

Navigating the Disciplinary Tribunal's duty to "hear and investigate" a matter
Attorney-General v Shanmugam Manohar and another
[2025] 1 SLR 189; [2025] SGCA 2

I. Executive Summary

The Legal Profession Act (Cap 161, 2009 Rev Ed) (the "**LPA**") consists of rules that regulate the professional conduct of legal practitioners and law practices. Under section 85(3) of the LPA, the Attorney-General (the "**AG**") may at any time refer to the Law Society any information touching upon the conduct of an advocate and solicitor, and request that the matter be referred to a Disciplinary Tribunal. Under the LPA, the role of the Disciplinary Tribunal is to "hear and investigate" the matter. In *Attorney-General v Shanmugam Manohar and another* [2025] 1 SLR 189, the Court of Appeal (the "**CA**") considered the precise scope of the Disciplinary Tribunal's duty to "investigate".

In the disciplinary proceedings before the Disciplinary Tribunal, the Law Society faced several procedural difficulties in securing the attendance of two key witnesses to its case. As a result, the disciplinary proceedings concluded with no evidence adduced (i.e. produced) in relation to some of the charges brought by the Law Society. Thus, the Disciplinary Tribunal held that there was no case to answer in relation to those charges. The AG subsequently filed a review application challenging the regularity of the disciplinary proceedings and alleging that, by not ensuring that parties were given every opportunity to adduce relevant evidence, the Disciplinary Tribunal had failed in its duty to hear and investigate the matter. The matter then made its way through the courts.

On appeal, the CA held that 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). The CA clarified that the responsibility pertains to the Disciplinary Tribunal's procedural control over the matter and does not require the Disciplinary Tribunal to venture into substantive issues (for instance, a Disciplinary Tribunal does not have a duty to search and gather evidence on its own motion).

II. Material Facts

The first respondent was Mr Shanmugam Manohar ("**Mr Manohar**"), a partner of M/s K Krishna & Partners (the "**Firm**"). In the course of investigations undertaken by the Commercial Affairs Department ("**CAD**") against one Mr Ng Kin Kok ("**Mr Ng**") for motor insurance fraud, Mr Manohar was discovered to have rewarded Mr Ng for referrals of clients to the Firm. Touting for business is a breach of rule 39 of the Legal Profession (Professional Conduct) Rules 2015. Therefore, in July 2018, the AG made a referral against Mr Manohar to the Law Society and requested for the matter to be referred to a Disciplinary Tribunal.

In 2019, the Law Society brought disciplinary charges against Mr Manohar. The appointed Disciplinary Tribunal (the "**First DT**") found that all the disciplinary charges were proved beyond a reasonable doubt and held that there was cause of sufficient gravity for disciplinary action. The Law Society then filed an application to the Court of Three Judges of the Supreme Court (the "**C3J**") for Mr Manohar to be sanctioned under section 83(1) of the LPA. The C3J set aside the decision of the First DT on the basis that there was incorrect admission of certain evidence. The evidence in question comprised statements taken in the course of the criminal

investigations by CAD. The C3J held that due to section 259 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), the statements were inadmissible as evidence in all proceedings, including disciplinary proceedings. Without those statements, there was insufficient evidence from the Law Society's witnesses to prove the charges. Therefore, the C3J directed that an application be made for the appointment of a fresh Disciplinary Tribunal to hear and investigate the complaint against Mr Manohar for a second time.

In 2022, a second Disciplinary Tribunal was appointed (the "**Second DT**"). Instead of relying on the inadmissible statements, the Law Society intended to lead evidence directly from the witnesses, and hence obtained orders for Mr Ng and a partner of the Firm, Mr Krishnamoorthi s/o Kolanthaveloo ("**Mr Krishna**"), to attend court (the "**Attendance Orders**"). Following multiple unsuccessful attempts to effect personal service of the Attendance Orders on Mr Ng and Mr Krishna, the Law Society applied for substituted service orders from the General Division of High Court (the "**HC**").

The first assistant registrar hearing the substituted service applications (the "**First AR**") took the view that the Second DT may have the power to grant the substituted service orders, and directed the Law Society to write to the Second DT to seek its views. The Law Society duly did so by way of letter to the Second DT. In its response, the Second DT stated that it was "unable to comment" on the matter as there was no application before it. Thereafter, the Law Society resubmitted its applications for the substituted service orders to the HC which was dismissed by a second assistant registrar who heard the applications (the "**Second AR**"). The Second AR considered that the Second DT was the proper body to determine whether the substituted service orders should be granted. Accordingly, the Law Society formally applied to the Second DT for the substituted service orders. This was, however, dismissed by the Second DT three days before the substantive hearing for the disciplinary proceedings, on the grounds that it had no power to grant the orders.

