

1. ADMINISTRATIVE AND CONSTITUTIONAL LAW

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I. Introduction

1.1 Most of the constitutional law cases in 2025 revolved around challenges to the mandatory death penalty for certain drug trafficking offences under the Misuse of Drugs Act 1973¹ (“MDA”). These cases implicated the equality guarantee under Art 12 of the Constitution of the Republic of Singapore² (“Constitution”) and the protection of life and personal liberty under Art 9. In terms of interpretive method, the courts have affirmed that Singapore is a dualist system, where it comes to how international law may impact public law. The “four walls” principle requires courts to determine “our domestic legal arrangements”,³ while not shutting the eye to comparative developments with jurisdictions sharing a legal and constitutional heritage, where tracing the history of a provision may be relevant.⁴

1.2 This reflects the primacy accorded to text and historical intent where it comes to constitutional construction. The four walls principle was also affirmed in *Howe Wen Khong Rocky v Attorney-General*⁵ (“*Howe Wen Khong Rocky*”). The principle of proportionality was also rejected generally and in the context of Art 12, as this would involve judicial review of the legitimacy of a statutory object, with the risk that courts would be acting as mini-Legislature which was a reef to be avoided.⁶ The scope of judicial remedial powers was also addressed.

1.3 In the field of administrative law, existing principles such as the need to exhaust statutory remedies which are “suitable and complete” before seeking judicial review was affirmed, as in *Goh Seng Heng v Official*

1 2020 Rev Ed.

2 2020 Rev Ed.

3 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [102].

4 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [102]–[103].

5 [2025] SGHC 253 at [62].

6 See *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [89], citing *Ong Ming Johnson v Attorney-General* [2020] SGHC 63 at [216], which cited *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at [82].

Assignee.⁷ This related to the alternative remedies provided for under s 8 of the Insolvency, Restructuring and Dissolution Act 2018⁸ (“IRDA”), with respect to decisions of the Official Assignee. Statutory review may be broader than what the usual grounds for judicial review provide for, extending even to reviewing the correctness of decisions taken.⁹ Exceptions to this rule do exist, *eg*, where an applicant can distinguish his case from the type of case a statutory review or appeal procedure was meant to address. This principle is embodied in O 24 r 2(2) of the Rules of Court 2021.¹⁰ The cases mainly addressed issues of amenability to judicial review and the *GCHQ* grounds of review, as well as whether there was a need to calibrate review where private religious associations were concerned, whether more stringently or deferentially.

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I. Amenability to judicial review: public body, private power?

1.4 In general, where a body in making a decision exercises power whose source is from statute or subsidiary legislation, the body’s decisions would, in the absence of compelling reasons to the contrary, be amenable to judicial review.¹¹ The absence of a public element in the exercise of statutory power or duty could be one such compelling reason.

1.5 In *Goh Seng Heng v Official Assignee*,¹² a public element was present in relation to the exercise of the powers of the Official Assignee under the IRDA. The function of supervising the conduct of the bankrupt and administering the estate of the bankrupt as set out in the IRDA has a public element as these are duties discharged “with an eye towards both promoting recovery for the creditors and rehabilitating the credit of the bankrupt”.¹³ As such, Official Assignee decisions made in exercising its official functions are in principle susceptible to judicial review.

1.6 However, not all exercises of power by a statutory body are necessarily exercises of public power amenable to judicial review; if private in nature, the correct trajectory to take is to seek remedies in

7 [2025] SGHC 237 at [61].

8 2020 Rev Ed.

9 *Goh Seng Heng v Official Assignee* [2025] SGHC 237 at [64].

10 *Goh Seng Heng v Official Assignee* [2025] SGHC 237 at [61].

11 *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR(R) 133 at [41].

12 [2025] SGHC 237.

13 *Haotanto Anna Vanessa v Fang Ching Wen Ted* [2023] 3 SLR 1155 at [17].

private law.¹⁴ The issue of whether a public body was exercising a private power which would not be amenable to judicial review arose in *Lim Siew Mui v SkillsFuture Singapore Agency*¹⁵ (“*Lim Siew Mui v SkillsFuture*”).

1.7 The applicant, Lim Siew Mui (“Lim”), the sole director and shareholder of training provider Ebiz Institute LLC (“Ebiz”), sought to challenge a notice of ineligibility for funding (“NOI”) issued by the SkillsFuture Singapore Agency (“SkillsFuture”). The challenge rested on the ground of contractual invalidity and the basis of seeking leave for judicial review, on three *GCHQ* grounds and bad faith.

1.8 SkillsFuture under s 3 of the SkillsFuture Singapore Agency Act 2016¹⁶ (“SSAA”) administers and manages training grants to defray costs of employers or their trainees attending eligible training courses. SkillsFuture had terminated its contract with Ebiz for reasons of suspected acts of fraud or dishonesty. While SkillsFuture was a statutory body, Hoo Sheau Peng J noted at that it was “trite”¹⁷ that not all decisions issued by a statutory body were invariably exercises of statutory power; it had to be ascertained whether the source of the specific power in question, *ie*, the power to issue an NOI, was contractual or “pursuant to statute and for a public purpose”,¹⁸ citing *How Weng Fan v Sengkang Town Council*.¹⁹

1.9 SkillsFuture issued the NOI which was personally addressed to Lim and any organisation in which she was a partner, owner, shareholder, director or where she held a key personnel position. Lim argued in her primary case that the NOI was invalid, being contractual in nature, as she was not herself a party to the contract between Ebiz and SkillsFuture. As such, SkillsFuture would have no power to issue the NOI against her in her personal capacity. If the power to issue a NOI was contractual in origin, then contractual powers do not extend to non-parties and the NOI as it applied to Lim would be invalid and have no legal effect. If the court did not treat this as a private law dispute between SkillsFuture and Ebiz, Lim would seek judicial review for what would be characterised as the exercise of public powers under the SSAA.

1.10 Hoo J held that the issuance of the NOI was not contractual but rather stemmed from statute, on three main grounds. First, from a review of “the objective circumstances”, the NOI had been issued to Lim as

14 *UDL Marine v Jurong Town Corp* [2011] 3 SLR 94.

15 [2026] 3 SLR 230.

16 2020 Rev Ed.

17 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [19].

18 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [19].

19 [2023] 1 SLR 707 at [140(b)].

a non-party to the contract between SkillsFuture and Ebiz, in the form of a separate instrument issued contemporaneously with the contractual letter of termination.²⁰ This pointed to the non-contractual nature of the power. Second, the contract itself did not empower SkillsFuture to issue a NOI against a non-party to the contract, as distinct from the employment contract in *Public Service Commission v Lai Swee Lin Linda*,²¹ which specifically authorised third party statutory bodies to deal with the respondent's appeal. Third, SkillsFuture had not invoked any SSAA provision in issuing the NOI, relying on specific provisions which require written notice in the exercise of specific statutory powers. Hoo J noted this point was immaterial as there was no statutory obligation to provide reasons for the exercise of powers under ss 6(1) and 6(2)(n) of the SSAA under which the NOI was purportedly issued. Further, there was no general duty to give reasons in issuing administrative decisions at common law, as affirmed by the Court of Appeal in *Manjit Singh s/o Kirpal Singh v Attorney-General*.²²

1.11 Hoo J waived compliance with the timeline even though the three-month limitation period was not complied with, pursuant to O 24 r 5(2) of the Rules of Court 2021 in the interests of justice under O 3 r 4(1) of the Rules of Court 2021. This would have been by 10 November 2023 while the originating application was only lodged on 18 October 2024. Hoo J accepted that Lim only became aware of SkillsFuture's position that the NOI was issued under the SSAA and of the allegations levied against her through a letter dated 16 August 2024.²³ Further, the exhaustion of alternative remedies rule did not apply as the NOI had merely stated that Lim could seek further clarifications by e-mail on the matter. This did not amount to an avenue for appeal or review, such as where a statutory appeal mechanism is provided.²⁴

II. Illegality

1.12 The issue in *Lim Siew Mui v SkillsFuture* was whether the issue of an NOI issued under ss 6(1) and 6(2)(n) of the SSAA was within the scope of statutory discretion. These provisions are broadly drafted but do not specifically refer to the power to issue NOIs. The relevant provisions read:

20 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [22].

21 [2001] 1 SLR(R) 133.

22 [2013] 2 SLR 844, cited in *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [25].

23 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [34].

24 *Borissik Svetlana v Urban Redevelopment Authority* [2009] 4 SLR(R) 92.

(a) Section 6(1) of the SSAA allows SkillsFuture to “to do all things necessary or convenient to be done for, or in connection with, the performance of its functions”.

(b) Similarly, under s 6(2)(n) of the SSAA, SkillsFuture argues that it may do “do any other thing” that is “necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions”.

1.13 Hoo J held that given the width of these provisions, SkillsFuture was empowered to withhold training grants from providers it deemed to be errant or fraudulent.²⁵ Read with the Skills Development Levy Act 1979,²⁶ SkillsFuture bore a duty to do “all things” necessary to ensure payment out of the Skills Development Fund was made correctly, properly authorised and adequately controlled.²⁷ Pursuant to this, SkillsFuture argued that it was tasked with safeguarding and preventing the misuse of public funds and could take enforcement action against errant training providers by rendering them ineligible for fundings. In this light, issuing NOIs, as administrative decisions rather than punitive action, clearly fell within SkillsFuture’s scope of power in maintaining proper financial controls.²⁸

1.14 The question of whether a Coroner’s Inquiry breached the ground of illegality arose in *Cheng Chang Hup v Attorney-General*.²⁹ In assessing whether any GCHQ ground had been violated, regard is to be had to the statutory purpose of a Coroner’s Inquiry as set out in s 27 of the Coroners Act 2010.³⁰ This was to ascertain the identity of the deceased as well as how, when and where the deceased came by her death. Relevant circumstances had to be “proximate in time and place” to the death.³¹

1.15 These questions were answered in the Coroner’s Certificate.³² The State Coroner (“Coroner”) determined that the death of the deceased, Cheng Yun Xin (“Ms Cheng”), sister of Cheng Chang Hup (“Mr Cheng”) who was seeking leave to apply for judicial review, was by suicide, though the Coroner concluded it was unclear why Ms Cheng committed suicide.

25 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [44].

26 2020 Rev Ed.

27 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [46].

28 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [47].

29 [2025] SGHC 178.

30 2020 Rev Ed.

31 *Selvi d/o Narayanasamy v Attorney-General* [2014] 1 SLR 458 at [45].

32 *Cheng Chang Hup v Attorney-General* [2025] SGHC 178 at [41].

1.16 Mr Cheng was dissatisfied with the inquiry which, he contended, failed to comply with s 27(1) of the Coroners Act 2010,³³ which required that both the cause and circumstance of death be investigated. His essential concerns were whether Ms Cheng's boyfriend at that time ("Mr Chew") provoked Ms Cheng to suicide ("Relationship Issue"); whether the police investigations were adequate in this respect; and whether the clinical decisions reducing her medication dosage for her schizophrenia contributed to Ms Cheng's suicide ("Treatment Issue").³⁴

1.17 The Coroner had considered the circumstances leading to the suicide. It fell beyond the role of the Coroner to determine whether her doctors were negligent or whether Mr Chew bore civil or criminal liability for the demise.

1.18 It was alleged that the Coroner had failed to take relevant considerations into account. This included evidence in the form of video logs on Ms Cheng's laptop recording hallucinations, fear, suicidality, which were not engaged with.³⁵ International and Ministry of Health guidelines were not considered despite repeated relapses. Mr Cheng asserted that the Coroner did not address patterns of emotional abuse in Ms Cheng's relationship with Mr Chew. He further argued the Coroner failed to consider the contradictions between Mr Chew's evidence and the messages in evidence as well as deleted messages that may have shown evidence of Mr Chew provoking Ms Cheng's suicide. He argued that the police's conclusion that no foul play was involved in Ms Cheng's demise was unsafe and that the Coroner should not have relied on it.

1.19 On the facts, the Coroner had considered that Ms Cheng had been in a tumultuous relationship with Mr Chew, having examined the Whatsapp and Short Message Service ("SMS") messages between them. Kwek Mean Luck J found on examining the Coroner's Certificate that the Coroner had taken into account the concerns raised by Mr Cheng, such as trying to locate Ms Cheng's phones. The Cyber Crime Response Team (CCRT) successfully extracted 5,000 SMS messages and 161,904 Whatsapp messages from Mr Chew's mobile phone which had been made available to Mr Cheng. The Coroner had highlighted that he had searched the SMS messages for terms relating to suicide.³⁶ In other words, the relevant evidence placed before the court had been taken into account in the finding of suicide.³⁷

33 2020 Rev Ed.

34 *Cheng Chang Hup v Attorney-General* [2025] SGHC 178 at [28].

35 *Cheng Chang Hup v Attorney-General* [2025] SGHC 178 at [23].

