IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 185

Criminal Revision No 12 of 2024

Between

S Iswaran

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Disclosure — Criminal case disclosure conference — Whether Case for the Prosecution required under s 214(1)(*d*) Criminal Procedure Code 2010 to include conditioned statement for every witness the Prosecution intends to call at trial]
[Criminal Procedure and Sentencing — Revision of proceedings — Revision of orders made at criminal case disclosure conference under s 404 Criminal Procedure Code 2010]

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Vincent Hoong J:

Introduction

1 In 2011, a statutory regime was introduced to govern the duty of parties in a criminal case to make reciprocal disclosure of information about their respective cases before trial. The hallmark of this framework is its sequential nature, which requires the Prosecution to first set out its case, stating aspects of its case and the evidence that it intends to rely on at the trial. This *quid pro quo* nature balances the interests of the Prosecution in maintaining an effective criminal justice process and the interests of the accused in preparing adequately for the trial. Since then, the statutory regime has evolved, in tandem with procedural reforms in 2018 abolishing committal hearings in criminal proceedings in the High Court. The case law has also developed, clarifying the extent of the Prosecution's duty to provide disclosure in criminal cases, and the court's role in ensuring compliance with disclosure obligations.

2 The present application provides an opportunity to examine the extent of the Prosecution's statutory disclosure obligations. At the time of this judgment, the Criminal Procedure (Miscellaneous Amendments) Act 2024 (Act 5 of 2024) ("CPC (Amendment) Act 2024") has been passed but not brought into operation. It will bring about further changes to the statutory regime of disclosure in criminal cases.

3 In this judgment, I consider the central issue of whether the Prosecution has a statutory obligation to file a statement under s 264 of the Criminal Procedure Code 2010 ("CPC") from every witness whom it intends to call at the trial as part of the Case for the Prosecution that it is required to file in the High Court pursuant to s 213(1) of the CPC.

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4 By way of background, Mr S Iswaran (the "applicant") is the accused in a criminal case to be tried in the General Division of the High Court (HC/HC 900019/2024).

5 In accordance with its obligation under s 213(1) of the CPC, the Prosecution filed and served the Case for the Prosecution on 31 May 2024. Subsequently, at a criminal case disclosure conference ("CCDC") conducted on 11 June 2024 (the "11 June CCDC"), the applicant applied to the Assistant Registrar (the "AR") for an order that the Prosecution should supplement the Case for the Prosecution, by 25 June 2024, with conditioned statements under s 264 of the CPC for every witness whom it intends to call at the trial. After hearing arguments from both parties, the AR dismissed the application. The AR's reasons are summarised as follows:

(a) That s 214(1)(*d*) of the CPC was clear that the Case for the Prosecution *must* contain statements of witnesses under s 264, or conditioned statements, "that are intended by the prosecution to be admitted at the trial". The Prosecution was not required to record and include in the Case for the Prosecution the conditioned statements *of every single witness* that it intended to call at the trial. It was not feasible for the Prosecution to record conditioned statements from all of its witnesses, whether or not it intended to admit these conditioned statements to be used at the trial. For example, a witness may be hostile to the Prosecution or refuse to provide a conditioned statement. The Prosecution did not have powers under the CPC to compel witnesses to provide conditioned statements, and it could not be the case that the Prosecution would be in breach of s 214(1)(*d*) of the CPC if it did not provide a conditioned statement for such a witness. Parliament was presumed not to have intended such an impractical and unworkable result.

(b) That there was no legal basis for the Defence's submission that the Prosecution ought, in instances where it was impractical or impossible to obtain a conditioned statement under s 264(1) of the CPC from a witness, to minimally file an affidavit to explain why.

(c) That written statements were the default mode of providing evidence in preliminary inquiries, and subsequently, in committal hearings, was irrelevant. Preliminary inquiries and committal hearings had been abolished, and what was material in the present case was the requirement for the Case for the Prosecution under s 214(1)(*d*) of the CPC. Crucially, the proposed cl 179(*d*) in the 2008 draft Criminal

Procedure Code Bill, specifying that the Case for the Prosecution must include the "signed statement of the witnesses" for the Prosecution, was not passed. In 2010, s 214(1)(*d*) was enacted, which stated instead that the Case for the Prosecution must include "the statements of the witnesses under section 264 that are intended by the prosecution to be admitted at the trial". The significant difference in wording must have been intended to confer on the Prosecution the "power to choose what conditioned statements to submit under section 214(l)(*d*), rather than mandate that the Prosecution has to submit all signed statements of all witnesses". When the committal procedure was abolished in 2018, there was no requirement for the Prosecution to provide the signed statements or conditioned statements of all witnesses, regardless of whether it intended to admit them at the trial.

(d) That the wording of s 214(1)(*d*) of the CPC was clear and that there was no authority to support the Defence's alternative submission that the court ought to exercise its inherent jurisdiction to order the production of conditioned statements for all the Prosecution's witnesses. In any event, the AR was not satisfied that the court should exercise its inherent powers due to the lack of evidence of any abuse, oppression or prejudice. The Prosecution had already disclosed, amongst others, messages between the applicant and Mr Ong Beng Seng ("Mr Ong"), messages between the applicant and Mr Lum Kok Seng ("Mr Lum") and statements recorded from Mr Ong and Mr Lum in the course of investigations. Such material would assist the Defence in preparing its case.

(e) That there was no basis to exercise the court's case management powers as contended by the Defence in its further alternative submission, as case management did not extend to requiring the Prosecution to record and produce conditioned statements that it did not intend to admit at the trial.

6 The applicant was dissatisfied with the AR's decision and, on 18 June 2024, filed the present application under s 404 of the CPC for this court to call for and examine the record of the 11 June CCDC, to set aside the AR's order dismissing his earlier application, and to order that the Prosecution serve the following on the applicant by 19 July 2024:

(a) For all witnesses in the Prosecution's list of witnesses who *agree* to provide a conditioned statement, the conditioned statements of those witnesses;

(b) A letter setting out the identities of the witnesses who *do not agree* to provide a conditioned statement and each such witness' reasons for not agreeing; and

(c) Draft conditioned statements which set out the evidence that the Prosecution intends to lead from the witnesses referred to in (b) at the trial.

The applicant's submissions

7 Section 212(1) of the CPC mandates the convening of a first CCDC not earlier than four weeks from the date of transmission of a case to the General Division of the High Court for the purpose of "settling", *inter alia*, the filing of the Case for the Prosecution and the Case for the Defence. The parties are on

common ground that the court conducting a CCDC has the power under s 212(1) of the CPC to give directions relating to compliance with orders made at a CCDC.[1] The applicant submits that the AR had erred in dismissing the application, and that such error has caused serious injustice, which this court should correct in the exercise of its revisionary jurisdiction. Alternatively, the applicant submits that this court should order the Prosecution to file conditioned statements as part of the Case for the Prosecution, in the exercise of either its inherent powers or case management powers under s 212 of the CPC.

8 The applicant submits that if the Prosecution intends to call any witnesses at the trial to prove the charges against him, it comes under a statutory obligation under s 214(1)(*d*) of the CPC to "provide the Defence with the same notice of its case that it would have had to provide under the [preliminary inquiry] and committal hearing processes by including the [c]onditioned [s]tatements and draft [c]onditioned [s]tatements" as stated in [6(a)] and [6(c)] above.[2]

9 The applicant's submission is essentially that the introduction of the criminal case disclosure regime by the amendments to the law by the Criminal Procedure Code 2010 (Act 15 of 2010) ("CPC 2010") was intended to ensure that the defence obtained the same degree of disclosure that it was already entitled to, under the pre-existing regime which provided for the conduct of preliminary inquiries before the trial. The applicant's position is that the preliminary inquiry regime required the Prosecution to place before a Magistrate, amongst others, written statements of all of its witnesses, and the

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1 Applicant's Written Submissions dated 28 June 2024 ("AS") at [276]–[280]; Prosecution's Written Submissions dated 28 June 2024 ("PS") at [69].

2 AS at [4].

Magistrate to review the evidence for the purposes of determining whether there was sufficient evidential basis to commit the accused to stand trial in the High Court on the charges which the Prosecution intended to proceed with at the trial.[3] Section 214(1)(*d*) of the CPC contains the "very same words" found in s 176(4)(*d*) of the CPC 2010,[4] which set out the contents of the Case for the Prosecution that must be filed not less than seven days before a committal hearing under s 176(3)(*b*) of the CPC 2010. Crucially, s 176(4)(*d*) required the Prosecution to file the statements of witnesses which "are intended by the prosecution to be admitted under section 179(1)", *viz*, admitted as evidence at the committal hearing.

10 The applicant's position is that the legislative intent was for the Prosecution's disclosure obligations in cases transmitted to the High Court under s 210 of the CPC 2010 to be as extensive as that in cases subject to the committal procedure in s 176 of the CPC 2010, as the legislative intent must have been for the "same conditioned statements that fell to be furnished in [preliminary inquiries]" to be included in a Case for the Prosecution filed in a case transmitted under s 210 of the CPC 2010.[5] Any reading which allows the Prosecution to determine whether to serve conditioned statements as part of the Case for the Prosecution would "make a mockery of the legislation, legislative history and the statements and assurances in Parliament".[6] The applicant submits that s 214(1)(*d*) of the CPC was introduced within a "history and context" which suggested that conditioned statements were provided to the

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3 AS at [16]–[24].

4 AS at [63].

5 AS at [65]–[67] and [93].

6 AS at [8].

defence in preliminary inquiries and committal hearings as a fundamental safeguard to ensure that the accused knew the facts and evidence against him, and that such a fundamental safeguard would remain and be available to the accused even after the abolition of committal hearings by the Criminal Justice Reform Act 2018 (Act 19 of 2018) ("CJRA 2018").[7]

11 The applicant further points to the requirements set out in s 162(1) of the CPC for the contents of the Case for the Prosecution in criminal proceedings in the State Courts, which include a summary of the facts in support of the charge (see s 162(1)(*b*) of the CPC) but not statements under s 264 of the CPC that are intended by the Prosecution to be admitted at the trial. A summary of facts must be included in a Case for the Prosecution filed in proceedings in the State Courts, but not in proceedings in the General Division of the High Court. As Parliament could not have intended that the Prosecution's duties of disclosure in proceedings in the General Division of the High Court would be less extensive than those in proceedings in the State Courts, conditioned statements that set out the evidence that each and every witness is likely to give in support of the charges must have been intended to be mandatory for proceedings tried in the General Division of the High Court. In contrast, the Prosecution has the prerogative or discretion to decide in proceedings in the State Courts, whether it wants to disclose conditioned statements in the Case for the Prosecution.[8]

12 The applicant contends that the Prosecution's position to not disclose any conditioned statements of its intended witnesses is "not a principled one".[9]

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7 AS at [13], [80] and [93].

8 AS at [172]–[174].

9 AS at [10] and [211]–[251].

He asserts that the Prosecution's position had changed after initially accepting at a CCDC on 2 April 2024 that it "has a statutory obligation to provide conditioned statements if the Defence consents to their admissibility".[10] However, when the Defence indicated that it was not going to consent to the admissibility of statements that it had not even seen, the Prosecution changed its position and claimed at the next CCDC on 14 May 2024 that it was not under an obligation to include conditioned statements in the Case for the Prosecution.[11]

13 Bearing in mind the wider purpose of the criminal case disclosure regime to mandate reciprocal disclosure of the parties' respective cases, the Defence would not be in a position to file the Case for the Defence unless it obtains the conditioned statements of the Prosecution's intended witnesses.[12] Further, the applicant will be taken by surprise at the trial, when he will find out for the first time what the evidence of the Prosecution's witnesses is. The applicant also submits that if the Prosecution does not furnish the Defence with the conditioned statements of all of its intended witnesses:[13]

> … it will result in the trial being protracted and bogged down by the taking and recording of oral evidence, and adjournments for the Defence to consider and review the evidence and to give instructions, resulting in the Court's time and resources being wasted …

14 Thus, the AR's interpretation of s 214(1)(*d*) of the CPC was wrong and occasioned serious injustice to the applicant.

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10 AS at [10].

11 AS at [10].

12 AS at [147].

13 AS at [268] and [272(b)].

The Prosecution's submissions

15 The Prosecution objects to the application, essentially on the ground that the AR's decision was not incorrect or illegal and did not suffer from any impropriety. Since there was nothing palpably wrong in the decision that has occasioned any injustice, much less serious injustice, there is no basis for this court to exercise its revisionary powers.[14] There is also no legal basis for the court to invoke its inherent powers or case management powers to make the orders sought by the applicant.[15]

16 The Prosecution argues that the AR's decision was correct for the following reasons:

(a) Applying the principles of statutory interpretation in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*"), s 214(1)(*d*) of the CPC permits of only one interpretation: namely, that the Case for the Prosecution need only contain any conditioned statements that the Prosecution intends to admit at the trial.[16]

(b) This is confirmed by the text and legislative context of s 214(1)(*d*) of the CPC:

(i) First, s 214(1)(*d*) of the CPC does not impose any obligation on the Prosecution to record conditioned statements

14 PS at [7].

15 PS at [67]–[70].

16 PS at [11].

from its witnesses, and only provides for the service of statements.[17]

(ii) Second, the CPC does not prescribe the number of conditioned statements to be furnished, who they must be recorded from or their contents, in contrast to other provisions in the CPC with specific requirements, for instance that the summary of facts to be filed in the Case for the Prosecution in State Courts proceedings must be "in support of the charge" under s 162(1)(*b*) of the CPC. Another example is s 217(1)(*d*) of the CPC, applicable to the Case for the Defence in proceedings in the General Division of the High Court, which requires the defence, if it objects to any issue of fact or law in relation to any matter contained in the Case for the Prosecution, to include a statement of the nature of the objection, the issue of fact on which evidence will be produced and the points of law in support of such objection. It must therefore be the case that the Prosecution was intended to be left with the discretion as to how best to present its case.[18]

(iii) Third, the use of conditioned statements at a trial is optional, and s 230 of the CPC, which provides for the procedure to be followed in a trial in all courts, includes s 230(1)(*e*) which makes clear that the default position is for Prosecution witnesses to give oral evidence.[19] Section 264 of the CPC is an

17 PS at [15].

18 PS at [16].

19 PS at [17].

admissibility provision that permits parties to admit conditioned statements as evidence by mutual consent but does not compel them to do so.[20]

(c) The plain meaning of s 214(1)(*d*) of the CPC is also confirmed by the legislative history of the CPC, which – amongst others – shows that Parliament introduced the use of conditioned statements in preliminary inquiry proceedings to save resources rather than to enhance pre-trial disclosure,[21] and had considered requiring the Case for the Prosecution in High Court cases to contain conditioned statements for all witnesses *but ultimately decided not to do so*.[22]

(d) There is no basis for invoking the court's inherent powers or case management powers to create an unprecedented and wide-ranging obligation upon the Prosecution to lead evidence from each witness at the trial by way of a conditioned statement.[23]

(e) In any event, the Prosecution has provided sufficient notice to the Defence of its case. The Defence has more than enough material to prepare its case and comply with its disclosure obligations should it wish to file a Case for the Defence.[24] The present application is in reality an attempt to "broaden the disclosure obligations of the Prosecution beyond

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20 PS at [18].

