IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 2

Court of Appeal / Civil Appeal No 18 of 2024

Between

Attorney-General

… *Appellant*

And

(1) Shanmugam Manohar
(2) The Law Society of Singapore

… *Respondents*

GROUNDS OF DECISION

[Legal Profession — Disciplinary proceedings — Review of determination of disciplinary tribunal]

Attorney-General
v
Shanmugam Manohar and another

[2025] SGCA 2

Court of Appeal — Civil Appeal No 18 of 2024
Sundaresh Menon CJ, Tay Yong Kwang JCA, Debbie Ong Siew Ling JAD
10 October 2024

13 January 2025

Debbie Ong Siew Ling JAD (delivering the grounds of decision of the court):

Introduction

1 This judgment discusses the statutory duty of the Disciplinary Tribunal to "hear and investigate" a matter under the Legal Profession Act 1966 (Cap 161, 2009 Rev Ed) (the "LPA").

2 In this case, we found that the Disciplinary Tribunal in DT/23/2022 failed to discharge its duty to hear and investigate the matter involving the respondent, Mr Shanmugam Manohar ("Mr Manohar"), relating to the alleged practice of touting. We allowed the appeal of the Attorney-General (the "AG"). We also set aside part of the determination of the Disciplinary Tribunal in DT/23/2022 relating to the touting charges and directed the Law Society of Singapore (the "Law Society") to apply for the constitution of a fresh Disciplinary Tribunal to hear and investigate the matter.

Background to the dispute

The AG's referral

3 Mr Manohar is an advocate and solicitor of more than 30 years' standing. He was admitted to the Singapore Bar on 9 February 1994 and is a partner of M/s K Krishna & Partners (the "Firm").

4 Sometime in 2017, in the course of investigations undertaken by the Commercial Affairs Department ("CAD") against Mr Ng Kin Kok ("Mr Ng") for motor insurance fraud, CAD discovered Mr Manohar's alleged misconduct in rewarding Mr Ng for referrals of clients to the Firm.

5 On 2 July 2018, pursuant to s 85(3) of the LPA, the AG made a referral against Mr Manohar to the Law Society. The grounds of referral against Mr Manohar concerned the alleged practice of touting for business, in breach of r 39 of the Legal Profession (Professional Conduct) Rules 2015. According to the AG's referral, between 2014 and 2016, Mr Manohar paid Mr Ng a service charge of $600 or $800 per case for at least five clients whom Mr Ng had referred to the Firm. Mr Manohar allegedly also gave to Mr Ng copies of the Firm's warrant to act with the Firm's stamp already affixed. Mr Ng asked the clients to sign on the warrants to act without the clients attending at the Firm to do so. Mr Ng was not an employee or partner of the Firm. The AG requested the Law Society to refer the matter to a Disciplinary Tribunal.

DT/9/2019: The first set of disciplinary proceedings

6 In 2019, the Law Society brought disciplinary charges against Mr Manohar. The hearing for DT/9/2019 ("DT 9") took place on 18 and 19 August 2020. The Disciplinary Tribunal in DT 9 (the "First DT")

found that all the disciplinary charges brought against Mr Manohar were proved beyond a reasonable doubt and held that there was cause of sufficient gravity for disciplinary action under s 83 of the LPA. The decision of the First DT dated 20 October 2020 is reported in *The Law Society of Singapore v Shanmugam Manohar* [2020] SGDT 9 ("*Shanmugam Manohar DT*"). In coming to its decision, the First DT primarily relied on three statements taken in the course of criminal investigations from: (a) Mr Manohar dated 20 September 2017; (b) Mr Ng dated 14 September 2017; and (c) Mr Krishnamoorthi s/o Kolanthaveloo ("Mr Krishna"), a partner of the Firm, dated 12 December 2017 (collectively, the "Contested Statements") (*Shanmugam Manohar DT* at [48]–[50]).

C3J/OS 7/2020: The proceedings before the C3J

7 Following the finding of the First DT, the Law Society filed C3J/OS 7/2020 for Mr Manohar to be sanctioned under s 83(1) of the LPA. The Court of Three Judges ("C3J") set aside the decision of the First DT on the basis that there was incorrect admission of certain evidence, namely, the Contested Statements, which had a material impact on the determination. Without the Contested Statements, there was insufficient evidence from the Law Society's witnesses to prove the charges (see *Law Society of Singapore v Shanmugam Manohar* [2022] 3 SLR 731 ("*Shanmugam Manohar C3J*") at [8], [123], [124] and [131]). Pursuant to s 98(8)(*b*)(ii) of the LPA, the C3J directed that an application be made for the appointment of another Disciplinary Tribunal to hear and investigate the complaint against Mr Manohar (*Shanmugam Manohar C3J* at [148]). The C3J observed that, had the First DT correctly excluded the Contested Statements, the Law Society may have conducted its case differently and would in all likelihood have "sought to elicit evidence of [Mr Manohar's] alleged misconduct directly from its witnesses instead" (*Shanmugam Manohar*

C3J at [139]). It stated that "[t]he fresh hearing would be conducted on a substantially different footing given that the [Law Society] would likely need to elicit evidence directly from its witnesses as to [Mr Manohar's] alleged misconduct" (*Shanmugam Manohar C3J* at [143]). The C3J also emphasised that there was "clearly a strong public interest in having a fresh hearing so that [Mr Manohar's] alleged misconduct [could] be properly investigated", and this was "necessary to uphold the high standards of the legal profession and to retain public confidence in the honesty, integrity and professionalism of its members" (*Shanmugam Manohar C3J* at [141]).

DT/23/2022: The second set of disciplinary proceedings

8 On 18 November 2022, DT/23/2022 (the "DT 23") was convened, and a second Disciplinary Tribunal was appointed (the "Second DT"). The Law Society brought 12 charges (and alternative charges) against Mr Manohar:

(a) The first five charges (with alternative charges) concerned touting (the "touting charges"). The touting charges alleged that Mr Manohar had made payments to Mr Ng for "obtaining the retainer" of five individuals involved in motor accidents (collectively, the "Clients") in contravention of s 83(2)(*e*) of the LPA. Mr Ng allegedly received payments of $600 or $800 for each referral.

(b) The remaining seven charges (with alternative charges) concerned Mr Manohar's failure to communicate directly with the Clients (the "non-communication charges").

Failure to obtain substituted service orders for the attendance of Mr Ng and Mr Krishna as witnesses

9 According to the Law Society, its solicitors wrote to Mr Ng by way of a letter dated 24 June 2022 to inform him of DT 23 and request an interview with him. Subsequently, on 5 July 2022, counsel for the Law Society communicated with Mr Ng on the telephone.

10 On 19 January 2023, the Second DT gave notice to the parties that the hearing of DT 23 was to begin on 23 March 2023. During the pre-hearing conference before the Second DT that day, Mr Leong Kah Wah ("Mr Leong"), who was lead counsel for the Law Society in DT 23, informed the Second DT that the Law Society intended to call at least six witnesses to the hearing, including Mr Ng.

11 By way of a letter dated 30 January 2023, the Law Society wrote to Mr Ng again to inform him of the hearing dates, request an interview with him, and finalise an affidavit of evidence-in-chief ("AEIC"). This was followed up by another telephone call with Mr Ng on 7 February 2023. The Law Society wrote a similar letter to Mr Krishna dated 2 February 2023. On 3 February 2023, by way of a letter, the Law Society conveyed to the Second DT and Mr Manohar its intention to call Mr Krishna as an additional witness for DT 23.

12 On 9 February 2023, the Law Society obtained orders for Mr Ng and Mr Krishna to attend court (the "Attendance Orders"). Between 10 February 2023 and 14 March 2023, the Law Society made multiple unsuccessful attempts to effect personal service of the Attendance Orders on Mr Ng and Mr Krishna.

