the affected solicitor may seek relief from a Judge under s 95(1). In addition,

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the affected solicitor may seek relief under s 97(1). This seems to run parallel with the avenue to challenge the Council's decision under and pursuant to s 95(1). It is not clear to us why there are two avenues open to the solicitor. Similarly, as far as the Council is concerned, its recourse to the court under s 97(1) overlaps substantially with its powers to act on its own under ss 94(2), 94(3), 94(3A) and 94(3B). However, as far as the complainant is concerned, the only available recourse is under s 97(1) and in that context, the principal remedy the complainant would seek is an order advancing the matter to the C3J, which is provided for in s 97(4)(*b*)(i), or for the decision of the Disciplinary Tribunal to be reconsidered, which is provided for in s 97(4)(*b*)(ii).

26 To consider the nature of the power conferred by s 97, we examine the remedies that would typically avail a complainant at common law. In this regard, we observe that the LPA does not provide a complainant with a statutory route of review against a decision of the Review Committee to dismiss the complaint outright (see ss 85(8), 85(8) and 85(10)). However, the High Court in *Deepak Sharma* ([14] *supra*) (affirmed by this court without discussion in *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 ("*Deepak Sharma (CA)*") at [3] and [24]) clarified that a dissatisfied complainant nonetheless has the option of commencing judicial review proceedings in respect of a decision of the Review Committee to dismiss the complaint.

27 *Deepak Sharma* was cited extensively by Mr Ravi in his written submissions and it is in some ways relevant to our decision, albeit not for the reasons advanced by Mr Ravi. In *Deepak Sharma*, the High Court held that the Review Committee's decision was susceptible to judicial review because the Review Committee's power was rooted in statute and also because of the public element that inhered in the nature of the decision (at [25] and [37]). The lack of a statutory route of review did not in and of itself indicate that Parliament

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intended to exclude the decisions of the Review Committee from judicial review (at [33]–[34]). The High Court considered the effect of s 91A(1) of the LPA, which states:

> **Restriction of judicial review**
>
> **91A.**—(1) Except as provided in sections 82A, 97 and 98, there shall be no judicial review in any court of any act done or decision made by the Disciplinary Tribunal.

28 Section 91A had been introduced by the Legal Profession (Amendment) Act (Act 19 of 2008). The High Court in *Deepak Sharma* elaborated on the scope and rationale of s 91A(1) (at [38]–[39]):

> 38 … Prior to the amendments in 2008, it was well established that the findings and determination of a [Disciplinary Tribunal, or "DT"] (then known as a Disciplinary Committee ("DC")) could be subject to judicial review notwithstanding that the complainant or the solicitor had a right to apply to a single judge under the then s 97 of the LPA or that the solicitor might have to show cause before a court of three judges. This resulted in a situation where judicial review challenges were made to the courts even before the DT had made a determination, causing the disciplinary process to be delayed significantly. In order to resolve this delay, Parliament amended ss 97 and 98 of the LPA along with the introduction of s 91A. The amendment to s 97 provides a single judge with the power of judicial review over the determinations of a DT where the DT has determined that there is no need for show cause proceedings before the court of three judges. The amendment to s 98 provides the court of three judges the power to determine "any question as to the correctness, legality or propriety of the determination of the [DT], or as to the regularity of any proceedings of the [DT]" (see s 98(8)(a) of the LPA). In other words, the court of three judges now decides both the merits and any judicial review challenges (see *Mohd Sadique bin Ibrahim Marican v Law Society of Singapore* [2010] 3 SLR 1097 at [10]). The purpose of s 91A is thus to restrict judicial review over determinations of a DT by consolidating the judicial review process with the hearing on the merits into one process, instead of maintaining them as two distinctly separate processes. Judicial review remains available, but only through the single judge process under s 97 (in the event there are no show cause proceedings) or the court of three judges under s 98 (in the event there are show cause proceedings). This is confirmed by

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> the Minister of Law's statement in the Second Reading of the Legal Profession (Amendment) Bill 2008 (at col 3251) which is as follows:
>
> > Mr Sin Boon Ann asked why do we have clause 36 [which introduced s 91A of the LPA] which restricts judicial review. In fact, he said 'ousted' judicial review. 'It is an important constitutional safeguard. Why are we doing this?' *I would clarify that judicial review is not "ousted". What we are doing is deferring it,* because what has happened in the past is that even before the tribunal proceedings and disciplinary proceedings are over, there were repeated applications for judicial review, which then dragged on and delayed the entire proceedings, vastly contributing to delays. *So, the approach has been to finish with the process, then you go for judiciary [sic] review.* Anyway, when you go before the Court of Three Judges, you can raise all the arguments that you could not have raised during the judicial review. So the lawyer is, to that extent, not in any worse-off position but what he cannot do now is to try and interrupt or delay the ongoing proceedings. [emphasis added]
>
> 39 Viewed against this background, s 91A is more accurately characterised as *restricting* or *consolidating* the then-existing judicial review process over DT decisions to the extent provided under ss 82A, 97 and 98 of the LPA. This is in contrast to the characterisation of the provision by the Law Society as "[providing] judicial review as a form of recourse … for DT proceedings". Section 91A's purpose is to speed up the disciplinary process *at the DT stage*. It would be a stretch, on a purposive statutory interpretation, to say that by restricting or consolidating the judicial review process over DT decisions, Parliament intended to completely exclude judicial review over decisions of a review committee which is an entirely different stage of the disciplinary process.
>
> [emphasis in original]

29 We generally agree with the observations of the High Court on the Parliamentary intent behind s 91A. Section 91A was introduced in the aftermath of the decisions of the High Court and the Court of Appeal in *Wong Keng Leong Rayney v Law Society of Singapore* [2006] 4 SLR(R) 934 ("*Rayney Wong (HC)*") and *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 ("*Rayney Wong (CA)*"). These concerned a solicitor's application

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to the High Court for leave to commence judicial review of certain decisions of a Disciplinary Tribunal (then known as the Disciplinary Committee) while disciplinary proceedings were ongoing. Judicial review was sought on the ground that some evidence had erroneously been admitted. As a result of the application, the disciplinary proceedings were halted and this gave rise to a question as to whether the judicial review application had been brought prematurely (see *Rayney Wong (HC)* at [13]–[45] and *Rayney Wong (CA)* at [15]–[23]). Reading the Parliamentary debates in that light, it becomes evident that s 91A was clearly intended to restrict the commencement of judicial review of the Disciplinary Tribunal's decisions *while* the proceedings were ongoing, as that was thought to have caused unnecessary delay. There was no indication that Parliament intended to oust judicial review of *all* decisions by *any* bodies constituted under the LPA. It followed that a decision of the Review Committee could be the subject of judicial review proceedings in the High Court (see *Deepak Sharma* at [39]–[40]). In those proceedings, the court's powers are those traditionally associated with judicial review, which includes the power to review the decision of the Review Committee on the grounds of illegality, irrationality and procedural unfairness (as was the applicant's case in *Deepak Sharma* (at [83], [118] and [135])). Judicial review proceedings do not encompass an appeal against the merits of the Review Committee's decision (see *Deepak Sharma (CA)* at [45]).

30 While *Deepak Sharma* ([14] *supra*) concerned the susceptibility of decisions of the Review Committee to judicial review, in our judgment, the High Court's reasoning would apply with equal force to the determinations of the Council pursuant to s 87(1) of the LPA after it has considered the recommendations of the Inquiry Committee. The decision to be reviewed is that of the Council and not the Inquiry Committee. While the Council is obliged to

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give effect to the Review Committee's decision to dismiss a complaint and cannot disagree (see ss 85(8) and 85(9)), it *can* disagree with at least some of the Inquiry Committee's recommendations (see s 87(2)(*b*)). However, any application for review of the determination of the Council pursuant to s 87(1) will likely entail an examination of the proceedings before the Inquiry Committee. Like the Review Committee, the powers exercised by the Council in reaching its determination are derived from statute (specifically s 87 of the LPA) and its determinations too carry the same public element, being the public interest in the regulation of solicitors (see *Deepak Sharma* at [22]–[23]). The key distinction between decisions of the Review Committee and those of the Council pursuant to s 87(1) is the provision of a statutory route of review of the Council's determination provided for in ss 95 and 96 (see [22(a)]–[22(b)] above), but in *Whitehouse Holdings Pte Ltd v Law Society of Singapore* [1994] 2 SLR(R) 485 ("*Whitehouse Holdings*"), this court held that the existence of those provisions does not preclude the possibility of judicial review of the Council's determination and the Inquiry Committee's decision (at [37]). Prerogative orders are *concurrently* available alongside the statutory route, though this court also opined that the statutory route should be the procedure of first resort (*Whitehouse Holdings* at [37] and [40]–[41]). In *Loh Der Ming Andrew v Law Society of Singapore* [2018] 3 SLR 837 at [82] and [93], the High Court held that under the statutory route, the Judge may similarly consider the legality of the decision-making process on the traditional grounds of judicial review and make the appropriate orders. We leave the question of the nature of the powers of a Judge under s 96 open for the moment. Based on the language of s 96(4), particularly when contrasted with the language of ss 97(4)(*a*) and 98(8)(*a*), it seems to us eminently arguable that the power of a Judge under s 96(1) may well be one that goes to the merits of the Council's determination that the matter need not advance to the next stage or as to the penalty to be

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imposed on the solicitor and not to encompass the traditional judicial review grounds. On this basis, judicial review would be available as a separate common law right existing alongside the statutory right of action provided for in s 96(4). At the same time, we note that ss 97(4)(*a*) and 98(8)(*a*) were inserted into the LPA alongside s 91A, and the language of the provisions might simply have been intended to clarify the relationship between these provisions rather than to limit the scope of review in ss 95 and 96. Read together, ss 91A, 97 and 98 address the susceptibility of decisions of the Disciplinary Tribunal to judicial review, and it is to this issue that we now turn.

31 The power of the Disciplinary Tribunal is also derived from statute (specifically ss 89–91 of the LPA) and its determinations encompass the same public element. However, any common law right of judicial review over the decisions of the Disciplinary Tribunal is subject to the restriction in s 91A discussed above (at [28]), which was aimed at "restricting or consolidating the then-existing judicial review process over [Disciplinary Tribunal] decisions to the extent provided under ss 82A, 97 and 98 of the LPA" [emphasis in original omitted] (*Deepak Sharma* at [39]). Section 91A therefore changed the prevailing legal position at that time, which was that proceedings before the C3J were distinct from judicial review proceedings in that the C3J would go into the merits of the determination and the appropriate sanctions and would be quite separate from judicial review proceedings which were concerned only with the legality of the decision (see *Mohd Sadique bin Ibrahim Marican and another v Law Society of Singapore* [2010] 3 SLR 1097 ("*Mohd Sadique*") at [7], citing *Re Singh Kalpanath* [1992] 1 SLR(R) 595 at [27] and *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 at [34]). After the amendment, the C3J was vested with jurisdiction over *both* the merits *and* any judicial review challenges within a single process (see *Deepak Sharma* at [38]–[39]).

