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IMPROPERLY OBTAINED EVIDENCE IN CRIMINAL PROCEEDINGS: AN UPDATED FRAMEWORK

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I. Introduction

1 This article is the last in the series on the admissibility of evidence in criminal proceedings.[2] Unlike the types of evidence covered in the previous articles, however, the Evidence Act 1893[3] ("Evidence Act"), at least on the face of its provisions, offers little guidance – arguably, even no guidance – on how to treat the subject covered in this article: improperly obtained evidence. To be clear, when it comes to evidence that has been obtained through threats, inducements, promises, or oppression, the Criminal Procedure Code 2010[4] ("Criminal Procedure Code") offers a ready answer, in that any statement given by an accused person in such circumstances will be inadmissible.[5] Statements that are taken without adherence to the procedural requirements

1 While the author is an AGC Professorial Fellow, the views expressed in this article are his own.

2 The other articles are Chen Siyuan & Chang Wen Yee, "The Use of Similar Fact in Criminal Proceedings: An Updated Framework" [2020] SAL Prac 25; Chen Siyuan, Chai Wen Min & Lau Yi Hang, "The Use of Hearsay in Criminal Proceedings: An Updated Framework" [2021] SAL Prac 8; and Chen Siyuan, Koh Zhi Jia & Joel Soon, "The Use of Expert Opinion Evidence in Criminal Proceedings: An Updated Framework" [2021] SAL Prac 27.

3 2020 Rev Ed.

4 2020 Rev Ed.

5 See s 258(3) of the Criminal Procedure Code 2010 (2020 Rev Ed), read together with Explanation 1 to the provision. Judicial decisions have also clarified the scope of this provision and how the doctrines interact, such as *Tey Tsun Hang v Public Prosecutor* [2014] 2 SLR 1189.

of the Criminal Procedure Code[6] may also be rendered inadmissible (more about this below).[7]

2 What this article is concerned with is evidence obtained through other improper means, for instance where there is entrapment or illegality. Previously, the Court of Three Judges in *Law Society of Singapore v Tan Guat Neo Phyllis* ("*Phyllis Tan*") had stated in no uncertain terms that evidence found relevant under the Evidence Act cannot be excluded even if it was improperly or illegally obtained.[8] That was more than a decade ago. With the introduction of the "interests of justice" test to the Evidence Act in 2012[9] and subsequent jurisprudential elucidation of the contours of the court's inherent powers, there are now multiple lenses through which the issue of improperly obtained evidence may be analysed. This article will thus examine the relevant developments in this area of law and identify some of the issues that need to be considered.[10]

II. How the rules developed

A. *Before* Law Society of Singapore v Tan Guat Neo Phyllis

3 Before the *Phyllis Tan* decision, the key cases[11] that addressed the subject of improperly obtained evidence were *Cheng Swee Tiang v Public Prosecutor*[12] ("*Cheng Swee Tiang*"),

6 See ss 22 and 23 of the Criminal Procedure Code 2010 (2020 Rev Ed), which provide for requirements such as recording the statement in writing or audiovisual form and having the statement signed by the accused. Sections 22 and 23 pertain to investigation/long statements and cautioned statements respectively.

7 See for instance *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205.

8 *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [104]–[117].

9 See ss 32(3) and 47(4) of the Evidence Act 1893 (2020 Rev Ed), which pertain to hearsay and expert opinion respectively.

10 Readers are again assumed to be broadly familiar with the various unique features of the Evidence Act 1893 (2020 Rev Ed) highlighted in previous articles in the series, such as the difference between general and specific relevancy, and the interface between relevance and admissibility.

11 *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [125].

12 [1964] MLJ 291.

Ajmer Singh v Public Prosecutor,[13] *How Poh Sun v Public Prosecutor*,[14] and *SM Summit Holdings Ltd v Public Prosecutor*[15] ("*SM Summit*"). The first and last of these cases are particularly pertinent for present purposes. In *Cheng Swee Tiang*, a provision shop owner was secretly selling lottery numbers illegally. Undercover police officers managed to trick him into selling them numbers, and although the appeal was resolved on other grounds, the Court of Appeal said that whether such evidence should be admitted to prove the commission of an offence would depend on whether its admissibility would operate unfairly against an accused person – but it did not elaborate any further.[16] The apex court was not unanimous, however. The dissenting view was that the Evidence Act simply did not provide for the judicial discretion to exclude evidence that is found to be relevant under the statute.[17]

4 *SM Summit* was a case involving unlawful replication of copyrighted material. The respondent obtained search warrants against the petitioners, but these warrants were issued partly on the basis of evidence gathered by a PI, who had asked the petitioners to replicate counterfeit masters. The High Court rejected the Prosecution's argument that *R v Sang*[18] – a House of Lords decision that held that evidence obtained illegally was not necessarily inadmissible – was of universal application.[19] One point of distinction the court drew was between that of illegality in obtaining the evidence of a crime already committed (such as in *Sang*) and illegality in procuring the commission of the offence (such as in *SM Summit*).[20] But while the court had "considerable misgivings" over the conduct of the PI, ultimately, it felt hampered in embracing the Australian and Canadian positions[21] which provided that, in deciding whether to exclude illegally obtained evidence, a court can consider factors such as fairness

