IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 22

Civil Appeal No 59 of 2021

Between

Law Society of Singapore

… *Appellant*

And

(1) Lee Wei Ling
(2) Lee Hsien Yang

… *Respondents*

JUDGMENT

[Legal Profession — Disciplinary procedures — Power of Council of Law Society]
[Legal Profession — Disciplinary proceedings — Application for review of decision of Council of Law Society]
[Legal Profession — Professional conduct]

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Law Society of Singapore
v
Lee Wei Ling and another

[2022] SGCA 22

Court of Appeal — Civil Appeal No 59 of 2021
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA, Judith Prakash JCA, Belinda Ang Saw Ean JAD, Chao Hick Tin SJ
19 January 2022

14 March 2022 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 This appeal principally concerns the extent of the power of the Council of the Law Society ("the Council") under s 87 of the Legal Profession Act 1966 (2020 Rev Ed) ("LPA") when considering the investigation of complaints against solicitors. The appeal also raises a secondary question limited to the particular facts before us and that is whether on the evidence, a *prima facie* case has been established of a breach of the applicable rules of conduct in relation to a solicitor, Ms Kwa Kim Li ("Ms Kwa") pertaining to a particular aspect of her conduct in the course of acting for a testator, Mr Lee Kuan Yew ("the Testator"), in the preparation of his wills.

2 Specifically, Ms Kwa, acted for the Testator and prepared six of the seven wills that he made. After the Testator's death, the executors of his estate

("the Executors") complained to the Law Society of Singapore ("the Law Society") alleging that Ms Kwa had breached her duties as a solicitor. There were four complaints in all. The first complaint, which is the subject of this appeal, was that Ms Kwa had failed to adhere to the Testator's instructions to physically destroy each of the six earlier wills, as and when they were superseded by a subsequent will, and specifically by the final will which is the seventh will (see below at [6]) ("the First Complaint").

3 In relation to the First Complaint, the Inquiry Committee ("IC") convened by the Law Society initially recommended in its first report ("the First IC Report") that the First Complaint be referred to a Disciplinary Tribunal ("DT") for a formal investigation. After considering that report, the Council referred the matter back to the IC for reconsideration in the light of certain questions raised by the Council. The IC, having reconsidered the matter, changed its view and instead, in its second report ("the Second IC Report"), recommended that the First Complaint be dismissed. The Executors were dissatisfied with this and so applied to the High Court for an order that the Council be directed to refer the First Complaint to the DT. The crux of the Executors' complaint before the High Court Judge ("the Judge") was that the Council had no power to pose further queries to the IC or to invite the IC to reconsider the matter once the IC had made a determination that the matter should proceed to the DT. On this basis and, in any case, also on their view of the evidence before the IC, the Executors contended that the IC's findings in the First IC Report should be adopted and that the First Complaint should be referred to a DT for a formal investigation.

4 The Judge allowed the application in *Lee Wei Ling and another v Law Society of Singapore* [2021] SGHC 87 ("*Lee Wei Ling HC*"). The Judge found that the Council did not have the power to refer to the IC, further questions for

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the IC's reconsideration of a matter, once the IC had made a determination that the matter should proceed to the DT. Accordingly, the Second IC Report should not have been issued at all or been acted upon by the Council. The Judge also found, in any case, that there was a *prima facie* case of sufficient gravity such that the First Complaint should be referred to a DT (*Lee Wei Ling HC* at [55] and [63]).

5 The Law Society appealed against the Judge's decision with respect to the First Complaint. Having heard the parties' submissions on appeal, we have come to the conclusion, with respect, that the Judge erred. We are satisfied that in such circumstances, the Council is entitled to pose further queries to the IC, and to invite its reconsideration of the matter. Further, having reviewed the evidence, we are also satisfied that the Council was correct to accept the recommendation in the Second IC Report that there is no *prima facie* case of sufficient gravity with respect to the First Complaint. We therefore allow the appeal in its entirety. In this judgment, we explain our reasons for coming to these conclusions.

Background

6 Ms Kwa, as the Testator's solicitor, prepared a total of six wills ("the Wills") for the Testator between 20 August 2011 and 2 November 2012. Ms Kwa was not involved in the preparation of the Testator's last will ("the Seventh Will"). That was prepared for execution by the Testator, by or under the supervision of Ms Lee Suet Fern, who was the Testator's daughter-in-law and wife of one of the Executors, Mr Lee Hsien Yang. The Seventh Will was executed on 17 December 2013. The Testator passed away on 23 March 2015. The executors of the Testator's estate ("the Estate") are two of his three children, Dr Lee Wei Ling and Mr Lee Hsien Yang (as the appeal against Dr Lee has

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been withdrawn, we shall refer to Mr Lee Hsien Yang as the Respondent). The Executors, along with the Testator's other child, Mr Lee Hsien Loong, are the beneficiaries of the Estate. On 5 September 2019, the Executors lodged four complaints with the Law Society against Ms Kwa's conduct in connection with the preparation of the Wills.