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32 The Disciplinary Tribunal's decisions are also made subject to a Judge's powers of review under s 97. By restricting judicial review *to the extent provided* under s 97, among other provisions, s 91A(1) suggests that the powers conferred on a Judge by s 97 are akin to those available in judicial review proceedings. This is also evident from the language of s 97(4)(*a*), which was inserted into the LPA at the same time as s 91A. The provision states that the Judge shall have full power to determine any question necessary to be determined for the purpose of doing justice in the case, "including any question as to the correctness, legality or propriety" of the determination of the Disciplinary Tribunal, which mirrors the powers conferred on the C3J by s 98(8)(*a*) and is directly referable to the traditional grounds of illegality, irrationality and procedural impropriety in judicial review (see *Mohd Sadique* at [10] and *Law Society of Singapore v Yeo Khirn Hai Alvin and another matter* [2020] 4 SLR 858 ("*Alvin Yeo*") at [25]). We reiterate our view that a Judge hearing an application under s 97 does not appear to be concerned with the merits of the Disciplinary Tribunal's determination (see [23(b)] above). Such a Judge does not have the express power to vary any determination of the Disciplinary Tribunal in the same way that a Judge has the power to vary decisions of the Council, as found in, for instance, s 95(3) read with ss 95(4)(*b*) and 95(5). We add that such a Judge also does not have *all* the powers of the C3J. The C3J's power to consider the merits of the decision and make an order that a solicitor be struck off the roll, suspended from practice, censured or pay a penalty are contained in s 98(1). In contrast, s 97(4)(*b*), while permitting the Judge some discretion, envisions the orders made by the Judge to be limited to directing that an application be made to advance the matter to the C3J pursuant to s 98 or that the matter be reheard by the same or a different Disciplinary Tribunal, and/or any order as to costs. In our judgment, this must be so if we are to make sense of all the statutory provisions.

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33 To add to the complexity, as we have noted above, there are overlapping avenues open to the solicitor and to the Council when seeking to reverse or vary the determination of the Disciplinary Tribunal. Where the recommendation of the Disciplinary Tribunal goes to the Council, the Council's decision in respect of that determination may be challenged before a Judge under s 95. However, s 97 seems to provide an avenue of recourse even before the Council has come to a determination. To make sense of this, it is necessary to return to the logic underlying the architecture of these provisions, which is that in general, the *Council* considers and decides what it will do in response to the Disciplinary Tribunal's determination, though in certain limited circumstances, the Council must adhere to the determination: see, for instance, s 94(1). We have also noted that as far as the complainant is concerned, the complainant's only recourse against a determination of the Disciplinary Tribunal is under s 97. That will be triggered after the Council has made *its* decision under s 94 and advised the parties under s 94(4). It seems to us that by contrasting s 95(3) which expressly empowers a Judge to vary or set aside a penalty *imposed* by the Council and s 97 which does not contain such a provision and which is concerned entirely with the exercise of the powers of the Disciplinary Tribunal and not of the Council, a Judge acting under s 97(1) does not have the power to decide on any penalty or even to make recommendations as to any penalty. It makes no sense to speak of such a recommendation at all. Rhetorically, it might be asked: would it be open to the Council then to reject such a recommendation of a Judge? And if it did, can that be then challenged before another Judge under s 95? Rather, it seems to us that the powers of a Judge acting under s 97 are, as we have said, essentially to direct that the matter be advanced towards the C3J or that it be reconsidered by the same or a freshly constituted Disciplinary Tribunal.

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34 In summary, the disciplinary framework and the avenues of review set out in Part VII of the LPA are enigmatic and in need of review and reform. As best we can make of it, we summarise it as follows:

(a) A Review Committee may direct the Council to dismiss the complaint or refer it back to the Chairman. Where the complaint is dismissed, the complainant may seek leave to commence judicial review proceedings in the High Court which will review the decision on the traditional grounds of judicial review.

(b) Where the complaint is referred back to the Chairman, it must then be referred to an Inquiry Committee. An Inquiry Committee may recommend that: (i) a formal investigation is not necessary; (ii) no cause of sufficient gravity exists for a formal investigation but the solicitor should be given a warning, reprimanded, order to comply with remedial measures or ordered to pay a penalty; or (iii) there should be a formal investigation by a Disciplinary Tribunal. The Inquiry Committee's report will be considered by the Council that will then make its determination as to whether to accept the recommendation, save that if the Inquiry Committee recommends that the matter should be referred to a Disciplinary Tribunal, the Council is obliged to act accordingly. Where the Council decides that the solicitor should be given a warning, reprimanded or ordered to pay a penalty, the solicitor may apply to a Judge under s 95 to set that determination aside and the Judge may affirm, vary or set aside that order. Where the Council does not refer the complaint for a formal investigation, the complainant may apply to a Judge under s 96 seeking to reverse that decision. Concurrently, a complainant or solicitor may commence judicial review proceedings of

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the Council's determination. This would presumably encompass any relevant concerns as to the proceedings of the Inquiry Committee.

(c) A Disciplinary Tribunal may determine that: (ii) no cause of sufficient gravity for disciplinary action exists, (ii) while no cause of sufficient gravity for disciplinary action exists, the solicitor should be reprimanded, ordered to comply with remedial measures or ordered to pay a penalty; or (iii) cause of sufficient gravity for disciplinary action exists. The Council may agree or disagree with the course recommended in the first two of these possibilities, but it must accept the determination of the Disciplinary Tribunal in the case of the third of these possibilities. In the latter case, there is no room for any further appeal and the matter must proceed to the C3J. Where the Disciplinary Tribunal determines that the solicitor should be reprimanded or ordered to pay a penalty and the Council accepts that recommendation, the solicitor may apply to a Judge under s 95 seeking to set aside the decision of the Council. The complainant, on the other hand, may apply to a Judge for an order that the matter be advanced to the C3J in either of the first two possibilities outlined above where the Council agrees with the Disciplinary Tribunal. Separately, the Council may apply to a Judge under s 97 if it does not agree with the findings of the Disciplinary Tribunal in the case of the first two of the possibilities outlined above. However, as we have noted already, this overlaps substantially with the Council's power to act on its own without needing such leave under ss 94(3)(*b*) and 94(3A)(*a*)(ii). Judicial review proceedings of the Disciplinary Tribunal's decisions cannot be commenced outside the statutory framework.

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(d) The C3J has full power to set aside the determination of the Disciplinary Tribunal on the traditional grounds of judicial review or on its merits and, upon due cause shown, may make an order under s 98(1).

35 The process is reflected in the diagram below:

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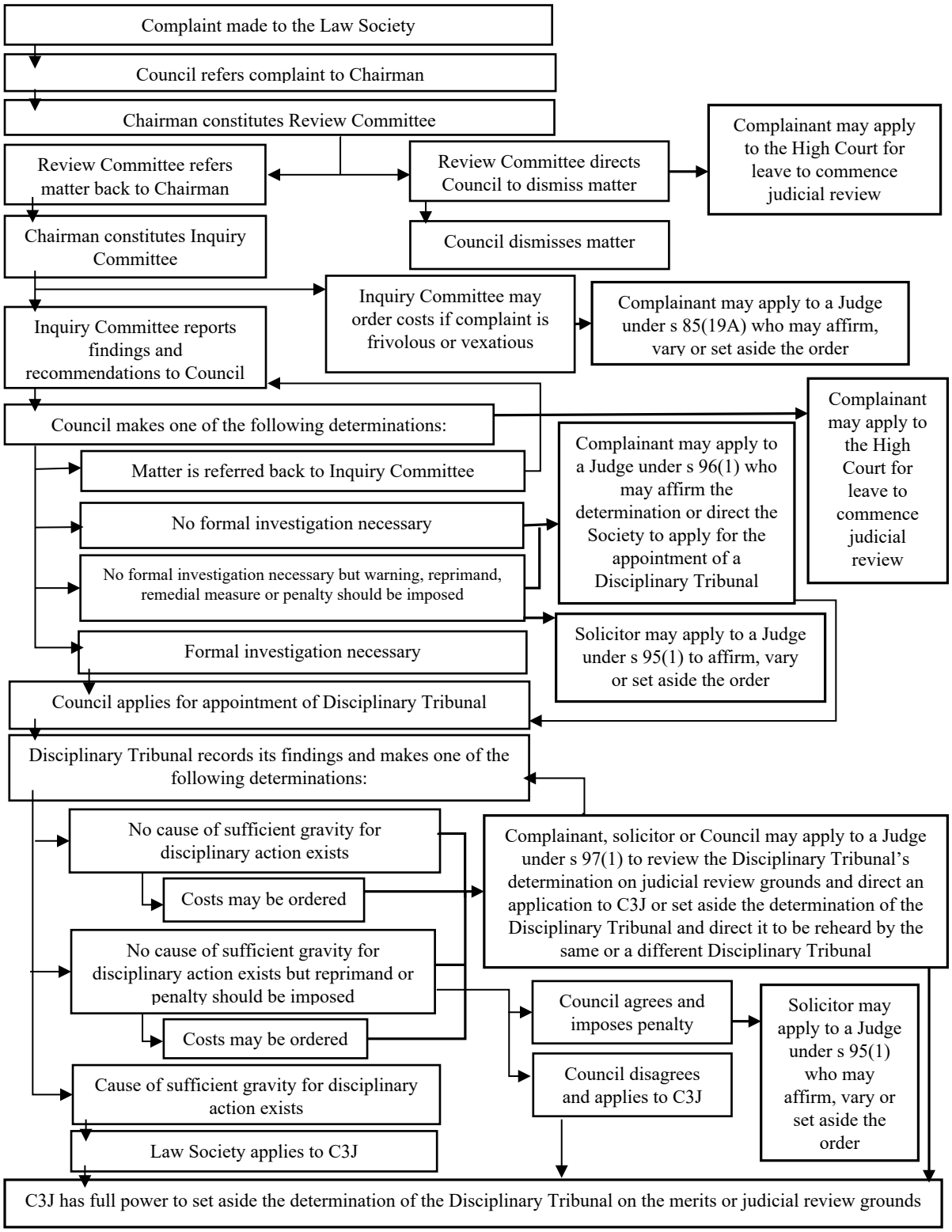

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36 With this framework in mind, we turn to consider the jurisdiction of the court.

The jurisdiction of the Court of Appeal

37 The Court of Appeal is a creature of statute, and it is seised only of the jurisdiction conferred upon it by statute (see *Blenwel Agencies Pte Ltd v Tan Lee King* [2008] 2 SLR(R) 529 at [23] and *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106 at [17]). The starting point for any analysis of the jurisdiction of the Court of Appeal is the SCJA. Section 3 of the SCJA states:

> **Divisions and jurisdiction of Supreme Court**
>
> **3.** The Supreme Court shall be a superior court of record and shall consist of —
>
> (*a*) the High Court, which shall exercise original and appellate civil and criminal jurisdiction; and
>
> (*b*) the Court of Appeal, which shall exercise appellate civil and criminal jurisdiction.

38 On the face of the statute, the High Court and the Court of Appeal exercise civil and criminal jurisdiction. The civil and criminal jurisdiction of the Court of Appeal is further elaborated on in s 29A of the SCJA. On civil jurisdiction, s 29A(1)(*a*) states:

> **Jurisdiction of the Court of Appeal**
>
> **29A.**—(1) The civil jurisdiction of the Court of Appeal consists of the following matters, subject to the provisions of this Act or any other written law regulating the terms and conditions upon which those matters may be brought:
>
> (*a*) any appeal from any judgment or order of the High Court in any civil cause or matter, whether made in the exercise of its original civil jurisdiction or made in the exercise of its appellate civil jurisdiction; …

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39 The civil jurisdiction of the High Court, in turn, is set out in ss 16 and 17 of the SCJA. As it is undisputed that disciplinary jurisdiction is not within the jurisdiction enumerated in s 17(1) of the SCJA, we will only set out s 16:

> **Civil jurisdiction — general**
>
> **16.—**(1) The High Court shall have jurisdiction to hear and try any action in personam where —
>
> (*a*) the defendant is served with a writ of summons or any other originating process —
>
> (i) in Singapore in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> (ii) outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules; or
>
> (*b*) the defendant submits to the jurisdiction of the High Court.
>
> (2) Without prejudice to the generality of subsection (1), the High Court shall have such jurisdiction as is vested in it by any other written law.

Earlier decisions of this court

40 The question, whether there is a right of appeal against decisions under Part VII of the LPA, has been judicially considered for some time and it is useful to outline the legal position prior to the decision in *Top Ten Entertainment* ([3] *supra*).