As Mr Ng and Mr Krishna did not give evidence before the Second DT, no evidence in relation to five of the 12 charges brought by the Law Society (the "**Touting Charges**") was adduced, and the Second DT held that Mr Manohar had no case to answer in relation to these charges. The remaining seven charges concerned Mr Manohar's failure to directly communicate with his clients involved in motor accidents. Based on these other charges which Mr Manohar pleaded guilty to and was convicted of, the Second DT found that there was no cause of sufficient gravity for disciplinary action against Mr Manohar, but ordered that he pay a financial penalty of \$3,000. The AG filed an application to the HC for a review of the determination by the Second DT. The HC dismissed the application and held that there was no irregularity in the proceedings before the Second DT. The HC 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. The AG then appealed to the CA, seeking to set aside the Second DT's determination in relation to the Touting Charges, and to convene a fresh Disciplinary Tribunal to hear and investigate the Touting Charges for a third time.

III. Issues

The CA dealt with the following main issues on appeal:

- A. The statutory role of the Disciplinary Tribunal, in particular:
 - (i) whether disciplinary proceedings before the Disciplinary Tribunal are adversarial or inquisitorial; and

- (ii) whether the Disciplinary Tribunal's statutory duty to "investigate" requires it to facilitate production of relevant evidence in certain limited circumstances.
- B. Whether the Second DT failed to discharge its statutory duty to "hear and investigate" the matter.
- C. If the above was answered in the affirmative, whether Mr Manohar should be acquitted or be required to face a fresh hearing (pursuant to section 97(4)(b)(ii)(B) of the LPA).

A. *The statutory role of the Disciplinary Tribunal*

The CA first noted that a Disciplinary Tribunal's statutory duty under sections 89 and 93 of the LPA to hear and investigate a matter is underscored by its role in carrying out a thorough finding of fact as to whether an advocate and solicitor was guilty of misconduct. 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. If it determines that there exists cause of sufficient gravity for disciplinary action, the Law Society must make an application under section 98 of the LPA which will be heard by the C3J. The Disciplinary Tribunal serves as a "filter" of sorts, thereby ensuring that only the most serious complaints are referred to the C3J. Thus, central in the role of the Disciplinary Tribunal is to carry out thoroughly, the finding of facts.

(i) Whether disciplinary proceedings before the Disciplinary Tribunal are adversarial or inquisitorial

Generally, in adversarial proceedings, the onus is on the disputing parties to put forward their cases while the decision-maker merely adjudicates on the dispute. Conversely, in inquisitorial proceedings, the decision-maker generally takes on an active role in investigating the matter.

The CA clarified that while the Disciplinary Tribunal has a duty to exercise its case management powers in a proactive way, it does not take on an inquisitorial role; instead, disciplinary proceedings before it are adversarial in nature. Similar to how Singapore's judicial system is founded on an adversarial model, the Legal Profession (Disciplinary Tribunal) Rules (Cap 161, R 2, 2010 Rev Ed) which govern disciplinary proceedings before the Disciplinary Tribunal are predicated on an adversarial system of proceedings. The onus is on the parties to furnish the Disciplinary Tribunal with evidence, and it is for the parties to put forward their cases as they would in adversarial court proceedings. Like court proceedings, proceedings before a Disciplinary Tribunal must comply with the Evidence Act. A Disciplinary Tribunal must also have regard to the practice and procedure of the courts.

The CA emphasised that a Disciplinary Tribunal must remain impartial and be circumspect about its role in relation to the procurement and presentation of evidence. 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.

At the same time, the CA clarified that the adversarial nature of the proceedings does not preclude a Disciplinary Tribunal from proactively exercising its case management powers. This is because of the important public interest element in these proceedings and the important statutory duty of the Disciplinary Tribunal in upholding the standards of the legal profession and the administration of justice. The alleged misconduct of legal professionals ought to be properly investigated to uphold the standards of 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.