7 The four complaints alleged as follows:

(a) **The First Complaint**: Ms Kwa failed to comply with the Testator's specific instructions to destroy the Wills;

(b) **The Second Complaint**: Ms Kwa had wrongfully disclosed privileged and confidential documents to Mr Lee Hsien Loong without the approval of the Executors, by way of her letters dated 4 and 22 June 2015 to all the Beneficiaries;

(c) **The Third Complaint**: Ms Kwa failed to keep proper contemporaneous records of all the instructions that were given by the Testator to her and all the advice that she rendered to the Testator; and

(d) **The Fourth Complaint**: Ms Kwa had given the Executors a false and misleading impression in her letters dated 4 and 22 June 2015, by omitting to mention certain discussions between her and the Testator in November and December 2013.

8 The Law Society convened the IC to examine these complaints. The IC found unanimously, in the First IC Report dated 8 May 2020, that:

(a) the First and Second Complaints had been made out on a *prima facie* standard, and should be referred to a DT for further investigations; and

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(b) the Third and Fourth Complaints were not made out on a *prima facie* standard and should be dismissed.

9 Following the IC's recommendations, the Council considered that it was empowered to remit the matter to the IC for reconsideration and so, pursuant to s 87(1)(*d*) of the LPA, it remitted the matter to the IC for further consideration on 3 July 2020, raising the following queries in respect of the First and Second Complaints:

(a) **The First Complaint**: The Council inquired whether "the IC considered if there is a distinction between destruction of a will and something that goes towards invalidation of a previous will". The Council also asked that the IC "consider the subject of the solicitor keeping a record of that will for the purposes of their own file copy", and whether there would be any wrongdoing by a solicitor who had complied with the client's intention to *revoke* a will, but had not complied with an instruction to destroy all copies of that will if the solicitor wished to maintain a file copy of the same for the solicitor's own records.

(b) **The Second Complaint**: The Council asked if the IC had considered whether there was a "waiver of privilege by reason of the [Executors'] making Facebook/social media posts".

10 The IC subsequently issued its Second IC Report dated 3 August 2020, maintaining by a majority its original position that the Second Complaint be referred to a DT. In respect of the First Complaint, the IC held a hearing on 22 July 2020 to hear Ms Kwa's responses to certain matters raised with her. The IC then concluded unanimously in the Second IC Report that the First

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Complaint be dismissed on the basis that the documentary evidence failed to demonstrate that the Testator had "expressly intended for all of his prior Wills to be physically destroyed or torn apart by [Ms Kwa]".

11 The Law Society then wrote to the Executors on 7 September 2020, informing them of the Council's acceptance of the IC's findings, and its recommendation that a formal investigation by a DT was not necessary save in respect of the Second Complaint.

12 The Executors, being dissatisfied with the dismissal of the First, Third and Fourth Complaints, sought an order in the High Court to direct the Law Society to apply to the Chief Justice for the appointment of a DT for a formal investigation into the conduct of Ms Kwa in relation to each of those complaints. As stated above at [5], the present appeal centers around the First Complaint.

Relevant legal provisions

13 The key issue of this appeal revolves around the interpretation of s 87 of the LPA, which provides as follows:

> **Council's consideration of report**
>
> **87.**—(1) The Council must consider the report of the Inquiry Committee and according to the circumstances of the case shall, within one month of the receipt of the report, determine —
>
> > (*a*) that a formal investigation is not necessary;
> >
> > (*b*) that, while no cause of sufficient gravity exists for a formal investigation, the regulated legal practitioner should be —
> >
> > > (i) ordered under section 88 to pay a penalty that is sufficient and appropriate to the misconduct committed;
> > >
> > > (ii) reprimanded or given a warning;

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(iii) ordered to comply with one or more remedial measures; or

(iv) subjected to the measure in sub-paragraph (iii) in addition to the measure in sub-paragraph (i) or (ii);

(*c*) that there should be a formal investigation by a Disciplinary Tribunal; ***or***

(*d*) ***that the matter be referred back to the Inquiry Committee for reconsideration or a further report***.

(1A) Where the Council has determined under subsection (1)(*d*) that a matter be referred back to the Inquiry Committee for reconsideration or a further report —

(*a*) the Council must notify the Inquiry Committee accordingly;

(*b*) the Inquiry Committee must submit its response or further report to the Council within 4 weeks from the date of the Council's notification; and

(*c*) subsection (1)(*a*), (*b*) and (*c*) applies, with the necessary modifications, in relation to the response or further report of the Inquiry Committee as it applies in relation to the report of the Inquiry Committee.

(2) If the Inquiry Committee in its report, ***read with any response or further report submitted under subsection (1A)(b)***, recommends —

(*a*) that there should be a formal investigation, then the Council must determine accordingly under subsection (1); or

(*b*) that a formal investigation by a Disciplinary Tribunal is not necessary, the Council may, if it disagrees with the recommendation, request the Chief Justice to appoint a Disciplinary Tribunal.