36 *Cheng Chang Hup v Attorney-General* [2025] SGHC 178 at [48].

37 *Cheng Chang Hup v Attorney-General* [2025] SGHC 178 at [35].

1.20 The Coroner also considered two clinical decisions made to reduce the dosage of Haloperidol from 5mg to 1.5mg and stated he was not positioned to second guess these decisions.³⁸ In so doing, he considered the concerns raised by Mr Cheng, including the psychiatrists' reasons for their clinical assessment in relation to drug dosage and assessment after consultations that Ms Cheng did not display behaviour warranting admission under the Mental Health (Care and Treatment) Act 2008.³⁹ As such, there was no *prima facie* case of illegality in relation to both the Relationship Issue and Treatment Issue.⁴⁰ To the extent that Mr Cheng argued that relevant considerations were ignored because the Coroner did not order further investigation into these matters, what constituted relevant circumstances had to be related to the four matters identified in s 27(1) of the Coroners Act 2010;⁴¹ an applicant could not seek judicial review proceedings to compel an inquiry into every circumstance to be looked into.⁴²

III. Irrationality

1.21 The NOI in *Lim Siew Mui v SkillsFuture*, which prevented Lim and any organisations she was associated with from receiving training grants from SkillsFuture, was challenged as being irrational on two grounds. First, that any sensible decision-maker would have clarified the allegations of fraud and dishonesty made against Lim with her before issuing the NOI and second, that the NOI which was not limited in duration was a disproportionate response as it excluded Lim from associating with essentially all organisations in Singapore. This limited her ability to explore professional opportunities for fear of the NOI's potential impact on her companies and potential business partners.

1.22 Hoo J noted that reasonableness did not require the stating of reasons, in relation to the argument that SkillsFuture had not provided reasons in the NOI.⁴³ That the allegations were not mentioned in the NOI did not in itself undermine the NOI's reasonableness. Second, whether SkillsFuture had sufficiently investigated and substantiated the basis for the allegations were factual issues which were "almost invariably not

38 *Cheng Chang Hup v Attorney-General* [2025] SGHC 178 at [17].

39 2020 Rev Ed.

40 *Cheng Chang Hup v Attorney-General* [2025] SGHC 178 at [51].

41 2020 Rev Ed.

42 *Cheng Chang Hup v Attorney-General* [2025] SGHC 178 at [52].

43 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [54], citing *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [93].

within the purview of judicial review”.⁴⁴ The learned judge noted that the evidence demonstrated that SkillsFuture had investigated the allegations.

1.23 While the ground of proportionality is not recognised as an independent ground of review in Singapore, it has been recognised as being subsumed under the grounds of irrationality, operating as part of the calculus in ascertaining reasonableness, rather than as the determinative factor requiring that the least restrictive measure be adopted to achieve an object. Hoo J questioned whether the NOI was a proportionate response to the findings of the investigation, finding its breadth *prima facie* irrational and Wednesbury unreasonable.⁴⁵ The extensive restrictions in terms of funding ineligibility would apply not only to companies like Ebiz which Lim established, controlled or owned, but any organisation “in which she has certain relationships”, such as where she is a director or shareholder or where she held more vague positions like a “senior management position” or “key personnel position”.⁴⁶ This restriction operated “irrespective of the size of her shareholding”⁴⁷ or actual ability to exert control over that organisation. The terms of the NOI would appear to reach beyond institutes of learning to organisations “completely unrelated to education”.⁴⁸ This had precluded Lim from seeking professional opportunities with two institutes of higher learning.⁴⁹ A person in Lim’s position would face “some uncertainty” in relation to disclosure obligations to prospective employers or business partners and what potential consequences may follow.⁵⁰

1.24 Notwithstanding SkillsFuture’s concern and belief that the scope of the NOI was necessary to prevent the possibility of Lim incorporating other entities to take advantage of SkillsFuture funding, given Lim’s alleged fraud involving certain corporate partners, it remained “questionable” whether the extent of the NOI restrictions was warranted.⁵¹ While the threshold to prove Wednesbury unreasonableness was a very high one, the threshold to be crossed in an application for leave to commence judicial review was a “very low one of a *prima facie* case of reasonable suspicion” which had been made, in questioning whether the issued NOI was a “calibrated and reasonable measure”.⁵²

44 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [55].

45 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [62].

46 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [58].

47 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [58].

48 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [59].

49 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [59].

50 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [60].

51 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [61].

52 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [62].

1.25 The issue of irrationality arose in *Lun Yaodong Clarence v Law Society of Singapore*⁵³ where the applicant (“Lun”), a solicitor, made a complaint against the lawyer who represented him, Mark Seah (“Seah”), in disciplinary proceedings before the Law Society of Singapore (“Law Society”) for overcharging and an alleged “want of skill”. The Review Committee (“RC”) found that this complaint was lacking in substance after reviewing the information and documents submitted by both parties and directed the Council to dismiss the complaints under s 85(9) of the Legal Profession Act 1966.⁵⁴ Lun sought leave to apply for judicial review, but this was denied.

1.26 Lun had contended that the RC’s decision-making process was “irrationality incomplete” – while the complaint itself set out two grounds. Lun asserted there were at least four heads of complaint in his application to apply for judicial review, faulting the RC for not considering these additional heads as distinct complaints.⁵⁵

1.27 Andre Maniam J found that this did not fall within the statutory role of the RC which, under ss 85(6) and 85(8) of the Legal Profession Act 1966,⁵⁶ as to sift out frivolous complaints within a tight timeframe and to direct the Council to dismiss the complaint if it unanimously considered the complaint to lack substance or to be frivolous, vexatious or misconceived. Its function did not extend to identifying additional heads of complaint, but only to address the heads of complaint presented to it.⁵⁷

1.28 The General Division of the High Court (“General Division”) clarified that irrationality and illegality were distinct grounds of review and not to be conflated⁵⁸ and found that irrationality was not made out in relation to the first head of complaint relating to the gross negligence or want of skill in legal representation by Seah. First, on examining the facts closely, there was no basis for Lun’s argument that the RC had ignored the substantial factual allegations in the complaint. Lun thought that the RC had mischaracterised this first head by saying Lun focused on the disappointing outcome of the Court of 3 Judges decision, while he thought he had grounded his complaints on concrete factual assertions about Seah’s conduct. However, while Lun in his complaint did criticise aspects of how Seah had handled the matter, he did not rebut the RC

53 [2025] SGHC 137.

54 2020 Rev Ed.

55 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [19].

56 2020 Rev Ed.

57 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [21].

58 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [33].

report's finding that Lun had failed to assert what knowledge, skills or attributes Seah was lacking in.

1.29 Given that Seah had rebutted each factual allegation by referring to contemporaneous documents, which were reviewed together with Lun's allegations, Maniam J found that it was not irrational for the RC to decide that Lun's first head of complaint lacked substance.⁵⁹ Various other factual allegations were rebutted by evidence to the contrary. For example, Seah had apparently declined Lun's suggestion that he be present at counsel's side for the hearing which deprived Lun of the opportunity to directly address the court. In fact, it had been proposed that Lun should attend by Zoom, but Lun preferred to attend with another lawyer in the public gallery.⁶⁰

1.30 Criticisms that Seah had inadequately prepared the case stemming from the invoice which listed only two hours in the week leading up to the case was rebutted by Seah's evidence that he had entered his time spent preparing for the case as non-billable, as a gesture of goodwill.⁶¹

1.31 The RC focused on the various documents presented, including the billing record and Seah's explanations in finding that Lun's criticisms of Seah's conduct did not suffice to show it was irrational for the RC to find his first complaint lacked substance. Further, the RC did not act irrationally in concluding that, the "mere fact" that it was Seah's first time acting as counsel for a lawyer facing disciplinary proceedings, did not mean he lacked the skill for this representation. Indeed, Seah pointed out that he did have relevant experience aside from his many years of litigation, having acted for the Law Society in disciplinary proceedings and having sat on its Inquiry Committee for many years.⁶²

1.32 The RC's decision that the second head of complaint, relating to gross overcharging and/or fraudulent concealment of the basis for charging professional fees, was also found not to be irrational. Lun had alleged that the RC treated this complaint simply as one of "overcharging simpliciter", discounting Lun's allegations of dishonesty and failure to provide a fee estimate. However, the RC had set out the complaint in Lun's own terms. It noted there was a letter of engagement ("LOE") which Lun had failed to disclose, setting out that billing be based on time costs that would be discounted on a goodwill basis, with there being no

59 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [43]–[46].

60 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [60].

61 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [62].

62 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [71].

evidence that Seah would be acting on a *pro bono* basis.⁶³ Seah also denied receiving any request for estimates nor any complaint about the lack of estimates. Given the circumstances, it was not irrational to conclude Lun's complaint was lacking in substance.

1.33 Lun had also refused to submit the bills to a taxation process, after the Law Society wrote a letter pointing out that an aspect of his complaint was that of gross overcharging. The accepted practice, as stated by the High Court in *Law Society of Singapore v Andre Ravindran Saravanapavan Arul*,⁶⁴ ("*Andre Arul*") was that where overcharging was concerned, the Law Society should advise the aggrieved party to apply to the court to have the bill of costs taxed as this was "the most objective and conclusive way" of determining the fees a solicitor was entitled to. The RC acted consistently with the clear guidance given in *Andre Arul* in concluding that a complaint of overcharging in relation to bills for which taxation was pending was lacking in substance, which was not unreasonable.⁶⁵

1.34 Thus, in assessing irrationality, the High Court closely examined the documents before it, heard and weighed evidence from both sides, and found that it was not unreasonable for the RC to conclude that the complainant's arguments were not made out, given that it was rebutted by the evidence on the record and the responses of the respondent to the allegations which provided the RC with relevant information and documents such as the LOE. The RC's decision fell within the range of defensibly reasonable views, showing that assertions, which disagreed with the RC's decision and were unsubstantiated or contradicted by other evidence, did not suffice to clear the high threshold of irrationality. Implicitly, it was appropriate to accord a measure of deference within the context of professional disciplinary hearings.

1.35 The test for irrationality was described by Kwek J in *Cheng Chang Hup v Attorney-General*⁶⁶ as relating to a decision "so absurd that no reasonable decision-maker could have come to it".⁶⁷

1.36 In arguing that the Coroner's Inquiry was irrational, the brother of the deceased, Mr Cheng, argued that the finding of no provocation was not safe as the investigating officers had ignored large volumes of

63 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [78].

64 [2011] 4 SLR 1184 at [41].

65 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [88]–[89].

66 [2025] SGHC 178.

67 *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779 at [80].

deleted message between Ms Cheng and Mr Chew and had not resolved contradictions in Mr Chew's evidence.

1.37 The police had not located Ms Cheng's phone, and there was no evidence of deleted messages in Mr Chew's phone. The Coroner had examined the messages in Mr Chew's phone relating to suicide and set out extracts in the Coroner's Certificate. It was not irrational for the Coroner not to direct the police to make further inquiries on the missing phones and not to call Mr Chew to give oral evidence on various issues, which Mr Cheng, the deceased's brother, had requested at the Coroner's hearing. This was because Mr Chew was suffering from mental health issues and further, Mr Cheng's queries were already addressed by the evidence or were not required to satisfy the requirements of s 27(1) of the Coroners Act 2010.⁶⁸ The Coroner's decision to accept the police's conclusion was not so absurd that "no reasonable decision-maker" could arrive at it, given the investigatory efforts taken and the satisfaction of the s 27(1) requirements.

1.38 Mr Cheng argued that the Coroner should not have accepted the two psychiatrists' assessments to reduce drug dosage, given Ms Cheng's repeated relapses and history of non-compliance. The issue of whether these clinical decisions were wrongly or negligently made, was a matter of civil liability, falling beyond the scope of the Coroner's Inquiry under s 27(2) of the Coroners Act 2010.⁶⁹ The Coroner had before him evidence from the psychiatrists that they had discussed treatment with Ms Cheng and explained their reasoning for reducing daily dosage, as well as a toxicology report indicating that the presence of Haloperidol in Ms Cheng's urine did not cause or contribute to her death.⁷⁰ On the evidence before the Coroner, no *prima facie* case of irrationality in relation to the Coroner's finding on the issue of Ms Cheng's treatment for schizophrenia was made out. That Mr Cheng disagreed with the Coroner's finding was not itself a basis for quashing the Coroner's findings, given the reasons provided which underlay the Coroner's decision-making process.⁷¹

IV. Bad faith

1.39 The applicant Lim in *Lim Siew Mui v SkillsFuture* argued that SkillsFuture acted in bad faith, the touchstone of which is dishonesty, in

68 2020 Rev Ed.

69 2020 Rev Ed.

70 *Cheng Chang Hup v Attorney-General* [2025] SGHC 178 at [57].