(ii) Whether the Disciplinary Tribunal's statutory duty to "investigate" requires it to facilitate production of relevant evidence in certain limited circumstances

The CA stated that the Disciplinary Tribunal's duty to "investigate" can only be fully understood against the backdrop of its role and function. The Disciplinary Tribunal plays an important role in upholding the standards of the legal profession and thereby, in the administration of justice. In discharging this role of regulating the legal profession, the primary function of the Disciplinary Tribunal is "to carry out a thorough finding of fact as to whether an advocate and solicitor was guilty of misconduct". This fact-finding task should not be hindered by difficulties faced by parties in presenting relevant evidence that are material to the final determination. A Disciplinary Tribunal must maintain and protect the integrity and efficacy of its proceedings, and ought to use its powers to give guidance and directions to parties for the production of relevant and material evidence intended by the parties to be adduced.

The CA also considered that the definition of "matter" in section 93(1) of the LPA went further than the evidence put before the court by the parties (as the HC had suggested). Section 93(1) contemplates that a Disciplinary Tribunal "hear[s] and investigat[es] any matter referred to it". In the context of a complaint brought by the AG, the CA held that the "matter" referred to the Disciplinary Tribunal is the information touching upon the conduct of an advocate and solicitor. 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." Therefore, a Disciplinary Tribunal's duty to "investigate" is not necessarily confined to the parties' evidence put before it.

The CA held that 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. In this case, the Disciplinary Tribunal ought to have exercised its case management powers to facilitate the adduction of relevant evidence which parties intended to adduce but encountered procedural issues in doing so.

B. Whether the Second DT failed to discharge its statutory duty to "hear and investigate" the matter

Based on the above principles, the CA found that the Second DT had failed to discharge its statutory duty to hear and investigate the Touting Charges. The Second DT had specific knowledge of the Law Society's intention to adduce evidence by calling Mr Ng and Mr Krishna as witnesses and its earlier unsuccessful attempts to serve the Attendance Orders on them. However, the Second DT adopted a passive stance and failed to exercise its case management powers to facilitate the adduction of evidence the Law Society had intended to rely on. As a result, there was no evidence at all in relation to the Touting Charges.

The CA noted that Mr Ng's and Mr Krishna's evidence was highly material to the Touting Charges and that the Second DT was completely aware that the Law Society's case on the Touting Charges rested on their evidence. In fact, the Law Society intended to call Mr Ng and

Mr Krishna as witnesses almost from the outset. The major obstacle was its failure to obtain substituted service of the Attendance Orders since both the Second DT and the HC had held that they did not have the power to make these orders.

Furthermore, the Second DT had full visibility of all the unsuccessful attempts made by the Law Society to secure the attendance of Mr Ng and Mr Krishna. The Second DT was intimately aware that the Law Society's failure to adduce the relevant evidence was caused by its inability to obtain the substituted service orders.

In these circumstances, the Second DT could have explored if more time was required for the Law Society to appeal the decision of the Second AR, or directed the parties to submit on whether an adjournment of the hearing was appropriate in light of the circumstances, or adjourned the hearing and given further case management directions. By failing to take any action in exercise of its case management powers, the Second DT failed to discharge its statutory duty to "hear and investigate" the Touting Charges. As a result, the proceedings of the Second DT were found to be irregular pursuant to section 97(4)(a) of the LPA and its findings on the Touting Charges were set aside.

C. Whether Mr Manohar should be acquitted or be required to face a fresh hearing

Subsequently, the CA considered whether Mr Manohar should be acquitted or be required to face a fresh hearing. The CA weighed the personal interest of Mr Manohar in not having a fresh hearing and the public interest involved in such disciplinary proceedings. On the one hand, a fresh hearing would subject Mr Manohar to disciplinary proceedings for a third time. On the other hand, the alleged misconduct of touting has been regarded by the courts as a serious ethical breach which could lead to disbarment if proved, and there was thus a strong public interest in having the matter properly investigated.

The CA noted that Mr Manohar had failed to present any alternative version of events in his defence before the First DT and the Second DT, and it was not the case that important evidence originally in existence or available was no longer in existence or available in a fresh Disciplinary Tribunal hearing. In these circumstances, Mr Manohar would not suffer undue prejudice if a fresh hearing was ordered. Therefore, the CA concluded that a fresh Disciplinary Tribunal should be constituted to hear and investigate the Touting Charges.

IV. Conclusion

The CA allowed the appeal against the HC's decision, finding that the Second DT had failed to discharge its statutory duty to "hear and investigate" the Touting Charges. The Second DT's findings on the Touting Charges were set aside and the Law Society was directed to apply to the Chief Justice for the appointment of a fresh Disciplinary Tribunal to hear and investigate the matter.

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