(3) Where the report of the Inquiry Committee, ***read with any response or further report of the Inquiry Committee submitted under subsection (1A)(b)***, discloses the commission of —

(*a*) any other misconduct by the regulated legal practitioner which has not been referred to or inquired into by the Inquiry Committee, the Council, if it determines that there should be a formal investigation of the misconduct, has power to prefer such charge

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> against the regulated legal practitioner as it thinks fit with respect to that misconduct; or
>
> (*b*) any offence involving fraud or dishonesty by the regulated legal practitioner, the Council must immediately refer the matter to the police for investigation
>
> …
>
> [emphasis added in bold italics]

14 Notably, there had been several earlier amendments to this provision. In the original iteration of s 87 of the LPA, which was then s 88 of the Legal Profession Act (Cap 217, 1970 Rev Ed) ("LPA 1970"), there was no provision corresponding to s 87(1)(*a*) or s 87(2). In 1979, the LPA was amended by the Legal Profession Act (Amendment) Act 1979 (Act 11 of 1979) ("the LPA 1979 amendments") to introduce the predecessor of s 87(2), which was then s 88(1A):

> (1A) If the Inquiry Committee in its report recommends —
>
> (*a*) that there should be a formal investigation, then the Council shall determine accordingly under subsection (1) of this section; or
>
> (*b*) that a formal investigation by a Disciplinary Committee is not necessary, the Council may, if it disagrees with the recommendation, request the Chief Justice to appoint a Disciplinary Committee.

15 In the Legal Profession Act (Cap 161, 1990 Rev Ed), s 88(1A) was renumbered as s 87(2). The current iteration of s 87(1A) was introduced by way of the Legal Profession (Amendment) Act 2008 (Act 19 of 2008) ("the 2008 amendments"), as were the words "read with any response or further report submitted under subsection (1A)(*b*)" in ss 87(2) and (3). Section 87(1A) sets out the timeline for the IC to respond after the Council has made a determination to refer a matter back to the DT. The significance of these amendments is a point of contention in this appeal.

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Decision below

16 The Judge allowed the Executors' application in respect of the *First and Fourth* Complaints. With respect to the *First* Complaint, the Law Society contends, among other things, that the Judge erred in her interpretation of s 87 of the LPA. The Judge held that the Council had no power to pose further queries to the IC once the IC had determined in its First IC Report that a *prima facie* case has been made out. This was based on the Judge's interpretation of s 87 of LPA (*Lee Wei Ling HC* at [55]).

17 The Judge first considered the possible interpretations of s 87, applying the framework set out in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*"). The Judge found that the plain text of s 87 of the LPA could support both interpretations advanced by the parties. The Judge considered that the plain reading of s 87(2) circumscribes s 87(1), and on this view, the Council would be bound to follow the IC's recommendation, once it recommended that there be a formal investigation. However, the Judge also recognised that the plain text of s 87(2) could also support the interpretation advanced by the Law Society: indeed, there appears to be nothing in the section that disables the Council from exercising its power under subsection (1)(*d*) to refer the matter back to the IC for reconsideration. Further, if the IC's report was to be "read with *any* … further report" as stated in subsection (2), it would follow that the Council has the power to refer the matter back to the IC for reconsideration and for the issuance of a further report as provided for in s 87(1)(*d*), even where the IC had initially recommended a formal investigation in its first report (*Lee Wei Ling HC* at [43]).

18 Having identified the possible interpretations of the provision, the Judge then sought to apply the second step of the *Tan Cheng Bock* framework which

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calls for the court to examine the legislative purpose or object of the statute. In this context, the Judge examined the *historical development* of the LPA and noted that the original iteration of s 87 in LPA 1970 (see above at [14]) afforded the Council a general discretion to refer the matter back to the IC for reconsideration, as provided in s 88(1)(*d*) of the LPA 1970. However, there was no provision in the LPA 1970 that corresponded to the present s 87(2). The LPA 1979 amendments inserted the equivalent of s 87(2), which was then numbered as s 88(1A). Pursuant to what was then s 88(1A)(*a*), the Council became obliged to determine "accordingly" where the IC recommended a formal investigation. This constrained the powers of the Council by removing the discretion it previously had, *not* to advance a matter to the next stage of the disciplinary process in certain circumstances; thus, where the IC recommends a formal investigation, the Council has no choice but to refer the matter to a formal investigation. The Judge thought that this meant that the Council was no longer empowered to invoke subsection (1)(*d*) where an IC had concluded that a formal investigation was necessary (*Lee Wei Ling HC* at [49]).

19 The Judge then considered the 2008 amendments and concluded that these did not revive the Council's previously existing power to refer a matter back to the IC for reconsideration where that power had been taken away based on her conclusion as to the effect of the 1979 amendments. First, the addition of subsection (1A) was purely of procedural significance in that it provides for a stipulated timeline once the Council has referred a matter back to the IC. This was designed only to expedite the process. Second, since the addition of subsection (1A) was merely procedural in effect, the addition of the words "read with any response or further report submitted under subsection (1A)(*b*)" in subsection (2) must have been an ancillary harmonising amendment to accommodate the timelines under subsection (1A). It could not have the effect

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of granting the Council a fresh power to refer the matter back to the IC. Further, the Judge noted that there is no express provision in subsection (2) empowering the Council to refer a matter back to the IC (*Lee Wei Ling HC* at [53]).