71 *Cheng Chang Hup v Attorney-General* [2025] SGHC 178 at [58].

issuing the NOI. The General Division noted that such allegations were serious and not to be made on “mere suspicion”.⁷²

1.40 Here, Lim failed to prove that SkillsFuture was *prima facie* dishonest in issuing the NOI, arguing that there had been no evidence of SkillsFuture investigating the allegations of fraud before issuing the NOI. The documentary record indicated otherwise; evidence of investigation included interviewing 17 trainees to examine how the training courses were conducted.⁷³ Further, SkillsFuture produced the e-mails sent to six purported employers to verify Ebiz’s compliance with certain conditions and to confirm the genuineness of the employment relationships.⁷⁴ In addition, it was clear that SkillsFuture issued the NOI because it had reasons to suspect Lim’s dishonesty and fraud in relation to SkillsFuture funding some training courses, despite Lim’s arguing that the fraud allegations had not yet surfaced. The fact that SkillsFuture had filed a police report before issuing the NOI further supported the view that these allegations featured in SkillsFuture’s decision-making process.⁷⁵

V. Procedural impropriety

A. Fair hearing

1.41 In *Lun Yaodong Clarence v Law Society of Singapore*,⁷⁶ the RC had sent queries to both Lun and the solicitor Seah who was the object of Lun’s complaint, requesting a copy of the LOE setting out the basis for fees and asking for an explanation why the complainant had not gone to court to tax the bill. Only Seah responded. Lun argued that the procedure was improper as the RC had failed to ensure that Lun had received notice of these queries and had relied on his failure to respond. The RC had sent the queries to the “hotmail” account which Lun had used to correspond with the Law Society and had not received any indication, like an “error” message, that Lun had not received the e-mail.

1.42 Although the RC was not obliged to pose queries or afford Lun a hearing, Lun argued that once the RC decided to pose queries, it was obliged to ensure such queries reached him. As they had not heard from him, the RC should have taken the further measures such as to send him a letter by courier or registered post, a reminder before the stated

72 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [75].

73 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [67].

74 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [68].

75 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [71].

76 [2025] SGHC 137.

deadline and Seah's response for his comment. Maniam J held that the RC had no duty to do any of these things.⁷⁷ Seah had in fact provided the LOE and other information the RC had requested.

1.43 Maniam J found there was “no procedural impropriety to speak of”⁷⁸ and that it was “hollow” for Lun to allege he was not given an opportunity to respond to the points relating to the alleged overcharging, particularly since he had failed to provide the LOE which provided for time-costs billing and had made a simple allegation that Seah had fraudulently concealed the basis for charging for professional fees. Both parties had had the same opportunity to provide inputs and influence the decision-making process, but Lun had failed to do so. This is distinct from cases where natural justice may be violated where one party to a dispute had a one-sided opportunity to influence the deciding authority, which would undermine the procedural right to have a reasonable opportunity to be heard, as in a case where an adjudicator receives information or evidence from one party behind the back of the other, which the other party does not receive. Unfairness is present where there is a lack of a two-way exchange of information, raising a risk of prejudice to the fairness of a hearing where both sides are entitled to know the case made against them and to respond to it.⁷⁹ There was no similar lack of reciprocity in the immediate case.

B. No duty to give reasons

1.44 Two issues pertaining to the fairness of a hearing arose in *Lim Siew Mui v SkillsFuture*. First, SkillsFuture had issued an NOI to receive grants; the applicant, Lim had sought to argue there was a notice requirement under s 6 of the SSAA, drawing from ss 57F to 57G. Hoo J affirmed the position in Singapore that there was no general duty to give reasons for an administrative decision as affirmed by the Court of Appeal in *Manjit Singh s/o Kirpal Singh v Attorney-General*.⁸⁰

1.45 The General Division however rejected the argument by SkillsFuture that it had not breached the right to be heard, asserting that it was a “privilege” for entities to receive funding from SkillsFuture, which had contended it had exclusive discretion in relation to funding decisions. SkillsFuture further argued that if it had to accord rights of hearing before issuing NOI, this would hinder its ability to manage errant

77 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [103]–[104].

78 *Lun Yaodong Clarence v Law Society of Singapore* [2025] SGHC 137 at [103]–[109].

79 *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169.

80 [2013] 2 SLR 844.

training providers. In addition, SkillsFuture argued that Lim had multiple opportunities to justify Ebiz's conduct before the NOI was issued, as the letter described the various breaches as well as invited responses as to why the contract with Ebiz should not be terminated ("Possible Termination Letter").⁸¹ Further the NOI stated that Lim could e-mail SkillsFuture for further clarifications.

1.46 Unlike the situation in *Dow Jones Publishing Co (Asia) Inc v Attorney-General*,⁸² Lim had not been warned that SkillsFuture intended to issue a NOI to her nor was there evidence that similar notices had been issued to other individuals and that Lim was aware of these "precedent[s]".⁸³

1.47 Hoo J held that for SkillsFuture to insist it had absolute discretion over whether to grant and withhold funding. It was also held that according hearings would impair SkillsFuture's enforcement efforts against errant trainers and would be contrary to the right to be heard ("Hearing Rule"). This was described by the Court of Appeal in *Kay Swee Pin v Singapore Island Country Club*⁸⁴ ("*Kay Swee Pin*") as "a cardinal principle of natural justice" – this meant that it is for the court to decide what fairness requires, as a matter of law.⁸⁵

1.48 Given the serious impact in the form of the NOI and its extensive reach and potential repercussions on Lim, a *prima facie* case did arise regarding whether fairness required SkillsFuture to have abided by the Hearing Rule.⁸⁶ The Possible Termination Letter did not concern Lim as it related to terminating the contract between SkillsFuture and Ebiz. It was also irrelevant to the NOI as the letter made no reference to this nor did it invite Lim to make representations regarding the intent to issue an NOI.⁸⁷

1.49 That the NOI invited Lim to e-mail for further clarification did not provide her an avenue to challenge or appeal the NOI. Thus, Lim did not have an opportunity to be heard, not only before, but also after the NOI was issued. The Hearing Rule furthermore requires that *before* a decision is made, the person likely to be affected by the outcome of the

81 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [78].

82 [1989] 1 SLR(R) 637.

83 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [85].

84 [2008] 2 SLR(R) 802 at [7].

85 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [86].

86 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [86].

87 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [87].

proceedings was to receive notice of the allegation and an opportunity to be heard.⁸⁸

C. *Natural justice – private religious associations*

1.50 Singapore courts have, as a facet of supervisory jurisdiction, intervened through procedural review in “social club” cases involving disciplinary proceedings where the subject of those proceedings would suffer loss in the form of a stigma and/or economic loss, *eg. Kay Swee Pin* which involved the transferable membership of a prestigious golfing club.

1.51 The General Division in *Tang Huixian v Soka Gakkai Singapore*⁸⁹ found that the approach adopted in *Kay Swee Pin*, where natural justice was considered an implied contractual term, should also be adopted for private association which happened to be religious associations. Here, 20 persons (“Claimants”) sought a declaration to the effect that their expulsion from Soka Gakkai Singapore (“SGS”) which practiced Nichiren Buddhism, was made in breach of natural justice rules or was unreasonable.

1.52 To the extent that irrationality was a ground on which the courts could review the acts of SGS, Philip Jeyaretnam J⁹⁰ considered that the expulsion decision, as an exercise of contractual discretion which was not unfettered, was “not so unreasonable that after considering the correct factors, no reasonable decision-maker could have come to it”.⁹¹ There was “no basis whatsoever”⁹² to support the allegation of irrationality, given the “ample evidence”⁹³ that the Claimants, as members of SGS, were involved in a group led by a former expelled SGS member conducting activities unauthorised by SGS.⁹⁴ In the interests of preserving contractual rights and to ensure against the warping of contractual bargains, courts will imply in a term that a contractual discretion be exercised “in good faith and not arbitrarily, capriciously or irrationality”, with the latter used in an analogous sense to *Wednesbury* unreasonableness.⁹⁵

88 *Lim Siew Mui v SkillsFuture Singapore Agency* [2026] 3 SLR 230 at [88].

89 [2025] SGHC 131.

90 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [81].

91 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [81], referencing *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779.

92 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [81].

93 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [81].

94 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [81].

95 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [41].

1.53 The established law is that private associations may be subject to natural justice rules as an implied contractual term.⁹⁶ The question in *Tang Huixian v Soka Gakkai Singapore*⁹⁷ was whether a different standard of review should apply to religious associations, where matters implicating religious doctrine could be involved. This raises the prospect that religious freedom guarantees under Art 15 of the Constitution could be implicated, in particular, the extent to which civil courts should address theological questions and the right of religious groups to manage their own religious affairs.⁹⁸ Expulsion from SGS, which was registered as a society in 1972 and later as a charity in 1985, did not affect the Claimants’ Art 15 rights, as they remained “free to pursue their faith ... outside membership of SGS”.⁹⁹

1.54 The Claimants had been involved in an informal group known as “Solidarity of Genuine Sensei’s Disciple” (“SGSD”), which gathered to study and practice Nichiren Buddhism. Their counsel likened SGSD to “a Bible study group”.¹⁰⁰ One of the leaders of SGSD was an expelled former SGS member. SGSD developed a Whatsapp group and met over monthly Zoom study sessions, pooling funds to purchase study materials and develop a mobile application.¹⁰¹

1.55 The management committee (“MC”) (which managed SGS’s affairs), after discovering the existence of SGSD, took the view in December 2022 that the formation of SGSD as an organised group within SGS would be “unorthodox and unacceptable”¹⁰² and called for further investigation.¹⁰³ The existence of such a group would be contrary to the interests and harmony of SGS, which was a stated ground for expulsion under Art 7(b)(i)(3) of SGS’s constitution.

1.56 SGS senior leaders at various training sessions held in February 2023 for SGS members noted that SGSD held their own activities such as soliciting donations from SGS members and stirring dissatisfaction towards SGS and its central figures. This violated the principles of SGS and was disruptive to the harmony of the Buddhist order, which was one of the five cardinal sins in Buddhism.¹⁰⁴ The senior leaders of SGS

96 *Lawrence Khong v Singapore Polo Club* [2014] 3 SLR 241 at [40].

97 [2025] SGHC 131.

98 Constitution of the Republic of Singapore (2020 Rev Ed) Art 15(3)(a).

99 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [82].

100 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [5].

101 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [5].

102 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [8].

103 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [6].

104 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [9].

said they needed to curtail the actions of SGSD and would contact its members to encourage them not to associate with the faction.

1.57 The senior leaders convened various dialogue sessions between February and March 2023 and invited the Claimants to discuss their participation in SGSD, with a view to stop them from being part of SGSD. During the dialogue sessions, the designated SGS leader described SGSD as a “faction” which disrupted the unity of SGS and effectively told the Claimants to stop associating with SGSD or leave SGS.¹⁰⁵ The Claimants had recorded these statements and introduced these audio recordings as evidence of hostility and bias or prejudgment by certain individuals in the SGS leadership towards SGSD;¹⁰⁶ these individuals were MC members, and some later became disciplinary committee (“DC”) members.

1.58 The terms of the SGS’s constitution mandated that certain procedures be followed prior to the expulsion of any member on one of the four listed grounds under Art 7(b). Either the MC or a MC-appointed board of inquiry or DC must inquire into the member’s conduct and provide a “full opportunity to defend himself and to justify or explain his conduct”.¹⁰⁷ The MC could call on the member to resign or expel him if a majority was satisfied that he was guilty of the requisite conduct and failed to justify it: Art 7(b)(ii) of SGS’s constitution. The Claimants all received notices to attend DC hearings (“DCHs”) but subsequently refused to attend. The Claimants were informed by letter from SGS of the outcome of the hearings and their resignations were requested within 14 days. When they failed to resign, notices of expulsion were issued to all 20 Claimants by March 2024. The Claimants then sought to challenge their expulsions, primarily on grounds that the rules of natural justice, both in terms of bias and the fair hearing rule, had been violated.

D. Appropriate scope of review for religious associations

1.59 A preliminary question was the appropriate scope and standard of review to be applied where religious organisations were concerned. The coercive nature of the powers involved and the importance of the interest at stake were relevant factors in the calibration of review.

1.60 The defendant SGS cautioned that theological questions would be non-justiciable and the court should be slow to import in *Wednesbury* principles as it was for SGS to determine whether SGSD departed from

105 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [19].

106 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [10].

