Redress for Legal Misconduct:
***Iskandar bin Rahmat v Law Society of Singapore* [2021] 1 SLR 874**

I. Executive Summary

In *Iskandar bin Rahmat v Law Society of Singapore* [2021] 1 SLR 874, Iskandar bin Rahmat ("**Iskandar**") appealed against the High Court ("**HC**") decision to dismiss his application for a formal investigation into the conduct of his trial lawyers by a Disciplinary Tribunal ("**DT**").

Iskandar had (in 2015) been convicted on two charges of murder under section 300(*a*) of the Penal Code (Cap 224, 2008 Rev Ed), and sentenced to death. At his trial for murder, Iskandar was represented by six counsel appointed for his defence pursuant to the Legal Assistance Scheme for Capital Offences. After his trial, Iskandar filed a complaint with the Law Society against his trial counsel, alleging that they failed to comply with his instructions in conducting his defence. The Council of the Law Society ("**the Council**"), which manages the affairs of the Law Society, accepted the Inquiry Committee's unanimous recommendation that no formal investigation by a DT was necessary and that the complaint should be dismissed.

Determined for the complaint to be advanced to a DT, Iskandar then applied to the HC, under section 96 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("**LPA**"), to review the Council's determination and order the appointment of a DT. Section 96 falls under Part VII of the LPA, which sets out the framework for dealing with complaints against legal practitioners. However, the HC affirmed the Inquiry Committee's findings that there was no ethical breach or misconduct by the six counsel, and dismissed Iskandar's application.

Iskandar then appealed against the HC's decision to the Court of Appeal ("**CA**"). The Law Society, however, argued that the CA had no jurisdiction (i.e. authority to hear and determine a dispute brought before it) to hear this appeal, as it was an appeal against a decision of a judge in *disciplinary* proceedings under the LPA and was thus outside of the court's *civil* jurisdiction.

The CA disagreed with the Law Society, holding that the CA indeed had the jurisdiction to hear an appeal against a decision of the HC concerning section 96 of the LPA. In doing so, the CA clarified that: (a) a judge hearing an application under Part VII of the LPA is indeed a "Judge" of the HC; and (b) the "disciplinary jurisdiction" of the court remains part of the civil jurisdiction of the court, and is not considered a separate body of law.

As part of this judgment, the CA discussed (and disagreed with) aspects of its earlier decisions in *Law Society of Singapore v Top Ten Entertainment Pte Ltd* [2011] 2 SLR 1279 ("***Top Ten Entertainment***") and *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 ("***Re Nalpon Zero***"), concerning the interpretation of Part VII of the LPA. The CA further noted that Part VII of the LPA was not a model of clarity and consistency, and that legislative reform in this area would be welcome.

II. Material facts

A. Disciplinary Process for Lawyer Misconduct

Part VII of the LPA sets out a framework where complaints regarding the conduct of lawyers are escalated through various bodies, before they may culminate in proceedings before the C3J.[1]

There are four main bodies for the review of complaints regarding lawyer misconduct: the *Review Committee*, the *Inquiry Committee*, the *DT*, and the *Court of 3 Judges* ("**C3J**"). The disciplinary

[1] Complaints against Legal Service Officers (e.g. Deputy Public Prosecutors), non-practising solicitors and regulated non-practitioners (e.g. in-house counsels) are dealt with through a separate though somewhat similar process, under sections 82A and 82B of the LPA.

process is broadly as follows: when a complaint against a lawyer is made to the Council, the Chairman of the Inquiry Panel ("**the Chairman**") will constitute a Review Committee to review the complaint. If the complaint is frivolous, vexatious, misconceived or lacking in substance, the Review Committee may direct the Council to dismiss the complaint. Otherwise, it may refer it back to the Chairman, who will then constitute an Inquiry Committee to inquire into the complaint.

The Inquiry Committee will report its findings and recommendations to the Council, who decides (among other things) whether a formal investigation is necessary. If it does so determine, it will apply to the Chief Justice to appoint a DT to hear and investigate the matter. If the DT finds that there has been cause of sufficient gravity for disciplinary action to be taken against the lawyer, the Law Society will make an application to the C3J for an order that the lawyer be struck off the roll, suspended, ordered to pay a fine or censured.

Where the Council has determined that a formal investigation is not necessary, or that no sufficient cause for a formal investigation exists, under section 96 of the LPA the complainant may apply to "a Judge" for an order directing the Law Society to apply to the Chief Justice for the appointment of a DT. If the DT determines that no cause of sufficient gravity for disciplinary action exists or that no cause of sufficient gravity exists but the lawyer should be reprimanded or ordered to pay a penalty, then under section 97 of the LPA the complainant may apply to a judge for review of that determination.