20 The Judge then sought to apply the third step of the *Tan Cheng Bock* framework, which is to compare the possible interpretations of the text against the purpose or object of the statute, preferring the interpretation that furthers the purpose of the statute. The Judge concluded that the Executors were correct in their interpretation. The Judge thought that the effect of the 1979 amendments to the LPA was to circumscribe the Council's power by enacting what is now s 87(2). She thought that by virtue of this, the Council no longer had the power to refer a matter back to the IC for reconsideration in circumstances where the IC had determined that the matter should proceed to a formal investigation before a DT. She also considered the 2008 amendments to the LPA, which included the insertion of the words "read with any response or further report", in subsections (2) and (3) and concluded that this did not empower the Council to refer the matter back to the IC, but only dealt with the situation where the Council retained the power to refer the matter back to the IC even after the 1979 amendments (*Lee Wei Ling HC* at [54]). The Council was therefore obliged to accept the IC's recommendation in the First IC Report to refer the First Complaint to the DT, and it was procedurally defective for the Council to have referred the matter back to the IC in the present case (*Lee Wei Ling HC* at [55]).

21 In any case, even if the Council was empowered to refer the matter back to the IC for reconsideration in this case, the Judge was of the view that the First Complaint should have been referred to the DT. In relation to the queries raised by the Council in connection with the First Complaint, the Judge found that the IC did not address these queries in the Second IC Report, but instead made some factual findings there to the effect that there was insufficient evidence of the

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Testator having instructed the solicitor to physically destroy his former wills. The Judge considered that such factual issues should have been referred to the appropriate fact-finding body, namely, the DT. These factual findings also departed from the recommendation in the First IC Report that there was a *prima facie* question as to whether the Testator had instructed Ms Kwa to destroy any of the wills. Given that the Second IC Report gave a conflicting view in contrast to the First IC Report, the Council should not have accepted the findings in the Second IC Report (*Lee Wei Ling HC* at [62]). The Judge accordingly directed that the First Complaint be referred to a DT (*Lee Wei Ling HC* at [94]).

Issues on appeal

22 There are two issues before us on appeal:

(a) whether the Council has the power to refer a matter back to the IC for reconsideration under s 87(1)(*d*) of the LPA, where the IC has determined that there should be a formal investigation by a DT; and

(b) whether there is a *prima facie* case of misconduct by Ms Kwa in relation to the First Complaint that warrants formal investigation by a DT.

23 If the first question is answered in the negative, it would follow that the Judge's order with respect to the First Complaint should be upheld, since in that situation, the Council would not have been entitled to seek or rely on the Second IC Report to dismiss the First Complaint. But if the first question is answered in the affirmative, the appeal will turn on the secondary issue, which is whether the IC erred in concluding that there was no *prima facie* case of breach of ethical conduct by Ms Kwa.

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The parties' cases on appeal

Appellant's submissions

24 The parties essentially raised the same arguments before us as they did before the Judge. Both counsel also accepted that s 87(1) was capable of being interpreted in the way each of them contended and the choice of which interpretation is preferred should be determined by applying the second and third steps of the *Tan Cheng Bock* framework. We digress to observe here, that in our judgment, both counsel were mistaken in this view for reasons we explain below.

25 Beyond this, the appellant contended that the learned Judge's construction of s 87(1)(*a*) and s 87(1)(*d*) is unduly restrictive. On its plain terms, s 87(1)(*d*) is broad enough to empower the Council to refer a matter back to the IC for reconsideration.

26 The appellant further submits that as a matter of policy, the broad interpretation of s 87(1)(*d*) of the LPA is to be preferred because the Council should not be limited to rubberstamping any and all recommendations of the IC that a matter should be referred to the DT, since it may sometimes be the case that the IC had overlooked a material point. In such circumstances, there is no public interest in advancing an unmeritorious complaint to the DT. Even so, the appellant accepts that the IC ultimately has the final say in the sense that if having reconsidered the matter it comes to or remains of the view that the matter should proceed, the Council is obliged to accept that view. This, it was said, ensures an essential and effective check and balance.

27 As for the Judge's finding that the First Complaint should have been referred to a DT because of the conflicting views reflected in the First and

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Second IC Reports, the appellant submits that the IC did not exceed its powers when it interviewed Ms Kwa, and that the IC was correct in its recommendation to dismiss the First Complaint. In the First IC Report, the IC found that there was a *prima facie* case that Ms Kwa had breached the Testator's specific instructions to destroy the first will based on Ms Kwa's own notes, but there was no evidence in relation to the rest of the Wills. But Ms Kwa's explanation during her subsequent interview with the IC made it clear that the Testator had never expressly instructed her to physically destroy his superseded Wills. She explained that *she* used the words "destroy" and "tore up" and she had done so loosely in her notes to refer to her practice of striking through the Wills to invalidate them. She did not mean by those words that she had been told by the Testator to physically destroy the Wills. Having heard from Ms Kwa, who was the only witness to the instructions given by the Testator, the IC found that there was insufficient evidence, to support even a *prima facie* case that the Testator had instructed Ms Kwa to physically destroy the Wills, and correctly recommended a dismissal of the First Complaint.