107 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [4].

core SGS beliefs.¹⁰⁸ Conversely, the Claimants asserted that the court did not have to deal with theological issues in the instant case and urged that natural justice rules be applied more rigorously given the MC's and DC's extensive and coercive powers to impose penalties or to expel SGS members, and the lack of an appeal mechanism.¹⁰⁹ In contrast, the defendants argued that natural justice rules "should be calibrated downwards"¹¹⁰ as the expulsion impact was "not highly consequential",¹¹¹ as the Claimants would suffer no economic loss, losing only "non-financial rights"¹¹² such as the right to participate in regular SGS activities and worship-related benefits, such as being conferred sacred objects or the possibility of being given an introductory letter to visit Soka Gakkai International in Japan.¹¹³

1.61 The character of an association as religious does not exclude the application of natural justice rules. Indeed, these had previously been applied in *Peck Constance Emily v Calvary Charismatic Centre Ltd*¹¹⁴ which related to the decision of a church that had been incorporated as a company by guarantee under the Companies Act.¹¹⁵ The nature of body in question was not to be the focal point, but rather "the form and nature of the power"¹¹⁶ and "the consequences to the affected member upon its exercise".¹¹⁷

1.62 That the contractual approach adopted in *Kay Swee Pin* equally applies to religious organisations was affirmed in *Ling Diung Kwong v Bo Tien Temple*.¹¹⁸ In relation to domestic tribunals conducting disciplinary proceedings, whether for social clubs or religious organisations, the judicial role is to ensure that natural justice rules have been observed and the decision honestly arrived at, and not to evaluate the weight of the evidence or the correctness of the decision arrived at.¹¹⁹

1.63 The General Division reviewed various authorities from England and Canada. It noted that in *R v Chief Rabbi of the United Hebrew*

108 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [36].

109 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [35].

110 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [37].

111 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [37].

112 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [37].

113 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [37].

114 [1991] 1 SLR(R) 57.

115 Cap 185, 1970 Rev Ed.

116 *Peck Constance Emily v Calvary Charismatic Centre Ltd* [1991] 1 SLR(R) 57 at [56].

117 *Peck Constance Emily v Calvary Charismatic Centre Ltd* [1991] 1 SLR(R) 57 at [56]–[57].

118 [2017] SGHC 155.

119 *Ling Diung Kwong v Bo Tien Temple* [2017] SGHC 155 at [46].

*Congregations of Great Britain and the Commonwealth*¹²⁰ (“*R v Chief of Rabbi*”), the English High Court found that it could not entertain a judicial review challenge against the Chief Rabbi’s declaration that a rabbi was unfit to hold rabbinical office. To assume jurisdiction would be to depart from the principles laid down in *R v Panel on Take-overs and Mergers*¹²¹ which provided for supervisory jurisdiction over entities which were not purely contractual in nature but had a “public element”, which was found to be absent in *R v Chief of Rabbi*.

1.64 Brown J in describing this public element¹²² noted that there must be “not merely a public but potentially a governmental interest” in the decision-making power in question. Such power must relate not merely to voluntary self-regulation over an important area of public life; non-government bodies which have been held reviewable have operated as “an integral part” of a non-statutory regulatory system which is “supported by statutory powers and penalties clearly indicative of government concern”. Although the rabbi in pursuing his vocation had no choice but to accept the Chief Rabbi’s disciplinary decision, it was not the sort of decision where, “but for” the Chief Rabbi’s office, the Government would impose a statutory regime. The Chief Rabbi’s functions lacked a public element, and were not governmental but “essentially intimate, spiritual and religious”; if the Chief Rabbi were “to abdicate his regulatory responsibility”,¹²³ the Government would not assume the functions of that religious office.

1.65 The principles of *R v Panel on Take-overs and Mergers*¹²⁴ applicable to public bodies did not apply on the facts of the instant case: SGS as a religious body did not perform functions that “the government would otherwise seek to discharge”.¹²⁵ Here, the source of power was contractual and the judicial role was to ensure compliance with natural justice rules which were implied into the terms of the constitution between SGS and its members. The court was not to examine the merits of SGS’s decision.¹²⁶ No theological issue was engaged in the present case as the *procedure* for expelling SKS members was governed by its constitution,

120 [1992] 1 WLR 1036.

121 [1987] 1 QB 815.

122 *R v Chief Rabbi of the United Hebrew Congregations of Great Britain and the Commonwealth* [1992] 1 WLR 1036 at 1041D–1041E.

123 *R v Chief Rabbi of the United Hebrew Congregations of Great Britain and the Commonwealth* [1992] 1 WLR 1036 at 1041H–1042A, cited in *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [50].

124 [1987] 1 QB 815.

125 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [51].

126 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [52].

not the substantive principles of SKS's religious beliefs, which did inform the substance of the expulsion decision.¹²⁷

1.66 Jeyaretnam J left open the question of how to calibrate the intensity of judicial review in cases where expulsion procedures were based on religious doctrine.¹²⁸ He noted that English courts would consider questions of religious doctrine and practice justiciable in so far as they shed light on determining who the trustees entitled to administer the trusts under the English law of trusts were.¹²⁹ While refraining from adjudicating upon the veracity of religious beliefs, English courts could address questions of religious belief and practice as an adjunct to enforcing contractual rights or ensuring trust property is used for purposes of the trust.¹³⁰ Disputes over religious doctrine were non-justiciable unless they engaged “civil rights or interests or reviewable questions of public law”.¹³¹ On the facts, no civil right or interest “turns on a question of theology” and ordinarily, such disputes are treated by the courts as non-justiciable.¹³²

1.67 Jeyaretnam J noted that the Canadian approach in *Lakeside Colony of Hutterian Brethren v Hofer*¹³³ was not to focus on the nature of the right, whether it was a property or contractual right, but whether it was of “sufficient importance” so as to attract judicial scrutiny.¹³⁴ The courts could review procedural rules based on contract which were designed to give effect to substantive religious principles,¹³⁵ but this issue was not squarely before the court in the immediate case. Jeyaretnam J was content to endorse the caution of the Canadian Supreme Court regarding “the courts’ legitimacy and institutional capacity to deal with questions of religious doctrine”.¹³⁶ It thus remains unclear whether the court will consider a “religious matter” if this is necessary to enforce legal rights.¹³⁷

1.68 For a hearing to be fair, the person who is the subject of the decision to be made must be given enough notice of the case against him and the opportunity to make a response. Most of the claimants claimed

127 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [53].

128 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [53].

129 *Shergill v Khaira* [2015] AC 359 at [59].

130 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [55].

131 *Shergill v Khaira* [2015] AC 359 at [46], cited in *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [55].

132 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [56].

133 [1992] 3 SCR 165.

134 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [58].

135 *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall* [2018] 1 SCR 750 at [36]–[38].

136 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [59].

137 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [60].

they did not have sufficient evidence to respond to the charges against them and requested more information.

1.69 In applying the rules of natural justice to the instant case, Jeyaretnam J noted that the constitution of SGS itself prescribed for a fair hearing and there was no particular reason to apply natural justice rules “with either special rigour or particular deference to SGS”.¹³⁸ While the Claimants did not face any economic loss or loss of property rights, he noted that “[e]xpulsion can be stigmatising”.¹³⁹

1.70 On the facts, there was no finding of an unfair hearing as the claimants had received a fair opportunity to respond and had not availed themselves of this procedural protection as afforded by the constitution. Jeyaretnam J found that the claimants had “ample notice”¹⁴⁰ of the allegations contained in the notice to attend the DCHs. This also provided a forum where any SGS member who received this notice could explain how SGSD was not contrary to the interest and harmony of SGS.

1.71 The Claimants were given, along with the DCH notice, the statutory declaration (“SD”) which was relied upon at the DCH. The SD, which identified the Claimants as active SGSD members, asserted that SGSD was led by an expelled former SGS member, that SGSD had its own mobile application and had conducted fund-raising without the authorisation of SGS leadership. Clearly, the Claimants would have understood the case they would have to meet on receiving the SD, either showing they were not involved in SGSD or that SGSD had not done the things alleged in the SD.¹⁴¹

1.72 What constitutes a fair hearing is a contextual issue, involving a trade-off between efficiency and fairness in the process. In the context of religious associations and hearings involving the expulsion of members, Jeyaretnam J held that it was a “perfectly reasonable approach”¹⁴² to preclude legal counsel, as “introducing lawyers into the process militates against the spirit of unity prized and valued by the SGS in particular”,¹⁴³ as may be gleaned from the “avowed values of SGS”,¹⁴⁴ which did not involve questions of religious doctrine. As the constitution of SGS had not provided for a second chance to be heard before the

138 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [64].

139 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [64].

140 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [77].

141 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [76].

142 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [78].

143 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [78].

144 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [61].

MC, there was no procedural right to see the DC's report which was transmitted to the MC or to be heard before the MC made its decision to expel.

1.73 Jeyaretnam J held that SGS had given the Claimants a “full and fair opportunity” to be heard at the DCHs and by choosing not to attend or failing to explain the purposes of SGSD in a non-confrontational way at any stage, the claimants could not complain they were denied the right to be heard.¹⁴⁵

E. Rule against bias

1.74 The General Division recounted the test for apparent bias, including prejudgment, as stated by the Court of Appeal in *BOI v BOJ*.¹⁴⁶ This adopted the objective stance of the “fair-minded, informed and reasonable observer”¹⁴⁷ and whether he would harbour a suspicion that the decision-maker had approached the matter with a closed mind, reaching a final decision before being made aware of all relevant evidence and arguments. This shifted the inquiry away from the subjective view of the decision-maker or aggrieved party, while requiring the court to “put aside any legalistic lens while “avoiding any descent into the gutter of scurrility where motives are always questioned and bad faith too readily suspected”¹⁴⁸.

1.75 The General Division considered collectively various statements made by SGS leaders (who later became members of the DC or were MC members) at different meetings expressing concerns about SGSD; these included deploying terms like “faction” and “evil”, expressing the view that SGSD participants, by disrupting the harmony of the Buddhist Order, committed one of five cardinal sins in Buddhism.¹⁴⁹

1.76 Jeyaretnam J observed that while outsiders might consider this strong language, such terms “reflect[ed] the spiritual writings concerning the core principle of unity and the correlative need to avoid factionalism and cliques which were adduced in evidence”¹⁵⁰ The MC of SGS clearly had “serious concerns about SGSD”.¹⁵¹

145 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [79]–[80].

146 [2018] 2 SLR 1156 at [103(a)].

147 *BOI v BOJ* [2018] 2 SLR 1156 at [109].

148 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [67].

149 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [69].

150 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [69].

151 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [70].

1.77 Jeyaretnam J did not find apparent bias and opined that had a fair-minded observer attended the training and dialogue sessions, he would have considered these sessions “good faith attempts”¹⁵² by the SGS leadership to look into SGSD in an attempt to “bring the claimants back into the fold”.¹⁵³ He said a fair-minded observer would have been “surprised”¹⁵⁴ that those claimants at the training session failed to take the opportunity to explain how SGSD could be reconciled with the core principle of unity even if it stood outside the organisational structure of SGS.¹⁵⁵ Jeyaretnam J was mindful of distinguishing between the view of the fair-minded observer and his own view as a judge where he observed that the claimants, rather than recognising the “obviously valid concerns” of the SGS leadership, had instead secretly recorded these sessions with a view to anticipated legal proceedings, rather than seeking to compromise or making some effort towards unity.¹⁵⁶

1.78 While it was clear that the SGS leadership had come to the view before the DCH notices were issued that the existence of SGSD as a self-directed group constituted “factionalism” and a departure from Buddhist teachings as understood and practised by SGS, Jeyaretnam J did not think a fair-minded observer would think this amounted to prejudgment of the disciplinary cases. This is because the context framing the sessions and statements made there was “organisational unity and discipline”.¹⁵⁷ It was natural to proceed from the general (*ie*, dialogue sessions and the failed attempt to bring the Claimants back into the fold) to the particular in the form of specific disciplinary proceedings.¹⁵⁸ There was “basis”¹⁵⁹ for the MC to form a view in good faith that SGSD, as a self-directed sub-group composed of SGS members led by a former expelled SGS member, was contrary to SGS’s interests, which led to the initiation of disciplinary proceedings. While the SGS’s leadership involved in this had to keep an open mind until the conclusion of the proceedings, they did not have to come with “an empty mind”,¹⁶⁰ nor would a fair-minded observer suspect that that they would have closed their mind.¹⁶¹ No prejudgment was found.

152 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [70].

153 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [70].

154 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [70].

155 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [70].

156 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [70].

157 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [72].

158 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [72].

159 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [73].

160 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [73].

161 *Tang Huixian v Soka Gakkai Singapore* [2025] SGHC 131 at [74].

CONSTITUTIONAL LAW

I. Standing

1.79 The constitutionality of the death penalty under s 33(1) of the MDA was unsuccessfully challenged in *Howe Wen Khong Rocky* on grounds of infringing Arts 9(1), 12(1) and 93 of the Constitution. The case was brought by a non-governmental organisation, the Transformative Justice Collective, whose purpose was to seek the abolition of the death penalty.