21 PS at [22]–[28].

22 PS at [29]–[33].

23 PS at [67]–[70].

24 PS at [71]–[78].

what is required under the statutory disclosure regime enacted by Parliament and at common law".[25]

The exercise of revisionary power by the General Division of the High Court over orders made in a CCDC

17 As a preliminary point, it is essential to set out the scope of the power of the General Division of the High Court under s 404 of the CPC to revise orders made at a CCDC. Section 404(1) of the CPC provides as follows:

> **Power to revise orders made at criminal case disclosure conference**
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> **404**.—(1) The General Division of the High Court may, on its own motion or on the application of the Public Prosecutor or the accused in any criminal case disclosure conference, call for and examine the record of any criminal case disclosure conference held under Part 9 or 10 before a Magistrate, a District Judge, the Registrar of the State Courts or the Registrar of the Supreme Court to satisfy itself as to the *correctness, legality or propriety of any order recorded or passed at the criminal case disclosure conference, and as to the regularity of the criminal case disclosure conference.*
>
> [emphasis added]

18 Under s 404(3) of the CPC, on examining a record under revision, the General Division of the High Court may "affirm, vary or set aside any of the orders made" at the CCDC. Under s 404(5) of the CPC, where a case is revised, the decision or order certified by the General Division of the High Court must be given effect to by the judicial officer who recorded or passed the original order at the CCDC.

19 In *Public Prosecutor v Li Weiming and others* [2014] 2 SLR 393 ("*Li Weiming (CA)*") at [68], the Court of Appeal held that Parliament's intention in

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[25] PS at [5(e)].

s 404 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC 2012") was to subsume the High Court's powers to review orders made at CCDCs under the umbrella of the court's paternalistic revisionary jurisdiction, instead of granting an independent and separate power to the High Court to conduct a *de novo* review of the merits of the order. The Court of Appeal in *Li Weiming (CA)* was not persuaded that the High Court was entitled to interfere so long as the order made at the CCDC was incorrect, illegal or improper or there was a procedural irregularity. Rather, the threshold for intervention was the requirement of "serious injustice" applicable to the court's exercise of its general powers of revision. Furthermore, this threshold is malleable in practice and the court may take into account the following factors (*Li Weiming (CA)* at [70]):

> …
>
> (a) Orders made during CCDCs inevitably involve some measure of administrative discretion, exercised within the context of the course of the entire CCDC process, which the High Court ought to accord some latitude to.
>
> (b) As the orders that may be challenged are interlocutory in nature, *what may constitute substantial injustice would have to be viewed flexibly through this perspective*, and substantial injustice need not necessarily rise to the level of requiring the order to have a considerable or immediate bearing on the actual merits of the case.
>
> (c) In assessing whether an order made at a CCDC would lead to substantial injustice, the court may have due regard to the yardsticks of *fairness and natural justice and whether the impugned order would severely undermine the statutory purpose of the CCDC regime in assisting the parties to prepare adequately for their cases before trial.*
>
> [emphasis added]

20 As can be seen from *Li Weiming (CA)* at [59]–[61], the statutory scheme in s 404 of the CPC 2012, read in conjunction with s 160(2), is predicated on the assumption that the court may make orders in the course of a CCDC relating

to matters enumerated in s 160(1) of the CPC 2012 applicable to proceedings in the Subordinate Courts. Sections 212(1) and 212(2) of the CPC, which are applicable to proceedings in the General Division of the High Court, contain language similar to ss 160(1) and 160(2), and provide:

> **Procedure after case has been transmitted to General Division of High Court**
>
> **212.**—(1) Where the criminal case disclosure procedures in this Division apply by virtue of section 211A, after the case has been transmitted to the General Division of the High Court, the prosecution and the defence must, unless the Registrar of the Supreme Court for good reason directs otherwise, attend a first criminal case disclosure conference, not earlier than 4 weeks from the date of transmission as directed by the Registrar of the Supreme Court for the purpose of settling the following matters:
>
> (*a*) the filing of the Case for the Prosecution and the Case for the Defence;
>
> (*b*) any issues of fact or law which are to be tried by the trial judge at the trial proper;
>
> (*c*) the list of witnesses to be called by the parties to the trial;
>
> (*d*) the statements, documents or exhibits which are intended by the parties to be admitted at the trial;
>
> (*e*) the trial date.
>
> (2) The Registrar of the Supreme Court must not make any order in relation to any matter mentioned in subsection (1) in the absence of any party if the order is prejudicial to that party.

21 The Court of Appeal observed in *Li Weiming (CA)* at [58] and [60] that, although s 169 of the CPC 2012 enumerated the substantive consequences for non-compliance with the CCDC procedures in proceedings tried in the Subordinate Courts, it did not preclude any directions or orders that the court may make in relation to compliance with the requirements for the filing of the parties' respective Cases. The powers to make such orders were conferred by s 160(1) as powers that were necessary or ancillary to "settling" the matters

enumerated therein. The court's intervention would be warranted if the Case for the Prosecution was so lacking that it detracted from the purpose of pre-trial criminal discovery and would so frustrate or considerably hamper the possibility of the defence asserting that the Prosecution had done what s 169(1)(*c*) proscribed, *ie*, put forward at the trial a case which differed from or otherwise was inconsistent with the Case for the Prosecution. The Court of Appeal therefore clarified at [54] that notwithstanding that s 169 of the CPC 2012 specified the substantive consequences of non-compliance by the Prosecution with its statutory disclosure requirements, the court had the power to enforce the "right" to information required under the statutory criminal case disclosure regime by making orders or directions when such information was not forthcoming.

22 Applying the principles *in Li Weiming (CA)* to proceedings in the General Division of the High Court, s 221 of the CPC, which spells out the consequences of non-compliance with criminal case disclosure requirements, similarly cannot be regarded as exhaustive. The General Division of the High Court therefore also has the power to make orders or directions to ensure the proper execution of the criminal case disclosure regime, and the source of the power to do so is s 212(1) of the CPC, which gives the court the power to make orders for the purpose of "settling", amongst others, the filing of the Case for the Prosecution.

23 In the present proceedings, the court assumes revisionary jurisdiction by virtue of s 404 of the CPC, and its role is to examine the record to satisfy itself as to the correctness, legality or propriety of the orders made by the AR at the 11 June CCDC in the exercise of the powers under s 212(1) of the CPC, and as to the regularity of the proceedings at the 11 June CCDC.

Can s 214(1)(*d*) of the CPC be read as imposing a requirement on the Prosecution to obtain conditioned statements for every witness that it intends to call at trial?

Applying principles on statutory interpretation, there is no ambiguity in the words of s 214(1)(d) of the CPC

24 In statutory interpretation, it is trite that the drafter's intention *at the time of the enactment* is material (*Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 ("*Ting Choon Meng*") at [18]; *Tan Cheng Bock* at [35]) or, in some cases, when it subsequently reaffirms the particular statutory provision in question (*Constitutional Reference No 1 of 1995* [1995] 1 SLR(R) 803 at [44]). It is also clear that in the interpretation of legislation, s 9A(1) of the Interpretation Act 1965 ("IA") requires a preference for an interpretation that "would promote the purpose or object underlying the written law".

25 As recognised in *Tan Cheng Bock* at [38], the first step is to ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole. This first step requires a court to ascertain the possible interpretations of a provision by determining the ordinary meaning of the words in the legislative provision. In so doing, the court can be aided by rules and canons of statutory construction which are all grounded in logic and common sense.

26 At the second step, the court then considers the purpose of the provision specifically, and the general purpose of the legislation as a whole, presuming that a statute is a coherent whole and that the specific purpose of the provision does not go against the grain of the general purpose of the legislation (*Tan Cheng Bock* at [41]). In *Tan Cheng Bock* at [44], the court highlighted that there are three sources for ascertaining the purposes of a legislative provision:

> There are three main textual sources from which one can derive the purpose of a particular legislative provision. First, the long title of a statute might give an indication of its purpose. If there is no contradiction between the general purpose of the statute and specific purpose of the legislative provision in question, the purpose stated in the long title may also shed light on the purpose of the specific legislative provision in question. Second, *the words of the legislative provision in question will clearly be of critical importance.* We agree with the Judge who noted … that *if a provision is well-drafted, its purpose will emanate from its words*. Third, *other legislative provisions within the statute may be referred to, so far as they are relevant to ascertaining what Parliament was seeking to achieve and how*. In particular, the structure of the statute as a whole and the location of the provision in question within the statute may be relevant considerations.
>
> [emphasis added]

27 Finally, as a third step, it is necessary to compare the possible interpretations of the text (if any) against the purposes or objects of the statute. An interpretation which furthers the purposes of the written text should be preferred to one which does not (*Tan Cheng Bock* at [54(c)]).

28 Section 9A(2) of the IA provides that extrinsic material, *if* capable of assisting in the ascertainment of the meaning of the provision, should be given consideration:

> (a) To confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law (see s 9A(2)(*a*) of the IA); or
>
> (b) To ascertain the meaning of the provision when: (i) the provision is ambiguous or obscure (see s 9A(2)(*b*)(i) of the IA); or (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the

written law leads to a result that is manifestly absurd or unreasonable (see s 9A(2)(*b*)(ii) of the IA).

29 It is important to bear in mind that s 9A(4) of the IA requires the court, in deciding whether any extraneous material should be referred to and/or the weight that should be given to such material, to have consideration to the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law (see s 9A(4)(*a*) of the IA), and the need to avoid prolonging legal or other proceedings without compensating advantage (see s 9A(4)(*b*) of the IA).

30 The court must first derive the meaning of the text of the provision from its context, *ie*, the written law as a whole, which would often give sufficient indication of the objects and purposes of the written law and even of the specific provision (see *Ting Choon Meng* at [66]). If the provision is ambiguous or obscure, or if the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable, recourse to useful extraneous material may be had to ascertain the precise objects and purposes of the enactment. Otherwise, the court would only have recourse to useful extrinsic material for the purpose of confirming the ordinary meaning of the provision. It should be emphasised that extraneous material cannot be used "to give the statute a sense which is contrary to its express text" (*Seow Wei Sin v Public Prosecutor and another appeal* [2011] 1 SLR 1199 at [21]). As stated in *Tan Cheng Bock* at [50]:

> Although purposive interpretation is an important and powerful tool, it is not an excuse for rewriting a statute … The authority

> to alter the text of a statute lies with Parliament, and judicial interpretation is generally confined to giving the text a meaning that its language can bear. Hence, purposive interpretation must be done with a view toward determining a provision's or statute's purpose and object 'as reflected by and in harmony with the express wording of the legislation': *PP v Low Kok Heng* [2007] 4 SLR(R) 183 at [50].

31 Applying the principles of statutory interpretation, the starting point is to construe the express words of s 214(1)(*d*) of the CPC. The entirety of s 214(1) of the CPC is set out as follows:

> **Contents of Case for the Prosecution**
>
> **214.**—(1) The Case for the Prosecution must contain the following:
>
> (*a*) a copy of the charge which the prosecution intends to proceed with at the trial;
>
> (*b*) a list of the names of the witnesses for the prosecution;
>
> (*c*) a list of exhibits that are intended by the prosecution to be admitted at the trial;
>
> (*d*) *the statements of the witnesses under section 264 that are intended by the prosecution to be admitted at the trial*;
>
> (*e*) any written statement made by the accused at any time and recorded by an officer of a law enforcement agency under any law, which the prosecution intends to adduce in evidence as part of the case for the prosecution;
>
> (*f*) a list of every statement, made by the accused at any time to an officer of a law enforcement agency under any law, that is recorded in the form of an audiovisual recording, and that the prosecution intends to adduce in evidence as part of the case for the prosecution;
>
> (*g*) for every statement mentioned in paragraph (*f*), a transcript (if any) of the audiovisual recording of that statement.
>
> [emphasis added]

32 To my mind, it is clear that the object of inclusion in the Case for the Prosecution under s 214(1)(*d*) of the CPC is "the statements of the witnesses under section 264", and the Prosecution's obligation to provide such statements is qualified by the express words "are *intended* by the prosecution to be *admitted at the trial*" [emphasis added]. The plain meaning of these words, read together, is that the Prosecution is only required to include as part of the Case for the Prosecution such "statements of the witnesses under section 264" that it *intends* to admit at the trial. Conversely, if the Prosecution does not *intend* to admit any such statements at the trial, it is not required to file those statements as part of its Case for the Prosecution under s 214(1)(*d*) of the CPC. Section 214(1)(*d*) refers to *the* statements of *the* witnesses under s 264 of the CPC, which cannot be construed to mean that the Prosecution must *obtain* statements under s 264 of the CPC from *all* the witnesses that it intends to call to give evidence at the trial. There is also nothing in the wording of s 214(1)(*d*) of the CPC which requires the Prosecution to file and serve the statements under s 264 of every witness that it intends to call at the trial, or to provide the *drafts* of such written statements where any such witness is not willing to provide a conditioned statement.

33 I am not able to agree with the applicant's characterisation of the meaning of the words "intended … to be admitted", as stated in oral arguments before me:[26]

> In other words, 'intended … to be admitted' merely means that you may choose later on to admit these statements in writing of the witnesses as conditioned statements. It doesn't mean I have an intention of not having conditioned statements and, therefore, this section doesn't apply … The intention there is just this. So if you look at the sequence of the words, 'the

[26] Notes of Evidence ("NEs") (5 July 2024) at p 35 lns 19–32.

> statements of [the] witnesses … [that] are intended by the prosecution …'. In other words, at this stage, you don't have to make up your mind. But you have to give us the statement[s] of witnesses. And if you later intend to admit all or some of them as conditioned statements, that's up to you. But you have to give us everyone's statements and if you have conditioned statements of those, give them to us.

34 In my view, it would be an impermissible extension of the language of s 214(1)(*d*) of the CPC to read "the statements of the witnesses under section 264" as referring to statements that the Prosecution may intend to admit under s 264, *regardless* of the Prosecution's intentions at the time of serving the Case for the Prosecution.[27]

35 It is necessary to construe the words of s 264 of the CPC to understand the meaning of the words "the statements of the witnesses under section 264":

> **Conditioned statements**
>
> **264.**—(1) Despite anything in this Code or in any other written law, a written statement made by any person is admissible as evidence in any criminal proceeding, to the same extent and to the same effect as oral evidence given by the person, if the following conditions are satisfied:
>
> (*a*) the statement appears to be signed by the person who made it;
>
> (*b*) the statement contains a declaration by the person to the effect that it is true to the best of the person's knowledge and belief and that the person made the statement knowing that, if it were given in evidence, the person would be liable to prosecution if the person stated in it anything the person knew to be false or did not believe to be true;
>
> (*c*) before the hearing at which the statement is given in evidence, a copy of the statement is served, by or on behalf of the party proposing to give it, on each of the other parties to the proceedings;

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27 NEs (5 July 2024) at p 36 lns 14–24.