Respondent's submissions

28 As against this, the Respondent seeks to uphold the Judge's decision and her reasons. He contends that this better accords with the legislative purpose and intent underlying the LPA, this being to maintain and improve the standards of conduct within the legal profession. On this basis, he argues that as long as there is a *prima facie* case of misconduct of sufficient gravity, a complaint must progress to a formal investigation by a DT. This is why s 87(2) of the LPA mandates the Council to accept any recommendation by an IC to refer a matter to the DT, so that the Council can effectively discharge its obligations to maintain discipline within the profession and ensure public trust in the legal profession.

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29 The Respondent also submitted, in line with the Judge's view, that the First Complaint should in any case be referred to the DT, because there was *prima facie* evidence of misconduct of sufficient gravity. Ms Kwa had told the Executors and Mr Lee Hsien Loong that the Testator asked her to "destroy the old Will", and Ms Kwa recorded that she "[t]ore up his will dated 20/8/2011". In a separate e-mail in relation to a different will, Ms Kwa informed the Testator that she had "destroyed [his] 'stop gap' or interim will dated 6 Sept 2012". These references suggested that the Testator had asked Ms Kwa to physically destroy the Wills.

30 The Respondent submits that the IC should not have engaged in an assessment of the substantive merits of a complaint. On this basis, it was submitted that the Judge had been correct to find that there was a *prima facie* case in relation to the First Complaint.

Our decision

Overview of the disciplinary process

31 In *Iskandar bin Rahmat v Law Society of Singapore* [2021] 1 SLR 874 ("*Iskandar I*") and *Iskandar bin Rahmat v Law Society of Singapore* [2021] SGCA 107 ("*Iskandar II*"), we set out in considerable detail an overview of the disciplinary process that applies where the Law Society receives a complaint against a solicitor. In brief terms, there are three main bodies involved in the initial stages of the disciplinary process, besides the Council: the Review Committee, the Inquiry Committee and the Disciplinary Tribunal. There are three main stages in the disciplinary process: the inquiry stage, the formal investigation stage and the hearing stage before the Court of Three Judges (*Iskandar II* at [25]). Here, we are concerned with the inquiry stage, where the IC investigates and makes recommendations to the Council. The IC considers

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whether there is a *prima facie* case that warrants a formal investigation by a DT (*Iskandar II* at [26], following *Whitehouse Holdings Pte Ltd v Law Society of Singapore* [1994] 2 SLR(R) 485 at [38]). But as observed in *Iskandar I*, the Council has some discretion in coming to a decision as to whether to accept the IC's recommendations, and retains the discretion to refer a matter for formal investigation even where the IC recommends not to. Bearing in mind the context, we examine the interpretation of s 87(1) of the LPA and the proper powers of the Council.

Applicable law

32 The law on statutory interpretation is set out in *Tan Cheng Bock*. Under the framework set out there, the court takes a three-step approach. First, the court will ascertain the possible interpretations of the provision, having regard to the text and context of the provision. Second, the court will ascertain the legislative purpose or object of the statute and the provision in question. Third, the court will compare the possible interpretations of the text against the purposes or objects of the statute and choose the interpretation that best advances the statutory object or purpose. The court may in specified circumstances also refer to extraneous materials which do not form part of the written law in which the provision is found, in order to ascertain the meaning of the provision, as such extraneous materials may be helpful in discerning the legislative purpose. But primacy is accorded to the text and context of the provision. Where the ordinary meaning of the provision is clear, extraneous material can only be used to confirm the ordinary meaning but not to alter it (*Tan Cheng Bock* at [54]).

33 Further, as we have stated in *Tan Cheng Bock* at [40], in ascertaining the legislative purpose, the court should, in appropriate cases, also consider the

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specific purpose behind a particular provision, which may be distinct from the general purpose underlying the statute as a whole. Articulating the general purpose of the statute, as will be seen in this case, may be insufficient and unhelpful to the exercise of purposive interpretation. Against that backdrop, we turn to consider the first issue, which is the interpretation of s 87.

Is the Council empowered to refer matters back to the IC where the IC has determined that the matter should proceed to a formal investigation?

34 We begin with the plain words of s 87. As we observed to counsel for the Respondent, Mr Abraham Vergis SC ("Mr Vergis"), there is simply no escaping the fact that under s 87(1)(*d*), the Council may refer a matter back to the IC for reconsideration or a further report. To succeed in his argument, Mr Vergis would have to persuade us that the Council's power that is provided for in s 87(1)(*d*) is confined to situations provided for in ss 87(1)(*a*) or (*b*), where the IC recommends that the matter need not proceed to a DT, but does not arise where the IC recommends that the matter should proceed to the DT under s 87(1)(*c*). Mr Vergis accepted that this was so. Yet, the biggest difficulty he faces is that there is nothing whatsoever in the language of s 87(1)(*d*) that supports the notion that the Council's power under that provision is constrained in this or in any other way.