1.80 Hoo J found that the applicants lacked standing, based on settled law, as none of their personal rights, which would include their constitutional rights, were violated, nor were they able to demonstrate “special damage” in relation to a public right.¹⁶²

1.81 In relation to private rights, the applicants were members of a non-governmental organisation which campaigned for the abolition of capital punishment or were siblings of individuals executed under the mandatory death penalty (“MDP”) regime. To have standing in an action for declaratory relief, the applicant must demonstrate a “real interest”¹⁶³ in bringing the action. Violation of one’s constitutional rights would *prima facie* satisfy this requirement. Second, there must be a “real controversy”¹⁶⁴ between the parties for the court to resolve, which would entail securing a proper contradictor to oppose the declaration sought. This prevents the court from having to address hypothetical issues. In exceptional cases, the existence of an allegedly unconstitutional law in the statute book or the real and credible threat of being prosecuted under such a law could amount to a violation of constitutional rights, as set out in *Tan Eng Hong v Attorney-General*¹⁶⁵ (“*Tan Eng Hong*”).

1.82 The applicants were not able to demonstrate how their constitutional rights had been violated by the law mandating MDP which they were challenging.¹⁶⁶ They lacked a real interest as they had not been personally affected by the MDP, as their philosophical objection to the MDP and being aggrieved on familial and reputational grounds did not suffice.¹⁶⁷ There was no real controversy as there were no violated

162 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [23].

163 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [12(a)].

164 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [12(b)].

165 [2012] 4 SLR 476 at [106] and [115], cited in *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [12(c)].

166 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [26].

167 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [29].

rights.¹⁶⁸ Further, their reliance on *Tan Eng Hong* was inappropriate. The Court of Appeal had commented on *Tan Eng Hong* in *Masoud Rahimi bin Mehrzad v Attorney-General*¹⁶⁹ noting that the challenged law there was offence-creating and the enquiry there centred on how the challenged law “may cast a shadow that affects the conduct of those affected by it” such that the affected may have standing to challenge the law which had not been invoked against them. In the instant case, the MDP as a punishment was not offence-creating.¹⁷⁰

1.83 In relation to public rights, the applicants had failed to demonstrate they possessed a special interest above that of the general public; Hoo J did not accept their argument that they had a special interest in their capacity as members of the Transformative Justice Collective, as they had accrued sufficient expertise from their advocacy work, which went beyond mere intellectual or emotional concerns. Neither did Hoo J accept that special interest could be founded by the argument of the next of kin that they had suffered special damage in the form of pain and trauma as family members, beyond that of the interest of the average citizen.¹⁷¹

1.84 The idea of special damage as endorsed in *Vellama v d/o Marie Muthu v Attorney-General*¹⁷² did not extend to strongly felt beliefs, as a person who had a special interest had to be “likely to gain some advantage, other than the satisfaction of righting a wrong”.¹⁷³ They also could not show how the MDP constituted a breach of public duties of sufficient gravity such that it would serve the public interest for the court to grant standing and hear the case.¹⁷⁴

II. Article 4 and remedial power: “reading down” legislation

1.85 The issue of the constitutionality of various presumptions in the MDA arose in *Jumaat bin Mohamed Sayed v Attorney-General*¹⁷⁵ (“*Jumaat*”). Sections 18(1) and 18(2) provide for a statutory presumption as to the fact of possessing the drugs in question and the accused person’s state of knowledge, upon proof of predicate facts, until the contrary is

168 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [30].

169 [2024] 1 SLR 414 at [5].

170 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [29].

171 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [34].

172 [2013] 4 SLR 1 at [42]–[43].

173 *Australia Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493 at 530–531 cited in *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [36].

174 *Jeyaretnam Andrew Kenneth v Attorney-General* [2014] 1 SLR 345 at [64].

175 [2025] 1 SLR 1287.

proved. The applicants, who were all prisoners sentenced to death for drug trafficking offences, sought to strike down the presumptions as void or to read them down in a manner that would bring them in conformity with Arts 9 and 12 of the Constitution.

1.86 It was argued in *Jumaat* that the court had the “inherent power to read down”¹⁷⁶ the MDA presumptions as imposing not a persuasive but only an evidential burden to raise a reasonable doubt as to the presumed fact. The Court of Appeal found there was no such remedial power in the Constitution itself, nor any basis to imply it.

1.87 It considered that Art 4 of the Constitution contained “the courts’ limited remedial powers to declare void any law enacted *after* the commencement of the Constitution”¹⁷⁷ that is inconsistent with the Constitution, to the extent of its inconsistency [emphasis added]; there was therefore no need for implying further remedial power such as the power to read unconstitutional legislation in a manner that would render it constitutional or to “read down” the MDA presumptions as was contended in the instant case.

1.88 The Court of Appeal noted that this argument was advanced unsuccessfully in *Prabakaran a/l Srivijayan v Public Prosecutor*.¹⁷⁸ Article 162 was found to be a transitional provision applying to laws existing at the commencement of the Constitution, provided these could be construed “with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution”.¹⁷⁹ Notably this differed from the position in *Tan Eng Hong*, that Art 162 applied to “all laws”¹⁸⁰ not just laws existing at the commencement of the Constitution, even though the applicability of Art 162 was not in issue there. The court in *Prabakaran a/l Srivijayan v Public Prosecutor*¹⁸¹ considered there was no need to imply remedial powers as these had been expressly provided for under Arts 4 and 162.¹⁸² The Court of Appeal in *Jumaat* appears to have departed from the view in *Tan Eng Hong*,¹⁸³ where it held that Art 4, when read with Art 162, could apply to laws *prior* to the commencement of the Constitution.

176 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [128].

177 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [128].

178 [2017] 1 SLR 173.

179 *Prabakaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [41].

180 *Prabakaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [47].

181 [2017] 1 SLR 173 at [50].

182 *Prabakaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [50].

183 *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [59].

1.89 The Court of Appeal in *Jumaat* considered that even if such power existed, it was unclear how it would operate or co-exist with Art 4, and whether it could be used to override the “fundamental purpose”¹⁸⁴ of the legislative provision. Reading down the s 18 MDA presumptions to impose only an evidential burden rather than a persuasive one on the accused person “would diminish the effectiveness of the MDA presumptions”¹⁸⁵. This would undermine the role of the MDA presumptions in combatting the drug trade.

III. Article 9: fundamental rules of natural justice and constitutionality of Misuse of Drugs Act 1973 presumptions

1.90 The content of the fundamental rules of natural justice (“FRNJ”), which the Privy Council in *Ong Ah Chuan v Public Prosecutor*¹⁸⁶ (“*Ong Ah Chuan*”) recognised was inherent in the term “law” in Art 9(1) of the Constitution of the Republic of Singapore,¹⁸⁷ and whose constitutional status was recognised by the Court of Appeal in *Yong Vui Kong v Attorney-General*,¹⁸⁸ was subject to judicial examination in various cases in 2026.

1.91 In relation to the presumption of innocence as a putative aspect of FRNJ, the Court of Appeal in *Jumaat* examined whether this bore constitutional or common law status, and the substantive content of what it might entail. This was in relation to a challenge made by applicants, who were all prisoners sentenced to death for drug trafficking offences, to the constitutionality of ss 18(1) and 18(2) of the MDA.

1.92 These provisions relate to the operation of a statutory presumption relating to the fact of possession of the relevant drugs and the accused person’s state of mind, which arises where certain predicate facts are proved. Where the drugs in possession are of a certain quantity, it is presumed that this is for the purpose of trafficking under s 17; under s 18(1), it is presumed that a person in physical control of the drugs is in possession of those drugs and under s 18(2), is presumed to have known the nature of the drug, unless the contrary is proved. The persuasive burden is placed on the accused person to disprove the presumed fact on the balancing of probabilities.¹⁸⁹

184 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [129].

185 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [129].

186 [1979–1980] SLR(R) 710.

187 1980 Reprint.

188 [2011] 2 SLR 1189 at [104].

189 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [47].

1.93 It was argued that these presumptions violated Arts 9(1) and 12(1) of the Constitution, which encompassed the FRNJ which included the common law guarantee of the “presumption of innocence”, drawing on a reading of *Ong Ah Chuan*.¹⁹⁰ Alternatively, the presumption of innocence was a “new right” emerging from the evolutionary development of FRNJ.

1.94 The word “law” in Art 9(1) incorporates those FRNJ forming part of English common law in operation in Singapore at the time of commencement of the Constitution.¹⁹¹ The Court of Appeal noted that the FRNJ bore constitutional status and could only be abrogated by a constitutional amendment, not a statute.¹⁹² As such, legislation violating any FRNJ as incorporated in Art 9(1) could be invalidated for unconstitutionality.¹⁹³

1.95 Article 9(1) does not deem valid all legislation that deprives a person “of his life or personal liberty, save in accordance with the law”. In other words, a literalist approach towards construing “law” as any formally valid law enacted by Parliament in accordance with due procedure was to be eschewed. “Law” transcends “formal validity”¹⁹⁴ and legislation was subject to the demands of FRNJ.

1.96 The question of what the content of FRNJ encompasses was discussed, with the Court of Appeal adhering to a narrow construction of FRNJ which, unlike the US due process clause, has no substantive content, being composed of “procedural rights aimed at securing a fair trial”.¹⁹⁵

1.97 Lord Diplock in *Ong Ah Chuan* at para 27 described one of the FRNJ in criminal law as being a rule that “a person should not be punished for an offence unless it has been established to the satisfaction of an independent and unbiased tribunal that he committed it”.¹⁹⁶ He considered that describing this rule as the “presumption of innocence” might be misleading. What the FRNJ required was that the court should

190 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [30], citing *Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710 at [27].

191 *Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710 at [26].

192 *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [104], cited in *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [54].

193 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [55].

194 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [55].

195 *Tan Seng Kee v Attorney-General* [2022] 1 SLR 1347 citing *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [64].

196 *Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710 at [27].

have before it material which is “logically probative of facts sufficient to constitute the offence with which the accused is charged”.¹⁹⁷

1.98 The applicants sought to invoke the presumption of innocence as being part of the non-exhaustively defined FRNJ. They argued that at least one of three proposed rules should fall within the ambit of the FRNJ in criminal law:

- (a) the presumption of innocence requiring that the Prosecution prove all elements of the offence beyond a reasonable doubt (*ie*, presumption of innocence);
- (b) that the Prosecution must prove all elements of the offence on the balance of probabilities (*ie*, Balance of probabilities); and
- (c) that the Prosecution must submit a factual case on each offence element, which is more probable than the case advanced by the accused persons, even if neither case is proven (*ie*, most probable case).¹⁹⁸

1.99 The Court of Appeal interrogated the various possible conceptions of the “presumption of innocence”, observing that its vintage extended to “tracing its roots to Babylonian times”,¹⁹⁹ although there was “little consensus”²⁰⁰ as to its substantive meaning, noting that the case law associated the presumption with “a range of ideas”, which could be distilled into —three or four conceptions. It noted that the applicants’ assertion that this stood for the proposition that the Prosecution “must adduce evidence sufficient to prove each element of an offence beyond reasonable doubt” was “but one of several possible conceptions.”²⁰¹

1.100 Thus, it could relate firstly to a rule that the Prosecution carries the burden of adducing sufficient evidence to prove an accused person’s guilt; second, it could be treated as a synonym that an accused person is presumed innocent until proven otherwise; third, it could be understood as a pronouncement on the particular applicable standard of proof such as requiring that the Prosecution adduce sufficient evidence to prove an accused person’s guilt beyond reasonable doubt, the version preferred by the applicants. Lastly, the “presumption of innocence” could be seen as a rule of fairness operating as a shield against punishment without conviction.²⁰² That these various conceptions existed suggests it would

197 *Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710 at [27].

198 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [61].

199 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [62].

200 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [62].

201 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [61]–[62].

202 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [63]–[73].

be “misleading”²⁰³ to regard the presumption of innocence as something understood to mean only that which the applicants contended for.

1.101 The Court of Appeal found that *Ong Ah Chuan* did not stand for any of the three proposed rules relating to the “presumption of innocence” which the applicants had advanced, which they considered to be “highly theoretical constructs”.²⁰⁴ They had argued that all three rules would have been infringed as in the case where the Prosecution sought to rely on ss 18(1) and 18(2) of the MDA. This is because the Prosecution would only have to prove the predicate fact that gave rise to the presumptions and that in proving the *predicate* fact, the Prosecution would only have adduced some probative evidence pointing to the veracity of the *presumed* fact, *eg*, that having the keys to anything containing a controlled drug constituted possession of that drug. If the accused adduced some probative evidence to disprove the presumed facts but evidence not rising to the level of the balance of probabilities, the presumption would fail to be rebutted, and the court would proceed on the basis of the presumed facts.²⁰⁵ To demonstrate this, the Court of Appeal provided the context to the extract from para 27 of *Ong Ah Chuan* which the applicants had relied on, by referring to the two following paragraphs, and concluded that the applicants had failed to engage the underlying rationale of *Ong Ah Chuan*.²⁰⁶

1.102 It was clear that Lord Diplock considered fair and consistent with FRNJ the statutory scheme under which the Prosecution was able to rely on statutory presumptions to establish particular elements of the offence, with the courts finding these elements to be made out unless the accused person is able to rebut this presumption on the balance of probabilities.²⁰⁷ The Court of Appeal clarified that this did not shift the Prosecution’s legal burden to prove the guilt of the accused person; this burden remains with the Prosecutor, even if it may discharge discrete aspects of this burden by recourse to the MDA presumptions, which the accused could rebut.²⁰⁸

1.103 Drawing from Lord Diplock’s reasoning in *Ong Ah Chuan*, the Court of Appeal at *Jumaat* noted that for presumptions relating to the purpose which the accused person had for the item in his or her possession:

203 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [75].