In short: where any of these bodies declines to refer the case to the next stage, an aggrieved complainant may apply for that decision to be reviewed by a judge.

B. Background

In 2015, Iskandar's counsel represented him at trial on charges of murder. Iskandar was convicted on both charges and sentenced to death in December 2015. His appeal was dismissed and his conviction and sentence were upheld in February 2017. In February 2018, Iskandar raised allegations with the Law Society against his trial lawyers for allegedly failing to comply with his instructions in conducting his defence. His case eventually appeared before the CA, as explained above.

III. Issues on Appeal

The only issue before the CA was whether it had jurisdiction to hear an appeal against a decision of "a Judge" made pursuant to section 96 of the LPA.[2] The CA based its decision in part on section 29A(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("**SCJA**"), which states that the CA has the authority to hear "any appeal from any judgment or order of the High Court in any civil cause or matter".

The CA held that under section 29A(1), it indeed had jurisdiction to hear Iskandar's appeal, because the two threshold requirements were met: the decision on appeal was (a) a decision of the HC, and (b) made in the exercise of the HC's original or appellate civil jurisdiction.

A. Decision Appealed Against Has to Be a Decision of the High Court

In the previous case of *Top Ten Entertainment*, the *Top Ten Entertainment* court had noted that the HC's jurisdiction was set out in sections 16 and 17 of the SCJA. Section 16(1) of the SCJA states that

[2] Sections 95 to 97 of the LPA provide avenues for parties to apply to a HC Judge to review the disciplinary decisions with which they are dissatisfied. Section 95 allows a legal practitioner to apply to the HC to review the Council's orders under section 88(1) or section 94(3)(*a)* for the legal practitioner to pay a penalty. Section 96 allows a complainant dissatisfied with the determinations of the Council to apply to a HC Judge to review said determinations. Finally, section 97 allows either the legal practitioner or the complainant to apply to a HC Judge to review the DT's determination pursuant to section 93(1)(*a*) or section 93(1)(*b*).

the HC has jurisdiction to "hear and try any action in personam where the defendant is served" in accordance with the "Rules of Court or Family Justice Rules",[3] or where "[t]he defendant submits to the jurisdiction of the High Court". Section 16(2) further states that "the High Court shall have such jurisdiction as is vested in it by any other written law." Section 17 of the SCJA lists the specific areas of law that the HC has jurisdiction over, such as bankruptcy or matrimonial proceedings.

The *Top Ten Entertainment* court had observed that section 16(1) discusses the HC's jurisdiction with respect to "in personam actions" and that an *in personam* action did not include disciplinary actions. Further, it noted that sections 16 and 17 did not refer to disciplinary proceedings. As such, it concluded that the HC's *civil* jurisdiction (provided under sections 16 and 17) did not include jurisdiction over *disciplinary* matters under Part VII of the LPA, and therefore the CA also had no such jurisdiction.

The *Top Ten Entertainment* court also noted that there was no express provision for an appeal from the decision of a judge under sections 95 to 97 of the LPA (provisions detailing the disciplinary process), and that the relevant definition of a "Judge" was "a Judge of the High Court and [including] any person appointed to exercise the powers of a "Judge" at that time. As such, the *Top Ten Entertainment* court concluded that a judge exercising powers under sections 95 to 97 of the LPA was also not doing so as a Judge of the HC exercising its *civil* jurisdiction under sections 16 and 17 of the SCJA, but rather as a Judge of the HC exercising *disciplinary* jurisdiction. Thus those decisions did not fall within the CA's appellate jurisdiction (under section 29A(1) of the SCJA).

However, the CA here noted that the *Top Ten Entertainment* court's observations on jurisdiction were merely *obiter dicta* (i.e. a court's opinion on the law which was not essential to the underlying decision of the court, and thus not binding on future courts). The main issue in *Top Ten Entertainment* actually concerned the costs of proceedings, rather than issues of jurisdiction or public interest in investigating the conduct of a solicitor. Further, the latter two issues were not fully argued by the parties or fully considered by the court in *Top Ten Entertainment*. As such, the CA here was not obliged to follow *Top Ten Entertainment*.

Instead, the CA affirmed the three indicia identified in *Re Nalpon Zero* to determine whether the decision being appealed against was a decision of the HC: the language used in the statute, the specific incorporation of the ROC, and the type of jurisdiction exercised.

(i) Language Used in the Statute

The CA noted that sections 95 to 97 of the LPA provided that an application shall be made to a "Judge". A "Judge" is defined in section 2 of the LPA as "a Judge of the High Court sitting in chambers." The CA thus held that the plain meaning of the definition of "court" in section 2 would be: a hearing before the HC.