41 In *Hilborne v Law Society of Singapore* [1971–1973] SLR(R) 685 ("*Hilborne (CA)*"), a solicitor applied under s 95 of the LPA to set aside the Council's decision to impose a fine on him. The judge dismissed the application and the solicitor filed an appeal. Neither party raised any issue of jurisdiction (see *Hilborne (CA)* at [4]). However, aside from addressing the appeal on the merits, the Court of Appeal also held that an order made under s 95 of the LPA was not an order made by the High Court in a civil matter either in the exercise

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of its original or appellate jurisdiction (at [18]). Wee Chong Jin CJ, delivering the judgment of the court, stated (at [20]):

> The provisions of Pt VII of [the LPA] clearly contemplate a special procedure in respect of disciplinary proceedings affecting the profession. One has only to consider the position that would arise should a person who had made a written complaint to the Society have been dissatisfied with the Council's action. Such a person could apply to a judge by way of originating summons under s 96 of [the LPA] and the only orders a judge could make would be to affirm the Council's decision or to direct the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee. Surely it cannot be successfully contended that an appeal would lie in such circumstances to the Court of Appeal. As the Act provides, if a Disciplinary Committee makes a finding adverse to the advocate and solicitor the procedure prescribed under s 98 of [the LPA] would apply and the matter would eventually go before a court of three judges and not before the Court of Appeal.

42 The Court of Appeal therefore held that it did not have jurisdiction to entertain an appeal from an order made by a Judge under s 95 of the LPA.

43 The solicitor filed an appeal to the Judicial Committee of the Privy Council ("the Privy Council") in *Hilborne v Law Society of Singapore* [1977–1978] SLR(R) 342 ("*Hilborne (PC)*"), where the Law Society maintained that the Court of Appeal had jurisdiction over the original appeal. The Privy Council dismissed the appeal before it on the merits, but saw fit to observe that it disagreed with the Court of Appeal on the issue of jurisdiction (at [33]):

> … The Court of Appeal held in the alternative that there was no right of appeal to it in such a case. The respondent did not seek to support that view before this Board, but since it is a question of jurisdiction the question must be dealt with. Their Lordships are of the opinion that there is no sufficient ground for excluding from s 29 of the Supreme Court of Judicature Act (Cap 15, 1970 Rev Ed) as "any judgment or order of the High Court in any civil matter" the decision of a High Court judge on an originating summons such as in the present case. There is no provision in the statute (Legal Profession Act) excluding such appeal, and it is not to be found among the non-appealable matters in s 34 of the former Act. The fact that by s 98(6) of the

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> latter Act it is expressly provided in the serious cases where a special court of three judges is to be concerned that there is to be no appeal therefrom to the Court of Appeal but only to the Judicial Committee of the Privy Council suggests to their Lordships that the Legislature was not minded to forbid appeal to the Court of Appeal in a case such as the present one.

44 The legal position was therefore reversed by the Privy Council on appeal, albeit in *obiter dicta*.

45 The decision in *Hilborne (PC)* was followed by the Court of Appeal in *Wong Juan Swee v Law Society of Singapore* [1994] 3 SLR(R) 619 ("*Wong Juan Swee*"), which concerned an application by a solicitor under s 95 of the LPA. The Law Society raised a preliminary objection to the appeal on the basis that the Court of Appeal had no jurisdiction to hear it, relying on *Hilborne (CA)* ([41] *supra* at [8]). LP Thean JA, delivering the judgment of the majority consisting of Goh Joon Seng J and himself, highlighted that the Privy Council had observed otherwise on appeal (at [9]). Thean JA also noted that the Court of Appeal had, since the decisions in *Hilborne (CA)* and *Hilborne (PC)*, on at least two occasions entertained appeals from decisions under the LPA (at [10], citing *Law Society of Singapore v Ang Boon Kong Lawrence* [1992] 3 SLR(R) 825 ("*Lawrence Ang*") and *Whitehouse Holdings* ([30] *supra*)) and stated (at [11]):

> The proceedings below were commenced under s 95 of the [LPA] by an originating summons – one of the four modes of beginning civil proceedings in the High Court. In hearing the application under s 95, the judicial commissioner was exercising a form of appellate but supervisory jurisdiction, and her judgment thereon was a judgment of the High Court given in exercise of the appellate jurisdiction in a civil cause or matter. Under s 29A(1) (which was then s 29(1) when the appeal was filed) of the [SCJA], this court has jurisdiction to hear and determine appeals from any judgment or order of the High Court in any civil cause or matter whether made in exercise of its original or appellate jurisdiction. Further, there is nothing in the [LPA] to say, expressly or by implication, that the judgment or order of a judge given under s 95 of the [LPA] is final, and such judgment

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> or order "is not to be found among the non-appealable matters" in s 34(1) of the SCJA. We are therefore firmly of the view that there is a right of appeal to this court from a judgment or order made by a judge under s 95 of the [LPA].

46 Warren L H Khoo J dissented on a separate issue but agreed with the majority that the decision in *Hilborne (PC)* had settled the law on the right of appeal (at [25]). At that stage, it seemed beyond debate that the Court of Appeal could hear an appeal against a decision under ss 95, 96 and 97 of the LPA.

Top Ten Entertainment

47 Some 15 years later, the legal position would once again be reversed. In *Top Ten Entertainment* ([3] *supra*), the applicant ("Top Ten") filed a complaint against a solicitor and the Inquiry Committee recommended that a formal investigation was unnecessary but that a fine should be imposed. Top Ten applied to a Judge pursuant to s 96(1) of the LPA. The Judge who heard the application concluded that there was sufficient material to justify a formal investigation and directed the Law Society to apply to the Chief Justice to appoint a Disciplinary Tribunal. On the question of costs, the Judge ordered the Law Society to pay 50% of Top Ten's costs and rejected its submission that no costs order should be made against it based on the application of the principle laid down by the decision of the Court of Appeal of England and Wales in *Baxendale-Walker v Law Society* [2008] 1 WLR 426 ("the *Baxendale-Walker* principle").

48 The Law Society's appeal related to the order on costs only, for which it sought – and was granted – leave pursuant to s 34(2)(*b*) of the SCJA (see *Top Ten Entertainment Pte Ltd v Law Society of Singapore* [2011] 1 SLR 291 at [7]). The Court of Appeal first addressed the Law Society's arguments on the *Baxendale-Walker* principle and held that it would have dismissed the appeal

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on the merits, but then held that in any event, there was no right of appeal against a decision of a Judge made under ss 95, 96 and 97 of the LPA (*Top Ten Entertainment* at [39]).

49 As the correctness of *Top Ten Entertainment* is directly in issue, we will set out the court's analysis in detail. First, the court considered the civil jurisdiction of the High Court as set out in ss 16 and 17 of the SCJA. It observed that s 16(1) of the SCJA provided for the general jurisdiction of the High Court with respect to *in personam* actions, and that the ordinary meaning of an *in personam* action did not include a disciplinary action. It also observed that none of the provisions – being ss 16 and 17 and the First Schedule of the SCJA – referred to disciplinary proceedings. It concluded that the civil jurisdiction of the High Court did not include jurisdiction over disciplinary matters under Part VII of the LPA, and therefore the Court of Appeal also had no such jurisdiction (*Top Ten Entertainment* at [42]).

50 Next, the court considered whether O 57 of the Rules of Court, which governs appeals to the Court of Appeal "from any tribunal from which an appeal lies to [the Court of Appeal]", applied. The court observed that Part VII provided "a self-contained disciplinary framework outside the civil proceedings framework". It noted there was no express provision for an appeal from a decision of a Judge under ss 95, 96 or 97 of the LPA (*Top Ten Entertainment* at [44]). The court further noted that s 2 of the LPA defined "Judge" as "a Judge of the High Court sitting in chambers", but it considered that this definition was not apt because there was no requirement that an application under s 96 had to be heard in chambers. Instead, it considered that the more appropriate definition was to be found in s 2 of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the Interpretation Act") and s 2 of the SCJA, both of which defined "Judge" as "a Judge of the High Court and [including] any person appointed to exercise the

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powers of a Judge" at that time. The court considered that a Judge exercising powers under ss 95, 96 and 97 was not doing so as a judge of the High Court exercising civil jurisdiction under ss 16 and 17 of the SCJA but rather as a judge of the High Court exercising disciplinary jurisdiction. As the judge's decisions were not decisions in civil proceedings, they did not fall within the appellate jurisdiction of the Court of Appeal set out in s 29A(1) of the SCJA (*Top Ten Entertainment* at [44]–[45]).

51 In reaching its conclusion, the court held that *Hilborne (PC)* ([43] *supra*) and *Wong Juan Swee* ([45] *supra*) were wrongly decided. It identified two assumptions in *Hilborne (PC)* – that disciplinary proceedings were civil proceedings and that the absence of a provision excluding an appeal could give rise to a right of appeal by implication. These assumptions were thought to be flawed because disciplinary actions under the LPA were not civil actions, and a right of appeal had to be expressly provided for (*Top Ten Entertainment* at [49]). The court dismissed *Wong Juan Swee*'s reliance on earlier authorities because the issue of jurisdiction had not been raised in those cases, and also disagreed that the commencement of proceedings by originating summons was significant (*Top Ten Entertainment* at [52]–[53]). The court concluded by considering the historical development of the legislative framework governing the disciplinary process and observed that the passing of separate legislation (being the LPA and SCJA) reinforced the separation of disciplinary proceedings from the normal civil process (*Top Ten Entertainment* at [71]).

52 We make some preliminary observations on *Top Ten Entertainment* ([3] *supra*). Notwithstanding the court's conclusion that it did not have jurisdiction, it first considered the parties' submissions on the substantive appeal and concluded that even if it did have jurisdiction, it would not have allowed the appeal (*Top Ten Entertainment* at [39]). Its observations on the jurisdictional

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issue therefore seem to us to be in the nature of *obiter dicta.* In line with this, it appears from the decision that neither party submitted on the issue of jurisdiction (see *Top Ten Entertainment* at [40]). As far as the Law Society's case was concerned, this rested just on the authority of *Wong Juan Swee* ([45] *supra*). The substantive appeal itself only concerned costs, for which the Law Society had been granted leave to appeal, and did not concern the substantive decision of the judge below, which had been, in effect, to allow the application and direct the Law Society to apply to the Chief Justice for the appointment of a Disciplinary Tribunal (*Top Ten Entertainment* at [6]). To that extent, any question of public interest – being the lack of a formal investigation into a solicitor's conduct – did not arise because the complaint was already proceeding to a full investigation. In our judgment, though *Top Ten Entertainment* clearly states that there is no right of appeal against a decision of a Judge pursuant to ss 95, 96 and 97 of the LPA, the fact that the specific question of jurisdiction does not appear to have been fully argued, and the fact that the real question at issue in that case had nothing to do with the public interest in investigating the conduct of a solicitor, cause us to reconsider the correctness of the observations that were made on jurisdiction. We also consider that *Top Ten Entertainment* appears to have approached the issue from the opposite end that was taken in *Hilborne (PC)*. What we mean by this is that whereas the latter case appears to have started from the premise that the disciplinary jurisdiction is within or forms a part of the civil jurisdiction of the court, *Top Ten Entertainment* appears to have come to the same question from the opposite end. It does not appear to us that either decision, with respect, adequately dealt with exactly *why* the respective conclusion they came to should be regarded as correct.

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Re Nalpon Zero

53 In that light we consider the later decision of this court in *Re Nalpon Zero* ([12(a)] *supra*), where the issue of the jurisdiction of the Court of Appeal over matters under Part VII of the LPA arose once again. *Re Nalpon Zero* involved an application for leave for an investigation to be made into a complaint against a Legal Service Officer pursuant to s 82A(5) of the LPA. The application was heard by Chan Sek Keong CJ and dismissed, and the applicant filed an appeal to the Court of Appeal.