204 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [79].

205 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [78].

206 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [83].

207 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [81].

208 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [137(d)].

- (a) it was fanciful to suppose the presumptions offended any FRNJ where it provided that upon proving a certain fact, the court shall infer the requisite purpose which is consistent with that predicate fact;
- (b) that it was not unfair to require the accused person to disprove on a balance of probabilities the presumed fact as it was a matter within his or her knowledge;
- (c) such presumptions were a common feature of legislation which regulated the use of dangerous items; and
- (d) while the presumed fact was consistent with the inferences to be drawn from the proven predicate fact, the accused person was best placed and in a position to adduce evidence to rebut the truth of the presumed fact.

1.104 In short, these factors relate to fairness to the individual and the justification in deploying such statutory presumptions in addressing grave social threats like drugs.

1.105 What FRNJ required, as stated in *Ong Ah Chuan* at para 27, was for material that was logically probative of facts sufficient to constitute the relevant offence. This was the basis upon which Lord Diplock found that s 15 of the Misuse of Drugs Act 1973²⁰⁹ (corresponding to the present s 17 of the MDA), was constitutionally valid – the predicate fact (*ie*, quantity of drugs found in possession of the accused person) is logically probative of the presumed fact (*ie*, purpose of trafficking). It was a matter of common sense that drugs transported at excessive quantities were for trafficking purposes.²¹⁰ The Court of Appeal held that this reasoning equally applied to s 18 of the MDA which provides that where the Prosecution proves certain circumstances, the person is presumed to have a controlled drug in his possession. As a matter of common sense, a person seeking to rebut the presumption of knowledge should be able to say what he thought he was carrying.²¹¹ There was thus nothing unconstitutional or unfair about a provision which requires the accused person to carry the burden of disproving the presumed facts on the balance of probabilities, as Lord Diplock expressly held, particularly when the relevant facts were peculiarly within his knowledge.²¹²

1.106 It may be true that just because a fact is within an accused person's knowledge, this does not mean it is easier for the accused person

209 Act 5 of 1973.

210 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [85].

211 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [86].

212 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [87].

to prove it. Nonetheless, this was irrelevant as the MDA presumptions are not in place because the presumed facts are within the accused person's knowledge, but because they embody a legislative choice to address a problem thought to be a societal scourge.²¹³ It was constitutionally permissible for Parliament to provide that upon proving a predicate fact beyond a reasonable doubt, the court shall presume a consequential fact unless the accused person rebuts this.²¹⁴

1.107 In the alternative, the applicants argued that FRNJ could evolve over time and that one of the three proposed rules advanced²¹⁵ should now be accepted as an FRNJ. The Court of Appeal rejected the invitation to read new rights into the Constitution, as this lacked “any legal or normative basis”.²¹⁶ Various reasons were given.

1.108 First, the problem with reading new rights into the Constitution is the question of how this may be done in a principled manner, as distinct from conjuring it out of thin subjective preference, *ie*, a values-based interpretative approach. The applicants had advanced “nothing”²¹⁷ to explain how to assess whether a FRNJ had change over time.

1.109 The Court of Appeal found that reliance on *Haw Tua Tau v Public Prosecutor*,²¹⁸ where the Privy Council had noted that FRNJ do change over time, was misplaced as the applicable FRNJ in that case “had crystallised by 1963 when the earliest iteration of the Constitution came into force” and not 1981 when the appeal was heard.²¹⁹

1.110 In other words the content of FRNJ having constitutional status was to be determined at the commencement of the Constitution,²²⁰ as made clear in *Ong Ah Chuan* where the reference to “law” in Art 9(1) referred to “a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in Singapore at the commencement of the Constitution”.²²¹

1.111 In other words, the court should confine itself to determining “the corpus of law that is embedded within the Constitution at its

213 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [89].

214 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [89].

215 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [60].

216 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [97].

217 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [98].

218 [1981–1982] SLR(R) 133.

219 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [98].

220 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [99].

221 *Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710 at [26].

inception”.²²² The act of adopting the Constitution was a deliberate act of the political branches and the courts should read the Constitution and its words, and the concepts they embed, by the historic understanding of them, at the moment of inception.

1.112 This imports a degree of staticity into the idea of FRNJ, despite the understanding that the common law, as judge-made law, does not stand still. Restricting FRNJ to a historical point in time while making it easy to hive off European-influenced English common law as the Singapore courts are wont to do, also limits its potential impact. Nonetheless, the Court of Appeal in *Jumaat* affirmed this restrictive approach and stated it “must be so” when “determining the corpus of law that is embedded within the Constitution at its inception”,²²³ otherwise “the Constitution would be liable to being amended by judges whose province it is to pronounce upon what the unwritten rules of the common law are”.²²⁴ It adhered to its pronouncement in *Yong Vui Kong v Public Prosecutor*²²⁵ that unenumerated rights cannot be read into the Constitution just because they are thought to be normatively desirable. It was permissible to imply constitutional rights from construing the Constitution holistically or as a matter of necessary implication, as in the case of the right to vote.²²⁶ This represented a continued rejection of the values-based living tree approach as an interpretive method, as rights cannot be created “out of nothing”,²²⁷ certainly not from subjective judicial preferences.

1.113 With respect, the Privy Council in *Haw Tua Tau v Public Prosecutor*,²²⁸ recognised that “what may properly be regarded by lawyers as rules of natural justice change with the times”,²²⁹ drawing from the principle of fairness in that procedure must not be “obviously unfair”.²³⁰ The Privy Council declined to produce a “comprehensive list of what constitutes fundamental principles of natural justice applicable” to criminal procedure determining the guilt of an accused person.²³¹

1.114 If rules may evolve, this carries the prospect of indeterminacy or uncertainty, but the rules of natural justice have developed over time, by

222 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [100].

223 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [100].

224 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [100].

225 [2015] 2 SLR 1129 at [73]–[75].

226 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [100].

227 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [56].

228 [1981–1982] SLR(R) 133.

229 *Haw Tua Tau v Public Prosecutor* [1981–1982] SLR(R) 133 at [26].

230 *Haw Tua Tau v Public Prosecutor* [1981–1982] SLR(R) 133 at [8].

231 *Haw Tua Tau v Public Prosecutor* [1981–1982] SLR(R) 133 at [9].

applying basic principles to new contexts, to achieve the end of securing a fair trial and guarding against the bias of the adjudicator in specific contexts. These principles govern the exercise of political discretion; FRNJ would control exercises of legislative and executive power, requiring consistency with constitutional principle.

1.115 One might argue that rather than placing FRNJ into a historical straightjacket, the sub-rules that inform what constitutes a fair trial or what constitutes bias should be open to incremental judicial development and indeed, indigenisation in accordance with changing social and legal conditions. Fears of juristocratic impulses may be allayed in so far as FRNJ do not engage controversial substantive rights or claims which may be better left to democratic deliberation; instead, they are oriented to securing fair procedure which any new rule must be shown to serve.

IV. Article 9 and mandatory death penalty

1.116 It was argued in *Howe Wen Khong Rocky* that the meaning of the word “law” in Art 9 incorporated the rule of law which included a right to a fair trial. Since the MDP excludes the courts from the sentencing process apart from pronouncing the sentence, it was argued that this precluded any right for the accused to be heard on the appropriateness of the sentence. A fair trial would require that the accused be able to make representations before an adverse decision, such as inflicting the death penalty, was made.²³² In other words, that the fundamental rules of natural justice included the right to be heard was precluded by the MDP.²³³

1.117 Drawing from the common law concept of natural justice, Hoo J stated that the right to be heard required that “no person should be condemned without having been heard or having been given prior notice of the allegations”²³⁴ The key to the right to be heard was having “a reasonable opportunity” of presenting one’s case or correcting or contradicting the case and allegations of the other party.²³⁵ In relation to criminal proceedings, FRNJ were procedural rights aimed at “securing a fair trial”²³⁶ and “for determining the guilt of a person charged with

232 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [45].

233 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [50].

234 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [51].

235 *Attorney-General v Datchinamurthy a/l Kataiah* [2022] SGCA 46 at [23].

236 *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [64].

a criminal offence.”²³⁷ The right to be heard was “not absolute”²³⁸ and what fairness required would depend on the subject matter, statutory framework and the “object of the process at the stage in question.”²³⁹

1.118 Hoo J noted that an accused person convicted of a capital offence under the MDA had a right to be heard in relation to sentencing, but within the “defined statutory parameters in s 33B of the MDA.”²⁴⁰ For example, proving that he was merely involved as a courier could lead to the non-imposition of the MDP.²⁴¹ It was therefore not accurate to contend as the applicants did that the sentencing process of the MDP precluded any right to be heard on sentencing.

1.119 Further, the right to be heard as a FRNJ was in nature a procedural right aimed at securing a fair trial and determining the guilt of the accused; the statutory framework within which the MDP operates “neither intends nor permits accused persons” (a) convicted of a capital charge under the MDA or (b) unable to satisfy s 33B MDA requirements to have a right to be heard in relation to the MDP. The MDP was a sentencing outcome which was imposed after the determination of guilt at a fair trial and thus did not violate the accused right to a fair trial and to be heard.²⁴²

1.120 It was argued that the Caribbean Court of Justice (“CCJ”) in *Nervais v R*²⁴³ (“*Nervais*”) had extended the right to fair trial to include sentencing.²⁴⁴ Hoo J noted that the CCJ had held that the relevant law had deprived the appellants of their right to make representations to the court as to why the death sentence should not be imposed on them.

1.121 The learned judge noted that this right to protection of the law stemmed from Barbados’ international human rights obligations as certain human rights bodies had found the MDP to be arbitrary and in violation of fundamental human rights.

1.122 However, Singapore has a dualist regime and any international law norm first had to be incorporated into domestic law by legislation as “it is not open to a Singapore court to rewrite the Constitution to

237 *Haw Tua Tau v Public Prosecutor* [1981–1982] SLR(R) 133 at [9], cited in *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [63].

238 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [52].

239 *Manjit Singh s/o Kirpal Singh v Attorney-General* [2013] 2 SLR 844 at [88].

240 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [53].

241 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [53].

242 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [55].

243 [2018] CJC 19 (AJ).

244 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [56].

accommodate a supposed rule of international law”.²⁴⁵ The applicants in the instant case were not relying on any international law rule.

1.123 In so far as reliance was placed on *Nervais* to challenge the power of the legislature to enact laws imposing the MDP, this argument was inconsistent with domestic jurisprudence which accepts that whether to have a MDP is a matter of social policy for the Legislature to determine.²⁴⁶ There was no breach of separation of power in enacting mandatory sentences and the courts would be acting as “mini-legislatures”²⁴⁷ and themselves be violating the separation of powers by amending or modifying statutes.²⁴⁸ The MDP thus did not violate the right to a fair trial and the right to be heard.

1.124 The applicants also argued that the MDP was contrary to the English common law principle that punishment must be proportionate, which they claimed was incorporated under Art 9(1). While the notion of proportionate punishment was judicially endorsed in *Mohamed Shouffee bin Adam v Public Prosecutor*,²⁴⁹ this was not a case about constitutional law. Indeed, the principle of proportionality review has been “categorially rejected”²⁵⁰ in Singapore law.²⁵¹

V. Article 9(1) and the right to fair trial

1.125 Thirty one prisoners awaiting capital punishment in *Masoud Rahimi bin Mehrzad v Attorney-General*²⁵² sought declarations that ss 60G(7)(d), 60G(8), 60H(6) and 60I(1) of the Supreme Court of Judicature Act 1969,²⁵³ (“SCJA”) as well as s 313(2) of the Criminal Procedure Code 2010²⁵⁴ (“CPC”) (collectively, the “Impugned Provisions”) were inconsistent with the right to fair trial and access to justice expressed in Art 9 of the Constitution. The adoption of the Post-appeal Applications in Capital Cases Act 2022²⁵⁵ regime (“PACC Act Regime”) was designed to deal with the procedure for any post-appeal applications in a capital

245 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [60].

246 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [61].

247 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [61].

248 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [61].

249 [2014] 2 SLR 998 at [47]–[50].

250 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [66].

251 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [66]–[67], citing *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [87] and *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210.

252 [2025] 3 SLR 1171.

253 2020 Rev Ed.

254 2020 Rev Ed.

255 Act 41 of 2022.

case (“PACC Applications”) by a person awaiting capital punishment (“PACP”). The PACC procedure was designed to deal with situations where new evidence or legal arguments were raised, not to reopen case merits generally.²⁵⁶ The four provisions in the SJCA were introduced by s 2(b) of PACC Act Regime in 2022 and none of them, nor the PACC Act Regime, were offence-creating.