In doing so, it rejected the *Top Ten Entertainment* court's refusal to use the definition of a "Judge" under section 2 of the LPA. The *Top Ten Entertainment* court had considered that the definition of a "Judge" under section 2 of the LPA, which specifically referred to "a Judge of the High Court sitting in chambers", was unsuitable for a section 96 LPA application. This was because such an application did not need to be heard in chambers. Instead, the *Top Ten Entertainment* court used the definition found in section 2 of the Interpretation Act (Cap 1, 2002 Rev Ed) and section 2 of the SCJA, both of which defined "Judge" as a "Judge of the High Court and [including] any person appointed to exercise the powers of a Judge" at that time.

However, the CA here stated that it was unclear why the definition under section 2 of the LPA was

[3] These refer to the Rules of Court (Cap 322, 2014 Rev Ed) ("**ROC**") and Family Justice Rules 2014 (Family Justice Act 2014) Act 27 of 2014, respectively.

unsuitable. It was implausible that Parliament: (a) would have contemplated the notion of a Judge of the HC exercising its powers under Part VII of the LPA, not as a Judge of the HC but in some other capacity, without making some provision for such an interpretation, or (b) including a definition of a judge as a "Judge of the High Court sitting in chambers" in the LPA itself but contemplating that that such definition would *not* apply to Part VII.

The CA here further noted that it was meaningless to speak of a judge acting other than in the exercise of the jurisdiction of a court, and in some other disciplinary capacity, simply because the judge was described as "sitting in chambers". This term was merely to be contrasted with the notion of a judge sitting in *open court*. There was no basis for construing such a reference to a judge as one acting in any capacity other than as a Judge of the HC.

(ii) Specific Incorporation of the Rules of Court

In the prior case of *Re Nalpon Zero*, the *Re Nalpon Zero* court noted that there were provisions in Part VII of the LPA that specifically stated that the ROC should apply. It thus inferred that this meant that those proceedings were not heard by the HC, and therefore proceedings under the entirety of Part VII were not to be heard by the HC. However, the CA here disagreed with this position.

The CA noted that the ROC had to be specifically incorporated into the sections regarding proceedings before the DT, the C3J and the Chief Justice (referring to sections 91, 98 and 82A of the LPA, respectively). However, the ROC were not specifically incorporated into proceedings before a judge under sections 95 to 97 of the LPA. This suggested that the ROC applied there without needing any express or special provision, because those were properly to be understood as proceedings before the court.

It thus followed that the decisions of a judge pursuant to sections 95 to 97 of the LPA were decisions of a Judge of the HC. Otherwise, if such a judge were sitting in a unique capacity under the LPA and not as a HC Judge, then it was unclear what the source and extent of the powers of such a judge would be, outside Part VII of the LPA.

(iii) Type of jurisdiction exercised

The CA discussed this indicium together with the second threshold requirement (below), as they were inextricably linked.

B. HC Had to Have Been Exercising Either Its Original or Appellate Civil Jurisdiction

The second requirement was that the decision on appeal had to have been made in the HC's exercise of *civil* jurisdiction. The CA held that this requirement had been met. In doing so, it rejected the *Top Ten Entertainment* court's holding that a judge exercising its jurisdiction under sections 95 to 97 of the LPA would be exercising its *disciplinary* jurisdiction, and the *Re Nalpon Zero* court's subsequent holding that *disciplinary* jurisdiction was a unique jurisdiction which was distinct from the court's civil or criminal jurisdiction.

The CA held that the term "disciplinary jurisdiction" simply described the body of law in question, in the same way that one might speak of the *family* jurisdiction, *admiralty* jurisdiction, *contempt* jurisdiction, or *arbitration* jurisdiction of the court. It described an aspect of the court's jurisdiction that nonetheless fell within the civil jurisdiction of the HC. Here, this civil jurisdiction was provided under section 16(2) of the SCJA.[4]

Section 16(2) of the SCJA states "the High Court shall have such jurisdiction as is vested in it by any

[4] In this regard, while the CA agreed with the *Top Ten Entertainment* court that section 16(1) of the SCJA would not provide the court with jurisdiction for hearing disciplinary proceedings, the CA noted that section 16(2) nonetheless gave the court such jurisdiction.

other written law". This was a broad-based provision that has been interpreted widely. For instance, it includes the jurisdiction to deal with applications under the Patents Act (Cap 221, 2005 Rev Ed) and to wind up a foreign company.

Given that a "Judge" hearing an application under sections 95 to 97 of the LPA is a Judge of the HC, then those same provisions vest the HC with disciplinary jurisdiction. Pursuant to section 16(2), that jurisdiction would fall within the court's civil jurisdiction. The court noted that there was no reason for thinking that section 16(2) would not apply in this context. As such, there was no need to find an express provision conferring a right of appeal, and the CA would have appellate jurisdiction pursuant to s 29A(1)(*a*) of the SCJA.