> (*d*) before or during the hearing, the parties agree to the statement being tendered in evidence under this section;
>
> (*e*) the court is satisfied that the accused is aware of this section or is represented by an advocate during the criminal proceeding.
>
> …

36 Section 264(1) of the CPC provides for the admissibility of written statements "in any criminal proceeding, to the same extent and to the same effect as oral evidence given by the person", provided that a number of cumulative conditions are satisfied. Section 264(2) of the CPC stipulates additional requirements as to the contents of the statements that are admitted under s 264, including a declaration that the statement was read to the witness if he is unable to read it, and that a statement which refers to any other document as an exhibit must be accompanied by a copy of that document or by information that will enable the party on whom it is served to inspect that document or a copy of it. Section 264(3) of the CPC provides that any person who makes a written statement admitted under s 264 may be called upon to give oral evidence in court, when called as a witness or required to attend by the court. Section 264(4) relates to the requirement that such statements shall be read out in criminal proceedings in which they are admitted under s 264, subject to s 264(4A) which allows for an oral account of unread portions to be given instead. Section 264(5) provides that a document or an object referred to as an exhibit and identified in a written statement given in evidence under this section must be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

37 In construing s 264(1) of the CPC, which provides for the admissibility of the written statements of witnesses, it would be apparent that some of the

conditions listed may be satisfied only at the proceedings in which the conditioned statement is to be admitted. Section 264(1)(*d*) stipulates the condition that the parties agree to the statement being tendered in evidence "before or during the hearing", and s 264(1)(*e*) stipulates the condition that "the accused is aware of [s 264] or is represented by an advocate during the criminal proceeding".

38 Thus, the words "the statements of the witnesses under section 264" found within s 214(1)(*d*) of the CPC, which provides for the contents of the Case for the Prosecution, must refer to the statements of the witnesses that have been prepared with the intention of admitting these statements under s 264 at the trial. Such an interpretation would make sense in light of the qualifier "intended by the prosecution to be admitted at the trial" within s 214(1)(*d*) of the CPC, to mean that the written statements prepared for admission under s 264 must be included in the Case for the Prosecution, *if* the Prosecution intends to admit these statements under s 264 of the CPC at the trial. In this judgment, the phrase "conditioned statements" will hereafter be used to refer to the written statements of witnesses that are prepared with the intention of admission in evidence in criminal proceedings upon satisfying the conditions enumerated in s 264 of the CPC.

Any requirement that the Prosecution must serve conditioned statements on the defence even if they are not intended to be admitted at trial is inconsistent with the legislative purpose of s 214(1)(*d*) of the CPC

39 I turn next to consider the legislative context, to ascertain the legislative purpose of s 214(1)(*d*) of the CPC. Examining the context of s 214(1) in the CPC as a whole, it is meant to set out a list of the items that must be disclosed by the Prosecution to give notice of its *intended* case at the trial, including the

charges, the statements recorded from the accused, a list of the witnesses and a list of the exhibits. Section 214(1) of the CPC is an aspect of the criminal case disclosure regime for cases tried in the General Division of the High Court.

40 The purpose of the criminal case disclosure regime is to provide a regime for early and reciprocal disclosure of the parties' respective cases, with the Prosecution first putting its cards on the table, followed by the defence, for the purpose of focussing issues to be determined at the trial, and to shift the dynamics of the trial process from a purely adversarial model to a truth-seeking model. One of the criminal case disclosure regime's imperatives is also to prevent the accused from shaping his defence to meet the Prosecution's case. Thus, the parties' disclosure obligations are sequential, *ie*, the Prosecution only needs to disclose the accused's statements that it does not intend to admit at the trial, after the Case for the Defence has been filed. As a regime of reciprocal and sequential discovery, the mutual exchange of information is intended to provide the accused with adequate information to make preparations for his defence (see *Li Weiming (CA)* at [26]).

41 The legislative purpose of CCDCs in proceedings in the General Division of the High Court is statutorily enshrined in s 212(1) of the CPC, and that is to settle the filing of the parties' respective Cases, the issues of fact or law which are to be tried and the disclosure of information including the parties' *intended* witnesses and the "statements, documents or exhibits" which "are *intended* by the parties *to be admitted at the trial*" [emphasis added]:

> **Procedure after case has been transmitted to General Division of High Court**
>
> **212.**—(1) Where the criminal case disclosure procedures in this Division apply by virtue of section 211A, after the case has been transmitted to the General Division of the High Court, the

> prosecution and the defence must, unless the Registrar of the Supreme Court for good reason directs otherwise, attend a first criminal case disclosure conference, not earlier than 4 weeks from the date of transmission as directed by the Registrar of the Supreme Court for the purpose of settling the following matters:
>
> (*a*) the filing of the Case for the Prosecution and the Case for the Defence;
>
> (*b*) *any issues of fact or law which are to be tried by the trial judge at the trial proper*;
>
> (*c*) the list of witnesses *to be called by the parties to the trial*;
>
> (*d*) the statements, documents or exhibits *which are intended by the parties to be admitted at the trial*;
>
> (*e*) the trial date.
>
> [emphasis added]

42 To put the point in another way, there is nothing in s 212(1) which obliges the registrar presiding over a CCDC to settle the filing of any statements, documents or exhibits which are *not* intended by the parties to be admitted at the trial.

43 In this regard, I do not understand the applicant to be asserting that the use of conditioned statements by the Prosecution at the trial is mandatory.[28] In any case, such a position would, if it had been taken, have been unsustainable, having regard to the wording of s 264(1) of the CPC (see [35] above) that provides that "a written statement made by any person is admissible as evidence in any criminal proceeding, to the same extent and to the same effect as oral evidence given by the person" upon the satisfaction of enumerated conditions. Section 264(1) appears in the CPC in Pt 14 on "Evidence and Witnesses", within Div 2 titled "Admissibility of certain types of evidence". Division 2 also

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[28] NEs (5 July 2024) at p 7 lns 7–10.

includes other admissibility provisions, such as s 258A on the admissibility of the Case for the Defence, s 259 on the admissibility of witness statements and s 262 on the use of affidavits made by witnesses. While Pt 14, Div 2 contains a series of provisions pertaining to when evidence is admissible in criminal proceedings, there is nothing in it which provides that evidence that would be admissible *must* be relied upon at the trial, or that such evidence must be disclosed during the statutory criminal case disclosure regime.

44 The procedure at a trial in all courts is set out in s 230(1) of the CPC. Specifically, s 230(1)(*e*) of the CPC provides for the default position, that in presenting the Prosecution's case at the trial:

> **Procedure at trial**
>
> **230.**—(1) The following procedure must be complied with at the trial in all courts:
>
> …
>
> (*e*) the prosecutor must … examine the prosecutor's witnesses (if any) and each of them may in turn be cross-examined by the accused and every co-accused, after which the prosecutor may re-examine them;
>
> …

45 Section 264 of the CPC allows for written statements to be admitted "to the same extent and to the same effect as oral evidence given by the person". The words "statements … under section 264" in s 214(1)(*d*) can only logically refer to statements prepared for the purpose of admission under s 264(1) of the CPC, *in place of* the oral evidence of the witnesses who would otherwise have to be orally examined in court. Conversely, O 15 r 16(1) of the Rules of Court 2021 provides that the trial in a civil originating claim, assessment of damages or value and taking of accounts must be decided on the basis of affidavits of evidence-in-chief, and O 15 r 16(2) provides that oral evidence-in-chief may be

given by a witness instead of by an affidavit of evidence-in-chief in a "special case".

The use of written statements in committal hearings or preliminary inquiries was not mandatory for all witnesses that the Prosecution intended to call

46 I next examine the statutory context and legislative history to confirm the ascertained meaning from the express words of s 214(1)(*d*) of the CPC. The applicant contends that in enacting the CJRA 2018, that led to the abolition of committal proceedings, there was no intention to make any changes to the Prosecution's criminal case disclosure obligations, which included the compulsory requirement to both obtain and disclose the written statements of every witness that the Prosecution intended to call at the trial. I am unable to accept this argument. As the Prosecution has pointed out, without the power to compel witnesses to give conditioned statements in any part of the CPC, this requirement would lead an impractical and unworkable result that Parliament is presumed not to have intended. As stated in *Tan Cheng Bock* at [38], the court may be aided in statutory interpretation by canons of statutory construction, grounded in logic and common sense. These include that Parliament shuns tautology and does not legislate in vain, and that Parliament is presumed not to have intended an interpretation that leads to an unworkable or impracticable result.

47 There is no general power of discovery before the trial, and in fact the statutory context shows that any powers to compel the production of documents or exhibits are not exercisable at a CCDC. Section 235(1) of the CPC permits the court, when it considers that the production of any document or other thing is necessary or desirable for the purposes of any inquiry, trial or other proceeding, to compel the production of such document or thing. However, it is

expressly stated in s 235(6) that this power does not apply at a CCDC, or a case conference conducted under Pts 9 or 10 of the CPC. If it was thought that the court should have the power to make general orders of pre-trial discovery, Parliament would have provided for such a power. Section 235, as it now stands, strikes a balance at requiring the court to deal with substantive issues of evidence production *at the trial* (see *Li Weiming (CA)* at [37]).

48 The applicant's argument also disregards developments that led to the enactment of s 214(1)(*d*) of the CPC, which provides for the contents of the Case for the Prosecution in cases *transmitted* to the General Division of the High Court for trial, and not in cases where committal for trial in the High Court was a necessary pre-trial stage of proceedings. Prior to the abolition of committal hearings by the CJRA 2018, the Prosecution would have, of necessity, tendered conditioned statements for admission *at the committal hearing* to present sufficient evidence before the court to cross the threshold for committal for trial in the High Court. This resulted in disclosure of the evidence of the Prosecution's witnesses through the admission of conditioned statements *at the committal hearing*. The wholesale abolition of committal proceedings by the repeal of Pt 10, Divs 2 and 3 of the CPC in 2018 has obviated the necessity for conditioned statements to be adduced at a committal hearing at the pre-trial stage by the Prosecution. Part 10, Div 5 of the CPC was then extended in its application to cases which hitherto had to undergo committal before trial in the High Court. Consequently, the Prosecution was required to make disclosure in the Case for the Prosecution of its intended case at the trial (see ss 213(1) and 214(1) of the CPC), but no longer needed to satisfy a court of the sufficiency of evidence *at the point of the committal hearing* to commit an accused for trial at the High Court.

49 The Explanatory Statement to the Criminal Justice Reform Bill (Bill No 14/2018) ("2018 CJR Bill") explained the extensive reforms which related not only to the abolition of committal hearings, but also to when criminal case disclosure procedures would apply in cases transmitted to the High Court, and the contents of material that were to be sequentially disclosed in any criminal case disclosure proceedings in the High Court:

> …
>
> Clause 52 amends section 214 —
>
> (*a*) to require the Case for the Prosecution to contain —
>
> (i) any written statement made by the accused and recorded by an officer of a law enforcement agency, which the prosecution intends to adduce in evidence;
>
> (ii) a list of every statement, made by the accused to an officer of a law enforcement agency, that is recorded in the form of an audiovisual recording, and that the prosecution intends to adduce in evidence; and
>
> (iii) for every such statement that is recorded in the form of an audiovisual recording, a transcript (if any) of the audiovisual recording of that statement; and
>
> (*b*) to provide for the viewing, at the request of the defence, of the audiovisual recording of each such statement that is recorded in the form of an audiovisual recording.
>
> …
>
> Clause 54 amends section 218(1), replaces section 218(2), and inserts new section 218(3), (4) and (5) —
>
> (*a*) to provide for the prosecution to serve copies of —
>
> (i) every other written statement given by the accused and recorded by an officer of a law enforcement agency in relation to the charge or

> charges that the prosecution intends to proceed with at the trial; and
>
> …

50 There was a deliberate consideration of the changes to the list of items enumerated in s 214(1) of the CPC forming part of the Case for the Prosecution, *in addition to* the amendments abolishing the committal hearing procedure. It should be underscored that s 214(1)(*d*) was left *unamended*. During the second reading of the 2018 CJR Bill, the then Senior Minister of State for Law, Ms Indranee Rajah ("SMS Rajah"), explained the intent behind the amendments as follows (Singapore Parl Debates; Vol 94, Sitting No 69; 19 March 2018 (Indranee Rajah, Senior Minister of State for Law)):

> …
>
> Under the present law, cases triable in the High Court must first go through a procedure called a Committal Hearing, before the case is put before the High Court. The only exception would be serious sexual offences, such as rape, which are transmitted to the High Court by the Public Prosecutor's fiat. This is called the transmission procedure.
>
> Historically, this procedure was meant to filter out cases where the Prosecution does not have sufficient evidence to justify a High Court trial. Such cases are filtered out in two ways: *first, the Prosecution is required to disclose the evidence that it has on hand before trial; second, the Defence is allowed to cross-examine the Prosecution's witnesses to test the evidence*.
>
> *Today, the main benefit of this procedure has become the pre-trial documentary disclosure*, as the Defence seldom chooses to cross-examine Prosecution witnesses. Doing away with the Committal Hearing will shorten the time that the accused has to spend in remand pending trial.
>
> A similar review in England and Wales a few years ago also resulted in the abolition of Committal Hearings there.
>
> *We will continue to require the Prosecution to disclose its case and evidence, in accordance with the criminal disclosure regime, for most cases that today would have been subject to the Committal Hearing procedure*.

> …
>
> [emphasis added]

51 What is clear from SMS Rajah's speech is that the Prosecution continues to be expected to "disclose the evidence that it has *on hand* before trial" [emphasis added], which the defence could then be allowed to cross-examine the Prosecution's witnesses upon to "test the evidence". However, there is nothing in her speech which suggests that the Prosecution has any obligation to *obtain* conditioned statements which would otherwise not be in its possession before the trial, for the sole purpose of making disclosure to the defence. Any expansion to the criminal case disclosure regime at that time, was limited to the extension of the criminal case disclosure requirements to a wider category of offences. As explained by SMS Rajah in the same speech (Singapore Parl Debates; Vol 94, Sitting No 69; 19 March 2018 (Indranee Rajah, Senior Minister of State for Law)):

> …
>
> Pre-trial disclosure was introduced in the CPC in 2010 as one of the most major changes to criminal procedure in the history of our criminal justice system. Disclosure has been welcomed and both Prosecutors and Defence counsel have grown comfortable with the system of disclosure. It is, therefore, an opportune time to expand the pre-trial disclosure requirements to more offences.
>
> With the inclusion of the Prevention of Corruption Act, Moneylenders Act, Remote Gambling Act, Prevention of Human Trafficking Act and Casino Control Act, practically all the major criminal offences will now be covered by the pre-trial disclosure regime for criminal cases.
>
> …

52 Furthermore, s 214(1)(*d*) of the CPC was first enacted in the CPC 2010 and existed prior to the abolition of committal hearings. At the time of its enactment, it was numbered s 214(*d*) of the CPC 2010. Section 214(*d*) of the

CPC 2010 applied in criminal proceedings transmitted to the High Court for trial under s 210 of the CPC 2010. At that time, while criminal case disclosure by the Prosecution operated within the rubric of the committal procedure for most criminal proceedings at the High Court, criminal case disclosure was also operative in cases transmitted to the High Court for trial without the need for committal. The material provision affecting committal proceedings was s 176 of the CPC 2010, and ss 176(1) and 176(4) had various similarities with ss 212(1) and 214 of the CPC 2010. Section 176 of the CPC 2010 provided:

> **Committal hearing**
>
> **176.**—(1) The prosecution and the accused shall attend a criminal case disclosure conference as directed by a court for the purpose of settling the following matters:
>
> (*a*) the charge that the prosecution intends to proceed with;
>
> (*b*) whether the accused intends to plead guilty or claim trial to the charge; and
>
> (*c*) the date for the holding of a committal hearing.
>
> (2) If the accused intends to plead guilty to an offence other than an offence punishable with death, the court shall fix a date for a committal hearing to be conducted in accordance with section 178(1).
>
> (3) If the accused intends to plead guilty to an offence punishable with death, or intends to claim trial —
>
> (*a*) the court shall fix a date for a committal hearing; and
>
> (*b*) the prosecution must file in court the Case for the Prosecution and serve a copy of this on the accused and every co-accused, if any, not less than 7 days before the date fixed for the committal hearing.
>
> (4) The Case for the Prosecution filed under subsection (3)(*b*) must contain the following:
>
> (*a*) the charge which the prosecution intends to proceed with at the trial;

> (*b*) a list of the names of the witnesses for the prosecution;
>
> (*c*) a list of exhibits that are intended by the prosecution to be admitted at the trial;
>
> (*d*) the statements of witnesses which are *intended by the prosecution to be admitted under section 179(1)*; and
>
> (*e*) any statement made by the accused at any time and recorded by an officer of a law enforcement agency under any law, which the prosecution intends to adduce in evidence as part of the case for the prosecution.
>
> [emphasis added]

53 Section 176(4)(*d*) provided that in High Court proceedings subject to the committal process, the Case for the Prosecution filed before the committal hearing must contain the statements of witnesses which are "intended by the prosecution to be admitted under section 179(1)". Section 179 of the CPC 2010 read similarly to s 264 of the CPC 2010, save that s 179(1) of the CPC applied to the admissibility of written statements of witnesses "*in a committal hearing conducted under this Division*" [emphasis added]. Specifically, s 179(1) was a provision providing for the admissibility of written statements in committal hearings. The court's powers to conduct committal hearings, and the procedure to be adhered to, were set out in Pt X, Div 2 of the CPC 2010. Such written statements were admissible in committal proceedings if they satisfied the conditions set out in ss 179(1) and 179(2) of the CPC 2010. Specifically, s 179(1)(*c*) of the CPC 2010 required the statement to be served on the other parties to a committal hearing not less than seven days before the date of the committal hearing. Unlike s 264(1)(*d*) of the CPC 2010 (which has not been amended), the consent of the other parties was not a condition of admission of a written statement under s 179(1) of the CPC 2010 at a committal hearing.

54 Under s 180(1) of the CPC 2010, the Magistrate was required to review "the written statements and all the other evidence, if any, in support of the prosecution" and must, "if he finds that there are insufficient grounds for committing the accused for trial, discharge him". Where there were sufficient grounds to commit the accused for trial in the opinion of the Magistrate, "the charge shall be read and explained to the accused" and the examining Magistrate was then required to administer a standard allocution, asking the accused if he had anything to say in answer to the charge (see s 181 of the CPC 2010). Anything said by the accused was to be recorded by the Magistrate under s 183(1) of the CPC 2010, and the Magistrate could, upon hearing submissions of the parties, determine whether there were sufficient grounds to commit the accused for trial under ss 185(*a*) and 185(*b*) of the CPC 2010.

55 Upon the committal of an accused for trial at the High Court, s 192 of the CPC 2010 applied, providing that the Registrar of the Supreme Court shall hold a CCDC not earlier than seven days from the date the record of the committal hearing was served on parties under s 188 of the CPC 2010:

> **Procedure after case has been committed to High Court**
>
> **192.**—(1) After the accused has been committed to stand trial in the High Court (not being a committal for trial under section 178), the Registrar of the Supreme Court shall hold a criminal case disclosure conference not earlier than 7 days from the date the record of the committal hearing has been served on the parties under section 188.
>
> (2) The accused and the prosecution shall attend a criminal case disclosure conference as directed by the Registrar of the Supreme Court in accordance with this Division for the purpose of settling the following matters:
>
> (*a*) the filing of the Case for the Defence;
>
> (*b*) any issues of fact or law which are to be tried by the trial judge at the trial proper;

> (*c*) the list of witnesses to be called by the parties to the trial;
>
> (*d*) the statements, documents or exhibits which the parties to the case intend to adduce at the trial; and
>
> (*e*) the trial date.
>
> (3) The court must not make any order in relation to any matter referred to in subsection (2) in the absence of any party if the order is prejudicial to that party.

56 Section 193(1) of the CPC 2010 provided that the defence may file the Case for the Defence no later than two weeks from the date of the first CCDC, and s 195(1) of the CPC 2010 set out the contents of the Case for the Defence. It is notable that there was no requirement for the Case for the Prosecution to be filed post-committal. This was because, in seeking to satisfy the Magistrate that there was sufficient evidence against the accused to justify his committal for trial in the High Court, the Prosecution would already have had to put forward evidence at the committal hearing, including by way of conditioned statements. The defence would thereby obtain disclosure of the evidence that the Prosecution adduced before the Magistrate in order to cross the legal threshold for committal for trial in the High Court. However, it was never a requirement, even under the pre-existing legislative regime, that the Prosecution was to obtain and admit for the purposes of committal, a conditioned statement from *each and every single witness* that it intended to call at the trial.

57 The use of written statements for the purposes of committal (when committal proceedings were termed preliminary inquiries) was first introduced much earlier, in 1972, *via* the Criminal Procedure (Amendment) Bill (Bill No 8/1972) ("1972 CPC (Amendment) Bill"). The material provisions of the Criminal Procedure Code (Cap 113, 1970 Rev Ed) as amended by the 1972 CPC (Amendment) Bill ("CPC 1972") were as follows:

Committal for trial on written statements

138. An examining Magistrate making an inquiry preliminary to committal for trial *may, where he is satisfied* —

(*a*) that all the evidence before the court, whether for the prosecution or the defence, consists of written statements tendered to the court under section 139 of this Code, with or without exhibits; and

(*b*) that the statements disclose sufficient evidence to put an accused upon his trial,

commit the accused for trial for the offence.

Written statements before examining Magistrate

139.—(1) In preliminary inquiries conducted under this Chapter, a written statement by any person shall, if the conditions mentioned in subsection (2) of this section are satisfied, be *admissible* as evidence to the like extent as oral evidence to the like effect by that person.

(2) The said conditions are —

(*a*) the statement purports to be signed by the person who made it;

(*b*) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(*c*) before the statement is tendered in evidence, a copy of the statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the proceedings not less than seven days before the date of hearing; and

(*d*) none of the other parties, before the statement is tendered in evidence at the preliminary inquiry, objects to the statement being so tendered under this section.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section, that is to say: —

(*a*) if the statement is made by a person under the age of twenty-one years, it shall give his age;

> (*b*) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and
>
> (*c*) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under paragraph (c) of subsection (2) of this section shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy thereof.
>
> (4) Notwithstanding that a written statement made by any person may be admissible in preliminary inquiries by virtue of this section, the court before which the proceedings are held may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.
>
> (5) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing, and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.
>
> (6) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.
>
> (7) Section 365 of this Code shall apply to any written statement tendered in evidence in preliminary inquiries under this section, as it applies to a deposition taken in such proceedings.
>
> [emphasis added]

58 The provisions relating to the powers of the Magistrate, upon receiving in evidence "the written statements and all the other evidence", are found in ss 140 and 141(1) of the CPC 1972. The Magistrate may either discharge the accused, deal with him summarily or commit him for trial.

59 The purpose of committal hearings (or preliminary inquiries as they were previously termed) was to ensure that the Magistrate was satisfied that

there was sufficient evidence on which the accused ought to be tried in the High Court, and to give notice to the accused of the case that he had to meet at the trial. During the second reading of the 1972 CPC (Amendment) Bill, the then Minister for Law and National Development, Mr E W Barker, explained that the use of written statements in preliminary inquiries as opposed to the recording of oral evidence was intended to save time and resources by requiring the court to consider written statements, if tendered by the Prosecution at a preliminary inquiry, and eschewing strict insistence by the defence on calling each and every witness to give oral evidence (Singapore Parl Debates; Vol 31, Sitting No 15; Cols 1111–1113; 23 March 1972 (E W Barker, Minister for Law and National Development)):

> …
>
> The Bill provides for the existing procedure with regard to preliminary inquiries to be abandoned in favour of committals to the High Court without the necessity of examining witnesses for the prosecution on oath at a court hearing before an examining Magistrate. This will no longer be required of the examining Magistrate for, under the proposed procedure, he may commit an accused person to the High Court for trial if he is satisfied that all the evidence for the prosecution or the defence consists of written statements which disclose sufficient evidence to put the accused upon his trial. While, however, the Bill is an adaptation of the United Kingdom Criminal Justice Act, 1967, much of the English procedure being incorporated in the Bill, it is not exactly on all fours with the current English practice in that whereas in England 'paper committals', as they are known, are optional, here they are to be compulsory. *This is because much of the purpose behind the Bill would be lost if the English procedure were adhered to rigidly since it is more than likely that in almost all cases here counsel for the defence will elect to proceed under the old system of examining witnesses for the prosecution one by one, orally upon oath before the committing Magistrate, which would defeat the very object of the new legislation.* Another significant difference is that under the English procedure, the Magistrate has the power to commit an accused for trial without considering the written statements of witnesses, *while under our proposed procedure the Magistrate is bound to consider the contents of the written statements of*

> *witnesses to decide whether there is sufficient evidence to commit an accused for trial*. This may be regarded as an important safeguard particularly where an accused is not represented by counsel at the preliminary inquiry.
>
> …
>
> I must hasten to assure Members that the new procedure, as embodied in the Bill, accomplishes the same purpose as the existing procedure which is sought to be replaced. *The principal difference is that in the existing procedure an oral statement of a witness is taken down by the court in the form of a deposition, that is, a statement on oath or affirmation, arid witnesses are liable to be cross-examined on that statement, while under the new procedure a copy of the written statement made by a witness and signed by him and certified by him that it is true to the best of his knowledge and belief will be given to the defence or the prosecution, as the case may be, before it is tendered in evidence*. After all the written statements and all other evidence in support of the prosecution have been received in evidence, the examining Magistrate will then generally follow the existing procedure of either committing the accused for trial, discharging him or dealing with the case summarily.
>
> …
>
> [emphasis added]

60 The above extract is a clear statement that *if* the Prosecution uses written statements of witnesses, the court shall be bound to consider such statements in determining whether there is sufficient basis to commit the accused for trial. However, that is not the same as saying that the Prosecution *must* obtain the conditioned statements of each and every witness that it intends to call at the trial. The Explanatory Statement to the 1972 CPC (Amendment) Bill puts this point across clearly:

> This Bill seeks to amend the Criminal Procedure Code in line with certain provisions of Part I of the U.K. Criminal Justice Act 1967. The principal amendment is designed to repeal Chapter XVII of the Criminal Procedure Code with the object of reforming the existing procedure of committing criminal cases for trial. The new Chapter XVII proposes that committals to the High Court of the more serious criminal cases *can be effected without the necessity of examining witnesses for the prosecution on oath*

> *at a separate court hearing before an examining Magistrate*. The Bill, accordingly, provides that an examining Magistrate making an inquiry preliminary to committal for trial *may* commit an accused person to the High Court for trial for the offence *where he is satisfied that all the evidence before the Court, whether for the prosecution or the defence, consists of written statements, with or without exhibits*, and that the statements disclose sufficient evidence to put the accused person upon his trial (section 138 of clause 3).
>
> Under the existing procedure *the main purpose of conducting a preliminary inquiry is to inform the accused of the case he has to meet and to satisfy the court that there is sufficient evidence to commit him for trial*. The new proposed procedure, which will replace the existing procedure, is designed to accomplish the same purpose. The principal difference between the two procedures is that under the new proposed procedure a copy of the written statement made by a witness and signed by him and certified by him that it is true to the best of his knowledge and belief will be given to the defence or the prosecution, as the case may be, before it is tendered in evidence — (section 139(2)(*a*) and (*b*) of clause 3) — in contrast to the existing procedure where an oral statement of a witness is taken down by the court in the form of a deposition, that is, a statement on oath or affirmation, and witnesses are liable to be cross-examined on that statement. *However, the court, the prosecutor or the defence counsel may still under the new proposed procedure require a witness to attend before the court and give evidence on oath and be liable to cross-examination even though the written statement of that witness may be admissible* (section 139(4) of clause 3).
>
> …
>
> [emphasis added]

61 It should also be noted that s 371A of the CPC 1972, which was the predecessor provision of s 264(1) of the CPC, was inserted at the same time. It provided for the admissibility of written statements (*ie*, conditioned statements) in criminal proceedings other than preliminary inquiries, as it was envisaged that written statements may also be admitted in a criminal trial "as evidence to the like extent as oral evidence to the like effect by that person". When the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC 1985") was passed, s 140 of the CPC 1985 continued to require the examining Magistrate

conducting a preliminary inquiry to commit an accused for trial in the High Court only where he was satisfied that all the evidence consisted of written statements tendered under s 141, with or without exhibits, and that the statements disclosed sufficient evidence to put an accused upon his trial. It should be noted that under s 141 of the CPC 1985, the admissibility of conditioned statements subject to conditions including the consent of all parties, was prescribed *for the purposes of the preliminary inquiry:*

> **Written statements before examining Magistrate**
>
> **141.**—(1) In preliminary inquiries conducted under this Chapter, a written statement by any person shall, if the conditions mentioned in subsection (2) are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.
>
> (2) The said conditions are —
>
> (*a*) the statement purports to be signed by the person who made it;
>
> (*b*) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
>
> (*c*) before the statement is tendered in evidence, a copy of the statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the proceedings not less than 7 days before the date of hearing; and
>
> (*d*) none of the other parties, before the statement is tendered in evidence at the preliminary inquiry, objects to the statement being so tendered under this section.
>
> …

62 While the applicant was originally of the position, before the AR, that the service of conditioned statements prior to a preliminary inquiry was

compulsory,[29] he acknowledges in the present application that s 139(4) of the CPC 1972 (and subsequently, s 141(4) of the CPC 1985) recognised that conditioned statements may not be served for every single one of the Prosecution's witnesses. Nonetheless, the applicant submits:[30]

> However, because it was recognised that witnesses could not be compelled to provide conditioned statements, where the Prosecution was not able to record a conditioned statement from any of its witnesses, the Prosecution would still have to give notice to the Defence of those witnesses' evidence by making an application to the Magistrate for an order requiring them to attend before the Court and give evidence at the [preliminary inquiry] by way of depositions.

63 The applicant therefore takes the position that the use of conditioned statements in preliminary inquiries and committal hearings was "compulsory" unless the Prosecution was "unable to record conditioned statements from any of its witnesses", in which event "it needed to make the relevant application to the Magistrate … to get those witnesses to attend Court to give their evidence by way of depositions".[31] The ability to compel witnesses to attend at a committal hearing to give evidence by deposition ensured that the necessary evidence was placed before the court at a preliminary inquiry, even where the conditioned statement of the witness could not be obtained. Thus, I understand the applicant's position to be that the provision of "draft statements" would be an alternative method, where a written witness statement is not available, to ensure that the Prosecution provides the "same notice of its case that it would

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29 Applicant's Written Submissions before the AR dated 7 June 2024 at [15] and [18].