1.126 The PACC Act Regime provides that in deciding whether to grant a PACP, the Court of Appeal has to consider whether the application has a reasonable prospect of success,²⁵⁷ which can be decided summarily.²⁵⁸ Section 313(2) of the CPC allows a warrant of execution to be executed even when an application for a stay of execution (or permission for that application) has been filed and served, if certain conditions are met.

1.127 In assessing whether the Impugned Provisions were unconstitutional in violating Art 9 of the Constitution, the General Division noted that the requirements of fair process were not uniform and may vary, particularly as between an accused person being tried for the first time, and for a PACP who has exhausted all avenues of appeal seeking to invoke the unique PACC Act Regime. The applicants had argued that the “reasonable prospect of success”²⁵⁹ test for the PACC Act Regime was stricter than leave for judicial review and that was unfair in going further than required in its objective of filtering out cases sans merit, thereby denying access to justice in limiting the ability of PACPs to bring meritorious cases.²⁶⁰

1.128 The General Division held that it was for Parliament to enact the threshold for the filtering process when it came to applying for permission to make a PACC Application,²⁶¹ given that PACPs have already had their case merits ventilated at least twice on trial and on appeal. The test for PACC permission did not have to follow that for judicial review, which is the test of an arguable or *prima facie* case of reasonable suspicion,²⁶² even where the PACP is facing impending capital punishment. Given that a PACC Application involves the raising of fresh applications after a PACP has exhausted all avenues of appeal, this justified imposing a “higher standard” before permission is granted, given the importance of the principle of finality in proceedings,

256 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [70].

257 Supreme Court of Judicature Act 1969 (2020 Rev Ed) s 60G(7)(d).

258 Supreme Court of Judicature Act 1969 (2020 Rev Ed) ss 60G(8) and 60H(6).

259 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [63].

260 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [63].

261 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [69].

262 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [69] and [77].

analogously drawn from *Adeeb Ahmed Khan s/o Iqbal Ahmed Khan v Public Prosecutor*.²⁶³

1.129 The PACC Regime did not deny an applicant from putting forth his case before the Court of Appeal, which had to consider any written submissions tendered by the applicant in any application for PACC permission. Natural justice rules do not require a hearing to be oral²⁶⁴ and the PACC Act did not violate the Art 9 rights. At the permission stage, the applicant should put forth the full material they were relying on, so the Court of Appeal could assess whether the application to be made had a reasonable prospect of success under s 60G(7) of the SJCA. Further, the standard for obtaining permission under the PACC Act was “not particularly high”.²⁶⁵ Ultimately, the PACC Act provisions were not found to impede access to justice such that Art 9 was not violated.

VI. Article 9(1) and section 106A of Criminal Procedure Code: “absurd or arbitrary”

1.130 Article 9(1) provides that a person should not be deprived of his life or personal liberty, “save in accordance with the law”. The word “law” extends beyond formal validity and Art 9 requires that the relevant law be in compliance with fundamental rules of natural justice, and must not be “absurd or arbitrary”.²⁶⁶ The General Division in *Katchu Mohideen Bazeer Ahamed v Public Prosecutor*²⁶⁷ affirmed that the test of “absurdity” was not substantive but procedural in nature, seeking to secure the right to fair process where there was a possible deprivation of life or personal liberty. It could not therefore be used to evaluate the substantive content of a statutory provisions as the application of a substantive “fair, just and reasonable test”²⁶⁸ in judging the constitutionality of an impugned law would trespass into the legislative domain.²⁶⁹

1.131 The central argument was that it was absurd to permit an accused person to self-bail by personal bond but to make it an offence if he provided funds to a bailor to “bail himself out”.²⁷⁰ Tay Yong Kwang JCA rejected this argument as it did not challenge any procedural aspect of s 106A of the CPC but its efficacy, which was a substantive matter, as the

263 [2022] 2 SLR 1197.

264 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [45].

265 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [78].

266 *Tan Seng Kee v Attorney-General* [2022] 1 SLR 1347 at [254].

267 [2025] SGHC 192.

268 *Kachu Mohideen Bazeer Ahamed v Public Prosecutor* [2025] SGHC 192 at [40].

269 *Tan Seng Kee v Attorney-General* [2022] 1 SLR 1347 at [264]–[265].

270 *Kachu Mohideen Bazeer Ahamed v Public Prosecutor* [2025] SGHC 192 at [41].

contention was that a bail indemnity agreement did not inevitably lead to a surety's failure to carry out his duties.

1.132 On questions of legislative efficacy, the courts decline to question Parliament's wisdom in enacting a law.²⁷¹ The legislative distinction between the different eligibility requirements for "self-bail" and for bail requiring a surety was also a substantive challenge the "absurdity" test could not launch.²⁷² Neither was s 106A(2) considered vague as it was clear that the offence is made out once an indemnity agreement is entered into, regardless of whether the accused absconds or whether the surety performs his duties.²⁷³

VII. Article 12: Misuse of Drugs Act 1973 presumptions and mandatory death penalty

1.133 It was argued in *Jumaat* that Art 12(1) was violated in relation to accused persons charged with criminal offences where life and liberty protected under Art 9(1) was implicated. This related to those prosecuted for drug offences where MDA presumptions applied, and those charged with crimes where no similar presumptions applied. In other words, persons in the latter category are not subject to a burden of proof on certain elements of the offence arising by way of statutory presumption.

1.134 It was argued that the legislative purpose of the MDA presumptions was to overcome the evidential difficulty the Prosecution would face in proving the state of mind of the accused person and that this was over-inclusive, in so far as the same purpose could be achieved by imposing an evidential burden on the accused person. This entails the less stringent requirement of placing on the accused persons the initial evidential burden to show some credible evidence that the relevant element of the offence is not established, before the evidential burden reverts to the Prosecution to show evidence to prove that element beyond a reasonable doubt.²⁷⁴

1.135 The Court of Appeal noted that the applicable test was the "reasonable classification" test, while noting the disparate approaches adopted in *Lim Meng Suang v Attorney-General*²⁷⁵ ("*Lim Meng Suang*") and *Syed Suhail bin Syed Zin v Attorney-General*,²⁷⁶ ("*Syed Suhail*")

271 *Kachu Mohideen Bazeer Ahamed v Public Prosecutor* [2025] SGHC 192 at [42].

272 *Kachu Mohideen Bazeer Ahamed v Public Prosecutor* [2025] SGHC 192 at [43].

273 *Kachu Mohideen Bazeer Ahamed v Public Prosecutor* [2025] SGHC 192 at [45].

274 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [110].

275 [2015] 1 SLR 26.

276 [2021] 1 SLR 809.

without pronouncing on which approach was preferred.²⁷⁷ The Court of Appeal noted that the applicable test was the “reasonable classification” test, while noting the disparate approaches adopted in *Lim Meng Suang v Attorney-General*²⁷⁸ (“*Lim Meng Suang*”) and *Syed Suhail bin Syed Zin v Attorney-General*,²⁷⁹ (“*Syed Suhail*”) without pronouncing on which approach was preferred.²⁸⁰ The applicants had argued that the courts had to be searching in their scrutiny as the MDA presumptions affected life and personal liberty, and that the nexus between the object and differentia could not be so tenuous as to be incapable of withstanding scrutiny.²⁸¹

1.136 The Court of Appeal held that the differentia between the two groups was rationally justified not only by the objective of the MDA presumptions, which was to address evidential difficulties in proving the accused’s state of mind;²⁸² it was also a policy choice, evident in many years of parliamentary debate, to serve as a vital enforcement tool to combat drug trafficking, given Singapore’s vulnerable position and its proximity to the “Golden Triangle”.²⁸³ The rational nexus test was satisfied bearing in mind the legislative objective underlying the MDA presumptions to “provide a robust pro-enforcement toolkit to enable the enforcement agencies to tackle and overcome the scourge of the drug trade in this country”²⁸⁴ such that these presumptions did not violate Art 12(1) of the Constitution.

1.137 Provisions relating to PACPs making a PACC Application were challenged as violating Art 12 in various cases such as *Pannir Selvam v Attorney-General*,²⁸⁵ which was the first PACC Application since the PACC Act 2022 came into force.

1.138 Here, Pannir Selvam Pranthaman (“Pannir”), a Malaysian death row inmate convicted of drug trafficking applied for a stay of execution. The Ministry of Home Affairs (“MHA”) policy, as he understood it, was that executions would not be scheduled where there was a “relevant pending proceeding”,²⁸⁶ even if this had no impact on a PACP’s conviction and sentence. This was distinct from previous cases such as *Syed Suhail*,

277 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [108].

278 [2015] 1 SLR 26.

279 [2021] 1 SLR 809.

280 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [108].

281 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [110].

282 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [121].

283 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [113] and [125].

284 *Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 at [126].

285 [2025] 1 SLR 1345.

286 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [20].

*Syed Suhail bin Syed Zin v Attorney-General*²⁸⁷ and *Attorney-General v Datchinamurthy a/l Kataiah*,²⁸⁸ which all involved matters which could potentially affect the convictions or sentences of PACPs.

1.139 The applicant therefore sought to assert his right to the equal application of MHA policy.²⁸⁹ The Court of Appeal noted their previous observation at para 26 that some flexibility in scheduling executions, as executive action, was desirable though this had to be exercised lawfully. Having stated its position, the consistent application of the criteria was required, unless legitimate reasons to depart from its stated baseline were provided.²⁹⁰

1.140 The applicant accepted that his complaint against his lawyers which led to disciplinary proceedings was not a relevant proceeding for the purposes of the MHA policy, and instead challenged the lawfulness of the MHA policy on two grounds.

1.141 First, the MHA had unlawfully changed its scheduling executions policy. It was alleged that prior to the change, any proceeding potentially requiring a PACP's testimony would have been considered a relevant proceeding by the MHA. Under the new policy, derived from how various affidavits from MHA officials were read, a proceeding where the PACP's testimony was required would only be relevant if it was a State-brought proceeding and unless it had an impact on the PACP's conviction and sentence. As Pannir's proceeding was not State-brought, it was no longer considered a relevant proceeding which would have stayed the execution. The Attorney-General rejected any change in policy.²⁹¹

1.142 The Court of Appeal, having sought clarification from the MHA of its policy concerning pending proceedings which were irrelevant to the PACP's conviction and sentence, noted that even assuming the MHA had changed its policy, there was nothing inherently objectionable about it, unless it could be shown the change was unlawful on a specific legal ground.²⁹²

1.143 The applicant had not succeeded in doing this. He had argued that the MHA policy change resulted in the different treatment received by PACPs before and after the policy change, and that in the absence

287 [2021] 5 SLR 452

288 [2022] SGCA 46.

289 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [22].

290 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [26].

291 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [46].

292 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [48].

of legitimate reasons to justify this change, was contrary to Art 12(1). The Court of Appeal found this misconceived as the right to equal treatment guaranteed equal treatment with other individuals in similar circumstances “at a particular point in time”, not “from one point in time to another” [emphasis in original omitted].²⁹³ It would not be correct to say that every policy change always constituted differential treatment requiring the State’s justification.²⁹⁴ There was no legitimate expectation that the MHA policy not be changed, as the MHA had not made a clear statement to the applicant to engender this.²⁹⁵

1.144 The second ground of challenge, which failed, was that the MHA policy distinction between State-brought proceedings (eg, being a witness in criminal proceedings or a claimant in confiscation proceedings) and non-State brought proceedings was unlawful for violating Art 12, or alternatively, irrational. Non-State brought proceedings including disciplinary proceedings against counsel, which would not impact the prisoner’s conviction or sentence, would not be considered “relevant” pending proceedings that would operate as a bar against scheduling an execution.²⁹⁶

1.145 In examining the MHA policy, the Court of Appeal noted it would obviously be invidious to schedule an execution while proceedings which would potentially impact the PACP’s conviction or sentencing were pending, as they could for example eventuate in the setting aside of the death sentence.²⁹⁷ In contrast, proceedings which would have no impact on a PACP’s conviction or sentence were regarded as not relevant by the MHA.²⁹⁸ The sole exception to this is that of State-brought proceedings which require the PACP’s testimony, distinguished from non-State brought proceedings requiring the PACP’s testimony.²⁹⁹

1.146 The Court of Appeal did not find the distinction intrinsically objectionable as PACPs stood in a different position “from other persons who have not lost their right to life by reason of a lawfully imposed death sentence”.³⁰⁰ The starting point is that the State is entitled to deprive PACPs of their lives, provided this is done in accordance with the law, and that the principle of finality should be foregrounded, as PACPs

293 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [50].

294 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [50].

295 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [51].

296 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [54].

297 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [55].

298 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [56].

299 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [56].