The CA noted that such an interpretation of the term "disciplinary jurisdiction" was not inconsistent with the fact that other provisions in Part VII of the LPA contain references to other committees, tribunals or courts, such as the Inquiry Committee, the DT, and the C3J, each of which have the powers and jurisdiction vested in them. Those bodies would not be part of the HC, but there was no reason to think that both those entities and the HC could not co-exist within Part VII of the LPA.

The CA further noted that under section 3 of the SCJA, the HC exercised "civil and criminal jurisdiction". When the HC was exercising its *disciplinary* jurisdiction, then under section 3 this jurisdiction could only be either *criminal* or *civil*. And since the *disciplinary* jurisdiction was not part of the court's criminal jurisdiction, it had to fall within the HC's *civil* jurisdiction. Identifying a *third* jurisdiction distinct from the civil and criminal jurisdiction would be inconsistent with these statutory limits.

In this regard, the CA observed that *Re Nalpon Zero* appeared to be the first court judgment to identify a unique ("*sui generis*") disciplinary jurisdiction. The CA disagreed with its reasoning, however. It noted that the *Re Nalpon Zero* court likely adopted this concept due to a student commentary written in the American context which identified the disciplinary jurisdiction of the courts as sui generis. However, that student commentary was not referring to disciplinary proceedings in general, but to the C3J's unique powers to disbar and suspend solicitors, which are not ordinarily available to the HC. The CA noted that the *Re Nalpon Zero* court had instead erroneously extended this jurisdiction to the entirety of Part VII of the LPA.

The CA highlighted that section 96 proceedings are very different from section 98(1) proceedings.[5] In section 96 proceedings, the judge may review the decision of the Council pursuant to the Inquiry Committee's recommendation and affirm that determination or direct that an application should be made to the Chief Justice for the appointment of a DT, but the judge cannot exercise the powers reserved to the C3J under section 98(1) proceedings: i.e. to investigate the solicitor's conduct or to impose penalties such as suspension or disbarment. And in the context of an appeal brought against such a decision by the HC, the CA would only be concerned with the question of whether the HC Judge's decision is correct.

Thus, to the extent that disbarment or suspension proceedings are unique, the proceedings before the HC and the CA did not encroach on the C3J's jurisdiction. As such, the CA held that the disciplinary jurisdiction exercised by a judge under sections 95 to 97 of the LPA were indeed part of the civil jurisdiction, and can form the subject of an appeal to the CA.

C. Other Considerations: Public Interest

The CA also noted that applications under sections 95 to 97 of the LPA concerned the disciplinary control of legal practitioners, and the C3J was the court that ultimately exercises that jurisdiction.

[5] Under section 98(1), an application may be made to the C3J for an order that the solicitor suffer punishment, including being struck off the roll or being suspended from practice.

There was thus a very strong public interest in ensuring that allegations of misconduct of legal practitioners were aired before the C3J in cases of doubt, especially where the complaint is that a reference that should rightly be made to the C3J is not being made.

However, if the CA adopted the Law Society's arguments that the HC's decisions under section 96 of the LPA could not be appealed to the CA, a situation would result whereby a practitioner could challenge allegations against him or her all the way to the proceedings before the C3J, but a complainant could be prevented from having his matter similarly heard by the C3J if a single (HC) judge decided to affirm the decision of the Council or the DT to not refer the matter to the next stage.

The CA held that it was "implausible" that a single (HC) judge, without being subject to the oversight of the CA, which stood at the apex of the Supreme Court which under the LPA has control over the discipline of legal practitioners, could in this way exclude the C3J's ability to determine the merits of the matter.

D. Legal Reform

In a concurring judgment, Andrew Phang Boon Leong JCA noted that there are two different conceptions of the court's disciplinary jurisdiction. The *narrower* conception refers to a *special* disciplinary jurisdiction that is not an exercise of the court's civil jurisdiction, whereas the *broader* conception refers to a statutory review in the context of the disciplinary process which was simultaneously an exercise of the court's civil jurisdiction.

A judge hearing an application under sections 95 to 97 of the LPA was exercising jurisdiction under the *broader* conception and hence, was exercising the civil jurisdiction of the court. Conversely, proceedings before the C3J exemplified the narrower conception whereby the C3J has unique powers to suspend or strike a solicitor off the roll. These are not powers ordinarily available to the HC, and the exercise of such powers are of a *sui generis* jurisdiction since the C3J is not constituted under the SCJA.

The CA further noted that Part VII of the LPA was not a model of clarity and consistency, and its provisions on the exercise of discipline over solicitors have vexed the courts for some time. Legislative reform would be welcome to clarify the jurisdiction of the courts and the routes of review and appeal available to the complainant, the solicitor and the Law Society.

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