54 The Court of Appeal held that it did not have jurisdiction to hear an appeal from a decision of the Chief Justice pursuant to s 82A of the LPA. It examined s 29A(1) of the SCJA, which at that time read (*Re Nalpon Zero* at [44]):

> **29A.**—(1) The civil jurisdiction of the Court of Appeal shall consist of appeals from any judgment or order of the High Court in any civil cause or matter whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to the provisions of this Act or any other written law regulating the terms and conditions upon which such appeals may be brought.

55 Based on s 29A(1), the Court of Appeal identified two threshold requirements that had to be met before it would be seised of jurisdiction. First, the decision appealed against had to be a decision of the High Court and second, the High Court had to have been exercising either its original or appellate civil jurisdiction (*Re Nalpon Zero* at [46]). In relation to the first requirement, the Court identified three indicia to help determine whether a decision had been made by the High Court: the language used in the statute, the type of jurisdiction exercised, and the specific incorporation of the Rules of Court (*Re Nalpon Zero* at [48]).

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56 The court held that an appeal against a decision under s 82A of the LPA failed both threshold requirements. First, the decision being appealed against was not a decision of the High Court but a decision of the Chief Justice (*Re Nalpon Zero* at [63]). Second, the oversight of disciplinary proceedings under the LPA was not an exercise of civil or criminal jurisdiction, but an exercise of a unique disciplinary jurisdiction by a specially constituted court (*Re Nalpon Zero* at [67]). On the latter point, the court affirmed the decision in *Top Ten Entertainment* ([3] *supra*) that disciplinary proceedings were distinct from normal civil proceedings (*Re Nalpon Zero* at [59]).

The present application

57 Having reviewed the relevant case law, we turn to consider the present application. We agree that in order to invoke our jurisdiction, the two threshold requirements set out in *Re Nalpon Zero* ([12(a)] *supra*) must be met. This follows from a plain reading of s 29A(1)(*a*) of the SCJA. Though s 29A of the SCJA was amended by the Criminal Justice Reform Act 2018 (Act 19 of 2018), the pre-2018 provision of s 29A(1) examined in *Re Nalpon Zero* is substantially similar to s 29A(1)(*a*). For completeness, we add that the post-amendment SCJA contains a substantially similar provision in s 53(2)(*a*), which governs the civil jurisdiction of the Court of Appeal. For the Court of Appeal to be seised of jurisdiction pursuant to s 29A(1)(*a*) of the SCJA, the decision on appeal must be: (a) a decision of the High Court; and (b) in the exercise of its original or appellate civil jurisdiction (*Re Nalpon Zero* at [46]). Sections 29A(1)(*b*) and 29A(2) of the SCJA set out the jurisdictional requirements in other scenarios which are not relevant for our present purposes.

58 *Top Ten Entertainment* was released prior to *Re Nalpon Zero*. The court therefore did not approach the issue by considering the two threshold

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requirements identified in the later decision. Instead, it first considered the earlier authorities and explained why those authorities were wrongly decided. We generally agree with its critique of these decisions. Clearly, the Court of Appeal is only seised of jurisdiction that has been conferred by statute and the approach in *Hilborne (PC)* ([43] *supra*) and *Wong Juan Swee* ([45] *supra*), to the extent that it seem to have *assumed* that a right of appeal could be implicitly inferred if not explicitly excluded, is not correct. However, had the court in *Top Ten Entertainment* considered the language of the LPA and the SCJA in detail, we think it might have reached a different conclusion. We discuss the present appeal in the light of the two threshold requirements to illustrate this point.

Whether the decision was one of the High Court

59 The first threshold question is to consider whether the decision is one made by the High Court and to that end, the first indicia identified by the court in *Re Nalpon Zero* to ascertain the identity of the court making the decision is the plain language of the statute (*Re Nalpon Zero* at [49]). Sections 95, 96 and 97 of the LPA provide that an application shall be made to a "Judge". A "Judge" is defined in s 2 of the LPA as "a Judge of the High Court sitting in chambers".

60 A key element of the decision in *Top Ten Entertainment* ([3] *supra*) was that the definition set out in the LPA was not appropriate, and the more appropriate definition was in s 2 of the Interpretation Act, which at that time referred to "a Judge of the High Court and includes any person appointed to exercise the powers of a Judge" (*Top Ten Entertainment* at [45]). With the greatest respect, we consider this aspect of the court's reasoning unpersuasive. Where a word has been defined in the relevant statute, there is no reason to have recourse instead to the Interpretation Act unless "there is something in the subject or context inconsistent with such construction or unless it is therein

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otherwise expressly provided" (see s 2(1) of the Interpretation Act). It is wholly unclear to us what it is that renders the definition in s 2 of the LPA unsuitable. More importantly, it strikes us as wholly implausible that Parliament would have contemplated an entirely separate notion of a Judge of the High Court exercising powers conferred under Part VII of the LPA, doing so not as a Judge of the High Court but in some other capacity, and yet make no provision for this at all; and even more implausibly, to include a definition of a Judge as a Judge of the High Court *sitting in chambers* within the LPA itself, and yet contemplate that that definition would *not* apply to Part VII. Further and in any case, although the court in *Top Ten Entertainment* preferred the definition in s 2 of the Interpretation Act, it nonetheless held that a Judge under ss 95, 96 and 97 of the LPA was "a judge *of the High Court* exercising disciplinary jurisdiction under Pt VII of the LPA" [emphasis added] (*Top Ten Entertainment* at [45]). Hence, its recourse to the Interpretation Act did not displace the definition of a Judge as one of the High Court.

61 The court in *Top Ten Entertainment* seemed to have been influenced by the fact that there was no requirement that an application under s 96 had to be heard in chambers, and it inferred that the definition of a "Judge" in the LPA was confined to provisions other than those in Part VII. Yet none of the other provisions cited (being ss 22, 23, 25B, 25C, 27A, 27B, 28 and 32(3) of the LPA in force at the time) explicitly *require* that the matters they concern must be heard in chambers. The only provision that might have come close in this regard was s 22 (which has since been repealed by the Legal Profession (Amendment) Act 2011 (Act 8 of 2011)). That provision concerned applications to review decisions of the Board of Legal Education, and s 22(4) provided that "[t]he Judge hearing the application may, in his discretion, adjourn the application into open court." The inference is that such an application should be heard in

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chambers, but this oblique reference does not seem to us sufficiently to distinguish a "Judge" under s 22 from a "Judge" in Part VII. In fact, as we have already noted (at [22(a)]), s 95(2) provides that a Judge shall hear an application under s 95 in chambers unless she sees fit to order a hearing in open court. In the latter case, it seems clear that on the plain meaning of the definition of "court" in s 2 of the LPA that this would be a hearing before the High Court; and it cannot then be sensibly contended that if a Judge were to hear the matter in chambers, she would be sitting in some other capacity than as a Judge of the High Court. Following from this, although there is no identical provision in ss 96 or 97, it would be strange to say the least to conclude on this basis that a Judge hearing an application under s 95 is a Judge of the High Court while a Judge hearing an application under ss 96 and 97 is not.

62 Furthermore, the court's recourse to s 2 of the Interpretation Act gave rise to some inconsistency with the rest of the LPA and, indeed, within Part VII. To begin, it should be noted that the definition of a "Judge" as one sitting in chambers becomes wholly unremarkable when it is seen in light of the fact that s 2 of the LPA also defines "court" as "the High Court or a Judge when sitting in open court". This appears not to have been considered in *Top Ten Entertainment.* The terms "court" and "Judge" are sometimes used interchangeably; for example, under s 80, the "court or a Judge" has certain powers to order a solicitor to account for moneys or securities in his possession while under s 81, the "court or a Judge" may order moneys certified payable to the client to be immediately paid.

63 Turning specifically to Part VII, it is clear from ss 82, 82A, 82B, 83 and 83A that the control of those engaged in the various aspects of the practice of law is vested in the *Supreme Court.* It is further evident that the C3J is identified as a part of the Supreme Court: see, for instance, s 83A(4). In addition, it is clear

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that the High Court exercises some jurisdiction within Part VII of the LPA, given that certain provisions do contemplate recourse to a "court". Complaints against solicitors are subject to the time bar in ss 85(4A) and 85(4B), but pursuant to ss 85(4C) and 85(4D), the Council may refer complaints to the Chairman notwithstanding the time bar with "the leave of the court". The precise court is not stated but in our judgment, it must be the High Court. It cannot be the C3J, because the leave of court in question is to be obtained before the complaint is referred to the Chairman (see *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 ("*Allan Chan*") at [29]), and the C3J would not have been convened at this time (*Allan Chan* at [30]–[32])). The High Court is thus not wholly excluded from matters under Part VII. Perhaps most tellingly, while s 95 provides that a solicitor may apply to "a Judge" for review of any penalty imposed, s 88(4)(*a*) refers to orders made under s 95(3)(*a*) as orders made by "the court". Similarly, while s 97(1) allows a complainant to apply to "a Judge" to review the Disciplinary Tribunal's determination under s 93(1)(*a*), s 94(2) provides that where there is a determination under s 93(1)(*a*), the Law Society need not take any further action unless so directed by "the court". There is no clear reason for this and one may infer that the references to "a Judge" and "the court" are simply used interchangeably, as in [62] above.

64 The view expressed in *Re Nalpon Zero* ([12(a)] *supra*) that the whole of Part VII fell outside the purview of the High Court and was under the control of a "specially constituted court" arose in the context of an appeal from s 82A(5). The court inferred this from the role of the C3J in s 98(7) and then extended it to all matters under Part VII (*Re Nalpon Zero* at [52]). Yet if s 2 of the LPA applies, and we see no reason why it should not, then a Judge hearing an application under ss 95, 96 and 97 *is* a Judge of the High Court and acting as such as indicated by the words "sitting in chambers". It is simply meaningless

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to speak of a Judge acting other than in the exercise of the jurisdiction of a court, and in some other disciplinary capacity when the Judge is described as "sitting in chambers". The latter term derives its meaning of a Judge presiding over a court hearing that is heard in chambers and it is to be contrasted with the notion of a Judge sitting in open court. The court in *Re Nalpon Zero* may have proceeded as it did because s 82A referred to the "Chief Justice" and s 98(7) referred to "a court of 3 Judges of the Supreme Court" and not a "court" or a "Judge". While its analysis might be appropriate for ss 82A and 98, there was no basis to extend it to ss 95, 96 and 97 when the statute clearly identifies a Judge as a Judge of the High Court who is sitting in chambers. To put it simply, we can see no basis at all for construing such a reference to a Judge as one acting in any capacity other than as a Judge of the High Court. That is what the LPA itself provides; and as we have already noted, it seems implausible in the extreme that Parliament contemplated some other capacity, did not define this, and instead left an inapposite definition in the LPA.

65 The second indicia identified in *Re Nalpon Zero* was the "the type of jurisdiction exercised" (at [53]), as the definition of the High Court is inextricably linked to its jurisdiction. We will consider this in detail in the discussion on the second threshold requirement (at [69] below).

66 The third indicia identified was specific references to the incorporation of court practices. In *Re Nalpon Zero*, the court noted that there were provisions in Part VII that specifically stated that the Rules of Court should apply, and inferred that this meant that those proceedings were not heard by the High Court, and therefore proceedings under the entirety of Part VII were not heard by the High Court (at [62]). In reaching this conclusion, the court highlighted s 91(4) (which provides that subpoenas issued by the *Disciplinary Tribunal* are treated as subpoenas issued in connection with a civil action in the High Court).