13 Having failed to effect personal service of the Attendance Orders on Mr Ng and Mr Krishna, on 22 February 2023 the Law Society applied for substituted service orders from the General Division of the High Court (the "High Court") pursuant to O 7 r 7(1) and 7(2) of the Rules of Court 2021 (2020 Rev Ed) (the "ROC"). When counsel for the Law Society appeared before the assistant registrar (the "First AR"), the First AR was not inclined to make any order as he was of the view that r 11 of the Legal Profession (Disciplinary Tribunal) Rules (Cap 161, R 2, 2010 Rev Ed) (the "DT Rules") does not expressly refer to O 7 r 7 of the ROC. The First AR also considered r 26(1) of the DT Rules which states that "the Disciplinary Tribunal shall have power to regulate its own proceedings, and in doing so, the Disciplinary Tribunal shall have regard to the practice and procedure of the courts". This led the First AR to conclude that the Second DT *may* have the power to grant the substituted service orders. Therefore, the First AR's preference was for the Law Society to apply to the Second DT for substituted service orders instead.

14 The Law Society took the view that O 7 r 7(1) of the ROC was worded broadly enough to encompass any situation where "a document is required to be served personally", and this included O 15 r 4 of the ROC which is expressly referenced in r 11 of the DT Rules. Further, the express wording of O 7 r 7(2) of the ROC makes clear that only "the Court" has the power to grant a substituted service order. The First AR was not persuaded and directed the Law Society to write to the Second DT to seek its views. If the Second DT was of the view that only the court could grant the substituted service orders, the Law Society was to re-submit its application to the court.

15 As a result, on 24 February 2023, the Law Society wrote to the Second DT to seek its views on the issue and request for appropriate directions (the

"Law Society's 24 February Letter"). In its letter, the Law Society maintained its position that the substituted service orders could only be granted by the court and indicated its readiness to re-submit its application to the court if necessary.

16 On 26 February 2023, the Second DT responded to the Law Society's 24 February Letter, an extract of which we reproduce here (the "26 February Decision"):

> In *Tan Ng Kuang Nicky (the duly appointed joint and several liquidator of Sembawang Engineers and Constructors Pte Ltd (in compulsory liquidation)) and others v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 … , the Court of Appeal observed at [62] that "the essential duty of the court… is to determine disputes, not to render advice or comment upon hypothetical issues" and at [69] that "in the absence of a live issue the court will decline to hear arguments… in relation to that issue."
>
> … as there is no application before the Disciplinary Tribunal, it is unable to comment or hear arguments on the point.
>
> … there is no live issue before the Disciplinary Tribunal.
>
> … whether the Law Society wishes to re-submit its application to the Court and to make submissions before the Duty Judge are matters for it to decide.

17 On 28 February 2023, the Law Society re-submitted its applications for the substituted service orders to the High Court and was directed by the First AR to file two originating applications, which the Law Society complied with on 6 March 2023.

18 On 9 March 2023, a second assistant registrar (the "Second AR") dismissed the applications for substituted service of the Attendance Orders. This was on the basis that the decision "should properly be made, if at all, by the [Second DT] itself, rather than by the court", as "[s]uch matters would appear to fall within the scope of the [Second DT's] regulation of its own proceedings". The Law Society did not appeal against the Second AR's decision.

19 On 10 March 2023, the Law Society wrote to the Second DT formally applying for substituted service orders. By way of letters on 17 and 18 March 2023, counsel for Mr Manohar, Mr R S Bajwa ("Mr Bajwa"), responded to the application by the Law Society. Mr Bajwa took the position that the Second DT did not have the power to make the substituted service orders and that this power resided with the court. Further, failure to comply with a substituted service order could result in contempt proceedings, therefore the procedural requirements had to be "scrupulously" complied with.

20 On 17 March 2023, the Law Society informed the Second DT by way of a letter that, if Mr Ng did not attend the hearing to give evidence, it intended to apply under s 32(1)(*j*)(ii) of the Evidence Act (Cap 97, 1997 Rev Ed) (the "Evidence Act") for permission to call Senior Investigation Officer Lie Dai Cheng ("SIO Lie") as a witness to attend and give evidence on behalf of the Law Society and admit his AEIC enclosing, among other things, Mr Ng's Contested Statement. SIO Lie had recorded the Contested Statements under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). During the hearing of DT 23, the Second DT heard submissions on the application. However, on the second day of the hearing, the Law Society sought leave to withdraw the application.

21 On 20 March 2023 (three days before the hearing of DT 23), the Second DT dismissed the application for substituted service orders, with brief grounds explaining that it had no power to order that the Attendance Orders be served by substituted service (the "20 March Decision").

The decision of the Second DT

22 The hearing of DT 23 proceeded as scheduled on 23 and 24 March 2023. The Law Society's witnesses comprised the Clients. Mr Ng and Mr Krishna did not give evidence before the Second DT.

23 At the close of the Law Society's case, Mr Bajwa submitted that there was no case to answer in relation to the touting charges. In response, Mr Leong stated that he was not offering any further submissions. It is undisputed that no evidence relevant to the touting charges was adduced before the Second DT. Thus in its report dated 27 April 2023, the Second DT held that "[t]here was no evidence about the alleged payments" from Mr Manohar to Mr Ng "from any of the witnesses who did give evidence". Hence, Mr Manohar had no case to answer in relation to the touting charges.

24 The Second DT allowed the Law Society to withdraw four of the non-communication charges, and Mr Manohar pleaded guilty to the remaining three non-communication charges (the "admitted charges"). Based on the conviction of the admitted charges, the Second DT found that there was no cause of sufficient gravity for disciplinary action against Mr Manohar under s 83 of the LPA and that a financial penalty of $3,000 was "sufficient and appropriate to the misconduct committed" (the "Determination").

25 On 15 May 2023, the Council of the Law Society (the "Council") accepted the Determination on the issue of liability and notified Mr Manohar of it.

HC/OA 541/2023: The AG's review application

26 On 26 May 2023, the AG filed an application, HC/OA 541/2023 ("OA 541"), under s 97 of the LPA for a review of the entirety of the Determination. The AG was of the view that the failure to investigate the AG's touting complaint amounted to an injustice that was contrary to the public interest in properly regulating the legal profession. It prayed that the Determination be set aside under s 97(4)(*b*)(ii) of the LPA and that, pursuant to s 97(4)(*b*)(ii)(B) of the LPA, the Law Society be directed to apply to the Chief Justice for the appointment of another Disciplinary Tribunal to hear and investigate the matter.

27 Among other things, the AG challenged the Second DT's finding in respect of the touting charges and the regularity of the disciplinary proceedings. According to the AG, the Second DT erred when it failed to give its views in its 26 February Decision and direct the Law Society to re-apply for substituted service orders from the High Court. The AG argued that the issue of whether substituted service orders should be obtained from the High Court was not hypothetical. Further, if the Second DT agreed with the Law Society that the court had the power to order the substituted service orders, it should have clearly indicated this, and directed the Law Society to obtain orders for substituted service from the High Court. As a result, the decision of the Second AR (on 9 March 2023) was made without the benefit of the views of the Second DT (which the First AR had directed the Law Society to specifically seek from the Second DT). By the time the Second DT dismissed the Law Society's application for substituted service orders (on 20 March 2023), the hearing of the Second DT was merely three days away, and it was too late for the Law Society to take other steps to serve the Attendance Orders on Mr Ng and Mr Krishna.

This led the Second DT to conclude that Mr Manohar had no case to answer in relation to the touting charges.

28 On the other hand, the Law Society and Mr Bajwa submitted that the Second DT could not have expressed its views in its 26 February Decision because there was no formal application before it. The Law Society further argued that when it eventually applied for substituted service orders from the Second DT, the Second DT acted with expediency and issued its decision within ten days of the application. In any event, even if the Attendance Orders had been served on Mr Ng and Mr Krishna by substituted service, there was nothing to suggest that their attendance would yield useful evidence in support of the touting charges, as they could be uncooperative witnesses.