30 AS at [24] and [28].

31 AS at [56].

have had to provide under the [preliminary inquiry] and committal hearing processes".[32]

64 Having reviewed the legislative history, I am unable to agree with this submission, for the following reasons:

(a) Before the abolition of committal hearings in 2018, the defence was entitled to the written statements of witnesses that were admitted at the preliminary inquiry or committal hearing.

(b) The purpose of admitting such statements at a preliminary inquiry or committal hearing by the Prosecution was to satisfy the court that there was sufficient evidential basis to commit the case for trial in the High Court and to give notice of the case that the accused had to meet. The practice of the Prosecution adducing written, rather than oral, statements of witnesses at preliminary inquiries or committal hearings, to satisfy the court that there was sufficient basis to commit the accused for trial in the High Court, developed as a result of legislative amendments that required the court to admit and consider written conditioned statements of witnesses to achieve efficiency and resource savings.

(c) With the abolition of the committal hearing regime in 2018, there was no longer any necessity for the Prosecution to obtain conditioned statements for the purpose of admitting them at a preliminary inquiry or committal hearing. The reduction of a witness' evidence into writing by way of a pre-trial deposition if the witness was not willing to sign a

[32] AS at [4].

conditioned statement was no longer necessary with the wholesale abolition of the committal regime.

(d) Section 214(4)(*d*) was enacted in 2010 (as s 214(*d*) of the CPC 2010) and, since its inception, applied specifically to transmission proceedings. Section 214(4)(*d*) requires the written statements from witnesses to be included in the Case for the Prosecution if the Prosecution intends to admit them at the trial under s 264 of the CPC. This necessarily means that the Prosecution is permitted to make an assessment that it prefers to adduce oral, rather than written, evidence from its witnesses at the trial. This is consistent with the default position under s 230(1)(*e*) of the CPC. There is simply no legislative provision requiring the Prosecution to obtain written statements of witnesses if it does not intend to admit these statements in criminal proceedings.

The parliamentary speeches or preparatory material on the policy intent behind criminal disclosure laws generally do not specifically address the intent behind s 214(1)(d) of the CPC

65 The interpretation of the plain and unambiguous words of s 214(1)(*d*) of the CPC is not assisted by the extraneous material quoted by the parties, because they do not specifically deal with the introduction of s 214(*d*) of the CPC 2010 in 2010, in the context of proceedings transmitted to the High Court for trial without the need for committal proceedings. Turning once again to the principles espoused in *Tan Cheng Bock* at [51] that guide the interpretation of legislation, it must be borne in mind that resort to extraneous material to confirm the meaning of a statutory provision may be had only if the material is "capable of assisting in ascertaining the meaning of the provision(s) by shedding light on the purpose of statute as a whole, or where applicable, on the purpose of

particular provision(s) in question". In *Tan Cheng Bock* at [52], the following principles were distilled from *Ting Choon Meng* at [70]:

> …
>
> (a) The statements made in Parliament must be clear and unequivocal to be of any real use.
>
> (b) The court should guard against the danger of finding itself construing and interpreting the statements made in Parliament rather than the legislative provision that Parliament has enacted.
>
> (c) Therefore, the statements in question should disclose the mischief targeted by the enactment or the legislative intention lying behind any ambiguous or obscure words. In other words, the statements should be directed to the very point in question to be especially helpful.

The 2004 budget debates

66 During the 2004 budget debates, the then Senior Minister of State for Law, Associate Professor Ho Peng Kee ("SMS Ho"), observed that the preliminary inquiry regime "ensures that the defence is provided with sufficient information of the prosecution case". The applicant submits that this observation was an "assurance" that disclosure by provision of conditioned statements would be provided in criminal cases.[33] For full context, the speech is excerpted as follows (Singapore Parl Debates; Vol 77, Sitting No 7; Cols 1024–1026; 10 March 2004 (Ho Peng Kee, Senior Minister of State for Law)):

> Mr Mohan has wandered all over the place in a very short time. But I think really the focus of what he says is that, in terms of our trial process, there should be more disclosure of documents to the defence. He also talks about international standards in the criminal justice system. But really there is no one international standard. I think every country has to find its own balance, for example, the balance between accused persons and prosecution, and also between investigation agencies and accused persons. So we are different from other countries like

[33] AS at [30]–[31].

> the UK and the US. But I take his point that our criminal justice system has, in fact, worked well.
>
> On his particular point of disclosure of documents, *I think he will know that for cases in the High Court, a preliminary inquiry (PI) is held in every case to determine whether the accused person should be tried in court. And it is at this PI that the prosecution presents its evidence to the court in the form of conditioned statements from its witnesses*. Copies of these statements are given to the defence at least seven days before the PI. The defence also has the right to question the prosecution witnesses at the inquiry itself. For the Subordinate Courts, I think he would know that there are PTCs (pre-trial conferences) which have, since its introduction many years ago, become an integral feature of our criminal justice system. And here, it has been useful for case management, helping both parties, encouraging them to have more discovery to minimise surprises at trials. Indeed, in many cases, PTC is instrumental in an accused person's decision to plead guilty without going through the trial.
>
> Therefore, *I would say that our system ensures that the defence is provided with sufficient information of the prosecution case before going to trial*. Nevertheless, the [Attorney-General's Chambers], the Law Society, the Subordinate Courts and the Police are currently reviewing and exploring new ways of managing the conduct of criminal cases. One example is the criminal case management system which is undergoing evaluation. Under this system, the prosecution and defence can discuss the merits of the respective cases … and narrow down the issues of contention or reach an agreement on pre-bargaining before the first PTC. In addition, in amending the Criminal Procedure Code, we are considering the merits of the system where both prosecution and defence would be required to disclose the relevant evidence that they have in support and against the charges.
>
> [emphasis added]

67 I observe that these comments were not made in the contemporaneous setting of moving any amendments or explaining the policy intent behind proposals for law reform but in a budget debate addressing a question by a Member of Parliament. I do not think it controversial that at the time when SMS Ho made the speech, he had accurately stated that preliminary inquiries did have the *effect* of providing the defence with information of the Prosecution's case

before the trial. However, it has to be appreciated those comments were made prior to the passing of CPC 2010 during which Parliament considered its policy concerning the criminal case disclosure regime across all criminal proceedings, including cases at the Subordinate Courts and cases *transmitted* under s 210 of the CPC 2010 from the Subordinate Courts to the High Court without the need for committal proceedings. These resulted in the enactment of s 214 of the CPC 2010. Seen in this context, these remarks by SMS Ho are therefore of limited utility in the confirmation of the meaning of s 214(1)(*d*) of the CPC, and its legislative purpose.

The second reading of the Criminal Procedure Code Bill (Bill No 11/2010)

68 The applicant also relies on another Parliamentary speech as an "assurance" that the defence would obtain the conditioned statements of intended Prosecution witnesses as part of pre-trial disclosure. When criminal case disclosure processes were introduced in 2010, during the second reading speech for the Criminal Procedure Code Bill (Bill No 11/2010) ("2010 CPC Bill"), the Minister for Law, Mr K Shanmugam ("Minister Shanmugam"), stated (Singapore Parl Debates; Vol 87, Sitting No 3; Cols 413–414; 18 May 2010 (K Shanmugam, Minister for Law)):

> Disclosure is familiar to lawyers operating within the common law system. In civil proceedings, the timely disclosure of information has helped parties to prepare for trial and assess their cases more fully.
>
> Criminal cases can benefit from the same approach. However, discovery in the criminal context would need to be tailored to deal with complexities of criminal practice, such as the danger of witnesses being suborned.
>
> To this end, Part IX of the Bill introduces a formalised framework obliging the prosecution and the defence to exchange relevant information about their respective cases

> before trial. This will introduce greater transparency and consistency to the pre-trial process.
>
> After the charge is tendered against an accused, the prosecution is required to provide the defence with a 'Case for the Prosecution'. *This document must include information about the facts, witnesses and evidence supporting the charge, together with the statements of the accused which the prosecution intends to rely on at the trial.*
>
> The defence is then required to serve on the prosecution its 'Case for the Defence'. This document will, in turn, contain information about the facts, evidence and witnesses that the defence will adduce at the trial.
>
> After the 'Case for the Defence' is served, the prosecution will then be required to furnish to the defence all other statements made by the accused person, documentary exhibits in the case for the prosecution, as well as the accused person's criminal records, if any.
>
> [emphasis added]

69 Minister Shanmugam was making reference to the introduction of the criminal case disclosure regime and explaining the legislative purpose behind the regime as a whole. He did not specifically state that the "document" giving "information about the facts, witnesses and evidence supporting the charge" must include the conditioned statements of every witness listed in the Case for the Prosecution filed in proceedings in the High Court. It also appeared that he had in mind a combination of items, such as the charge, the lists of witnesses and exhibits and the summary of *facts* supporting the charge to be filed by the Prosecution in proceedings in the Subordinate Courts but not in proceedings in the High Court. Thus, the quoted passage from Minister Shanmugam's second reading speech does not assist because it is, firstly, not sufficiently clear and unequivocal to be of any real use for present purposes, and secondly, it is not "directed to the very point in question to be especially helpful" (see *Tan Cheng Bock* at [52(c)]).

70 The applicant submits that given the comment in the second reading speech that "[t]he new procedure will initially apply automatically to High Court cases and the majority of offences tried in the District Court" (Singapore Parl Debates; Vol 87, Sitting No 3; Col 414; 18 May 2010 (K Shanmugam, Minister for Law)), Minister Shanmugam was making an assurance that the Case for the Prosecution would include:[34]

> … *both* … (for cases that were subject to the committal hearing procedure) the conditioned statements under sections 176(4)(*d*) of the CPC 2010 that the Prosecution intended to admit at the committal hearing, as at the time of the filing of the CFP, which would later be supplemented by any depositions that the Prosecution obtained at the committal hearing, and (for cases that were not subject to the committal hearing procedure) the conditioned statements under section 214(*d*) of the CPC 2010 which contained the evidence that the Prosecution intended to lead from its witnesses during the trial, as at the time of the filing of the CFP.
>
> [emphasis in original]

71 However, I understand Minister Shanmugam to have been referring to the fact that the "new procedure" of statutory criminal case disclosure would automatically apply to the High Court cases and the majority of offences tried at the District Court. His comments cannot be construed to mean that the contents of the Case for the Prosecution for both High Court and State Courts matters are to be the same. Otherwise, it would not have been necessary for Parliament to provide separately for the criminal case disclosure requirements in the High Court and the Subordinate Courts.

72 The applicant also relies on the following response by Minister Shanmugam to a question posed in Parliament by a Member of Parliament

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[34] AS at [71].

during the second reading of the 2010 CPC Bill, in support of his argument that the furnishing of conditioned statements by the Prosecution is compulsory (Singapore Parl Debates; Vol 87, Sitting No 4; Cols 562–563; 19 May 2010 (K Shanmugam, Minister for Law)):[35]

> Mr Lim also asked why conditioned statements of witnesses are furnished to the defence as part of the prosecution case for High Court cases but not for Subordinate Court cases. For High Court cases, conditioned statements are part of the Prosecution's Case because they are used for committal hearing which precedes the High Court trial. Conditioned statements can be used in the Subordinate Courts if they are served before the hearing and parties consent to the use. But such statements are not prepared as a matter of course.

73 The statutory context for transmission proceedings is clearly different. There is no necessity to admit conditioned statements at a committal hearing *for the purpose of determining whether the accused is to be committed for trial.* The various passages cited do not specifically address the legislative purpose for making reference to statements of the witnesses under s 264 of the CPC which the Prosecution intends to admit at the trial, in s 214(1)(*d*) of the CPC.

The 2008 draft Criminal Procedure Code Bill

74 The Prosecution relies on cl 179(*d*) of the 2008 draft Criminal Procedure Code Bill ("2008 Draft CPC Bill") which was first presented for public consultation in 2008, in support of its argument that there was never a requirement for the Prosecution to file and serve, as part of the Case for the Prosecution, the conditioned statements of every intended Prosecution witness. The Prosecution submits that since Parliament did not pass the proposed

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35 AS at [77]–[78].

cl 179(*d*), which contemplated the mandatory inclusion in the Case for the Prosecution of conditioned statements from the Prosecution's intended witnesses, Parliament must be taken to have intended to confer on the Prosecution the prerogative to decide whether to include these conditioned statements.[36] Clause 179 of the 2008 Draft CPC Bill read as follows:

> **Contents of Case for the Prosecution**
>
> **179.** The Case for the Prosecution must contain the following matters:
>
> (*a*) a copy of the charge;
>
> (*b*) a list of the witnesses for the prosecution;
>
> (*c*) a list of exhibits that the prosecution intends to admit at the trial;
>
> (*d*) *the signed statements of the witnesses* showing in each case —
>
> (i) the name, occupation and age of each witness;
>
> (ii) if the statement has been interpreted, the name and occupation of the interpreter;
>
> (iii) a declaration that the statement is true to the best of the witness's knowledge and belief and that he made it knowing that, if it were given in evidence, he would be liable to prosecution if he had stated in it anything he knew to be false or did not believe to be true;
>
> (iv) any other relevant document referred to in the signed statements; and
>
> (*e*) any statement or any part of any statement, made by the accused and recorded by any person under any provision of any law, which the prosecution intends to produce in evidence as part of the case for the prosecution.
>
> [emphasis added]

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[36] PS at [32]–[33].

75 There was no qualifier in cl 179(*d*) of the 2008 Draft CPC Bill to the effect that only the conditioned statements that the Prosecution intended to admit as evidence at the trial must be included in the Case for the Prosecution. The 2008 Draft CPC Bill that was initially presented for consultation was different in material aspects from the 2010 CPC Bill that was eventually enacted. Following an extensive public consultation exercise, the proposal to include all the conditioned statements of the Prosecution's intended witnesses within the Case for the Prosecution was no longer maintained by the time that the 2010 CPC Bill was moved in Parliament. Significantly, the proposal that all cases to be tried in the High Court may be transmitted from the then Subordinate Courts to the High Court, with the abolition of the preliminary inquiry formalities but with the same entitlement to material that the defence was entitled to for the purposes of the preliminary inquiry (see Ministry of Law, *Consultation on the Criminal Procedure Code Bill* (11 December 2008) at [23]), was also not passed in its original mooted form.

76 The 2008 Draft CPC Bill was specifically mentioned in Minister Shanmugam's speech during the second reading of the 2010 CPC Bill, and he had stated that the 2008 Draft CPC Bill had undergone extensive amendments following public consultation (Singapore Parl Debates; Vol 87, Sitting No 3; Cols 408–410; 18 May 2010 (K Shanmugam, Minister for Law)). Under s 9A(3)(*d*) of the IA, any relevant material in any official record of debates in Parliament may be considered in the interpretation of a provision of a written law, subject to the principles that I have mentioned earlier. It is essential to note that Minister Shanmugam's second reading speech in 2010 did not specifically explain the reasons for abandoning the proposal to abolish preliminary inquiries or abandoning the proposed cl 179(*d*). Thus, in my view, the 2008 Draft CPC Bill is useful only to the extent of showing that Parliament had made a deliberate

decision to abandon some of the initial law reform proposals when passing the CPC 2010. However, the 2008 Draft CPC Bill does not elucidate the *reasons* for retaining committal proceedings for criminal proceedings in the High Court, allowing certain criminal cases to be transmitted to the High Court for trial without committal or enacting the specific qualifier that the conditioned statements that must be included in the Case for the Prosecution under s 214(*d*) of the CPC 2010 must be *intended by the Prosecution to be admitted at the trial in cases transmitted to the High Court for trial*.