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In addition, reference may also be made to s 98(10) which provides that in the absence of rules regulating proceedings before the *C3J*, the Rules of Court may be followed as nearly as circumstances permit, and s 82A now incorporates a similar provision in proceedings before the *Chief Justice* (see s 82A(14), inserted by the Legal Profession (Amendment) Act (Act 22 of 2018)). This means that the rules governing civil proceedings in court also govern proceedings brought under those provisions.

67 Section 91 concerns proceedings before the *Disciplinary Tribunal*, while s 98 concerns proceedings before the *C3J*, and s 82A concerns proceedings before the *Chief Justice*. These tribunals and courts are evidently *not* the High Court, and the Rules of Court had to be specifically incorporated to apply in that context. That the Rules of Court had to be specifically incorporated into proceedings before the Disciplinary Tribunal, the C3J and the Chief Justice but *not* into proceedings before a Judge under ss 95, 96 and 97 suggest, on the other hand, that the Rules of Court otherwise apply without needing any express or special provision because those are properly to be understood as proceedings before the High Court.

68 It follows from our consideration of the language in the statute and the specific incorporation of the Rules of Court in some provisions and not in others that decisions of a Judge pursuant to s 96 and, similarly, ss 95 and 97, of the LPA are decisions of a Judge of the High Court. This also resolves any difficulty that might otherwise arise from a gap in the powers of a Judge acting under ss 95, 96 and 97. If such a Judge were sitting in a unique capacity under the LPA and not as the High Court, then it is unclear what the source and extent of the powers of such a Judge would be, outside Part VII of the LPA. Yet, in *Alvin Yeo* ([32] *supra*), where a question arose as to whether a Judge could allow the Law Society to file an application under s 97 after the stipulated time period for the

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filing of an application had expired (at [113]–[114]), the court held that a Judge hearing an application under s 97 had the power to grant an extension of time because the Judge "is a Judge of the High Court exercising disciplinary jurisdiction, and would have the powers vested in the High Court, including those in the First Schedule by virtue of s 18(2) of the SCJA" (at [129]–[131]). The latter powers would not apply to a Judge who was *not* acting in the exercise of a jurisdiction conferred under the SCJA.

Whether the decision was in the exercise of civil jurisdiction

69 We turn to consider the second and potentially more difficult threshold requirement that the decision on appeal was made in the High Court's exercise of civil jurisdiction. It has been said that a decision pursuant to s 96 of the LPA is an exercise of the *disciplinary* jurisdiction of the court. The court in *Top Ten Entertainment* ([3] *supra*) had referred to a Judge under ss 95, 96 and 97 as "a judge *of the High Court* exercising *disciplinary jurisdiction* under Pt VII of the LPA" [emphasis added] (at [45]), and in *Re Nalpon Zero* ([12(a)] *supra*) the court held that the disciplinary jurisdiction was a unique jurisdiction entirely distinct from the civil or criminal jurisdiction (at [69]). Relying on these decisions, Mr Padman contended strongly that the disciplinary jurisdiction could not be part of the civil jurisdiction of the High Court and was a unique jurisdiction falling outside the SCJA.

70 Here, we respectfully do not agree with the holding in *Top Ten Entertainment*, which in turn was largely followed on this point in *Re Nalpon Zero*. In our judgment, the term "disciplinary jurisdiction" is *descriptive* of the body of law that is being dealt with, in much the same way that one might speak of the family jurisdiction, the admiralty jurisdiction, the contempt jurisdiction, or the arbitration jurisdiction of the court. It describes an aspect of the court's

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jurisdiction that nonetheless falls within the civil jurisdiction of the High Court. In this instance, that is so pursuant to s 16(2) of the SCJA. If that is correct, then there is no need to find an express provision conferring a right of appeal and the Court of Appeal would have appellate jurisdiction pursuant to s 29A(1)(*a*) of the SCJA. As the civil jurisdiction of the High Court is set out in statute, we begin by examining s 16 of the SCJA before we discuss *Re Nalpon Zero*.

(1) Section 16(1) of the SCJA

71 Under s 16(1), the High Court has jurisdiction to hear and try any action *in personam* where there is proper service of an originating process on a defendant or the defendant submits to jurisdiction. This provision formed a key part of the reasoning of the court in *Top Ten Entertainment* when it observed that "[t]he ordinary meaning of an *in personam* action does not include a disciplinary action", and concluded on that basis that the civil jurisdiction does not include jurisdiction over any disciplinary matter under Part VII (*Top Ten Entertainment* at [42]). The court did not place any weight on the fact that proceedings were to be commenced by originating summons (*Top Ten Entertainment* at [53]).

72 An *in personam* action is defined in *Black's Law Dictionary* (Bryan A Garner, ed) (Thomson Reuters, 11th Ed, 2019) as:

> **1.** Involving or determining the personal rights and obligations of the parties. **2.** *Civil procedure.* (Of a legal action) brought against a person rather than property. …
>
> > "An action is said to be *in personam* when its object is to determine the rights and interests of the parties themselves in the subject-matter of the action, however the action may arise, and the effect of a judgment in such an action is merely to bind the parties to it. A normal action brought by one person against another for breach of contract is a common example of an action

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> *in personam*." R.H. Graveson, *Conflict of Laws* 98 (7th ed. 1974).

73 An *in personam* action is therefore one that involves the determination of the rights and obligations of parties as against one another, and the High Court's jurisdiction over the defendant in a suit is established by proper service or submission to jurisdiction pursuant to s 16(1) of the SCJA. Though the application under ss 95, 96 and 97 of the LPA must be served on other parties (being the complainant, the solicitor or the Law Society, as the case may be (see ss 95(2), 96(3) or 97(2)(*b*)), it remains an application for review of the decision of the Council or the Disciplinary Tribunal akin to an application for judicial review. While the applicant, particularly where the complainant is an aggrieved client, might appear to be pursuing its rights against the solicitor, the Judge hearing the application is not determining the personal rights and obligations of parties. The issue is the correctness of the decision of the Council or the Disciplinary Tribunal. In that regard, *Hilborne (PC)* ([43] *supra*) and *Wong Juan Swee* ([45] *supra*) were wrong to place any weight, as they appeared to have done, on the fact that an originating summons had to be used in order to commence proceedings. The question turns on the nature of the proceedings rather than on how they are to be commenced because s 16(1) does not apply to proceedings which are not *in personam* actions. Because the disciplinary jurisdiction of the court does not concern *in personam* actions as explained above, it does not come within the civil jurisdiction that is set out in s 16(1) of the SCJA.

(2) Section 16(2) of the SCJA

74 We are therefore satisfied that *Top Ten Entertainment* ([3] *supra*) was correct in holding that s 16(1) of the SCJA is not applicable. However, the court in that case appears not to have considered what is, in our judgment, the key

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provision. Section 16(2) of the SCJA states "the High Court shall have such jurisdiction as is vested in it by any other written law". This is a broad-based provision that has been interpreted widely to include, for example, the jurisdiction to deal with applications under the Patents Act (Cap 221, 2005 Rev Ed) (see *Sunseap Group Pte Ltd and others v Sun Electric Pte Ltd* [2019] 1 SLR 645 at [61]), and to wind up a foreign company (see *Re Griffin Securities Corp* [1999] 1 SLR(R) 219 at [16]).

75 Given that a "Judge" hearing an application under ss 95, 96 and 97 of the LPA is a Judge of the High Court, then those very same provisions vest the High Court with disciplinary jurisdiction, and pursuant to s 16(2), that jurisdiction would fall within the civil jurisdiction of the court. We can see no reason at all for thinking that s 16(2) would not apply in this context. As this court recognised in *Re Nalpon Zero* ([12(a)] *supra* at [53]), the identity of the court is closely linked to the jurisdiction that it exercises. If the High Court exercises a jurisdiction not enumerated in the SCJA, a question arises as to the source of that jurisdiction, and if the source of that jurisdiction is statutory, then it would fall under s 16(2). This is not at all inconsistent with the fact that other provisions in Part VII of the LPA do constitute specific committees, tribunals or courts, such as the Inquiry Committee, the Disciplinary Tribunal, the Chief Justice and the C3J, each of which have the powers and jurisdiction vested in them. Those bodies would not be the High Court, but there is no reason at all to think that both those entities and the High Court could not co-exist within Part VII of the LPA.

76 We are fortified in our reasoning by the decision of this court in *Citiwall Safety Glass Pte Ltd v Mansource Interior Pte Ltd* [2015] 1 SLR 797. There we had to consider whether the supervisory jurisdiction of the High Court fell within its original civil jurisdiction that is stipulated in s 3 of the SCJA.

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Observing that under s 3 the High Court "shall exercise original and appellate civil and criminal jurisdiction", the court held (at [79]):

> This suggests that the High Court's supervisory jurisdiction over inferior tribunals is subsumed under the High Court's original civil jurisdiction since it is not part of the High Court's appellate jurisdiction. …

77 In substance, the court concluded that the jurisdiction of the High Court was bounded by the statute, and if it exercised "supervisory jurisdiction", then this supervisory jurisdiction had to be either original or appellate jurisdiction given the ambit of s 3 of the SCJA. Similarly, if the High Court exercises disciplinary jurisdiction, then in the light of s 3 of the SCJA, this jurisdiction can only be criminal or civil jurisdiction. As it is not part of criminal jurisdiction, it must fall within civil jurisdiction. To identify a third jurisdiction *distinct* from civil and criminal jurisdiction would be inconsistent with the statutory limits seemingly contemplated in s 3 of the SCJA.

78 Both *Top Ten Entertainment* ([3] *supra*) and *Re Nalpon Zero* placed considerable weight on the legislative history, tracing the development of legislation from the time of the Straits Settlements to the present day to conclude that there was a historical distinction between the civil or criminal jurisdiction exercised by the courts and the disciplinary jurisdiction exercised by a special court. It was suggested that this distinction was reinforced when a separate piece of legislation – now the LPA – was enacted to regulate advocates and solicitors.

79 While the legislative history sheds light on the origins of the LPA, it does not undermine the scope of s 16(2). The development of a separate piece of legislation to set out the scope of disciplinary jurisdiction would not displace or affect the subject-matter of the civil jurisdiction of the court. The LPA simply becomes another piece of "written law" under s 16(2) of the SCJA. Moreover,

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it cannot be disputed that the High Court already exercises some *aspects of its* jurisdiction when dealing with matters under the LPA, which the court's elaboration of legislative history would suggest, in fact, forms part of the disciplinary jurisdiction. To illustrate, the court in *Re Nalpon Zero* ([12(a)] *supra*) understood the Straits Settlements Supreme Court Act 1867 ("the SSSCA 1867") to provide for "three forms of jurisdictions… by three separate provisions" (at [56]). "Disciplinary jurisdiction" was supposedly provided for under s 35 of the SSSCA 1867, which stated:

> **Admission of Advocates**
>
> 35. The Court is hereby authorised to admit as Advocates and Attorneys such persons as are now admitted in the said Court of Judicature as Agents for Suitors, and such other persons as may hereafter be qualified, under any Act of the Legislative Council passed or to be passed for the purpose; and the Court may on due and reasonable cause, in accordance with the practice of the Superior Courts at Westminster, and subject to the provisions of any Act or Acts passed or to be passed by the Legislative Council in that behalf, strike off the rolls any persons so admitted.

80 The reasoning appeared to be that the jurisdiction embodied in s 35 of the SSSCA 1867 had been removed from the SCJA and was now contained in the LPA. While the court focused on the court's power to strike a solicitor off the rolls and held that this was a distinct jurisdiction exercised by a different court, s 35 also provides for, and is in fact titled, the "Admission of Advocates". Yet, the admission of advocates and solicitors is today governed by s 12(1) of the LPA and advocates and solicitors are plainly admitted by the High Court. This aspect of the "disciplinary jurisdiction" might have been contained in a different provision of the early court ordinances, yet it is now exercised by the High Court, which is vested with this jurisdiction by written law.