35 Upon receiving the IC's report, the Council is presented with a range of options under s 87(1) and is required to elect one of the four options listed there. One of the options, which is s 87(1)(*d*), is to refer the matter back to the IC. There is *nothing* in the plain words of s 87(1) that precludes the Council from exercising its power under s 87(1)(*d*) to refer the matter back to the IC, in one particular situation, namely under s 87(1)(*c*). If it had been the intention of Parliament to limit the Council's power to refer the matter back to the IC, one

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would have expected this to be reflected in the text of the provision itself, meaning s 87(1)(*d*). Not only is there nothing at all to suggest this, s 87(1A)(*c*) provides that where the matter has been referred back to the IC and the IC has submitted its response or further report, the provisions of ss 87(1)(*a*), (*b*) and (*c*) shall apply. In short, the Council must then review the IC's further responses and its powers at this stage are as set out in s 87(1) save for s 87(1)(*d*). What this suggests is that the Council cannot refer the matter back to the IC yet again. But there is nothing at all to suggest that it could not act under s 87(1)(*d*) in the first instance where the IC report in question had recommended that the matter be referred to the DT.

36 All of this becomes even clearer when one turns to s 87(2). Section 87(2)(*a*) is in fact the provision that *obliges* the Council to refer a matter to the DT if the IC so recommends. Yet that section, on its express terms, only applies where the IC so recommends in its report "read with any response or further report submitted under subsection (1A)(*b*)". What this means is that the obligation of the Council to advance a matter to a formal investigation only arises if that is the recommendation of the IC, having regard to both its initial report and any subsequent report it might issue.

37 Turning next to the context of the section, where the Council chooses to act under s 87(1)(*d*), and refers a matter back to the IC, s 87(1A) provides that the Council must so notify the IC and also sets the timeline for the IC to reconsider the matter. This is situated in s 87 as an intermediate step in the process that then leads to subsections (2) and (3), which set out the powers of the Council to determine the course of action in the light of the original report "read with any response or further report submitted under subsection (1A)". Hence, the text and context of s 87(1A) and s 87(2) clearly contemplate a situation where the IC may be asked by the Council to submit a further response

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or report; there is nothing to limit the Council's power to pose queries under s 87(1)(*d*); and the Council is only *mandated* to act in a certain way under s 87(2) after considering the recommendations of the IC under its original report, read with any other response or report.

38 The Judge held that s 87(2) restricts the power of the Council to refer the matter back to the IC under s 87(1)(*d*), because the Council is bound to "determine accordingly under subsection (1)" where the IC recommends that there should be a formal investigation. However, even though s 87(2)(*a*) states in mandatory terms that the Council *must* determine accordingly if the IC recommends that there should be a formal investigation, this only applies *after* considering the IC's original report together with any subsequent report or response. On its express terms, there is nothing in s 87(2) that precludes the Council from exercising its power under s 87(1)(*d*) to pose further queries to the IC. While s 87(2) may circumscribe, in general terms, how the Council makes its final determination based on all the IC reports in a given case, it does not circumscribe how the Council may act under s 87(1)(*d*). This is where the Judge erred in accepting the Respondent's interpretation as a possible interpretation, in considering the first step of the *Tan Cheng Bock* framework.

39 In the course of the arguments and submissions, reference was made to *Iskandar I*, *Re An Advocate and Solicitor* [1987] 2 MLJ 21 ("*Re An Advocate and Solicitor*"), and *Law Society of Singapore v Chia Shih Ching James* [1983–1984] SLR(R) 596 ("*James Chia*"). In our judgment, those decisions neither bear on the present issue nor cause us to change our analysis. These precedents were relied upon by the Judge as support for the view that the Council could not disagree with a positive recommendation of the IC that there should be a formal investigation. That much is true in a general sense. However, the anterior question is whether the Council has the power under s 87(1)(*d*) to refer a matter

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back to the IC for reconsideration and that question was not considered in these cases. In *Iskandar I*, we held that certain determinations by each of the bodies involved in the disciplinary process must be given effect at the relevant stages of the investigative process. This includes the recommendation of an IC that a matter should proceed to the DT, which the Council is bound to abide by under s 87(2)(*a*). However, in *Iskandar I*, the question whether the Council could refer a matter back to the IC under s 87(1)(*d*) did not arise, and that was therefore not an issue before us then.

40 Similarly, in *James Chia*, the court discussed the changes effected in the 1979 amendments as follows at [16]:

> … Firstly, the Council was thenceforth required to determine that there should be a formal investigation if the Inquiry Committee so recommended. The Council's ***former right to review and disagree*** with the recommendation of the Inquiry Committee was taken away. Secondly, and on the other hand, the Council may disagree with the Inquiry Committee, if the latter recommends that a formal investigation is not necessary, and in such a case may request the learned Chief Justice to appoint a Disciplinary Committee….
>
> [emphasis added]

41 Similar remarks were made in *Re An Advocate and Solicitor* to the effect that the Council was obliged to accept the IC's recommendations. However, in neither of these cases was the effect of s 87(1)(*d*) in its present form and context considered, or in issue.