Decision below

29 The Judge of the High Court (the "Judge") dismissed OA 541 in its entirety and made no order as to costs (*Attorney-General v Shanmugam Manohar and another* [2024] SGHC 28 ("Judgment") at [4]).

30 The Judge held that no irregularity in the proceedings arose from the Second DT's failure to give its views earlier and redirect the Law Society to re-apply for substituted service orders from the court (Judgment at [46]). In brief, her reasoning was as follows:

(a) As a preliminary point, it was the High Court, and not the Second DT, which had the power to deal with the substituted service of the Attendance Orders (see Judgment at [31]–[36]).

(b) The Second DT was under no duty to provide its views or advice to the Law Society, because there was no subsisting application before

it. A Disciplinary Tribunal should not deal with hypothetical issues (Judgment at [39]).

(c) Even if the Second DT erred in failing to give a definitive answer to the Law Society, this did not have a material impact on the course of the disciplinary proceedings and their eventual outcome. The Second DT had pointed out in its 26 February Decision that it was the prerogative of the Law Society to re-submit its applications to the court, and the Law Society did take steps to do so on 28 February 2023 (Judgment at [40]).

(d) The Law Society's conduct was unsatisfactory in that it could have appealed against the decision of the Second AR but did not; it could have applied for a postponement of the hearing before the Second DT or it could have applied for further time to reconsider its position in relation to Mr Ng and Mr Krishna after having dealt with its other witnesses (Judgment at [41]).

(e) The Judge disagreed with the AG's submission that the Second DT had a duty to investigate the matter by ensuring that the necessary evidence was put before it. A Disciplinary Tribunal hears and investigates matters based on the evidence put before it by the parties. Before the hearing, it was not for the Second DT to speculate whether the Law Society had the necessary evidence to proceed with the charges, and to take steps on its own initiative to secure evidence to shore up one party's case. If the Second DT had granted an adjournment on its own motion to facilitate potential evidence being placed before it (without being in the position to know in detail the evidential case of the Law

Society), its actions may have been susceptible to challenge by Mr Manohar on other grounds (Judgment at [43]–[44]).

The parties' arguments on appeal

The AG's case

31 On 18 March 2024, the AG filed CA/CA 18/2024 ("CA 18") to appeal against the Judge's decision that the Second DT did not fail in its duty to hear and investigate the matter against Mr Manohar relating to the alleged practice of touting. The AG sought to set aside the determination of the Second DT on the touting complaint, and to convene a new Disciplinary Tribunal to hear and investigate the touting complaint.

32 The AG submitted that a Disciplinary Tribunal has a statutory duty under ss 89(1) and 93(1) of the LPA to hear and investigate the *complaint* or *matter referred to it*, and not just the *evidence* put before it by the parties. The AG did not contend in this appeal that a Disciplinary Tribunal has a duty to search and gather the necessary evidence on its own motion. Instead, its position was that the Second DT had a statutory duty to hear and investigate the matter, which required it to "properly exercise its case management powers to ensure that the parties [were] given every opportunity to adduce evidence relevant to [its] investigation (especially since [it] was aware that highly relevant evidence was available in this case)". The Second DT failed to do so.

33 The AG argued that the Disciplinary Tribunal's statutory duty is not confined to "*hearing* the matter (like a Court)" but it must also "*investigate*" the matter. Each of the two words, "hearing" and investigate", must be given a separate meaning. It submitted that disciplinary proceedings have both

inquisitorial and adversarial elements, thus a Disciplinary Tribunal cannot play a "purely passive role".

34 In this case, the AG submitted that the Second DT misunderstood the scope of its duty, "reflected in [its] passive stance when it failed to ensure that relevant evidence was adduced". In particular, the Second DT's 26 February Decision was erroneous because: (a) the Law Society's 24 February Letter specifically sought "appropriate directions" from the Second DT and; (b) there was a live issue relating to the case management of the Second DT's own proceedings, *ie*, the appropriate forum to hear an application for substituted service of the Attendance Orders. Further, after its 20 March Decision, the Second DT should have adjourned the hearing, or at least invited parties' submissions on whether an adjournment should be granted, but it failed to do so. Thus, "the disciplinary proceedings concluded with absolutely no evidence adduced and no investigation" in relation to the AG's referral. This was despite the "strong public interest" in having a fresh hearing so that the alleged misconduct could be properly investigated. The disciplinary proceedings before the Second DT were clearly irregular.

35 The AG stressed that the Second DT should have been alive to the difficulty of obtaining voluntary testimony on the alleged offence of touting. The Second DT would have been aware that Mr Ng and Mr Krishna were crucial witnesses in relation to the touting charges. Therefore, the Second DT should have actively exercised its case management powers to allow relevant evidence from Mr Ng and Mr Krishna to be adduced.

Mr Manohar's case

36 In the First Respondent's Case, Mr Manohar's position was that the Disciplinary Tribunal's duty is to hear and investigate the charges, not the AG's complaint, as the "complaint is … subsumed in the charges provided they captured (*sic*) the gravamen of the complaint".

37 It was submitted that being a neutral body, a Disciplinary Tribunal is not obliged to ensure that witnesses attend the hearing. The Disciplinary Tribunal relies on the parties to present the relevant evidence before it at the hearing. It is for the Law Society to consider the ramifications on its case in the event that its witnesses do not give evidence at the hearing. Therefore, there was no illegality or irregularity when the Law Society closed its case without providing any evidence relating to the touting charges.

38 At the hearing before us on 10 October 2024, Mr Bajwa stressed that, in any event, it would be wrong to assume that the Second DT was aware of Mr Ng's and Mr Krishna's evidence. This was because the hearing before the Second DT was "a *de novo* hearing". On this basis, the Second DT was not allowed to take cognisance of any of the matters raised in DT 9, the evidence adduced in the C3J proceedings and the decision in *Shanmugam Manohar C3J* (save for the fact that the matter would be heard afresh before a new Disciplinary Tribunal).

The Law Society's case

39 On appeal, in its Respondent's Case, the Law Society reconsidered its position – it agreed with the AG that a fresh Disciplinary Tribunal ought to be constituted so that the evidence of Mr Ng and Mr Krishna may be taken.

40 However, it adopted a somewhat different characterisation of the role and duties of a Disciplinary Tribunal from the AG. First, the Law Society submitted that, as a general position, the Disciplinary Tribunal's mandate to "hear and investigate" a matter should be determined by and confined to the evidence placed before it by the parties. However, there may be exceptional circumstances where a Disciplinary Tribunal would be expected to do more to properly discharge this duty. The Law Society set out two such situations:

(a) A Disciplinary Tribunal is duty-bound to ensure that its ability to hear and investigate is not frustrated by improperly framed charges.

(b) A Disciplinary Tribunal should ensure that its statutory duty to hear and investigate a matter is not hampered by the non-production of evidence by the parties in the *exceptional* case where a Disciplinary Tribunal has been made aware of the existence of evidence that neither party intends to adduce even though it is demonstrably relevant, material and available for production. Such situations are rare. In such circumstances, the Disciplinary Tribunal should give guidance or directions to the parties for the production of this evidence.

41 Second, the Law Society disagreed with the AG's suggestion that disciplinary proceedings are inquisitorial in nature. According to the Law Society, a Disciplinary Tribunal is, in the main, an adjudicative body, and its proceedings are adversarial in nature.