The second reading of the Criminal Justice Reform Bill (Bill No 14/2018)

77 In 2018, the committal process was abolished by the CJRA 2018 by a repeal of Pt 10, Divs 2, 3 and 4 of the CPC. During the second reading of the 2018 CJR Bill, SMS Rajah explained the *raison d'etre* for the abolition as follows (Singapore Parl Debates; Vol 94, Sitting No 69; 19 March 2018 (Indranee Rajah, Senior Minister of State for Law)):

> Today, the main benefit of this procedure *has become* the pre-trial documentary disclosure, as the Defence seldom chooses to cross-examine Prosecution witnesses. Doing away with the Committal Hearing will shorten the time that the accused has to spend in remand pending trial.
>
> A similar review in England and Wales a few years ago also resulted in the abolition of Committal Hearings there.
>
> We will continue to require the Prosecution to disclose its case and evidence, *in accordance with the criminal disclosure regime*, for most cases that today would have been subject to the Committal Hearing procedure.
>
> On the whole, abolishing the Committal Hearing *and substituting it with the transmission procedure and criminal disclosure obligations* will shorten the waiting time for trial and free up precious judicial resources to focus on the substance of cases.
>
> [emphasis added]

78 The statements made were in the context of a speech made by SMS Rajah, introducing a sea change of reforms which included the abolition of the committal hearing process, and its substitution with the transmission procedure *and* criminal case disclosure obligations. It should be recalled that there were also changes made at the time to the criminal case disclosure regime. For instance, the regime was made to apply to a greater range of criminal cases listed in the Second Schedule of the CPC. The defence would also be required, pursuant to s 218(4), to serve on the Prosecution within two weeks after the date on which the Case for the Defence is served, a copy of each documentary exhibit that is set out in the list mentioned in s 217(1)(*c*) and is in the possession, custody or power of the accused. Prior to the legislative amendments passed in 2018, only the Prosecution had the obligation to file what was known as the supplementary bundle, including unused statements of the accused and his criminal records, within two weeks after the service of the Case for the Defence on the Prosecution. Additionally, the newly introduced s 218(5) of the CPC provided that the Prosecution's and the defence's obligations in this regard would be independent of each other.

79 It is pertinent to note that in 2018, a wholesale repeal of the provisions relating to the committal hearing procedure was undertaken, including of s 176 of the CPC 2010 which provided that the Case for the Prosecution was constituted by documents tendered in committal proceedings. Parliament had decided, following the abolition of committal hearings, that the substantive disclosure obligations of parties in cases transmitted to the High Court under s 210 of the CPC 2010 should apply to all cases that would henceforth be tried in the High Court, subject to certain refinements that did not impact upon the wording of s 214(1)(*d*). For context, transmission under s 210 of the CPC 2010 was available for only scheduled offences under ss 375 to 377B of the Penal

Code (Cap 224, 2008 Rev Ed), prior to the amendments. Thus, while the quoted passage from SMS Rajah's second reading speech sheds light on the intent behind the abolition of committal proceedings, and its substitution with transmission and statutory criminal case disclosure obligations, the passage does not assist in the construction of s 214(1)(*d*) of the CPC.

Conditioned statements need not be mandated in the General Division of the High Court to better the defence's position where a summary of facts by the Prosecution is not required

80 Another line of argument by the applicant is that Parliament could not have intended that the Prosecution's criminal case disclosure obligations in proceedings in the General Division of the High Court would be less extensive that those in the State Courts. Essentially, the applicant is of the view that the Prosecution must be required to file conditioned statements for all of its intended witnesses in order to place accused persons in proceedings in the General Division of the High Court on the same or better footing *vis-a-vis* accused persons in proceedings in the State Courts.[37]

81 To address this argument, it is helpful to juxtapose the material provisions providing for the contents of the Case for the Prosecution in the State Courts, against those specifying the contents of the Case for the Prosecution in the General Division of the High Court:

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[37] AS at [202]–[207].

Section 162(1) of the CPC (pertaining to proceedings in the State Courts)	**Section 214(1) of the CPC (pertaining to proceedings in the General Division of the High Court)**
Contents of Case for the Prosecution **162.**—(1) The Case for the Prosecution must contain — (*a*) the charge which the prosecution intends to proceed with at the trial; (*b*) *a summary of the facts in support of the charge*; (*c*) a list of the names of the witnesses for the prosecution; (*d*) a list of the exhibits that are intended by the prosecution to be admitted at the trial; (*e*) any written statement made by the accused at any time and recorded by an officer of a law enforcement agency under any law, which the prosecution intends to adduce in evidence as part of the case for the prosecution; (*f*) a list of every statement, made by the accused at any time to an officer of a law enforcement agency under any law, that is recorded in the form of an audiovisual recording, and that the prosecution intends to adduce in evidence as part of the case for the prosecution; and (*g*) for every statement mentioned in paragraph (f), a transcript (if any) of the audiovisual recording of that statement.	**Contents of Case for the Prosecution** **214.**—(1) The Case for the Prosecution must contain the following: (*a*) a copy of the charge which the prosecution intends to proceed with at the trial; (*b*) a list of the names of the witnesses for the prosecution; (*c*) a list of exhibits that are intended by the prosecution to be admitted at the trial; (*d*) *the statements of the witnesses under section 264 that are intended by the prosecution to be admitted at the trial*; (*e*) any written statement made by the accused at any time and recorded by an officer of a law enforcement agency under any law, which the prosecution intends to adduce in evidence as part of the case for the prosecution; (*f*) a list of every statement, made by the accused at any time to an officer of a law enforcement agency under any law, that is recorded in the form of an audiovisual recording, and that the prosecution intends to adduce in evidence as part of the case for the prosecution;

[emphasis added]	(*g*) for every statement mentioned in paragraph (f), a transcript (if any) of the audiovisual recording of that statement. [emphasis added]

82 It can be seen at one glance, that the key difference is that in proceedings in the State Courts, the Prosecution is required to include a summary of facts in the Case for the Prosecution pursuant to s 162(1)(*b*) of the CPC. This requirement is not present for proceedings in the General Division of the High Court, where the Prosecution is, instead, required to file conditioned statements of witnesses that are intended to be admitted *at the trial* pursuant to s 214(1)(*d*) of the CPC.

83 This difference existed from the very inception of criminal case disclosure proceedings in 2010. Sections 214(1)(*d*) and 162(1)(*b*) have remained substantively unchanged save that they have been renumbered since they were first passed as ss 214(*d*) and 162(*b*) in the CPC 2010. Aside from the contents of the Case for the Prosecution, there are also other significant distinctions between the specific requirements in criminal case disclosure for proceedings in the General Division of the High Court and the State Courts respectively that exist today.

84 For instance, s 159(2) of the CPC, which applies to State Courts proceedings, allows the defence to opt out of the criminal case disclosure regime at the outset, while there is no equivalent option in the General Division of the High Court. Section 215(1)(*b*) of the CPC, which applies to proceedings in the General Division of the High Court and has no equivalent applicable to proceedings in the State Courts, allows the defence the option to elect not to file

a Case for the Defence without an adverse inference drawn against it (compare ss 221 and 169(1)(*a*) of the CPC).

85 Under s 169(1)(*a*) of the CPC, the failure to file a Case for the Prosecution in State Courts proceedings may constitute grounds for the trial court to draw an adverse inference against the Prosecution. Under s 169(2)(*a*) of the CPC, the failure to file a Case for the Prosecution may result in a court ordering a discharge not amounting to an acquittal. By contrast, in proceedings in the General Division of the High Court, there is no risk of the court ordering a discharge if the Prosecution does not file the Case for the Prosecution (see s 221 of the CPC).

86 It would be overly simplistic to assert that the defence is in a poorer position in proceedings in the General Division of the High Court simply because the Prosecution is not required to file a summary of facts in the Case for the Prosecution. The respective obligations of the Prosecution and the defence are as important as the consequences of non-compliance, as essential components of an effective regime for criminal case disclosure. Albeit different in some respects, the regimes applicable in the General Division of the High Court and the State Courts have the same legislative purpose. The general legislative purpose of CCDCs, to institute a reciprocal and sequential regime to enable accused persons to prepare for trial, and to maintain an effective criminal justice system, was achieved *via* distinct regimes at the two courts.

87 The various distinctions between the criminal case disclosure regimes applicable in the General Division of the High Court and the State Courts appear to have existed from the outset, in the introduction of the CCDC regime in 2010. In 2010, there were three regimes provided for:

(a) Pt X, Divs 2 and 3 applied to accused persons subject to committal for trial in the High Court.

(b) Pt X, Div 5 applied to accused persons whose cases were transmitted to the High Court for trial.

(c) Pt IX, Div 2 applied to cases in the Subordinate Courts for which no committal was necessary.

88 As indicated above at [64], changes were made in 2018 to the CCDC procedures applicable to the High Court, including the abolition of committal hearings which resulted in the expanded use of the transmission procedure, and the criminal case disclosure regime applicable to transmitted proceedings. At the same time, there were other legislative amendments, including those relating to procedures for the disclosure of an accused's statements recorded in an audio-visual format, as opposed to in writing (see ss 162, 166, 214 and 218 of the CPC).

89 I observe that in the CPC (Amendment) Act 2024, further amendments were made to the criminal case disclosure regime, including amendments that require the Prosecution to include "a summary of the facts in support of the charge" in a Case for the Prosecution filed in proceedings in the General Division of the High Court. The intention of this amendment was to "enhance consistency between the Prosecution's [criminal case disclosure] obligations in State Courts cases and High Court cases" (Singapore Parl Debates; Vol 95, Sitting No 120; 5 February 2024 (Senior Parliamentary Secretary to the Minister for Law, Rahayu Mahzam)). During the second reading of the Criminal Procedure (Miscellaneous Amendments) Bill (Bill No 6/2024), the Senior Parliamentary Secretary to the Minister for Law, Ms Rahayu Mahzam, outlined

that Parliament had chosen to eliminate certain differences that existed between the requirements for the Case for the Prosecution filed in proceedings in the General Division of the High Court *vis-à-vis* the State Courts.

90 For instance, in proceedings in the General Division of the High Court, it will become mandatory for the defence to file a Case for the Defence under s 215(1) of the CPC. Section 159(2) of the CPC will also be repealed, so that the defence can no longer opt out of criminal case disclosure proceedings in the State Courts. Parliament has recognised that it is timely to align the CCDC requirements in proceedings in the General Division of the High Court and State Courts *via* a legislative amendment in 2024. The CPC (Amendment) Act 2024 has not come into force and does not impact the interpretation of s 214(1)(*d*) of the CPC as it stands. However, the continued development of the specific rules of criminal case disclosure by statute indicates that the specific details of the regime applicable in the General Division of the High Court as opposed to the State Courts *are decidedly dissimilar despite the common general legislative purpose.* Specifically, the purpose in question is to translate the policy balance of ensuring sufficient disclosure on the one hand, while managing the danger of the accused tailoring his evidence with the benefit of disclosure provided.

91 While I understand the applicant's position that a summary of facts would enable the Defence to easily ascertain the facts asserted by the Prosecution, there is no applicable provision requiring a summary of facts to be filed. The bridge for this gap is not to read into s 214(1)(*d*) of the CPC words that do not exist. Simply put, there is no basis to read into s 214(1)(*d*) an obligation on the Prosecution's part to obtain material which it does not intend to admit at the trial, for the purposes of providing the Defence with a preview of the evidence that will be led at the trial through the Prosecution's witnesses.

92 Even if I were to disregard the distinctions in the criminal case disclosure regimes applicable to the General Division of the High Court and the State Courts mentioned at [84]–[85] above, I am unable to accept the contention that without the conditioned statements of all of the Prosecution's intended witnesses, the applicant would be placed in a weaker position than he would have been in had the State Courts disclosure regime applied. The case law concerning the Prosecution's obligation to provide particulars in a summary of facts in support of the charge in proceedings in the State Courts does not go so far as to require the Prosecution to set out the evidence that its witnesses will be giving at the trial. Rather, what is required are sufficient particulars to state the facts that are alleged to make out the elements of the charge, as can be seen in the relevant illustrations, illus (*a*) and (*b*) to s 162(1) of the CPC:

> Illustrations
>
> (*a*) A is charged with theft of a shirt from a shop. The summary of facts should state the facts in support of the charge, for example, that A was seen taking a shirt in the shop and putting it into A's bag, and that A left the shop without paying for the shirt.
>
> (*b*) A is charged with conspiracy to cheat together with a known person and an unknown person. The summary of facts should state —
>
> (i) when and where the conspiracy took place; and
>
> (ii) who the known conspirators were and what they did.

93 As elucidated by the Court of Appeal in *Li Weiming (CA)* at [89], the summary of facts is meant to provide sufficient notice of the facts that are alleged against the accused and must be construed as a whole with the Case for the Prosecution:

> … we are of the view that Parliament intended for the summary of facts to serve the basic function of giving both the accused and the Prosecution adequate initial notice of the factual

> premises of the cases that will be pursued at trial. This purpose is also evident from the contents of the Case for the Defence filed after service of the Case for the Prosecution. The accused has to file his own summary of facts that responds to the charge – which by parity of reasoning, should also give adequate notice to the Prosecution – and raise any objections to the Case for the Prosecution. This second summary of facts will not be helpful in isolating the disputed issues if the accused is not apprised of at least the *foundation of the charge against him*. For there to be a meaningful exchange of information between the Prosecution and accused, the imperative must first lie with the Prosecution to candidly set out the alleged factual basis of the charge.
>
> [emphasis added]

94 The contents of the summary of facts are meant to provide information on the matters that would inform the accused of the facts alleged to constitute the charge (*Li Weiming (CA)* at [92]–[93]):

> 92 We now turn to consider the requisite contents of the summary of facts. There is no statutory definition of the summary of facts, save for the substantive requirement that it has to be '*in support of* the charge' … The use of the word 'summary' indicates that what Parliament had in mind was a concise, but not necessarily comprehensive, description of the Prosecution's case in relation to the charge, and 'in support of the charge' suggests that the facts set out must establish the essential factual basis for the charge …
>
> 93 Illustration (*a*) may be read as requiring the summary of facts to contain not merely a bare recital of the requisite *actus reus* (*ie*, taking movable property out of a person's possession without consent) and *mens reas* [*sic*] (*ie*, dishonesty) elements of the charge, but also an elaboration of the fundamental surrounding facts that establish the elements. Similarly, illustration (*b*) demonstrates that the summary of facts ought to contextualise the charge by providing information on the alleged events that gave rise to the charge and, if relevant to establishing the charge, the identity of the persons involved and the degree of involvement. ***The level of detail required in the summary of facts should therefore generally suffice to provide adequate notice to the accused when read in the context of the entire Case for the Prosecution***. What is adequate notice on a particular set of facts is not susceptible to abstract definition, but the summary of facts is not a mere formalistic requirement that can be satisfied by a cursory reproduction of the elements of the charge. Further, while we

> would generally accept that facts which do not go directly to proving the legal elements of the charge would not be essential facts 'in support of the charge' required in the summary of facts, we decline to lay down a categorical rule, as contended for by the [Public Prosecutor], that where certain elements are not required to be contained in the charge, *a fortiori*, the summary of facts can never be required to contain details of these elements. It would depend on the precise circumstances of the charge before the court.
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> [Court of Appeal's emphasis in *Li Weiming (CA)* in italics; emphasis added in bold italics]

95 Specifically, on the facts of *Li Weiming (CA)*, it was held, at [95]–[97], that in a charge under s 477A of the Penal Code (Cap 224, 2008 Rev Ed), there was no need for the Prosecution to provide facts to prove a specific intent to defraud or the identity of the allegedly defrauded party, as the defence had been given sufficient notice as to the allegedly fictitious sub-contract, and that the accused was alleged to have created invoices for the fictitious sub-contract. Matters of evidence, while relevant to the trial, need not be detailed in a summary of facts.