42 The Respondent's contention, that the Council has no power to refer a matter back to the IC upon an initial determination that the matter should be referred to a DT is not compatible with the text and context of s 87. Further, it runs contrary to the wording of s 87(2) which provides that the IC's report is to be "read with any response or further report".

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43 The conclusion we have arrived at based on the plain language of s 87 of the LPA also accords with common sense. It is entirely logical that the Council should be allowed to bring its collective mind to consider the report and determine the appropriate course, subject to s 87(2) of the LPA. If it considers that there might be factual errors, or additional matters the IC has not fully investigated and considered, it would be entirely sensible for the Council to be able to pose further queries to clarify the ambit of the IC's recommendations, before deciding on the appropriate course of action. Such clarifications may also be important to the Council, before it exercises its powers or duties under s 87(3) to refer the matter to the DT or to the police. Nor does the plain language of s 87 reasonably admit of the interpretation advanced by the Respondent for the reasons set out at [34]–[38] above.

44 Given that our interpretation is based on the plain words of the provision, and given the absence of an alternative interpretation that is reasonably capable of being advanced, there is no need to proceed past the first step of the *Tan Cheng Bock* framework. The short point, as we have explained at [34]–[38] above, is that there is no reasonable way to read the plain words of s 87(1)(*d*) and s 87(2) as limiting the power of the Council to refer a matter back to IC for reconsideration, to certain situations only. Nonetheless, for completeness, we are satisfied that this interpretation of s 87 in no way detracts from the legislative purpose behind this provision.

45 It is evident from the Parliamentary debates that the 1979 amendments were introduced with the objective that "the procedure of disciplinary control over solicitors will be streamlined, and be made more effective" (*Singapore Parliamentary Debates, Official Report* (30 March 1979), vol 39 at col 306 (E W Barker, Minister for Law and Science and Technology)). As for the 2008 amendments, which inserted the words "read with any response or further report

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…" in ss 87(2) and (3), the Minister for Law similarly reiterated the need for an expeditious process, but also emphasised the need for due process, given the consequence of disciplinary proceedings on the lawyer's reputation and livelihood (see *Singapore Parliamentary Debates, Official Report* (26 August 2008), vol 84 at cols 3241–3243 (K Shanmugam, Minister for Law)). Significantly, as we pointed out to Mr Vergis, there is nothing in either of these legislative discussions to suggest that Parliament intended to take away from the Council, the power it had had since the enactment of the LPA 1970 to refer a matter back to the IC for reconsideration, even where the IC had recommended that the matter progress to a formal investigation before a DT. The Judge, however, erred in finding that the 1979 amendments had taken away the Council's right to refer the matter back to the IC. It would be surprising indeed if Parliament had in fact intended to take away a previously existing power of the Council, as the Respondent contends, and nothing to this effect was said in the text of the amendments and/or in the legislative debates. It becomes wholly untenable to maintain that this was Parliament's intention when, in addition, the text giving rise to that right, in this case s 87(1)(*d*), remains in place in the statute.

46 In our respectful view, the Judge went wrong in part because she did not, in fact, endeavour to deduce any specific legislative intent. Instead, she proceeded by relying essentially on the legislative history, which might be helpful but is no substitute for deducing the legislative intent. As a result, the specific intent of s 87 was neither considered nor even identified. This, in our view, was not the correct approach to purposive interpretation. Further, the Respondent's reference to the general purpose of the LPA is also unhelpful, because that is stated at such a high level of generality that it is unhelpful in discerning or articulating the *actual* purpose of the legislative amendments. The

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general purpose of the LPA to safeguard public trust in the legal profession is unconnected to the issue of whether Parliament intended to circumscribe the Council's power. Had Parliament intended to restrict the Council's previously existing powers by taking away one of these powers, one would have expected this to have been made clear, by an explicit reference in the text of the statute and/or in any extraneous material to the extent that this does not contradict the plain text. However, neither the statutory text nor the extraneous material lends support to the Respondent's argument. We reiterate that if the legislative intent had been to curtail the Council's power and specifically to take away a power that the Council undoubtedly had at the time, it is extremely peculiar that there is no hint of anything to this effect in the course of the debates.

47 We accept that the specific intent of both sets of the legislative amendments that are relevant here was to streamline the timelines and processes of the investigation. But this does not lead to the conclusion that the Council's power to review and refer a matter back to the IC under s 87(1)(*d*) was therefore taken away. In fact, any conceivable concern over the possible delay that might arise if the IC were required to issue an additional report was amply dealt with in s 87(1A), by which Parliament stipulated a tight timeline for the submission of any such further report. Our reading that the Council is empowered to review and refer the matter back to the IC under s 87(1)(*d*) is also in line with the need for due process, which was emphasised in the Parliamentary debates pertaining to the 2008 amendments, and which would be given effect to by recognising the possibility of the IC being invited to reconsider its initial recommendations in suitable circumstances. It follows that in our judgment, the Judge erred in her interpretation of the relevant legislative provisions.