42 The Law Society contended that, on "the very special facts and circumstances of this case", the Second DT knew enough that it ought to have exercised its case management powers *exceptionally* to guide or direct the Law Society to secure the evidence of Mr Ng and Mr Krishna. In particular, the

Second DT was well aware that: (a) it had been convened for the express purpose of taking the evidence of Mr Ng and Mr Krishna; (b) the Law Society's case on the touting charges rested entirely on the two witnesses' evidence; (c) the Law Society had at all times intended to adduce the evidence of Mr Ng and Mr Krishna; (d) the Law Society had taken extensive steps to secure their evidence; and (e) the last hurdle was obtaining the substituted service orders. If the Second DT had guided or directed the Law Society to apply to the court for substituted service orders and/or adjourned the matter to enable the Law Society to do the same, it would merely be guiding the Law Society to complete what it had all along set out to do.

43 The Law Society submitted that the Second DT should have exercised these case management powers after its 20 March Decision (*ie*, when it dismissed the Law Society's application for substituted service orders); this was the point when the Second DT had cleared the way for the Law Society to apply to the High Court for the substituted service orders. However, the Law Society submitted that, in respect of its failure to give directions or its views in its 26 February Decision, the Second DT was *not* derelict in its duties because there was no live issue before the Second DT and the 26 February Decision had no material impact on the course of the disciplinary proceedings.

Issues to be determined

44 There were a few main issues before us. The first was, as a preliminary matter, whether CA 18 was correctly filed in the Court of Appeal. The second concerned the statutory role of the Disciplinary Tribunal, in particular whether disciplinary proceedings are adversarial or inquisitorial and whether the Disciplinary Tribunal's statutory duty to "investigate" requires it to facilitate

the production of relevant evidence in certain limited circumstances. Another issue was whether, on the facts of this case, the Disciplinary Tribunal failed to discharge its statutory duty to "hear and investigate the matter" by failing to give its view and directions in its 26 February Decision and/or failing to use its case management powers to explore an adjournment of the hearing of DT 23.

Preliminary issue: The appeal was correctly filed in the Court of Appeal

45 During a case management conference on 27 March 2024, Mr Bajwa took the position that the present appeal ought to have been filed at the Appellate Division of the High Court. Conversely, the AG and Law Society both submitted that CA 18 was correctly filed at the Court of Appeal. On 1 April 2024, Mr Bajwa confirmed that the appeal had been correctly filed at the Court of Appeal and that Mr Manohar would not be filing a transfer application. This was the correct position to take. Section 97(4) of the LPA makes clear that the court's power of review under s 97(1) of the LPA extends to *reviewing* the *legality* of the Disciplinary Tribunal's determination. Thus, CA 18 arose from a case relating to administrative law, and the AG was correct to have filed the appeal to the Court of Appeal, pursuant to para 1(*a*) of the Sixth Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed). As all parties were in agreement that CA 18 was correctly brought before the Court of Appeal, we say no more on this issue.

Review in s 97 of the LPA

46 Section 97 of the LPA sets out the powers of a Judge hearing a review application:

Application for review of Disciplinary Tribunal's decision

> **97.**—(1) Where a Disciplinary Tribunal has made a determination under section 93(1)(*a*) or (*b*), the person who made the complaint, the advocate and solicitor or the Council may, within 14 days of being notified of that determination or any order under section 93(2) or (2A), apply to a Judge for a review of that determination or order.
>
> **…**
>
> (4) *The Judge hearing the application —*
>
> (*a*) *shall have full power to determine any question necessary to be determined for the purpose of doing justice in the case, including any question as to the correctness, legality or propriety of the determination or order of the Disciplinary Tribunal, or as to the regularity of any proceedings of the Disciplinary Tribunal; and*
>
> (*b*) *may make such orders as the Judge thinks fit, including —*
>
> …
>
> (ii) *an order setting aside the determination of the Disciplinary Tribunal and directing —*
>
> (A) the Disciplinary Tribunal to rehear and reinvestigate the complaint or matter; or
>
> (B) *the Society to apply to the Chief Justice for the appointment of another Disciplinary Tribunal to hear and investigate the complaint or matter*; or
>
> (iii) such order for the payment of costs as may be just.
>
> [emphasis added]

Section 97 of the LPA involves the Judge's review of the correctness of a decision made by a body constituted under the LPA (*Loh Der Ming Andrew v Koh Tien Hua* [2021] 1 SLR 926 ("*Loh Der Ming Andrew No. 1*") at [23]–[24]). In reviewing a matter, the Judge exercises both supervisory and appellate jurisdiction (*Law Society of Singapore v Yeo Khirn Hai Alvin and another matter* [2020] 4 SLR 858 ("*Alvin Yeo*") at [25]–[26]). In exercising the supervisory jurisdiction, the Judge may consider the "correctness, legality or

propriety" of the determination, which is "directly referable to the traditional grounds of illegality, irrationality and procedural impropriety in judicial review" (*Iskandar bin Rahmat v Law Society of Singapore* [2021] 1 SLR 874 ("*Iskandar*") at [32]). In exercising its appellate jurisdiction, the Judge may also "assess the substantive merits of the findings and determinations of the [Disciplinary Tribunal]" (*Loh Der Ming Andrew v Koh Tien Hua* [2021] 2 SLR 1013 at [34] and [36]).

47 However, while the Judge has "full power to determine any question necessary to be determined for the purpose of doing justice in the case" (s 97(4)(*a*) of the LPA), the Judge is limited in the orders that may be made. In particular, a Judge acting under s 97(1) of the LPA does not have the power to decide on any penalty or even to make recommendations as to any penalty (*Iskandar* at [33]). Instead, upon a review, the Judge may only: (a) direct that an application be made to advance the matter to the C3J; (b) set aside the determination and remit the matter to the same Disciplinary Tribunal; or (c) direct that a new Disciplinary Tribunal hear and investigate the complaint or matter. Similarly, "[i]n an appeal against the Judge's decision, the Court of Appeal is only concerned with the correctness of that decision and cannot exercise the powers reserved to the C3J" (*Loh Der Ming Andrew No. 1* at [24]).

The statutory function and role of the Disciplinary Tribunal

48 The LPA provides that a Disciplinary Tribunal must hear and investigate the matter (see ss 89 and 93 of the LPA). The importance of this statutory duty is underscored by the role of the Disciplinary Tribunal "to carry out a ***thorough finding of fact*** as to whether an advocate and solicitor was guilty of misconduct" [emphasis added in bold italics]: *Wong Keng Leong Rayney v Law*

Society of Singapore [2006] 4 SLR(R) 934 ("*Rayney (HC)*") at [36]). Pursuant to s 93(1) of the LPA, after hearing and investigating any matter referred to it, a Disciplinary Tribunal must record its findings in relation to the facts of the case. It must determine, based on those facts, whether or not cause of sufficient gravity for disciplinary action exists (s 93(1) of the LPA). If it determines that there exists cause of sufficient gravity for disciplinary action, the Law Society must make an application under s 98 of the LPA which will be heard by a court of three Judges in the Supreme Court. Andrew Phang JA (as he then was) in *Law Society of Singapore v Jasmine Gowrimani d/o Daniel* [2010] 3 SLR 390 at [28] explained that "[o]ne main function of the Disciplinary Tribunal is to serve as a 'filter' of sorts, thereby ensuring that only the most serious complaints are referred to the court of three Judges". Thus, central in the role of the Disciplinary Tribunal is to carry out thoroughly, the finding of facts.

49 What does this statutory duty to "hear and investigate" entail? For the reasons that we set out below, we were of the view that, on the facts of the present case, the Disciplinary Tribunal's statutory duty to investigate requires it to exercise its case management powers in a proactive way, which includes facilitating the adduction of evidence in circumstances where: (a) relevant and material evidence to the disciplinary proceedings exists and is available; (b) a party intends to adduce this evidence but faces procedural difficulties doing so; and (c) the Disciplinary Tribunal has notice of (a) and (b).