96 Thus, the applicant's submission appears to have attributed to the summary of facts filed by the Prosecution in proceedings in the State Courts a function and significance that it does not have. Furthermore, the comparison of the utility of the conditioned statements which are intended to be admitted by the Prosecution with the summary of facts is not only unhelpful but ultimately irrelevant to the ascertainment of the meaning of s 214(1)(*d*) of the CPC, when shorn of the context of the different criminal case disclosure regimes in the State Courts and the General Division of the High Court which had developed as the committal hearing procedure was eventually reviewed and abolished.

There is no necessity to develop criminal procedure or invoke the court's inherent powers to address any injustice

97 Having decided that the meaning of s 214(1)(*d*) of the CPC is clear and unambiguous, and that the extraneous material is not useful in confirming the court's interpretation of those specific words, I am satisfied that the AR's decision in the first instance was not in error. There is also no suggestion of any procedural irregularity in the proceedings below. Therefore, this suffices to dispose of the present application.

98 However, for completeness, I turn next to address the applicant's alternative argument that the Prosecution, in not disclosing the conditioned statements of its intended witnesses, has abused the court's process or otherwise caused injustice in the present case, that justifies the invoking of the court's inherent powers or the adoption of criminal procedure under s 6 of the CPC to correct such injustice.[38]

99 In *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821, the Court of Appeal stated at [27]:

> It seems to us clear that by its very nature, how an inherent jurisdiction, whether as set out in O 92 r 4 [of the Rules of Court (Cap 322, 1997 Rev Ed] or under common law, should be exercised should not be circumscribed by rigid criteria or tests. In each instance the court must exercise it judiciously. In his lecture on 'The Inherent Jurisdiction of the Court' published in *Current Legal Problems 1970*, Sir Jack Jacob (until lately the general editor of the *Supreme Court Practice*) opined that this jurisdiction may be invoked when it is just and equitable to do so and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression and to do justice between the parties. Without intending to be exhaustive, we think an essential touchstone is really that of 'need' …

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[38] AS at [252]–[272]; NEs (6 July 2024) at p 88 ln 30 to p 89 ln 3.

100 It was further articulated in the High Court decision of *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 at [81] that the courts would generally not invoke their inherent powers, save in the most exceptional circumstances. It should be noted that these pronouncements were made in the context of the invoking of O 92 r 4 of the Rules of Court (Cap 322, 1997 Rev Ed) and Rules of Court (Cap 322, 2004 Rev Ed), which reads:

> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

101 In criminal proceedings, it has also been recognised in *Public Prosecutor v Soh Chee Wen and another* [2021] 3 SLR 641 ("*Soh Chee Wen*") at [32] that the court has residual powers to "ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them". The General Division of the High Court in *Soh Chee Wen* further recognised that the court has the inherent power to stay criminal proceedings, if injustice that was occasioned by an abuse of process is incurable by any means available to the court.

102 In relation to matters of criminal procedure, s 6 of the CPC specifically provides:

> **Where no procedure is provided**
>
> **6.** As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force, such procedure as the justice of the case may require, and which is not inconsistent with this Code or such other law, may be adopted.

103 In *Goldring Timothy Nicholas and others v Public Prosecutor* [2013] 3 SLR 487 ("*Goldring (HC)*") at [65], the High Court held that s 6 of the CPC 2010 may be invoked only upon satisfying the court that the following two-stage test has been complied with:

> Section 6 of the CPC 2010 appears to prescribe a two-stage test: (a) has special provision been made for a matter of criminal procedure? and (b) if not, is the proposed procedure to be adopted inconsistent with the CPC 2010 or any other law? Where the first stage is concerned, it is only the *absence* of a provision on a particular, specific issue which will indicate that 'no special provision has been made' for that particular issue. Silence cannot, *ex hypothesi*, mean that special provision has been made. It is only where a provision expressly dealing with that particular issue *exists* that 'special provision *has been made*' …
>
> [High Court's emphasis in *Goldring (HC)* in italics]

104 In *Goldring (HC),* the High Court held that an accused is entitled to access documents over which he had ownership, legal custody or a legal right to control immediately before their lawful seizure by law enforcement authorities. This right arose under common law, as an accused's pre-existing proprietary rights to possession or control over such documents were merely suspended by seizure for the purpose of the administration of justice (*Goldring (HC)* at [19] and [24]). The High Court added that even if there had not been such a common right to access, it would have recognised, pursuant to s 6 of the CPC 2010, the existence of such a right of access for the purpose of making copies of the relevant documents. Such a right would have been in the interests of justice and was also not inconsistent with the CPC 2010 (*Goldring (HC)* at [78]). In *Public Prosecutor v Goldring Timothy Nicholas and others* [2014] 1 SLR 586 ("*Goldring (CA)*"), the Court of Appeal, upon a criminal reference, affirmed the High Court's views, and observed at [84]–[86] that had it not found that a common law right of access to seized material existed, it would have

thought that it was appropriate to invoke s 6 of the CPC to create a similar right of access. The Court of Appeal further noted in *Goldring (CA)* at [85] that:

> It seems to us that the adoption of a procedure in the context of s 6 amounts (in substance and even form) to the promulgation of *a new common law rule* (albeit made in the context of a gap in the criminal procedure laid down in a statute) …
>
> [emphasis in original]

105 In *Iskandar bin Rahmat v Public Prosecutor* [2021] 2 SLR 1151 ("*Iskandar*"), the issue that arose was whether s 6 of the CPC 2012 could be invoked as a basis to adopt the procedure under O 15 r 6(2)(*b*)(ii) of the Rules of Court (2014 Rev Ed) ("ROC 2014") concerning third party intervention in proceedings. In essence, the applicant in *Iskandar* applied to intervene in a completely unrelated criminal appeal after his own appeal against his convictions on two counts of murder was heard and dismissed, so that he could make arguments relating to the interpretation of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("Constitution") in that unrelated criminal appeal. *Iskandar* is instructive for the Court of Appeal's holding at [32] that it was for the applicant to justify why the adoption of the procedure in question under s 6 of the CPC 2012 would be the interests of justice, even if it was indeed the case that nothing in the CPC 2012 expressly dealt with the right of a third party to intervene in a criminal appeal. On the facts, the Court of Appeal found at [40] that it would not be in the interests of justice for the applicant to impose his arguments on the appellant in a case that affected the appellant but not the applicant, especially given the possibility that the appellant may not necessarily adopt the same arguments on the interpretation of the Constitution. There was therefore no need to adopt the proposed procedure for third party intervention as set out in the ROC 2014, in the context of criminal proceedings.

106 Synthesising the principles elucidated in the authorities discussed above at [103]–[105], s 6 of the CPC permits the adoption of a procedure in criminal cases only if such procedure: (a) relates to a matter of criminal procedure for which there is no special provision in the CPC or any other law; (b) is required in the interests of justice; and (c) is not inconsistent with the CPC or any other law. In the present proceedings, the court has revisionary jurisdiction and has been conferred broad statutory powers to correct errors in decisions made at CCDCs by virtue of s 404 of the CPC.

107 Upon a review of the record of the 11 June CCDC, in which the AR had exercised powers conferred expressly by s 212(1) of the CPC to "settle" matters at a CCDC, which extend to deciding whether it was necessary to make any orders to ensure that the Prosecution fully complies with the requirements for the contents of the Case for the Prosecution, it is not necessary to have recourse to the court's power under s 6 of the CPC or to invoke the court's inherent powers. In *Li Weiming (CA)*, the Court of Appeal stated at [60]:

> As we have considered above … , ss 160(2) and 404 are predicated on the assumption that the court may make orders in the course of a CCDC hearing relating to the matters enumerated in s 160(1), although s 160 understandably does not set out an extensive list of the precise types of orders that may be made. ***To the extent that these orders or directions do not impose additional legal obligations or subject parties to substantive legal disabilities that are not otherwise prescribed under the CPC 2010 or another written law, we consider that the powers to make such orders are conferred by s 160(1) as powers that are necessary or ancillary to*** '*settling [such] matters*'. Under s 29(1) of the Interpretation Act (Cap 1, 2002 Rev Ed), a written law conferring powers to do any act or thing shall be understood to confer powers that 'are reasonably necessary to enable the person to do … the act or thing'. The term 'settling' is a broad one and ordinarily refers to the resolving of matters in dispute and/or which have not been agreed upon. It is implicit that a power of the presiding judicial officer to settle must incorporate the power to do what is necessary to achieve that objective. In

> our view, this must necessarily include directions to parties on the timelines for filing and service, as well as orders to provide further particulars or information to fully comply with the requirements for the contents of the Cases under ss 162 and 165. In the light of the foregoing analysis, it is not necessary for us to have recourse to the court's power under s 6 of the CPC 2010 to adopt a procedure as the justice of the case may require or to invoke the court's inherent powers.
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> [emphasis in original in italics; emphasis added in bold italics]

108 As stated in *Li Weiming (CA)* at [41], the court's revisionary powers under s 404 of the CPC confer some degree of discretion to make orders with substantive impact in circumstances where the CCDC framework is not self-executing:

> In our view, the role of the court at the pre-trial CCDC stage is not a purely administrative and mechanistic one that that is limited to overseeing the progress of the sequential CCDC procedures. Section 160 sets out a list of matters that may be settled at a CCDC, and the settling of these matters would inevitably involve the court giving incidental directions or orders. Quite apart from the statutory obligations under the CCDC procedures, it would be fanciful to contend that because there are no express statutory powers relating to the matters in ss 160(1)(*b*)–(*d*) (the court's power to set a trial date under s 160(1)(*e*) is found in s 167), the court cannot give directions to the parties but can merely 'encourage' the parties to settle these matters. Further, s 160(2) enjoins the court from making orders in the absence of a party if the order is prejudicial to that party. This is premised on the assumption that a CCDC court may make substantive orders relating to the matters set out in s 160(1). ***The High Court's powers of revision over orders made at CCDC proceedings under s 404 of the CPC 2010 also necessarily presume that orders with substantive impact can and will be made in these proceedings. The CPC 2010 understandably did not institutionalise a rigid procedural framework or formal strictures with respect to the manner in which CCDC hearings should be conducted and the directions or orders that may be made by the presiding judicial officer, the Legislature opting instead to leave this to the development of practice and discretion.*** We consider that it is entirely within the purpose of the overall CCDC regime that the presiding judicial officer assumes an active role in case management at the pre-trial stage to ensure that matters proceed expeditiously and

> that all material issues are placed before the trial judge. This necessitates some degree of discretion, and it would be entirely contrary to the aim of the CCDC regime if the judicial officer's powers are limited to the scheduling of CCDC hearings so as to move the parties through each stage of the procedures and towards trial.
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> [emphasis added]

109 I am unable to accept the applicant's submission that there has been an abuse of process or serious injustice arising in this case. The applicant has asserted in his affidavit filed in support of this application, that without the conditioned statements, he will not have "any, let alone adequate, notice of the facts and evidence that the Prosecution intends to rely on at the trial to support the [c]harges" because:[39]

(a) The charges do not contain any information about the facts and evidence that the Prosecution is intending to adduce and rely on at the trial.

(b) The Prosecution's list of witnesses does not contain any information on what facts and evidence each of the 56 witnesses will be giving, what issues they will be dealing with, what exhibits they will be seeking to admit and speak about or what facts the Prosecution is seeking to establish from those witnesses.

(c) The Prosecution's list of exhibits refers to 222 exhibits which it says it intends to admit at the trial. The applicant's difficulty is that he does not know which witnesses will be giving evidence on each of those exhibits, whether they have personal knowledge of and/or are in a

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[39] Affidavit of S Iswaran affirmed on 18 June 2024 ("S Iswaran's Affidavit") at [47]–[48].

position to testify to those exhibits, what their position on those exhibits will be, or whether and how those exhibits are relevant to the case that the Prosecution intends to pursue at the trial. The applicant also contends, parenthetically, that he does not even know how many pages the exhibits will run into.

(d) The 66 statements recorded by the Corrupt Practices Investigation Bureau ("CPIB") from the applicant do not provide any notice of the Prosecution's case and of the facts and evidence it intends to rely on at the trial. These statements, "which are said to be [the applicant's]", do not say anything about the facts and evidence that the Prosecution intends to rely on at the trial to support the charges.

110 It should be recalled that the court's powers to make substantive orders relating to compliance with criminal case disclosure obligations stem from its powers under s 212 of the CPC to "settle" matters within the purview of a CCDC. Criminal case disclosure must be provided in accordance with the statutory regime for disclosure, which is what this court is concerned with in the present application. There is nothing in s 214(1) of the CPC that goes as far as to require the extent of disclosure which the applicant desires at the present juncture.

111 Section 214(1) of the CPC requires the Case for the Prosecution to comprise the charges, the lists of exhibits and witnesses and the statements of the accused which the Prosecution intends to admit at the trial. Charges serve an important function in criminal proceedings in that they give notice to the accused of the offence with which he is charged to enable him to answer the allegations against him (see Jeffrey Pinsler, *Evidence and the Litigation Process*

(LexisNexis, 7th Ed, 2020) at para 1.025). It is not the applicant's case that the charges do not sufficiently set out the particulars of the alleged offences. As discussed above at [93], the Case for the Prosecution should be viewed holistically, in the light of all of its components.

112 In the present case, as averred by Deputy Public Prosecutor Jiang Ke-Yue in his affidavit, the Case for the Prosecution contains the following:[40]

(a) Charges which state the particulars of the alleged offences. These include charges under s 165 of the Penal Code 1871 ("PC") stating the nature of the valuable thing, from whom it was obtained, when it was obtained, the nature of the business transacted and the relevant connection to the applicant's official function at the time.

(b) The list of exhibits which provides notice of the facts and evidence that will be led by the Prosecution at the trial. The relevance of many of the listed exhibits is self-evident from their description, including those related to Formula 1 and other ticketed events and experiences which would correlate to the various charges.

(c) The 66 statements recorded from the applicant under s 27 of the Prevention of Corruption Act 1960 ("PCA") and s 23 of the CPC, which total 1,156 pages and annex numerous exhibits such as emails, messages, Formula 1 complimentary request forms and other relevant documents shown to the applicant during the process of statement recording. The statements include the questions asked of the applicant

[40] Affidavit of Jiang Ke-Yue sworn on 25 June 2024 ("Jiang Ke-Yue's Affidavit") at [14]–[17].

> as well as his responses. The fact that these statements have been included in the Case for the Prosecution clearly informs the applicant that the Prosecution intends to rely on them as evidence at the trial.