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Is there a prima facie case of sufficient gravity in relation to the First Complaint?

48 Having found that the Council was entitled to refer the matter back to the IC, which then led to the issuance of the Second IC Report, we turn to the question of whether the Council was entitled to adopt the IC's recommendation not to proceed with a formal investigation for the First Complaint. The test to determine whether there is a *prima facie* case of misconduct is whether there is some evidence, which is not inherently incredible, that would establish each essential element in the alleged offence if such evidence were to be accepted as accurate (*Tan Ng Kuang and another v Law Society of Singapore* [2020] SGHC 127 at [17]).

49 On appeal under s 96 of the LPA, the court's role is to review the determination by the IC and the Council, and consider whether there is, on the face of the matter being investigated, material to support charges for possible misconduct that should be formally investigated. The court should not disturb the decision of the IC unless the court is satisfied that the evidence before the IC did not support the conclusion it reached, or that the IC had misunderstood the evidence, or if there was some exceptional circumstance that justifies disagreeing with the IC's conclusion and the Council's acceptance of the same (*Iskandar II* at [34]). It is not the court's role to make findings of fact, but to consider whether the material before the IC justified the conclusions that the IC had reached (*Iskandar II* at [35]).

50 In our judgment, the IC's conclusion that there is no *prima facie* case with respect to the First Complaint was amply justified by the evidence. The essence of the First Complaint is that the Testator instructed the solicitor to *physically destroy* the earlier Wills, in the sense that there would be no

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remaining trace of these earlier Wills. This emerged from the Executors' complaint where reference was made to the Testator's desire to "keep his testamentary wishes private, privileged and confidential".

51 Ms Kwa explained to the IC that the word "destroy" was in fact her own word, and that the Testator had never used that word in the context of their discussions as to the superseded Wills. She further explained that when she used that word, she did so to refer to the act of invalidating a will, and we understand this in the sense of destroying its legal force. She also explained that the Testator would often ask her about the contents of his previous Wills and she then needed to be able to refer to the prior Wills. She said that she did this quite frequently given the quite regular occasions when the Testator asked her about the contents of his prior Wills. Ms Kwa also explained that she had never physically destroyed a will in the Testator's presence, but had only drawn a line through them. Having considered all this, the IC concluded that the documentary evidence failed to demonstrate that the Testator expressly intended or instructed that each of his prior Wills were to be physically destroyed. It noted that had Ms Kwa physically destroyed the superseded Wills, she would not have been able to refer to them as and when the Testator asked about them. In short, there was no evidence that the Testator intended or instructed that his Wills were to be physically destroyed.

52 In our judgment, there is no basis to challenge the conclusions of the IC. There is in fact no factual controversy at all because there is no evidence to suggest that the Testator intended that his Wills were to be destroyed *physically*, so long as they had been properly invalidated. In the course of the arguments before us, we asked Mr Vergis exactly what the Respondent's concern was, and what the evidentiary basis was for the case he was advancing. He told us that the Respondent's concern was simply to ensure that the Testator's instructions

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were adhered to. While he saw no substantive difference between physically destroying the will and otherwise invalidating it, for instance, by intentionally defacing it, he said the Respondent understood from what Ms Kwa had noted that the Testator wanted the old Wills destroyed. By way of example, he pointed to Ms Kwa's e-mail dated 4 June 2015 to the Beneficiaries where she used the word "destroy". We pointed out to Mr Vergis that in the same e-mail, she also attached copies of the superseded Wills. This demonstrated that, insofar as Ms Kwa was concerned, when she used the word "destroy" in relation to the Wills, this was in no way inconsistent with her keeping cancelled copies of the same. She plainly did not think that the Testator had instructed her to physically destroy the Wills or that she was acting contrary to his instructions in retaining copies of the invalidated Wills for her records. This also was to be seen in the context of and supporting her explanation that "destroy" was her own word. Further, she did in fact stamp "cancelled" on the Wills.

53 Finally, there could be no real doubt that the Testator knew that Ms Kwa retained old copies of his Wills which had been invalidated but not physically destroyed. As Ms Kwa explained, this was evident from the consultations between the Testator and Ms Kwa where the Testator asked about the contents of his prior Wills. It is inconceivable that the Testator imagined Ms Kwa could recall the precise contents of each of the Wills by memory. It is also the case that when the Testator was presented with the Seventh Will, he was expressly told and believed that it was the same document as the first will. He could not possibly have believed this unless he knew that a copy of that long-superseded Will was available in the solicitor's files and records.

54 There is therefore no evidential basis on which the First Complaint could be pursued. It follows that there is no *prima facie* case of sufficient gravity such that the matter should be referred to the DT.

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Conclusion

55 For the foregoing reasons, we allow the appeal by the Law Society and affirm the determination by the Council to dismiss the First Complaint. Unless the parties are able to come to an agreement on costs, they are to file written submissions, limited to ten pages each, on the appropriate costs orders that should follow. These submissions are to be filed within two weeks of the date of this judgment.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

Chao Hick Tin
Senior Judge

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