A statutory duty to "investigate"

50 At the hearing before us on 10 October 2024, Mr Bajwa submitted that the words "hear" and "investigate" are synonymous in meaning. We disagreed. Since a Disciplinary Tribunal has a statutory duty to both "hear and investigate",

each of these two words must be given a separate meaning. It is a "fundamental rule of statutory interpretation that Parliament shuns tautology and does not legislate in vain", thus "it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded": Court of Appeal in *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484 at [43] (the latter a quote from the Malaysian Supreme Court in *Foo Loke Ying v Television Broadcasts Ltd* [1985] 2 MLJ 35 at 43).

51 In *In re An Advocate and Solicitor* [1950] MLJ 113, Thomson J, in addressing the functions of the Disciplinary Committee under the Advocates and Solicitors Ordinance, observed that "[t]he use of the word 'hear' makes it clear that [the Disciplinary Committees] are to act in a judicial sort of way". However, unlike the courts, the Disciplinary Tribunal does not only "hear" but also has a statutory duty to "investigate" the matter as well.

52 The plain meaning of the word "investigate" is "[t]o search or inquire into; to examine (a matter) systematically or in detail" (*The Oxford English Dictionary*, Volume VIII (J. A. Simpson & E.S.C. Weiner eds) (Clarendon Press, 2nd ed, 1989) at p 47). Similarly, an "investigation" is "[t]he activity of trying to find out the truth about something" (*Black's Law Dictionary* (Bryan A. Garner ed) (Thomson Reuters, 11th ed, 2019) at p 989). From these definitions, in the context of the Disciplinary Tribunal's duty, "investigate" suggests at least a more proactive approach to managing a case.

Disciplinary proceedings are adversarial in nature

53 Before going further, it is important to be clear that while the Disciplinary Tribunal has a duty to exercise its powers in a proactive way, it does *not* take on an inquisitorial role, as the disciplinary proceedings are

adversarial in nature. It was observed by Yong Pung How J (as he then was) in *Wong Kok Chin v Singapore Society of Accountants* [1989] 2 SLR(R) 633 ("*Wong Kok Chin*") at [55] that:

> … in trying to discharge its responsibilities effectively, the [Disciplinary] Committee went well beyond its authority to carry out a "due inquiry" under the [Accountants Act (Cap 212, 1970 Rev Ed)], until the inquiry became an inquisition of its own, aimed at securing evidence to justify a finding of guilt.

Such a situation must be avoided.

54 In *Law Society of Singapore v Nathan Edmund* [1998] 2 SLR(R) 905, the High Court comprising a three-Judge coram set out the powers of the Disciplinary Committee and concluded that "[t]he proceedings before the Disciplinary Committee are truly adversarial" (at [17(a)]). In *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 ("*Re Shankar*"), Sundaresh Menon JC (as he then was) reiterated that "our system of justice is founded on an adversarial model rather than an inquisitorial model" (at [107]). It was found in *Re Shankar* at [124] that the Disciplinary Committee had:

> … failed to discharge its judicial function because it assumed an inquisitorial role at a certain point by descending into the arena in such a manner that impaired its judgment and its ability to fairly evaluate and weigh the evidence and the case as a whole.

The exposition of the law on proscribing judicial interference in *Re Shankar* was affirmed by the Court of Appeal in *Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR(R) 1058 at [160].

55 The DT Rules are predicated on an adversarial system of proceedings. The onus is on the parties to furnish the Disciplinary Tribunal with evidence (see r 10), and it is for the parties to put forward their cases as they would in

adversarial court proceedings (see rr 3, 4 and 8). Like court proceedings, which are adversarial in nature, proceedings before a Disciplinary Tribunal must comply with the Evidence Act (see r 23). A Disciplinary Tribunal must also have regard to the practice and procedure of the courts (see r 26).

56 The Disciplinary Tribunal is not the prosecutor. It should not supplement a party's case, descend into the arena or join in the fray (*Wong Kok Chin* at [54]). Like a court, a Disciplinary Tribunal is bound to observe the rules of natural justice. A Disciplinary Tribunal tasked with determining the dispute must be disinterested and independent, and every party to a dispute is entitled to a fair hearing (*Re Shankar* at [42]). To this extent, we agree with the Judge's view that "a Disciplinary Tribunal has to remain impartial, and it must be circumspect about its role in relation to the procurement and presentation of evidence" (Judgment at [44]). The AG was correct in its position that a Disciplinary Tribunal does not have a duty to search and gather the necessary evidence on its own motion. The Disciplinary Tribunal is a neutral and dispassionate finder of facts.

57 Having explained the adversarial nature of disciplinary proceedings, we highlight that there is an important public interest element in these proceedings. We explain below the nature of the Disciplinary Tribunal's duty within these adversarial proceedings, and how adversarial proceedings do not preclude a Disciplinary Tribunal from proactively exercising its case management powers. Procedural difficulties ought not to hinder the Disciplinary Tribunal's discharge of its important statutory duty in the administration of justice.

The statutory duty requires a proactive exercise of the Disciplinary Tribunal's case management powers

58 To fully understand the Disciplinary Tribunal's duty to "investigate", it is important to appreciate its role in the regulation of the conduct of advocates and solicitors. "There is public interest involved" in these disciplinary proceedings: Singapore Parl Debates; Vol 84, Sitting No 18; [26 August 2008] (K Shanmugam, Minister for Law) at col 3245. It has been highlighted by this court in *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 ("*Rayney (CA)*") at [51] that:

> The objective of disciplinary proceedings is to uphold the standards of the profession (here the legal profession) in order to retain public confidence in the honesty, integrity and professionalism of its members. Lawyers are officers of the court and as such must maintain the highest ethical standards in their professional work and conduct. The disciplinary process is part of the statutory framework designed to punish errant lawyers in order to promote this objective.

The Disciplinary Tribunal thus plays a crucial role in upholding the standards of the legal profession and thereby, in the administration of justice.

59 In discharging this role, a central function of the Disciplinary Tribunal is to carry out a thorough finding of fact (see above at [48]). The execution of this essential task should not be hampered by difficulties faced by the parties in presenting relevant evidence that will have a material bearing on its determination. The Disciplinary Tribunal's statutory mandate should not be undermined by parties encountering some procedural issues that can be addressed in case management.

60 A Disciplinary Tribunal has the responsibility to maintain and protect the integrity and efficacy of its proceedings. Where applicable, it ought to use

its powers to give guidance and directions to parties for the production of relevant and material evidence that a party intends to adduce. For example, r 13 of the DT Rules gives a Disciplinary Tribunal the power to, of its own motion or on the application of any party, direct the parties to attend a pre-hearing conference, to make orders or give directions "for the just, expeditious and economical disposal of the matter". Rule 17 of the DT Rules allows a Disciplinary Tribunal to adjourn the Disciplinary Tribunal hearing of its own motion or on the application of any party. Section 167 of the Evidence Act (read with r 23 of the DT Rules) confers very wide powers on a Disciplinary Tribunal to ask any question "in any form at any time, of any witness or of the parties, about any fact" to discover or to obtain proper proof of relevant facts.

61 Our view differed from the Judge's view that a Disciplinary Tribunal only "hears and investigates the matters based on what is 'referred to it', *ie*, *the evidence put before it by the parties*" [emphasis added] (Judgment at [44]). The Judge appeared to suggest that a "matter" referred to a Disciplinary Tribunal under s 93(1) of the LPA simply refers to the evidence put before it by parties – in other words, a Disciplinary Tribunal's duty to investigate is confined to the parties' evidence. In our view, the matter referred to a Disciplinary Tribunal for investigation by the AG is the "information touching upon the conduct of an advocate and solicitor" (s 85(3) read with s 93(1) of the LPA). In *Alvin Yeo*, the High Court explained that the Disciplinary Tribunal has a duty to hear and investigate the *complaint*, and "the expectation must be that the charges reflect the gravamen of the complaint and fall within the scope of the complaint": *Alvin Yeo* at [66]. Therefore, a Disciplinary Tribunal's duty to investigate is not necessarily confined to the parties' evidence put before it.