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(3) Re Nalpon Zero

81 We turn finally to *Re Nalpon Zero*, where this court said that the disciplinary jurisdiction is *sui generis* given its blend of civil and criminal elements (see *Re Nalpon Zero* at [55], [67]–[70], which was later cited with approval in *Law Society of Singapore v Yap Bock Heng Christopher* [2014] 4 SLR 877 at [39]). Several cases were cited and these were said to represent the position in England and in Singapore. A number of academic authorities were also cited. With respect, we do not find these sufficiently persuasive in the light of all the other considerations we have outlined above, and which were not placed before the court in *Re Nalpon Zero*.

82 First, the Singapore cases identified or named the disciplinary jurisdiction, but did not hold that this constituted a jurisdiction that was distinct from civil or criminal jurisdiction. In *Lawrence Ang* ([45] *supra*), which involved a complaint against a Legal Service Officer (prior to the enactment of s 82A of the LPA), the Court of Appeal held that the "disciplinary jurisdiction" of the court was wide enough to include an advocate and solicitor without a practicing certificate (at [13]). This said nothing about whether that was or was not part of civil jurisdiction. Similarly, in *Law Society of Singapore v Tham Yu Xian Rick* [1999] 3 SLR(R) 68, the C3J held that because orders made by a disciplinary tribunal were not primarily punitive, considerations which would ordinarily weigh in mitigation of punishment had less effect on the exercise of the "disciplinary jurisdiction" than on sentences imposed in criminal cases (at [22]). Again, it seems to us that the description of "disciplinary jurisdiction" was used as a label for the nature of the jurisdiction exercised, in the way that a court may refer to the family jurisdiction or the probate jurisdiction of the court, but that did not preclude the possibility that it fell within the broad civil jurisdiction.

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83 We similarly do not find the English cases to be relevant or persuasive. Those concerned the jurisdiction to order costs against a solicitor for his or her conduct of the case, and the issue was whether such an order was an exercise of the disciplinary jurisdiction of the court or some other jurisdiction, such as contempt jurisdiction (see *Myers v Elman* [1940] AC 282, *Weston v Central Criminal Court Courts Administrator* [1977] QB 32 (CA), *R & T Thew Ltd v Reeves (No 2)* [1982] QB 1283 (CA), and *Ridehalgh v Horsefield* [1994] Ch 205 (CA)). In Singapore, the power to order costs against a solicitor is contained in O 59 r 8 of the Rules of Court and it is exercised as part of civil jurisdiction. In any event, the English courts' reference to the disciplinary jurisdiction of the court in distinction to its contempt jurisdiction does not preclude the disciplinary jurisdiction forming part of the civil jurisdiction.

84 In effect, *Re Nalpon Zero* ([12(a)] *supra*) seems to us to be the first decision to identify the disciplinary jurisdiction as *sui generis* and it relied on academic publications that we respectfully do not find to be entirely relevant. While the court cited Professor Tan Yock Lin's comment that the jurisdiction to discipline solicitors is "on the whole civil in nature, although it partakes of criminal elements" (at [68], citing Tan Yock Lin, *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998) at p 765), this appeared to us again to be an explanation of the jurisdiction exercised by the court in disciplinary proceedings, rather than a suggestion that this constituted a distinct head of jurisdiction not encompassed by the civil jurisdiction of the court. The court also cited an article on the disciplinary jurisdiction of professional tribunals in the English context, but the article dealt with the jurisdiction of *tribunals* rather than of the courts (see J Gareth Miller, "The Disciplinary Jurisdiction of Professional Tribunals" (1962) 25 MLR 531). The main authority relied on in *Re Nalpon Zero* was a student commentary

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written in the American context, which identified the disciplinary jurisdiction of the courts as *sui generis*. The student commentary cited the decision of the Seventh Circuit Court of Appeals in *In re Echeles*, 430 F.2d 347 (7th Cir. 1970) at 349 (see Joseph Frank Strength, "Attorney Disciplinary Proceedings: Civil or Criminal in Nature?" (1994–1995) 19 The Journal of the Legal Profession 257 at 264), and that states:

> Preliminarily, it would be well to note that disbarment and suspension proceedings are neither civil nor criminal in nature but are special proceedings, sui generis, and result from the inherent power of courts over their officers. Such proceedings are not lawsuits between parties litigant but rather are in the nature of an inquest or inquiry as to the conduct of the respondent. They are not for the purpose of punishment, but rather seek to determine the fitness of an officer of the court to continue in that capacity and to protect the courts and the public from the official ministration of persons unfit to practice.

85 That passage seems to us to suggest that the Seventh Circuit Court of Appeals was not referring to disciplinary proceedings generally, but to disbarment and suspension proceedings that arise from the "inherent power" of the courts. In all likelihood, the court in *Re Nalpon Zero* was referring to this because it referred to "an exercise of a unique disciplinary jurisdiction by a specially constituted court" – in other words, the C3J – except that it then extended this jurisdiction to the entirety of Part VII. There is no doubt that the powers exercised by the C3J are unique in that it may strike a solicitor off the rolls or suspend them, which are not powers ordinarily available to the High Court. An application under s 98(1) might be the C3J's exercise of a *sui generis* jurisdiction over advocates and solicitors, because the C3J is not constituted under the SCJA, but that does not mean that all proceedings under Part VII of the LPA are similarly of a *sui generis* nature.

86 We should not, in the final analysis, lose sight of the *nature* of the proceedings that are entailed in an application brought under s 96. Where such

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an application is made, the Judge may review the decision of the Council pursuant to the Inquiry Committee's recommendation and affirm that determination or direct that an application should be made to the Chief Justice for the appointment of a Disciplinary Tribunal, but the Judge cannot exercise the powers reserved to the Disciplinary Tribunal or the C3J. It is evident to us that proceedings under s 96 are not akin to suspension or disbarment proceedings because the Judge is statutorily empowered to review the Council's determination but not to investigate the solicitor's conduct or impose penalties herself (see [22(b)] and [30] above). In the context of an appeal brought against such a decision, the Court of Appeal would only be concerned with the question of whether the High Court Judge's decision is correct. A court hearing such an appeal against a decision made under s 96 would not be in a position to exercise the same powers as the Disciplinary Tribunal or the C3J. It may disagree with the Judge, if it finds it appropriate, and affirm the Council's decision or direct the Law Society to apply to the Chief Justice for the appointment of a Disciplinary Tribunal, but it cannot itself dispose of the matter. To the extent that disbarment or suspension proceedings are *sui generis*, the proceedings before the High Court and the Court of Appeal do not encroach on the jurisdiction of the C3J.

87 For those reasons, we consider that the disciplinary jurisdiction exercised by a Judge under ss 95, 96 and 97 of the LPA is part of the civil jurisdiction and can form the subject of an appeal to the Court of Appeal.

88 Our view is based on the statutory language of the LPA and the SCJA. Aside from the statutes, we highlight that if there is a particular perspective to be borne in mind, it must be that applications under ss 95, 96 and 97 concern the disciplinary control of solicitors. The C3J is the court that ultimately exercises that jurisdiction. There is a very strong public interest in ensuring that

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allegations of misconduct are ventilated before the C3J in cases of doubt, especially where the complaint is that a reference that should rightly be made to the C3J is not being made. A solicitor who disputes the allegation against him may challenge it all the way to the proceedings before the C3J; but a complainant may be deprived of having the matter heard by the C3J if a single Judge exercising the powers conferred by ss 96 and 97 decides to affirm the decision of the Council or the Disciplinary Tribunal not to refer the matter to the next stage. It seems implausible to us that a single Judge, without being subject to the oversight of this court, which is at the apex of the Supreme Court which under the LPA has control over the discipline of solicitors, can in this way exclude the C3J's ability to determine the merits of the matter.

89 As we have already intimated, it seems to us that the confusion over ss 95, 96 and 97 of the LPA arises from the interactions between different provisions of the LPA. In a bid to achieve coherence across Part VII, the courts have opted for interpretations that have not always been consistent with the language of the particular statutory provision. While internal consistency is important, ignoring the text may engender greater uncertainty. To illustrate the point, we return to *Deepak Sharma* ([14] *supra*). If the High Court has the power of judicial review over a decision of the Review Committee, and that decision is appealable to the Court of Appeal, then it seems odd to hold that decisions under ss 95, 96 and 97 cannot similarly be appealed to the Court of Appeal. A Review Committee deals with a complaint at the most preliminary stage and may dismiss it only if it is "unanimously of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance" (see s 85(8) of the LPA). In comparison, complaints dealt with by the Inquiry Committee or the Disciplinary Tribunal would seem likely to have some measure of merit to have reached that stage. Yet, if the applicant were correct, it would only be

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susceptible to one level of review by a Judge. This also seems perverse because s 91A, which we touched on at [27]–[29] above and which restricts recourse to judicial review in certain circumstances and subject to certain exclusions, only applies to decisions of the Disciplinary Tribunal. As discussed above, an aggrieved complainant such as Mr Iskandar in the present case might be able to commence judicial review of the Council's determination pursuant to the findings and recommendations of the Inquiry Committee, and if that were so, would be better off doing so than if he availed himself of the statutory route under s 96, because he would be assured of a right of appeal to the Court of Appeal (see also the discussion at [30] above).

Section 82A of the LPA

90 Finally, while an in-depth consideration of the other provisions of the LPA is best left to an occasion when the issue is squarely before the court, we make some brief remarks on the provision that was in question in *Re Nalpon Zero* ([12(a)] *supra*). Section 82A provides for the jurisdiction of the *Chief Justice* over Legal Service Officers and non-practising solicitors. The court in *Re Nalpon Zero* inferred from the entirety of Part VII of the LPA that the Chief Justice was neither the High Court nor exercising disciplinary jurisdiction. We note that unlike ss 95, 96 and 97 of the LPA, which refer to a "Judge", s 82A refers to the "Chief Justice", thus precluding any reference to "a Judge of the High Court" in s 2 of the LPA on which much of the above analysis turns. Our holding in this judgment does not undermine the decision in *Re Nalpon Zero* taken as a whole. However, we doubt that the Chief Justice hears an application under s 82A *qua* President of the Legal Service Commission because s 82A(15) clearly contemplates the Legal Service Commission taking independent disciplinary action against a Legal Service Officer. Crucially, s 82A also provides for complaints against non-practising solicitors, and there is no reason

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for the President of the Legal Service Commission to have any authority over non-practising solicitors. It seems to us more likely that the jurisdiction under s 82A is a jurisdiction personal to the Chief Justice and is not subject to appeal.

Conclusion

91 Part VII of the LPA is not a model of clarity and consistency, and its provisions on the exercise of discipline over solicitors have vexed the courts for some time. Legislative reform would be very welcome to clarify the jurisdiction of the courts and the routes of review and appeal available to the complainant, the solicitor and the Law Society. Until then, a court interpreting or applying the provisions should first and foremost focus on the language of the specific provision. In our judgment, *Top Ten Entertainment* incorrectly concluded that there was no right of appeal against decisions of a Judge pursuant to s 96. We therefore dismiss the application to strike out the notice of appeal in CA/CA 9/2020.

92 Finally, we have had the advantage of reading in draft the concurring judgment of Andrew Phang Boon Leong JCA and we agree with the additional points that are made there.

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93 We will hear parties on the substantive appeal in due course. The costs of this application are reserved pending the determination of the substantive appeal.