113 The applicant appears to be asserting that in view of the sheer volume of the material and information disclosed, he needs to understand how the Prosecution intends to synthesise, from the mass of material, its case theory for the trial. The applicant explains that he needs to know the Prosecution's case theory in order to identify relevant facts that he will need to establish in support of his defence or any issues of fact or law that he will need to raise to challenge that theory. Specifically, the applicant says that he cannot prepare for the trial unless he knows what evidence he has to face, what each witness is going to say and which exhibits will be admitted through each witness and for what purpose. The applicant says that without the conditioned statements, he does not know which parts of the exhibits he should object to, and which witnesses he should line up and have his lawyers *interview* and determine if they will give evidence to meet the Prosecution's case.[41]

114 To buttress this argument, the applicant refers to s 231 of the CPC which specifies the need for notice to be provided and a description of any exhibit or outline of any witness' evidence to be provided, if a new witness or exhibit is sought to be called or produced at the trial which was not disclosed in the party's Case filed during the criminal case disclosure proceedings. The applicant asserts that if s 231 of the CPC mandates the provision of information on new witnesses

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41 S Iswaran's Affidavit at [40].

or exhibits, the Case for the Prosecution cannot have been intended to require less of the Prosecution.[42]

115 In my view, s 231 of the CPC does not assist the applicant because its objective is to prevent surprises prior to the trial. Hence, it provides for specific disclosure of information *ex post facto* after criminal case disclosure is completed. Even then, s 231 of the CPC does not go as far as to require the entirety of the intended witness' evidence-in-chief to be set out, even if witnesses are introduced after the completion of criminal case disclosure.

116 During oral arguments, the applicant also stated that allowing the Prosecution the prerogative to decide whether to admit conditioned statements would allow the Prosecution to gain a "forensic advantage". According to the applicant's counsel, "if you choose to put 55 [witnesses] on your list [of witnesses], you produce 55 [conditioned statements]".[43] The applicant's submission is that if the witnesses are listed, then the draft conditioned statement must be produced, to prevent the Prosecution from listing as many witnesses as possible to avoid having to file a notice under s 231 of the CPC, which provides for "pre-trial discovery" in the form of an outline of the evidence or a description of the exhibit.[44] The applicant's counsel submits that these draft statements would be usable for cross-examination of other witnesses.[45]

117 On the other hand, the Prosecution argues that the applicant's advocated requirement has been through "multiple evolutions, in an attempt to circumvent

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42 AS at [178]–[185].

43 NEs (5 July 2024) at p 40 ln 24 to p 41 ln 8.

44 NEs (8 July 2024) at p 31 ln 18 to p 32 ln 9.

45 NEs (8 July 2024) at p 41 lns 5–8.

insurmountable obstacles posed by the statutory wording".[46] The Prosecution asserts that the applicant has adapted his initial advocated reading of s 214(1)(*d*) of the CPC to account for the possibility that the Prosecution's intended witnesses are unwilling to make a conditioned statement stating the evidence that they are likely to give "in support of the charges". The applicant had, before the AR, taken the position that there should minimally be an affidavit to explain "why it is difficult for [a] conditioned statement to be prepared and why [a] conditioned statement cannot be prepared".[47] The Prosecution argues that upon realising that such an advocated procedure finds no legislative basis, the applicant has advanced a further interpretation that the Prosecution is obliged, in respect of any witnesses who do not agree to provide a conditioned statement, to provide draft conditioned statements setting out the evidence that the Prosecution intends to lead at the trial from those witnesses and a letter explaining each such witness' reasons for not agreeing.

118 I am unable to agree with the applicant's submission, which necessitates reading into s 214(1)(*d*) of the CPC words which do not exist. If adopted, the applicant's submission would require the draft witness statements to be prepared as a pre-emptive disincentive to the Prosecution from abusing the avenue of s 231 of the CPC. With respect, I have considerable difficulty accepting that the written or draft statements of witnesses should be included in the Case for the Prosecution for the purpose of revealing or distilling the Prosecution's *case at the trial* and the evidence that the witnesses will give even if the Prosecution has *no intention of admitting these statements at the trial*. There is no basis for invoking the court's revisionary or inherent powers, or to

46 PS at [49].

47 NEs (11 June 2024) at p 9 lns 25–29.

adopt any procedure under s 6 of the CPC to compel the Prosecution to provide information on its overall case theory and trial strategies.

119 It is also not apparent that the Prosecution should be required to ask witnesses to indicate their reasons for not signing a conditioned statement, and to provide any reasons given as well as draft conditioned statements prepared by the Prosecution to the Defence (see [6(b)] and [6(c)] above). These "reasons" emanating from the witnesses and the draft conditioned statements would not form part of the Prosecution's intended case at the trial and are not required by the words of ss 212(1) and 214(1) of the CPC. It is also altogether unclear why it should be for a witness to give an explanation for the Prosecution's intention to adduce oral evidence from that witness at the trial instead of admitting a conditioned statement under s 264(1) of the CPC.

120 It is not the case that the factual foundation of the alleged offences is not clear from the charges brought, or that the material disclosed do not relate to the charges brought. Specifically, the list of witnesses includes the roles of the witnesses who are to be called. The list of exhibits contains descriptions of the exhibits, which include the following non-exhaustive categories of documents:

(a) Statements recorded from the applicant under s 27 of the PCA;

(b) Statements recorded from the applicant under s 23 of the CPC;

(c) The Accounting and Corporate Regulatory Authority ("ACRA") Business Profile of Lum Chang Building Contractors Pte Ltd and the 2023 Annual Report of Lum Chang Holdings Limited;

(d) A letter of acceptance dated 25 October 2016 relating to a contract between Lum Chang Building Contractors Pte Ltd and the Land

Transport Authority for "Addition and Alteration Works to Existing Tanah Merah Station and Existing Viaducts";

(e) Contractual agreements relating to the Singapore Grand Prix;

(f) Messages between the applicant and Mr Lum;

(g) Messages and call logs between the applicant and Mr Ong;

(h) Messages and call logs between the applicant and various persons related to Singapore GP Pte Ltd such as Syn Wai Hung Colin and Mok Chee Liang;

(i) Messages between and among Mr Lum and other individuals, including other Prosecution witnesses;

(j) Messages between and among Mr Ong and other individuals, including other Prosecution witnesses;

(k) Documents relating to the purchase of various tickets to various shows in London and sporting events as well as various physical items;

(l) "F1 photographs", and other photographs from the applicant's devices;

(m) Correspondence pertaining to "flight details to Ldn"; and

(n) Documents relating to flights and expenses relating to a trip to Doha in December 2022, as well as hotel bookings in the same period.

121 The Prosecution has highlighted in its submissions that the 35 charges filed "contain particulars that give the [applicant] sufficient notice of what he is

charged with". In relation to the charges under s 165 of the PC, the Prosecution has highlighted that the charges fully set out the nature of the valuable thing, from whom it was obtained, when it was obtained, the nature of the business transacted, and the relevant connection to the applicant's official function at the time.[48]

122 The applicant has received sufficient information that discloses the factual premise of the charges against him, and it is not the law that the Prosecution must detail its intended case at the trial to the point of informing the applicant of exactly what each witness will testify, which exhibit each witness will give evidence on, and what the evidence on each exhibit will entail. The applicant has also not demonstrated the injustice he would suffer from not receiving the *draft* conditioned statements or a letter stating reasons why certain witnesses will not sign draft conditioned statements (if any drafts exist). There is therefore no need for any procedure to be adopted in light of the "justice of the case" as there are specific provisions in the CPC concerning disclosure and it is decidedly not the law that in criminal proceedings, there need to be "pleadings" by which the Prosecution shall be bound, or that the conditioned statements are to be regarded as affidavits of evidence-in-chief "filed in lieu of a statement of claim".[49]

123 Under s 215(1) of the CPC, the defence has the *option* to file a Case for the Defence, bearing in mind the possible effects on its case at the trial under s 221 of the CPC, and its entitlement to the accused's remaining investigation statements and criminal records under s 218. *If* the defence chooses to file a

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48 PS at [72].

49 NEs (11 June 2024) at p 3 lns 13–33.

Case for the Defence, its Case shall contain the items enumerated in s 217(1) of the CPC:

> **Contents of Case for the Defence**
>
> **217.**—(1) The Case for the Defence must contain —
>
> (*a*) a summary of the defence to the charge and the facts in support of the defence;
>
> (*b*) a list of the names of the witnesses for the defence;
>
> (*c*) a list of the exhibits that are intended by the defence to be admitted at the trial; and
>
> (*d*) if objection is made to any issue of fact or law in relation to any matter contained in the Case for the Prosecution —
>
> (i) a statement of the nature of the objection;
>
> (ii) the issue of fact on which evidence will be produced; and
>
> (iii) the points of law in support of such objection.

124 The applicant argues that:[50]

> In its written submissions before the learned AR, the Prosecution argued that the Defence can comply with section 217 of the CPC because '*[T]o the extent that matters are not contained in the CFP, the Defence is not required to make objections pursuant to its obligations under s 217(1)(d) of the CPC*'.
>
> That is another way of saying that if the Prosecution does not comply, then the Defence can also not comply. That assumes that the law permits the parties the choice of whether to comply. It does not and would defeat the rationale behind the CCDC regime which requires the parties to meaningfully identify and isolate the issues that will be before the Court at the trial. The Court of Appeal [in *Li Weiming (CA)*] specifically cautioned that the CCDC provisions in the CPC should not be interpreted in a

[50] AS at [149]–[150].

> way that leads to such an outcome. It described the very scenario that the Prosecution is advocating for as one where '*[n]either the Prosecution nor the accused obtains any helpful discovery*', and that such a '*deadlock*' '*cannot be the intended result of the CCDC procedures*.'
>
> [emphasis in original]

125 A "deadlock" certainly would not arise, so long as the factual basis of the charges is adequately disclosed by the Prosecution. It is the very nature of the regime of criminal case disclosure in the General Division of the High Court, as the law stands, that the defence can choose not to file a Case for the Defence, for any reasons that it deems fit. The defence may make a statement of objection under s 217(1)(*d*) of the CPC, only in relation to any matter contained in the Case for the Prosecution but not otherwise.

126 The applicant also asserts that the Prosecution had at some point, accepted that it had to include conditioned statements of its intended witnesses in the Case for the Prosecution, but had subsequently changed its position to the applicant's detriment. The Prosecution had indicated at the CCDC on 2 April 2024, that the Prosecution would require eight weeks to prepare the Case for the Prosecution, but would be able to take two weeks instead if the applicant "does not want conditioned statements filed for trial" and the Prosecution only needs to file the "list of exhibits and list of witnesses'.[51] As the applicant was not prepared to consent to the admission of the conditioned statements before having seen them, the applicant had asked the Prosecution to include the statements in the Case for the Prosecution. The applicant had, through counsel, indicated his position that he would not be consenting to the admission of any

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[51] NEs (2 April 2024) at p 2 ln 24 to p 3 ln 4.

conditioned statements at the trial under s 264(1) of the CPC.[52] It does not appear to me to be remiss of the Prosecution to determine, in those circumstances, that it did not intend to admit any conditioned statements for the purpose of the trial. The consequence of the Prosecution's election would necessarily mean that the Case for the Prosecution would not contain any conditioned statements that *the Prosecution* intended to admit under s 264 of the CPC at the trial.

127 For completeness, I should highlight that the Prosecution has, pursuant to its disclosure obligations under *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*"), made disclosure to the applicant of unused material, *viz*, 37 investigation statements recorded by the CPIB from various witnesses named in the Case for the Prosecution filed on 31 May 2024.[53] The Prosecution has also separately disclosed messages between the applicant and various material witnesses, which show the context of communications between the applicant and the various witnesses, including in relation to the events which form the subject of the charges. A majority of these messages are listed in the Prosecution's list of exhibits.[54] I note that the disclosure was made pursuant to the applicant's request for access to seized exhibits, arising from his common law rights recognised in *Goldring (CA)*.

128 However, such additional disclosure has no bearing on the issues at hand. The AR regarded the disclosure provided as reinforcing the view that the disclosure was adequate, and no prejudice was suffered by the applicant. It may

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52 NEs (2 April 2024) at p 4 ln 20 to p 5 ln 21.

53 Affidavit of Jiang Ke-Yue at [20].

54 Affidavit of Jiang Ke-Yue at [19].

be true that the unused material that was disclosed by the Prosecution in discharge of its *Kadar* obligations and upon the applicant's request pursuant to *Goldring (CA)* added to the amount of material available to the applicant to be used in his preparation for trial. However, whether there was sufficient disclosure made in the *Case for the Prosecution* to give notice of the particulars of the charge, the intended witnesses and the intended evidence that will be presented at the trial is a separate issue. Thus, to be clear, the disclosure of the material highlighted at [127] has no bearing on the court's decision in these proceedings.

There is no necessity to exercise this court's case management powers under s 212 of the CPC

129 In his written submissions, counsel for the applicant advances as an alternative argument that the court should exercise its "case management powers under s 212 of the CPC" to order the Prosecution to file and serve the requested conditioned statements.[55] Having decided to dismiss the application in the exercise of the General Division of the High Court's revisionary jurisdiction, I see no further basis to make the orders sought in the exercise of this court's original jurisdiction. As explained above at [19], in the exercise of this court's revisionary jurisdiction, the court does not determine the application *de novo*, but exercises its jurisdiction for the purpose of correcting any errors in orders made in a CCDC. In any event, there is no non-compliance with criminal case disclosure orders that warrants intervention in the exercise of this court's revisionary powers in this criminal revision application.

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55 AS at [273]–[276].

Conclusion

130 In conclusion, I return to the central issue as set out at [**Error! Reference source not found.**] above, *ie*, whether the Prosecution has a statutory obligation to file a statement under s 264 of the CPC for every witness whom it intends to call at the trial, as part of the Case for the Prosecution it is required to file in the High Court pursuant to s 213(1) of the CPC. The answer is "no".

131 The words of s 214(1)(*d*) of the CPC are clear and unambiguous. The legislative purpose and statutory context support the reading that in proceedings transmitted for trial in the General Division of the High Court, the Case for the Prosecution need only include the statements of witnesses that the Prosecution intends to admit under s 264 of the CPC and not of every witness whom the Prosecution intends to call at the trial.

132 Furthermore, the Prosecution is under no statutory obligation to include in the Case for the Prosecution the same conditioned statements that fell to be furnished in a preliminary inquiry or committal hearing, as advocated by the applicant. The abolition of committal hearings by way of the CJRA 2018 was not accompanied by any legislative amendments to s 214(1)(*d*) of the CPC that enlarged the scope of the Prosecution's disclosure obligations with respect to the conditioned statements of its intended witnesses.

133 The application for revision is dismissed.

Vincent Hoong
Judge of the High Court

Davinder Singh s/o Amar Singh SC, Navin Shanmugaraj Thevar, Rajvinder Singh Chahal and Sheiffa Safi Shirbeeni (Davinder Singh Chambers LLC) for the applicant;
Deputy Attorney-General Tai Wei Shyong SC, Tan Kiat Pheng, Christopher Ong, Jiang Ke-Yue, Kelvin Chong and Sarah Siaw (Attorney-General's Chambers) for the respondent.