62 To be clear, the responsibility pertains to the Disciplinary Tribunal's *procedural* control over the matter. On the facts of this case, we found that the Second DT ought to at least have facilitated the adduction of material evidence that the parties wanted to adduce but had difficulties in doing so. By this we were not suggesting that the Disciplinary Tribunal should venture into the substantive issues, and we have said earlier that it does not have a duty to search and gather evidence on its own motion. The active use of case management powers over procedural matters does not, without more, contravene the doctrine proscribing judicial interference and is instead of great assistance towards a just determination of the matter. Menon JC (as he then was) has explained in *Re Shankar* (at [114]):

> I agree that the principle recognised in *Jones* and upheld in *Yap Chwee Khim* must be applied with due consideration for the fact that *in the modern era of complex and often document-intensive litigation, it is not uncommon for judges to take an active part in case management or to intervene as often as they feel they need to in order to understand the issues and the evidence.* Equally, I accept (and indeed my personal approach to conducting hearings reflects this view) that *counsel are often assisted by the court revealing its concerns, its provisional views and its reservations so that the parties have every opportunity to seek to correct or modify them or to persuade the court to come to a different view. In my view, giving counsel the opportunity to peek within the judicial mind considering the case can be a great advantage to counsel and the parties.*
>
> [emphasis added]

63 Outside of disciplinary proceedings, even the civil justice system itself adopts a more robust case management approach today. The *Report of the Civil Justice Review Committee* (26 October 2018) (Chair: Indranee Rajah SC) ("CJRC Report") states that a successful judge-led civil justice system requires judges to be "empowered to manage the case and intervene at any time during the proceedings to give directions on important issues and identify areas where

evidence is lacking" (CJRC Report at para 37(b)). Legitimate judicial intervention includes "[d]irecting parties or witnesses to adduce evidence in support of any relevant issue" (CJRC Report at para 38(e)). The proposals in the CJRC Report eventually found expression in the ROC, which applies to civil proceedings in the Supreme Court and the State Courts. In proceedings in the Family Justice Courts where there is a public interest in protecting the children's welfare, the "judge-led approach" to conducting proceedings was legislated since 2014 (see r 22 of the Family Justice Rules 2014). In the context of disciplinary proceedings, bearing in mind that there is a public interest in regulating the conduct of lawyers and upholding public confidence in the legal profession, a Disciplinary Tribunal discharging its statutory duty ought to exercise its case management powers proactively. The LPA imposes an additional duty on the Disciplinary Tribunal to *investigate* the matter – this gives rigour to the Disciplinary Tribunal's obligation to exercise proactive case management. In the facts before us, we were of the view that a Disciplinary Tribunal ought to exercise its case management powers to facilitate the adduction of relevant evidence which parties intended to adduce but encountered procedural issues in doing so.

64 We observed during the hearing that there were suggestions that the Disciplinary Tribunal's duty to investigate went further in scope. For instance, counsel for the AG, Mr Khoo Boo Jin, suggested that it was the role of a Disciplinary Tribunal to "*ensure*" that all the relevant evidence is placed before it, and that a Disciplinary Tribunal is entitled to query a party's strategic decisions on which witnesses to call to the stand and how it makes its case. The Law Society also submitted that a Disciplinary Tribunal ought to give guidance to parties to produce evidence in circumstances where, among other things, "neither party intends to adduce" the evidence. These issues did not arise in the

context of the present facts. We were of the view that detailed consideration of these suggestions should be reserved to a case where the issues arose squarely for the court's determination.

Application to the facts of the present case

The Second DT did not discharge its statutory duty to hear and investigate the touting charges

65 We found that, in applying the applicable principles we have set out, the Second DT had failed to discharge its statutory duty to hear and investigate the touting charges. On the facts of this case, the Second DT, having the specific knowledge of the Law Society's intention to adduce evidence by calling Mr Ng and Mr Krishna as witnesses, as well as its earlier unsuccessful attempts to serve Attendance Orders on them, ought to have at least facilitated the adduction of such evidence. Its failure to do so meant that there was no evidence at all in respect of the touting charges. The Second DT appeared to have taken a passive stance as if it was a decider of a contest of private rights in adversarial proceedings, when it was in fact carrying out a statutory function over legal disciplinary proceedings which overriding purpose is "to protect the public and uphold public confidence in the legal profession": *Law Society of Singapore v Constance Margreat Paglar* [2021] 4 SLR 382 at [39].

66 Mr Ng's and Mr Krishna's evidence was highly material to the touting charges. Mr Ng was allegedly the willing payee in the touting arrangement. Mr Krishna was a partner in the same firm as Mr Manohar and allegedly had knowledge of the payment arrangement. In fact, Mr Ng and Mr Krishna were the *only* witnesses with relevant evidence on the alleged payments. There was no suggestion that the Clients or anyone else had direct knowledge of the alleged

touting. It also seemed that, had Mr Ng and Mr Krishna been served the Attendance Orders, they would have appeared before the Second DT. Both of them were apparently residing in Singapore and "remained contactable by way of telephone or email". Further, Mr Ng appeared as a witness before the First DT.

67 The Second DT was fully aware that the Law Society's case on the touting charges rested on the evidence from Mr Ng and Mr Krishna. This would have been clear from the previous proceedings. In the background facts of *Shanmugam Manohar DT* at [14], the First DT noted that the Law Society had informed the Attorney-General's Chambers that "without the [Contested Statements], the Law Society would not have the evidence to proceed with the complaint before a disciplinary tribunal". In DT 9, the First DT concluded that the touting charges were proved beyond a reasonable doubt *primarily* by relying on the Contested Statements (which included Mr Ng's and Mr Krishna's statements). This was observed by the C3J in *Shanmugam Manohar C3J* at [19]. The C3J further noted that (*Shanmugam Manohar C3J* at [131]):

> … the DT's determination that the Charges have been proved beyond a reasonable doubt (and that there is cause of sufficient gravity for disciplinary action) cannot stand. This is because that determination was based primarily on evidence which was wrongly admitted. Without the Contested Statements, there is insufficient evidence (in the form of affidavit evidence or oral testimony) from the applicant's witnesses to show that the respondent had (a) paid referral fees to [Mr Ng]; and/or (b) failed to directly communicate with the Clients at the appropriate junctures.

68 The C3J took the view that, had the First DT correctly excluded the Contested Statements, it would in all likelihood have "sought to elicit evidence of [Mr Manohar's] alleged misconduct directly from its witnesses instead" (*Shanmugam Manohar C3J* at [139]). When the C3J held that the matter would

be heard afresh before a new Disciplinary Tribunal, the C3J observed that "[t]he fresh hearing would be conducted on a substantially different footing given that the [Law Society] would likely need to elicit evidence directly from its witnesses as to [Mr Manohar's] alleged misconduct" (*Shanmugam Manohar C3J* at [143]). The Second DT was well aware of these proceedings leading up to DT 23, which made it clear that Mr Ng and Mr Krishna were crucial witnesses in respect of the touting charges.

69 Further, various documents filed in the proceedings of DT 23 expressly identified Mr Ng and Mr Krishna as crucial witnesses having direct knowledge of the facts underlying the touting charges.

(a) First, paragraphs 3–7 of the AG's referral clearly set out Mr Ng's role in relation to the touting matter.