Sundaresh Menon
Chief Justice

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Quentin Loh
Judge of the Appellate Division

Andrew Phang Boon Leong JCA (concurring):

Introduction and preliminary observations

94 I have had the opportunity to read in draft the judgment delivered by the learned Chief Justice on behalf of the majority of this court. I agree, in substance, with the judgment of the Chief Justice; but, as I was on the panels of this court in *Top Ten Entertainment* ([3] *supra*) and *Re Nalpon Zero* ([12(a)] *supra*), and as those decisions have been commented on extensively by the Chief Justice and, in some respects, have been overruled by the present majority judgment of this court, I think it is apposite if I add some further (albeit brief) observations of my own. In doing so, I shall, unless otherwise stated, use the same abbreviations as those used in the Chief Justice's judgment.

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95 A couple of preliminary observations are appropriate. First, as the learned Chief Justice has pointed out, the present issue (whether the Court of Appeal has jurisdiction to hear an appeal against a decision of a Judge made pursuant to s 96 of the LPA) was not squarely before (and hence not argued before) the court in *Top Ten Entertainment* and the observations rendered in that case in respect of the particular (and significant) issue of jurisdiction now before us were therefore merely *obiter dicta* and are not binding on the present court (see also [52] above).

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96 On a more general level, it might also be usefully observed that the law is seldom static and develops over time. Hence, what appears to be the settled position with respect to a particular legal issue at a previous point in time might change (and even radically at that) as, *inter alia*, new arguments not hitherto considered are proffered and considered by later courts (as is consistent with the very nature of an adversarial system such as ours). This is not only a natural process but is also desirable from the perspective of both logic and principle. Indeed, it is emblematic of the development of not only the principles of common law and equity but also of (as is the case here) the interpretation of statutory provision(s) as well. And this is all to the good as judicial humility as well as a concomitant openness to new arguments are true hallmarks of the judicial function which views the attainment of substantive and procedural justice as well as fairness as its overarching and, indeed, ultimate mission with respect to every case that arises for decision. It is in the spirit of such an approach that I now consider the issue before this court afresh in light of legal arguments that were not before this court in both the previous cases.

The issue

97 In my view, the issue in the present application itself (whether the Court of Appeal has jurisdiction to hear an appeal against a decision of a Judge made pursuant to s 96) turns, in the main, on the answer to the following question: has a special jurisdiction been laid down in the LPA with respect to disciplinary proceedings concerning lawyers, which jurisdiction is not amenable to the civil jurisdiction of the Singapore courts? However, the answer to this question may not be one that is binary because an either affirmative or negative answer to the question just posed *presupposes*, as its underlying premise, that that part of the LPA (*viz*, Part VII) is *uniform in jurisdictional scope* – put simply, that it is either a special jurisdiction *or* that it is not. There may, however, be a ***third***

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possibility that has hitherto never been put forward (and, hence, never been considered) by this court – that Part VII of the LPA (hitherto referred to throughout the present judgment as "Part VII") potentially encompasses a ***variety*** of possible proceedings and that whilst there might exist in certain provisions a special jurisdiction in relation to disciplinary proceedings, to the extent that Part VII contemplates other (albeit related) proceedings in the civil sphere, there exists a right of appeal to this court with regard to *those* proceedings (and those proceedings *only*). In other words, whilst it would have been desirable for there to have been a uniformity and unity (a common underlying thread, as it were) with regard to the jurisdictional nature of proceedings in Part VII, that was simply not the case (this point is also alluded to by the learned Chief Justice at [18] and [89] above). I should note, at this juncture, that although I focus on the question just mentioned, I also agree with the general analysis as well as corresponding reasons of the learned Chief Justice in his judgment (in particular, his detailed analysis of the relevant structure of Part VII and the precise language utilised by the relevant provisions therein, as well as his reliance on s 16(2) of the SCJA).

My decision

98 Having surveyed the relevant legal materials, my view is that whilst Part VII was promulgated *primarily* with the purpose of providing a special jurisdiction with regard to disciplinary proceedings (and, to *that* extent, is *not* amenable to the civil jurisdiction of the Singapore courts), to the extent that there was the possibility of *related* proceedings being brought in the ***civil*** *sphere*, such proceedings would *remain amenable to* the *civil* jurisdiction of the Singapore courts. In other words, the ***third*** possibility referred to in the preceding paragraph is the most logical and principled conclusion that one can arrive at based on all the relevant legal materials. Let me elaborate.

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99 Turning first to the most obvious example of a special jurisdiction in relation to disciplinary proceedings pursuant to Part VII that is *not* amenable to the civil jurisdiction of the Singapore courts, I refer to *the court of 3 Judges of the Supreme Court* (abbreviated in the learned Chief Justice's judgment as "the C3J") which constitutes the ultimate disciplinary tribunal in respect of advocates and solicitors of the Supreme Court (including non-practising solicitors) as well as Legal Service Officers. This particular tribunal, although comprising Supreme Court judges, is *unique* and this is also demonstrated by its unique nomenclature. Put simply, the C3J epitomises that part of Part VII which deals with a *special disciplinary jurisdiction* (here, with regard to lawyers) which is therefore *not* amenable to the *civil* jurisdiction of the Singapore courts. It is not disputed that the C3J is specially constituted under the LPA and is vested with jurisdiction by the same (see *Re Nalpon Zero* ([12(a)] *supra*) at [60] and [67], and [85] above). Indeed, this is *confirmed* by *the LPA itself* since it is clearly stated in ***s 98(7) of the LPA*** that an application under s 98(1) of the LPA "*shall be heard* by a court of 3 Judges of the Supreme Court, and *from the decision of that court* ***there shall be no appeal***" [emphasis added]. In this regard, I also note the decision of this court in *Re Nalpon Zero*, where it was held that the dismissal by the Chief Justice of an application to him for leave to commence an investigation in relation to a complaint against a Legal Service Officer pursuant to s 82A(5) of the LPA was not appealable to this court which lacked the jurisdiction to entertain an appeal from a decision by the Chief Justice (which decision was also made not pursuant to the exercise of the civil or criminal jurisdiction of the High Court but, instead, as an exercise of a peculiarly disciplinary jurisdiction). It was in *that particular context* that it could be said that there was the exercise of a special jurisdiction in relation to disciplinary proceedings and that, with respect, there was therefore ***no*** need to

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extend (following *Top Ten Entertainment* ([3] *supra*)) that conclusion to cover *all other* matters under Part VII (see also [64], [67], [84]–[86] and [90] above).

100 ***In contrast***, however, I note that Part VII also provides for what is, in substance, a *limited* right to ***judicial review*** in so far as any act done or decision made by the *Disciplinary Tribunal* is concerned. This is to be inferred from ***s 91A*** of the LPA, which reads as follows (it has also been partially reproduced at [27] above):

> **Restriction of judicial review**
>
> 91A.—(1) ***Except as provided in* sections 82A, 97 and 98**, there shall be no judicial review in any court of any act done or decision *made by the Disciplinary Tribunal*.
>
> (2) In this section, "judicial review" includes proceedings instituted by way of —
>
> (*a*) an application for a Mandatory Order, a Prohibiting Order or a Quashing Order; and
>
> (*b*) an application for a declaration or an injunction, or any other suit or action, relating to or arising out of any act done or decision made by the Disciplinary Tribunal.
>
> [emphasis added in italics and bold italics]

101 It is clear from the express language of s 91A that ***judicial review is available with regard to acts done or decisions made by the Disciplinary Tribunal pursuant to ss 82A, 97 and 98 of the LPA***. The invocation of judicial review ***necessarily*** involves invoking the ***civil*** *jurisdiction* of the Singapore courts. And, in the absence of any express provision in the LPA to the contrary, an appeal to this court would be available as of right to the dissatisfied party.

102 I will not deal with the rationale underlying the promulgation of s 91A as this has been dealt with in detail by the High Court in *Deepak Sharma* ([14] *supra*), and whose analysis was referred to as well as endorsed by the learned

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Chief Justice in the present judgment (see [29] above). Put simply, judicial review *is* available in the context of acts done or decisions made by the Disciplinary Tribunal but is subject to specific limitations in order to prevent an abuse of process whereby the disciplinary process itself is stymied by the invocation of judicial review. Indeed, it is important to also note that the *availability* of *judicial review* is *not* confined to acts done or decisions made by the Disciplinary Tribunal. *Deepak Sharma* is a recent illustration, being a case in which judicial review was initiated in respect of a decision of the *Review Committee* of the Law Society of Singapore. However, it is also important to note – particularly for the purposes of the present appeal – that decisions of the *Council* and the *Disciplinary Tribunal* are ***also*** subject to review, *albeit pursuant to* ***statutory review procedures laid down under the LPA***. What, then, is the *nature* of these last-mentioned reviews – bearing in mind that the provision involved in the present proceedings is *s 96*?

103 In so far as acts done or decisions made by the *Disciplinary Tribunal* are concerned, in *addition to* the right to initiate judicial review proceedings at common law (prior to the introduction of s 91A(1)), a dissatisfied party could also proceed by way of *s 97*. The precursor to s 97 may be traced as far back as 1936 when it was introduced *via* the Statute Law (Revised Edition) Operation Ordinance 1936 (Ordinance No 6 of 1936) ("the 1936 Ordinance"). Its original form was, however, quite different. The provision concerned was silent as to the criteria that were to be utilised by the judge and this was also the situation when the LPA was first enacted in 1966 (see s 101 of the Legal Profession Act (Act 57 of 1966)). However, the present version of s 97 *does* in fact lay down criteria that are *akin to judicial review* (see s 97(4)(*a*) of the LPA; see also the view of the learned Chief Justice (at [30] and especially [32] above)). If so, it would then follow that s 97 is a provision that is *civil* in nature. I pause to note that the

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aforementioned criteria appear to have been added by s 41 of the Legal Profession (Amendment) Act 2008 (Act 19 of 2008) ("the 2008 Amendment Act"). This was consistent with the introduction by the same Act (in s 36) of s 91A – in order to confirm that the review under s 97 now incorporates judicial review as well. Returning to s 97 itself, I should add that the view that a decision by a Judge pursuant to s 97 is civil in nature and therefore appealable to this court makes eminent sense because a view to the contrary could conceivably lead to judicial review proceedings at common law being utilised instead (albeit stymied by s 91A(1)). Indeed, the learned Chief Justice perceptively observed above (at [89]) that "[i]f the High Court has the power of judicial review over a decision of the Review Committee, and that decision is appealable to the Court of Appeal [as was held in *Deepak Sharma*], then it seems odd to hold that decisions under ss 95, 96 and 97 cannot similarly be appealed to the Court of Appeal"; he proceeded to observe further:

> A Review Committee deals with a complaint at the most preliminary stage and may dismiss it only if it is "unanimously of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance" (see s 85(8) of the LPA). In comparison, complaints dealt with by the Inquiry Committee or the Disciplinary Tribunal would seem likely to have some measure of merit to have reached that stage. Yet, if the applicant were correct, it would only be susceptible to one level of review by a Judge. This also seems perverse because s 91A, which we touched on at [27]–[29] above and which restricts recourse to judicial review in certain circumstances and subject to certain exclusions, only applies to decisions of the Disciplinary Tribunal. As discussed above, an aggrieved complainant such as Mr Iskandar in the present case might be able to commence judicial review of the Council's determination pursuant to the findings and recommendations of the Inquiry Committee, and if that were so, would be better off doing so than if he availed himself of the statutory route under s 96, because he would be assured of a right of appeal to the Court of Appeal (see also the discussion at [30] above).