300 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [59].

have been legally sentenced to death and their convictions and sentences upheld on appeal or review.³⁰¹ Further, it is legitimate for the MHA to recognise a limited exception only for State-brought proceedings, as these seek to vindicate the public interest, not the private interest of any individual PACP; practically speaking, as the PACP had no control over when the State may bring a proceeding or the State's conduct, there was no danger that such proceedings would be used to indefinitely impede executing the execution sentence.³⁰² Where complaints are made over the conduct of lawyers to the Law Society, it is the Law Society and not the State who is responsible to bring disciplinary proceedings in the public interest, such that these proceedings are non-State brought in nature.³⁰³

1.147 Applying *Syed Suhail*, the Court of Appeal did not accept that PACPs, whose testimonies are required in non-State brought proceedings, were equally situated with PACPs whose testimonies are required in State-brought proceedings. Further, even if these two groups were taken to be equally situated, the State had provided “legitimate reasons”³⁰⁴ to justify the differential treatment which was “amply shown to be reasonable” given the different types of interest at stake and the principle of finality.³⁰⁵ Practically speaking, it falls on the Law Society to take steps to expedite proceedings or record evidence of the PACP before he is executed.

1.148 The Court of Appeal thus declined to stay the execution pending disciplinary proceeding against his lawyers.

1.149 It was argued in *Howe Wen Khong Rocky* that the MDP under the MDA was unconstitutional in violating Art 12 and failing the reasonable classification test, as individuals with vastly different culpabilities and circumstances were classified together and punished with the MDP, even if their culpability and circumstances varied significantly.³⁰⁶ This was not a case about the differentia between different classes, but who was included within a single class.³⁰⁷

1.150 Hoo J found that under the first limbs of *Lim Meng Suang* and *Syed Suhail*, the inquiry related to identifying the purported criterion for differential treatment; whether the MDP was imposed turned on the amount and weight of drugs which was clearly an intelligible

301 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [59].

302 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [60].

303 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [62].

304 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [60].

305 *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 1345 at [60].

306 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [78].

307 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [77].

criterion.³⁰⁸ To contend that the differentia was unreasonable and should take into consideration an offender's culpability and circumstances was "untenable": under the first limb of *Syed Suhail*, the concern is not with the reasonableness of the differentia; it would also pass the stricter first limb test in *Lim Meng Suang*.³⁰⁹

1.151 In *Ong Ah Chuan*, in relation to the similar treatment accorded to dissimilar offenders falling within the same class of a drug trafficking offence defined by the quantity of drugs trafficked, the Privy Council had stated that Art 12 was not concerned with equal punitive treatment for equal moral blameworthiness, but rather "equal punitive treatment for similar legal guilt".³¹⁰ The Misuse of Drugs Act 1973³¹¹ recognised gradations in culpability for drug trafficking offences only in terms of the amount of the drugs trafficked.³¹² What threshold triggered the MDP remained a matter of legislative policy and the question of what constitutes a better differentia was one "on which reasonable people may well disagree".³¹³ It would not be unreasonable for the Legislature to decide that individuals trafficking in larger quantities of illicit drugs deserved "a stronger deterrent and a more severe punishment", as the Privy Council emphasised in *Ong Ah Chuan*.³¹⁴

1.152 The "mere fact" some disparity existed between offenders in the same class facing the MDP did not make the law arbitrary or contrary to Art 12(1). If the applicants' arguments were to be accepted, Hoo J noted that no offence carrying a mandatory sentence could ever be constitutional as there would always be "some extent of distinction between different offenders"³¹⁵ regardless of how high the threshold triggering the mandatory sentence was set at.³¹⁶ Thus, the applicants did not prove the MDP was inconsistent with the reasonable classification test, on the basis that the thresholds triggering the MDP under the MDA did not bear sufficient rational relation to the MDP object, under the second limb of the *Syed Suhail* test.³¹⁷

308 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [78].

309 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [78].

310 *Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710 at [39].

311 Act 5 of 1973.

312 *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [49], cited in *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [81].

313 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [83].

314 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [86].

315 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [82].

316 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [82].

317 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [86].

1.153 As the MDP did not violate either Art 9 or 12, it also was found to be consistent with Art 93 of the Constitution, as the court was not compelled to impose an unconstitutional punishment, as the appellants had unsuccessfully argued.³¹⁸

VIII. Article 12 and section 106 of Criminal Procedure Code 2010

1.154 Section 106 of the Criminal Procedure Code³¹⁹ (“CPC 2012”) allowed a court or police officer to permit a person to enter a personal bond (“self-bail”) rather than being required to sign a bond with one or more sureties.

1.155 In *Katchu Mohideen Bazeer Ahamed v Public Prosecutor*,³²⁰ the constitutionality of s 106A of the CPC 2012 was challenged as violating Art 12 as self-bail was lawful, while, as of 31 October 2018, it is an offence to enter into indemnity agreements for bail sureties, which are void under s 106A(1) of the CPC.

1.156 The rationale was that this would undermine accountability, because if an accused person is bailed out by strangers, this removes the financial and personal pressure exerted on the bailor to fulfil his supervisory obligations in relation to the accused.³²¹ Such indemnity agreements are thus against public policy as a bailor indemnifies from all loss would be disincentivised from fulfilling his obligations, as his assets are not at risk of forfeiture. If permissible, an accused person with financial means could “effectively purchase his own freedom”.³²²

1.157 The court noted that the bail mechanism had to balance various competing interests, and that it was the best compromise between the competing goals of liberty prior to conviction and securing the accused’s attendance at trial.

1.158 Bail may be available for both bailable and non-bailable offences; for the latter, a person so accused may be released on bail by a police officer (rank of sergeant or above) or the court, under s 93(1) of the CPC. For bailable offences, the police officer or court may release the accused person on his personal bond without sureties under s 92(2) of the CPC and a person willing to give bail must be released as of right. The decision not to release an accused person on personal bond means that the court

318 *Howe Wen Khong Rocky v Attorney-General* [2025] SGHC 253 at [93] and [95].

319 Cap 68, 2012 Rev Ed.

320 [2025] SGHC 192.

321 *Katchu Mohideen Bazeer Ahamed v Public Prosecutor* [2025] SGHC 192 at [29].

322 *Katchu Mohideen Bazeer Ahamed v Public Prosecutor* [2025] SGHC 192 at [38].

or police officer is not satisfied that the risk of forfeiting the accused person's own funds does not suffice as an incentive to comply with the terms of the release. The accused person does not choose whether his release is to be secured by personal bond or by a bail bond with sureties.³²³

1.159 The appellant had since 2019 operated a scheme under which he recruited Singapore bailors for foreign accused persons, for which he received a fee from the foreign accused or their next of kin. He pleaded guilty to one charge under s 106A(2) and agreed to allow two other charges to be considered in sentencing, for which he received six weeks' imprisonment.

1.160 The General Division found that s 106A CPC 2012 did not infringe Art 12; the appellant had argued that it was discriminatory in permitting self-bail while prohibiting the accused person from providing funds to a surety who would then act as bailor for that accused person. However, the General Division held that the argument failed at the first step of the *Lim Meng Suang* test where the Court of Appeal held that the reasonable classification test was not engaged where the impugned legislative provision was not discriminatory in the first place.³²⁴ This is because there was no differentiation in how s 106A(2) of the CPC 2012 was applied as it applied to all persons, both indemnifier and indemnified, whether this be the accused person, bailor or some third party who knowingly entered into a bail indemnity agreement after 31 October 2018.³²⁵

IX. Article 12 and procedure applicable to prisoners awaiting capital punishment

1.161 In *Masoud Rahimi bin Mehrzad v Attorney-General*,³²⁶ 31 PACPs sought declarations that ss 60G(7)(d), 60G(8), 60H(6) and 60I(1) of the SCJA, as well as s 313(2) of the CPC were inconsistent with the right to equality under Art 12 of the Constitution.

1.162 The applicants actually lacked standing as none had, at the relevant time (*ie*, time of the application), made any applications under the PACC Act Regime. Nonetheless, Hoo J proceeded to examine the substantive issues.

323 *Katchu Mohideen Bazeer Ahamed v Public Prosecutor* [2025] SGHC 192 at [54].

324 *Katchu Mohideen Bazeer Ahamed v Public Prosecutor* [2025] SGHC 192 at [53].

325 *Katchu Mohideen Bazeer Ahamed v Public Prosecutor* [2025] SGHC 192 at [55].
326 [2025] 3 SLR 1171.

1.163 It was argued that Art 12 was breached in so far as the reasonable classification test was not satisfied, owing to the distinction drawn between capital and non-capital prisoners under the PACC Act, on the basis that the latter could also file frequent or frivolous applications post-appeal. This was substantiated by reference to nine cases filed under s 394H of the CPC which were dismissed for being without merit or for abuse of process.³²⁷ The applicants framed the issue in terms of whether the further curtailment of the applicants rights under the PACC Regime to prevent abuse of process or to sift out unmeritorious claims was reasonably justifiable.³²⁸

1.164 Hoo J applied the *Syed Suhail* approach which was “more favourable” to the applicants,³²⁹ and found that the first limb would be satisfied, in identifying the purported criterion for differential treatment, between PACPs seeking to make PACC Applications under the SJCA provisions, and PACPs who had previously been found to abuse court processes under s 313(2) of the CPC.

1.165 Hoo J also considered that the first limb of the *Lim Meng Suang* test would be satisfied, the differentia being intelligible and not so unreasonable as to be illogical or incoherent such that no reasonable person would ever contemplate them as being functional as intelligible differentia.³³⁰

1.166 The applicants argued these groups should be assessed against “non-capital prisoners” or more broadly, all litigants who come under the CPC or who wish to apply for judicial review. Hoo J also considered that the second limb of either test would pass muster, the object of the PACC Act Regime being to address the trend of PACPs filing last-minute applications in capital cases after exhausting all avenues of appeal.³³¹ There was a “legitimate trend of concern”³³² that Parliament was trying to address in introducing the Impugned Provisions. There was clearly a rational relation between the object and Impugned Provisions, facilitating the quicker disposition of cases which did not bear any reasonable prospect of success, and to prevent the abuse of courts’ processes in order to stay executions through patently unmeritorious post-appeal applications.³³³ This was not tantamount to saying that

327 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [90].

328 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [91].

329 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [93].

330 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [96].

331 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [97].

332 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [98].

333 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [98].

the Impugned Provisions' object was to introduce the differentiae they embodied.³³⁴

1.167 The distinction between capital and non-capital prisoners was misplaced as s 394H of the CPC fell outside the scope of the PACC Act Regime, governing a different set of proceedings in relation to applications to review an earlier appellate court decision.³³⁵ As such, no differentia existed between PACPs and other offenders in non-capital cases.³³⁶ Any challenge based on Art 12 therefore lacked any chance of success.³³⁷

X. Conclusion

1.168 Within the field of administrative law, it is clear that the courts are not locked into categorical thinking but adopt a functionalist approach, in assessing whether an entity is amenable to judicial review. Quite apart from whether the source of a body's power is statutory (public), whether there is a public element or a government element in the exercise of power is closely evaluated, the impact of a decision of the affected party is also factored in, as part of a multi-factoral approach in assessing whether judicial review is warranted, and how it may be calibrated where constitutional rights or principles are implicated. That there is an overlap in the application of the common law principles of rationality and fairness in public law and private law (where the principles are treated as implied terms) is acknowledged. The courts continue to operate within the comfort zone of the *GCHQ* grounds of review, presumably based on the contestable assumption that this preserves the dichotomy between legality and merits, eg, proportionality is incorporated within an irrationality analysis, just as it has been suggested that the values underlying substantive legitimate expectations in the *SGB Starkstrom Pte Ltd v Commissioner for Labour*³³⁸ decision could be given expression under the headings of illegality and procedural impropriety. "Standing" continues to be read restrictively in terms of vindicating individual rights or interests, as distinct from righting public wrongs which may sustain a broader reading of standing along the lines of public interest litigation.

1.169 It appears from a review of decisions in this field in 2025 that the trajectories of constitutional interpretation have largely been set, continuing in a direction orientating towards autochthony. This entails an emphasis towards according primacy to the text and historical intent, and

334 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [98].

335 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [99].

336 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [99].

337 *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 at [101].

338 [2016] 3 SLR 598.

a continuing antipathy towards values-based outcome oriented “living tree” interpretations. This is not to say there has not been continued theoretical development or affirmation, such as reading the separation of powers more in terms of the value of inter-branch autonomy rather than accountability, as in the rejection of proportionality review. As determined in earlier decisions, the function of the fundamental rules of natural justice under Art 9 are procedural in nature, seeking to secure a fair trial, and what that requires continues to be closely examined in context. It continues not to apply to the sentencing process, except in so far as statutory procedural protections may be provided, and the requirement that the law not be “absurd” is also procedurally apprehended. If the holding in *Jumaat* that fundamental rules of natural justice are to be historically confined to what existed at the commencement of the Constitution is adhered to, this would be a regrettable cabinining in the development of procedural fair trial rights that Art 9 is recognised in principle to protect.