(b) Second, paragraph 2 of the Law Society's Statement of Case filed on 9 November 2022 similarly explained at the outset that:

> [t]he Law Society's case against [Mr Manohar] is consequent on [Mr Ng's] referral of various motor accident claims and clients to [Mr Manohar] and/or [Mr Manohar's] law firm between 2013 and 2016 in return for commission payments …

(c) Third, at paragraph 9 of its opening statement, the Law Society pleaded that it "intends to put forward the following 7 factual witnesses: (a) [Mr Krishna], who was at the material time the other partner of the Firm, (b) [Mr Ng]; and (c) the five Clients".

(d) Fourth, and importantly, at paragraph 23(b) of its application for substituted service orders before the Second DT, the Law Society explained that "Mr Ng and [Mr Krishna] are crucial witnesses. There are

> matters that are solely within their own knowledge and it is important that the [Second DT] consider their evidence in establishing the facts of the present inquiry".

70 In any case, contrary to what the Judge thought (see Judgment at [44]), the Second DT would have been patently aware by the end of the first day of the hearing on 23 March 2023 that only Mr Ng and Mr Krishna would be giving evidence on the touting charges. This was because the five other witnesses for the Law Society, namely, the Clients, would have completed their testimonies and none of them had given any evidence relating to the touting charges.

71 Mr Bajwa's submission was that the Second DT was not allowed to take cognisance of any of the matters raised in DT 9 or in the C3J proceedings (save for the fact that the matter would be heard afresh before a new Disciplinary Tribunal), because the hearing before the Second DT was a *de novo* hearing. We rejected this argument. When a Disciplinary Tribunal hears a matter *de novo*, it is obliged to consider the matter afresh and come to its own conclusions without being bound by previous decisions related to the matter, but it is not constrained to disregard all previous proceedings and decisions related to the matter. As the C3J had stated in *Shanmugam Manohar C3J*, "[t]he new disciplinary tribunal would consider the evidence on its merits and come to its view on that basis" (at [144]).

72 Of note is that, almost from the outset, the Law Society intended to call Mr Ng and Mr Krishna as witnesses. However, it faced considerable difficulty in securing their evidence. The main impediment was the Law Society's failure to secure substituted service of the Attendance Orders, as both the Second DT and the High Court held that they did not have the power to make these orders.

To recapitulate, on 19 January 2023, the Law Society was informed that the hearing of DT 23 had been fixed to begin on 23 March 2023. On 9 February 2023, the Law Society obtained the Attendance Orders. However, as its attempts to effect personal service of the Attendance Orders on Mr Ng and Mr Krishna were unsuccessful, it applied for substituted service orders from the High Court on 22 February 2023. The First AR of the High Court took the view that the Second DT had the power to grant the substituted service orders. He therefore directed the Law Society to write to the Second DT to seek its views. The Law Society did so on 24 February 2023. In its response dated 26 February 2023, the Second DT said that it was "unable to comment" as there was no application before it. On 28 February 2023, the Law Society re-submitted its applications for the substituted service orders to the High Court. On 9 March 2023, the Second AR dismissed the applications for substituted service of the Attendance Orders, being of the view that the Second DT was the proper body to determine whether substituted service should be granted. No appeal was filed against the Second AR's decision. On 10 March 2023, the Law Society returned to the Second DT to apply for substituted service orders. On 20 March 2023, the Second DT dismissed the Law Society's application for substituted orders (see above at [10]–[21]). Thus, three days before the hearing of DT 23, the Law Society was left in a difficult position where both the Second DT and the High Court had held that they did not have the power to order substituted service of the Attendance Orders. The Law Society had essentially gone back and forth between the Second DT and the court yet had no success on obtaining the orders sought. The Law Society's attempts to adduce the evidence of the two crucial witnesses were hindered by these procedural issues.

73 We agreed with the Judge that it was the court, and not the Second DT, which had the power to deal with the substituted service of the Attendance

Orders (see Judgment at [31]–[36]). We also agreed with the Judge's reasoning in support of this conclusion and would only add our observation that the Attendance Orders, which were the subject of the substituted service applications, had been granted by the High Court, not the Second DT.

74 Mr Bajwa submitted that after the Second DT rendered its decision on substituted service, the Law Society could have appealed the decision of the Second AR. Alternatively, during the hearing of DT 23, it was open to the Law Society to apply to adjourn the matter. The Law Society did not embark on either course of action. Instead, on the first day of the hearing on 23 March 2023, the Law Society decided to "draw a line across the sand" and accepted that it would not be offering any evidence on the touting charges. In our view, it must be borne in mind that, by that stage, the Law Society would have been experiencing significant time pressure. In any event, even if the Law Society could have sought an adjournment, this did not reduce the duty of the Second DT in ensuring that the matter was properly investigated. Investigating the matter on the specific facts of the present case would entail facilitating the procedural aspects, namely, facilitating the adduction of evidence which the Law Society had clearly been trying to admit but failed to as a result of the procedural difficulties. We now elaborate on this further.

75 It was significant that the Second DT had full visibility of all the attempts made by the Law Society to secure the attendance of Mr Krishna and Mr Ng, as well as the difficulties that the Law Society had faced in doing so. It was also intimately aware that the only reason the Law Society was unable to adduce their evidence was its inability to obtain the substituted service orders. The Second DT was well-apprised of these facts through the Law Society's 24 February Letter, the Law Society's application to the Second DT for the

substituted service orders, and the hearings. These attempts were also acknowledged by the Second DT in its report dated 27 April 2023. Counsel for the Law Society had written to the Second DT on 15 March 2023, noting that time was running out and highlighting that there would be insufficient time for the Law Society to send the Attendance Orders to Mr Ng and Mr Krishna before the first day of the hearing on 23 March 2023. Therefore, in its letter, the Law Society sought to make amendments to its application for substituted service (*ie*, to post a copy of the Attendance Orders on the front doors of the two witnesses' address instead), and for any "further and/or other orders or directions as [the Second DT] deems fit". In a last-ditch effort, on 17 March 2023, the Law Society informed the Second DT that, if Mr Ng did not attend the hearing to give evidence, it intended to apply for permission to call SIO Lie as a witness to admit his AEIC enclosing Mr Ng's Contested Statement (under s 32(1)(*j*) of the Evidence Act). A supporting affidavit for the intended application was annexed to this letter. Despite these circumstances, the Second DT adopted a passive stance and proceeded with the hearing as scheduled.

76 After the Second DT dismissed the Law Society's applications for substituted service of the Attendance Orders on 20 March 2023, the Second DT should have in the exercise of its case management powers explored the need for time to be afforded to enable the Law Society to address the applications for substituted service orders. This was especially important, given that the Second DT disagreed with the decision of the Second AR. The Second DT could have explored if more time was required for the Law Society to appeal the decision of the Second AR (the Law Society had until 23 March 2023 to appeal the decision of the Second AR); it could have directed the parties to submit on whether an adjournment of the hearing was appropriate in light of the circumstances, or it could have adjourned the hearing and given further case

management directions. Instead, the Second DT took a passive position and explored none of that. We agreed with the Judge that a Disciplinary Tribunal does not have a duty to search and gather the evidence on its own motion (Judgment at [45]). However, on the facts of the present case, it was the Law Society which clearly sought to call Mr Ng and Mr Krishna as witnesses. The Second DT would only be involved in case management over procedural matters and would not be descending into the arena simply by exploring an adjournment of the hearing. By the time the Second DT dismissed the Law Society's applications for substituted service, it was aware that the hearing for DT 23 was in three days, and Mr Krishna and Mr Ng would not give evidence without the substituted service orders as they were reluctant to testify before the Second DT. Their reluctance also added to the importance of serving on them the Attendance Orders to compel them to give crucial evidence which they would otherwise not have provided. Further, this was not a case where their evidence was to supplement other evidence already admitted; without their attendance at the hearing there would be no evidence at all on the touting charges before the Second DT. As a result of the procedural problems, the disciplinary proceedings in DT 23 concluded with absolutely no evidence adduced in relation to the touting charges. This was despite the "strong public interest" in appointing the Second DT to properly investigate Mr Manohar's alleged misconduct (*Shanmugam Manohar C3J* at [141]).