104 What, then, about ***s 96*** (which is the provision in issue in the present appeal)? Before elaborating on the nature of s 96 itself, it might be apposite to

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point out that it is open to a dissatisfied party (here, the complainant) to initiate *judicial review* proceedings at common law and that if he or she does so, there would (as already alluded to at [101] above) be a right of appeal to this court. This raises, in turn, *the same potential anomalies* that were referred to towards the end of the preceding paragraph and might present themselves if it was held that there was no appeal to this court for proceedings pursuant to s 96. Turning to s 96, its precursor was also introduced *via* the 1936 Ordinance. In its original form, the complainant had to apply to *the Chief Justice*. However, by the time the LPA was enacted, the application was to be made to a Judge instead (which remains the position today). I pause to note, parenthetically, that the original version of s 96 (by requiring that the relevant application be made to the Chief Justice) did *not*, in my view, render it qualitatively the same as s 82A(5) of the LPA (the latter of which was the subject of the proceedings in *Re Nalpon Zero* ([12(a)] *supra*) and which, it will be recalled, I characterised as an exercise by the Chief Justice of a peculiarly disciplinary jurisdiction). That this is so is clear from the fact that s 82A of the LPA involves a different order or level of proceedings. This was inserted into the LPA by the Legal Profession (Amendment) Act 1993 (Act 41 of 1993) in response to the issue of the disciplinary jurisdiction over Legal Service Officers (see *Singapore Parliamentary Debates, Official Report* (12 November 1993) vol 61 at col 1163 (Prof S Jayakumar, Minister for Law) and the decision of this court in *Lawrence Ang* ([45] *supra*) at [13]), long after it had been established that the application pursuant to s 96 had to be made to a Judge (instead of the Chief Justice). In other words, the considerations and intention behind s 82A of the current LPA and the precursor to s 96 in the 1936 Ordinance would have been very different. Importantly, s 96 is *the* ***statutory analogue*** of *s 97*. In so far as this last-mentioned point is concerned, it is inconceivable that the Legislature would have intended s 97 to point in one direction and s 96 to point in the diametrically

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opposite direction. Indeed, both ss 96 and 97 were originally enacted in *the* ***same section*** (see, for the latest version prior to the enactment of the LPA in 1966, ss 29(1) and (2) of the Advocates and Solicitors Ordinance (Cap 188, 1955 Rev Ed)). Sections 96 and 97 embody a common thread inasmuch as they relate to proceedings initiated by a dissatisfied party, the only difference being that the *former* relates to decisions of *the Council* whilst the *latter* relates to acts done or decisions made by *the Disciplinary Tribunal*. *However*, it is acknowledged that, unlike s 97, s 96 does not import the language of judicial review. Would this imply that proceedings pursuant to s 96 would *not* be appealable to this court? Whilst such a proposition is possible, I think that the better view is that the Legislature intended *both* ss 96 *and* 97 to *flow in parallel legal channels* for the reasons that I have just set out above and that, therefore, if a decision pursuant to s 97 was appealable to this court, then the *same* conclusion should follow with regard to a decision pursuant to s 96. It would also be odd if a Judge hearing an application under s 96 were to adopt more wide-ranging criteria than that set out in s 97(4)(*a*) (with respect to an application under s 97). It is also important to reiterate the point that if it were held that there was no appeal to this court with regard to applications pursuant to s 96, then an anomaly would arise because there would be nothing preventing a complainant from initiating *judicial review* proceedings at common law – which initiative would permit him or her to have a right of appeal to this court. Whilst it may be argued that an application under s 96 might be – potentially at least – more advantageous if the Judge was able to take into account criteria other than those which obtain under judicial review proceedings (for example, examining the merits of the case), such an argument is speculative because, as just pointed out above, the criteria that the Judge would utilise pursuant to an application under s 96 is, at present at least, unclear (not least because, as also just pointed out above, of the specific criteria laid down under s 97(4)(*a*) with

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regard to an application pursuant to s 97). What all this does indicate is that some legislative clarification is welcome – a point to which I shall return at the end of the present judgment.

105 To summarise, it appears clear that there would be a right of appeal to this court for decisions made pursuant to s 97 and that, whilst the language of s 96 is somewhat less clear, given the fact that ss 97 and 96 are intended to flow in parallel legal channels and the fact that the particular Judge concerned would probably utilise similar criteria (akin to that for judicial review) that is present in s 97(4)(*a*), I would prefer the view, on balance, that there would also be a right of appeal to this court for decisions made pursuant to s 96. What *is* important, from *a more general perspective*, is that the jurisdiction contained in Part VII is ***not*** a uniform – let alone monolithic – one centred *only* on a special and distinct disciplinary jurisdiction in relation to lawyers. Put simply, Part VII itself comprises a ***mixed*** jurisdiction of sorts with some of its provisions relating to a special and distinct disciplinary jurisdiction in relation to solicitors (see [97] above), whilst *other* provisions (such as ss 96 and 97) relate to the *civil* jurisdiction of the courts.

106 I pause, at this juncture, to note that the learned Chief Justice adopted *an even broader* approach with respect to proceedings under provisions such as s 96, holding that the Judge in such proceedings is indeed exercising disciplinary jurisdiction and that such jurisdiction is merely "*descriptive* of the body of law that is being dealt with" and which "describes an aspect of the court's jurisdiction that nonetheless falls within the ***civil*** jurisdiction of the High Court … pursuant to s 16(2) of the SCJA" [emphasis in italics in original; emphasis added in bold italics] and that on that basis, the Court of Appeal would have appellate jurisdiction pursuant to s 29A(1)(*a*) of the SCJA (see [70] above). In

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arriving at this conclusion, the learned Chief Justice (as just mentioned) relied on *s 16**(2)*** of the SCJA (see [75] above):

> Given that a "Judge" hearing an application under ss 95, 96 and 97 of the LPA is a Judge of the High Court, then those very same provisions vest the High Court with disciplinary jurisdiction, and pursuant to s 16(2), that jurisdiction would fall within the civil jurisdiction of the court. We can see no reason at all for thinking that s 16(2) would not apply in this context. As this court recognised in *Re Nalpon Zero* ([12(a)] *supra* at [53]), the identity of the court is closely linked to the jurisdiction that it exercises. If the High Court exercises a jurisdiction not enumerated in the SCJA, a question arises as to the source of that jurisdiction, ***and if the source of the jurisdiction is statutory, then it would fall under s 16(2)***.
>
> [emphasis added in bold italics]

107 Put simply, the learned Chief Justice was referring to ***two different conceptions*** *of the* ***concept*** *of* ***"disciplinary jurisdiction"***. The ***narrower*** *conception* refers *to a special disciplinary jurisdiction* that, *ex hypothesi*, is *not* an exercise of the *civil* jurisdiction of the court. In contrast, the ***broader*** *conception* (referred to in the preceding paragraph) refers to *a statutory review in the context of the disciplinary process which is* ***simultaneously*** *an exercise of the* ***civil*** *jurisdiction of the court*. Viewed in this light, it is clear that the Judge hearing an application under ss 95, 96 and 97 of the LPA is exercising jurisdiction in the ***latter*** *sense* and, hence, is exercising the ***civil*** *jurisdiction* of the court *pursuant to* ***s 16(2) of the SCJA***. In this last-mentioned regard, it will also be recalled that I characterised the review proceedings pursuant to, *inter alia*, s 96 as being proceedings by way of a statutory review and which are (in substance if not form as well) in the nature of (or at least akin or analogous to) *judicial review* and are, to that extent, *civil* in nature – thus being appealable to the Court of Appeal. Adopting the learned Chief Justice's terminology, such proceedings could *also (and simultaneously)* be characterised as the exercise of

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the court's disciplinary jurisdiction, albeit in the *broader* sense just referred to above (which therefore is also *civil* in nature).

108 On the other hand, as I have already noted above (at [99]), the ***narrower*** *conception* of *"disciplinary jurisdiction"* exists in *limited and particular* situations – for example, in proceedings before the ***C3J***. This, too, is the view of the learned Chief Justice who observed above, as follows (at [85]):

> There is ***no doubt*** that the powers exercised by ***the C3J are unique*** in that it may it may strike a solicitor off the rolls or suspend them, which are not powers ordinarily available to the High Court. An application under ***s 98(1)*** might be the C3J's exercise of a **sui generis** ***jurisdiction*** over advocates and solicitors, ***because the C3J is not constituted under the SCJA, but that does not mean that all proceedings under Part VII of the LPA are similarly of a* sui generis *nature***.
>
> [emphasis added in bold italics, underlined bold and underlined bold italics]

109 I pause, at this juncture, to note that the approach I have proffered is, in fact, consistent in large part with the historical analysis of the relevant local legislation undertaken in meticulous detail in *Re Nalpon Zero* (especially at [56]–[60]). In summary, the various Acts and Ordinances of the Straits Settlements focused on disciplinary proceedings in the context of what is today known as the C3J (which proceedings, as I have already noted, *do* constitute the exercise of a special disciplinary jurisdiction). Indeed, until the enactment of the 1936 Ordinance, there were no provisions akin to the statutory review provisions (such as those to be found in ss 95, 96 and 97 of the LPA) and, even then, the provisions concerned were in rather more rudimentary form. And as I have also noted above (at [103]), s 97 at least lays down criteria that are akin to judicial review (these could always have been inherent within the provision in its original form but in any event were certainly made express by the time the 2008 Amendment Act was promulgated). That provisions such as s 97 should

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have been promulgated only relatively later is perhaps not surprising as administrative law as we know it today appeared to begin its development in earnest in the Commonwealth only after the Second World War with the rise of administrative bodies as well as the administrative state in general (Prof S A de Smith's seminal work, *Judicial Review of Administrative Action*, for example, was first published in 1959 (see S A de Smith, *Judicial Review of Administrative Action* (Stevens, 1959) (see especially at pp 9–10), presently in its eighth edition and since re-titled *De Smith's Judicial Review* (Harry Woolf *et al*) (Sweet & Maxwell, 8th Ed, 2018), with a student-oriented version entitled *De Smith's Principles of Judicial Review* (Harry Woolf *et al*) (Sweet & Maxwell, 2nd Ed, 2020)), whilst Prof H W R Wade's (also) seminal work, *Administrative Law*, was first published in 1961 (see H W R Wade, *Administrative Law* (Clarendon Press, 1961), presently in its eleventh edition (H W R Wade & C F Forsyth, *Administrative Law* (Oxford University Press, 11th Ed, 2014)))).

110 I will not deal with the other points made by the learned Chief Justice, although it might be useful to point to specific observations made which turn not only on the statutory language of the LPA and the SCJA but also contains not an insignificant amount of relevant logic as well as *policy*, as follows (see [88] above):

> Our view is based on the statutory language of the LPA and the SCJA. Aside from the statutes, we highlight that if there is a particular perspective to be borne in mind, it must be that applications under s 95, 96 and 97 concern the disciplinary control of solicitors. The C3J is the court that ultimately exercises that jurisdiction. There is a very strong public interest in ensuring that allegations of misconduct are ventilated before the C3J in cases of doubt, especially where the complaint is that a reference that should rightly be made to the C3J is not being made. A solicitor who disputes the allegation against him may challenge it all the way to the proceedings before the C3J; but a complainant may be deprived of having the matter heard

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> by the C3J if a single Judge exercising the powers conferred by ss 96 and 97 decides to affirm the decision of the Council or the Disciplinary Tribunal not to refer the matter to the next stage. It seems implausible to us that a single Judge, without being subject to the oversight of this court, which is at the apex of the Supreme Court which under the LPA has control over the discipline of solicitors, can in this way exclude the C3J's ability to determine the merits of the matter.

111 I would like to conclude this judgment by underscoring as well as endorsing the learned Chief Justice's observation (at [91] above) that, in the circumstances, "[l]egislative reform would be very welcome to clarify the jurisdiction of the courts and the routes of review and appeal available to the complainant, the solicitor and the Law Society" (a point also alluded to earlier by the learned Chief Justice even earlier in his judgment at [34]).

Andrew Phang Boon Leong
Justice of the Court of Appeal

Ravi s/o Madasamy (Carson Law Chambers) for the appellant;
P Padman and Lim Yun Heng (KSCGP Juris LLP) for the respondent.

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