77 In our view, in the factual matrix presented by the present case, the statutory duty to investigate requires a Disciplinary Tribunal to exercise its case management powers to facilitate the adduction of evidence in circumstances where: (a) relevant and material evidence to the disciplinary proceedings exists and is available; (b) a party intends to adduce this evidence but faces difficulties doing so; and (c) the Disciplinary Tribunal has notice of (a) and (b). The element

of public interest in disciplinary proceedings requires the Disciplinary Tribunal to exercise its case management powers in this facilitative manner.

78 In the circumstances, the Second DT failed to discharge its statutory duty to "hear and investigate" the touting charges. Thus, the proceedings of the Second DT were irregular, pursuant to s 97(4)(*a*) of the LPA. We therefore set aside the findings of the Second DT on the touting charges.

The Second DT's 26 February Decision

79 For completeness, we did not think the Second DT erred in making its 26 February Decision. The Judge correctly found that there was no live issue before the Second DT as the Law Society had not filed any application with the Second DT for the substituted service orders. The Second DT "was asked to give an answer, *in vacuo*, as to whether it would have the power to grant an order for substituted service", thus it was "under no duty to provide its views or advice to the Law Society" and "should not have to deal with hypothetical issues" (Judgment at [39]). Further, we disagreed with the AG's suggestion that the Second DT "decided to turn down the High Court's request for assistance". The First AR's directions had been solely directed at the Law Society, who duly complied with them. The Judge rightly found that the 26 February Decision did not have a material impact on the course of the disciplinary proceedings and their eventual outcome (Judgment at [40]). Although the Second DT did not give express directions in its 26 February Decision for the Law Society to re-apply to the High Court for substituted service orders, and merely stated that it was the Law Society's prerogative to do so, the Law Society did, in fact, take these steps two days later. The AG's suggestion that the Second AR would have

made the correct decision if it had the benefit of the Second DT's views was speculative.

A new Disciplinary Tribunal should hear the touting charges

80 The next question was whether Mr Manohar should be acquitted or be required to face a fresh hearing (pursuant to s 97(4)(*b*)(ii)(B) of the LPA).

81 The most significant consideration that militated against a fresh hearing of the touting charges was that Mr Manohar would be subject to disciplinary proceedings before a third Disciplinary Tribunal for the same matter. Mr Manohar submitted that this would be "unjustifiably vexatious, oppressive and … an abuse of process", as this "matter has been hanging over [his] head for almost five … years". We considered the relevant facts and weighed the personal interest of Mr Manohar and the public interest involved in such disciplinary proceedings.

82 In *Rayney (CA)* at [51], the Court of Appeal stressed the importance of retaining public confidence in the honesty, integrity and professionalism of the legal profession, which justified "a higher public interest in disciplining errant lawyers than in letting them off". The remarks of the court in *Law Society of Singapore v Nor'ain bte Abu Bakar and others* [2009] 1 SLR(R) 753 at [46] are a good reminder that:

> … advocates and solicitors should be held to a higher standard of conduct than others who have not been accorded the privileges that advocates and solicitors have under the law and whose professional ethos requires them to act honestly and with utmost integrity in their vocation, especially as counsel before the court. …

83 We noted the observations of the C3J in *Shanmugam Manohar C3J* that "[t]he alleged professional misconduct here is serious" (*Shanmugam Manohar C3J* at [140]) – touting has been regarded by the courts as a serious ethical breach (*Shanmugam Manohar v Attorney-General and another* [2021] 3 SLR 600 at [90]), and if proved, it "could attract the punishment of disbarment" (*Re Ong Tiang Choon* [1977-1978] SLR(R) 291 at [21]). Rajah J (as he then was), had strong words for the consequences of such violations of professional rules on the legal profession as a whole (*Rayney (HC)* at [84]–[85]):

> 84 … ethical rules only delineate minimal standards and duties which solicitors must observe. There is much left unsaid that must be implicitly understood and observed with intelligent flexibility. Unstinting compliance with all ethical rules and practices is in the enlightened self-interest of the profession. *Without such observance and effective enforcement of ethical rules, the glue that binds and distinguishes advocates and solicitors as professionals as opposed to merely self-serving businessmen will soon dissolve. A solicitor is most certainly not merely a businessman or client proxy. He is an officer of the court charged with the unique responsibility of upholding the legal system and the quality of justice*; …
>
> 85 A failure by significant numbers of the legal profession to abide by and observe these ethical standards would eventually drive the entire profession down the slippery slope of ignominy. Systemic ethical corruption will fray and ultimately destroy the moral fibre of the profession. *In a race to the bottom, legal practices will expend more and more valuable time and resources competing with and out-foxing each other for business rather than focusing their efforts on effectively delivering premier services to clients and appropriately discharging their wider obligations to the community. While legal practices are necessarily run as profit-making businesses, this does not, and cannot, mean that ethical constraints should be perceived as inconveniences to be either accepted and ignored at will. Solicitors who take their obligations and roles seriously should not be disadvantaged by the less scrupulous who do not.*
>
> [emphasis added]

84 We also noted that, before the First DT and the Second DT, Mr Manohar failed to proffer any alternative version of events in his defence. He was content

to put the Law Society to strict proof of the touting charges. During the hearing of DT 23, Mr Manohar simply submitted that there was no case to answer in relation to the touting charges.

85 In these circumstances, there was clearly a strong public interest in having a fresh hearing so that Mr Manohar's alleged misconduct can be properly investigated. It was noted in *Shanmugam Manohar C3J* at [142] that it was not the case that important evidence which had been originally in existence or available to Mr Manohar was no longer in existence or available in a fresh Disciplinary Tribunal hearing. In this sense, Mr Manohar would not suffer any undue prejudice if a fresh Disciplinary Tribunal hearing was ordered. We add a note that throughout the proceedings, Mr Manohar was not prevented from practising as an advocate and solicitor. We were of the view that a fresh Disciplinary Tribunal should be constituted to hear and investigate those charges.

Conclusion

86 We allowed the appeal. We were satisfied that the Second DT had failed to discharge its statutory duty to hear and investigate the touting charges. We thus set aside the findings of the Second DT on the touting charges and ordered the Law Society to apply to the Chief Justice for the appointment of another Disciplinary Tribunal to hear and investigate the matter.

87 As for costs, the AG submitted that, if CA 18 is allowed, it should be awarded $30,000 in costs plus disbursements estimated at $8,000 from the Law Society and/or Mr Manohar. In so far as the respondents have resisted the appeal which is in the public interest, they should compensate the public purse for the costs of dealing with their misconceived resistance. The Law Society submitted

that if the appeal should succeed, costs and disbursements should be ordered against Mr Manohar.

88 In the present circumstances, we were of the view that there should be no order as to costs. The Law Society did not act in bad faith nor was it guilty of gross dereliction; it should not be made to pay costs when it was performing its regulatory functions (*Law Society of Singapore v Top Ten Entertainment Pte Ltd* [2011] 2 SLR 1279 at [24]).

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Debbie Ong Siew Ling
Judge of the Appellate Division

Khoo Boo Jin, Ms Shi Pei-Yi Sarah, Ms Ho Jiayun and Chng Luey Chi (Attorney-General's Chambers) for the appellant;
Ragbir Singh s/o Ram Singh Bajwa (Bajwa & Co) and Spencer Chew (Global Law Alliance LLC) for the first respondent;
Abraham Vergis SC, Axl Rizqy (Providence Law Asia LLC) (instructed), Darrell Low Kim Boon, Ms Ng Rui Wen and Ms Petrina Tan Heng Kiat (Bih Li & Lee LLP) for the second respondent.