13 [1985–1986] SLR(R) 1030.
14 [1991] 2 SLR(R) 270.
15 [1997] 3 SLR(R) 138.
16 *Cheng Swee Tiang v Public Prosecutor* [1964] MLJ 291 at 293.
17 *Cheng Swee Tiang v Public Prosecutor* [1964] MLJ 291 at 294.
18 [1980] AC 402.
19 *SM Summit Holdings Ltd v Public Prosecutor* [1997] 3 SLR(R) 138 at [42].
20 *SM Summit Holdings Ltd v Public Prosecutor* [1997] 3 SLR(R) 138 at [42] and [52].
21 Such as in *Bunning v Cross* (1978) 19 ALR 641 and *Collins v R* (1987) 38 DLR (4th) 508.

of trial, judicial endorsement of improper government conduct, the egregiousness of the impropriety, and the seriousness of the offence.[22] The court stopped short of saying more, however, perhaps because even without relying on the evidence of the PI, there was sufficient evidence to justify the issuance of the warrants.[23]

B. Law Society of Singapore v Tan Guat Neo Phyllis

5 Any doubt that *SM Summit* had left the door open for courts to exclude evidence found relevant under the Evidence Act was, arguably, dispelled around a decade later in *Phyllis Tan*.[24] There, a law firm hired a PI to obtain evidence that the respondent's firm was engaged in touting for conveyancing work. The PI contacted the respondent, purporting to be a real estate agent who needed help with a client's purchase of a property. The PI secretly made audio and video recordings of the conversation, and armed with this evidence, he proceeded to lodge a complaint with the Law Society, alleging that the respondent had offered to pay a referral fee. Before the Court of Three Judges, the respondent argued that the recordings should be excluded as they had been obtained illegally.

6 The court first noted that pursuant to s 2(2) of the Evidence Act, the "starting point" is "any rule of evidence not contained in any written law which is inconsistent with any of the provisions of the [Evidence Act] is repealed".[25] This provision would apply prospectively to all common law rules of evidence, and was not confined to common law rules as they existed at the time of enactment of the statute.[26] The court then observed that, regardless of whether the evidence was illegally obtained or obtained through entrapment, the Evidence Act did not give the court any discretion to admit evidence found relevant under the statute.[27] This meant that previous cases that had sanctioned

22 *SM Summit Holdings Ltd v Public Prosecutor* [1997] 3 SLR(R) 138 at [54]–[57].
23 *SM Summit Holdings Ltd v Public Prosecutor* [1997] 3 SLR(R) 138 at [34]–[42].
24 See also *Mah Kiat Seng v Attorney-General* [2021] SGHC 202 at [50].
25 *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [116].
26 *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [124].
27 *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [124].

the exclusion of relevant evidence on grounds not specifically expressed in the Evidence Act – be it *Cheng Swee Tiang* or *SM Summit* – could not be considered to be consistent with the statute.[28] The paramountcy of adhering to s 2(2) of the Evidence Act has since been affirmed in various subsequent cases by the High Court[29] and Court of Appeal.[30]

C. Muhammad bin Kadar v Public Prosecutor

7 However, the court in *Phyllis Tan* also stated that in any event, "in the case of entrapment evidence … the probative value of such evidence must be greater than its prejudicial value in proving the guilt of the accused".[31] There were at least two possible ways to interpret this aspect of the judgment.[32] The first was it confirmed that the relevancy provisions of the Evidence Act were predicated entirely on an epistemic formulation (that is, whether a piece of evidence is logical and reliable enough);[33] since the discomfort surrounding the admission of entrapment evidence is not over its probative value but over its propriety and provenance, prejudice under such a reading simply refers to a lack of probative value and does not include any normative considerations, and therefore entrapment evidence is by definition admissible and recourse to the court's discretion is obviated. The second interpretation is that the court possesses a residuary discretion to exclude relevant evidence if the prejudicial effect is high enough. The question, then, is whether prejudice only refers

28 *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [124]–[126].

29 See for instance *Public Prosecutor v Mas Swan bin Adnan* [2011] SGHC 107. There, the court pointed out that similar fact cases such as *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178, which held that similar fact evidence found relevant under the Evidence Act (Cap 97, 1997 Rev Ed) can be excluded, were wrong.

30 See for instance *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 and *ARX v Comptroller of Income Tax* [2016] 5 SLR 590.

31 *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [126].

32 See Chen Siyuan & Eunice Chua, "The Indian Evidence Act and Recent Formulations of the Exclusionary Discretion in Singapore" (2018) 15(1) *International Commentary on Evidence* 1.

33 See generally Chin Tet Yung, "Remaking the Evidence Code – Search for Values" (2009) 21 SAcLJ 52.

to the lack of probative value and reliability, or it can include non-epistemic factors such as fairness and other norms.

8 The Court of Appeal in *Muhammad bin Kadar v Public Prosecutor*[34] ("*Kadar*") appeared to support the second interpretation, but only gave prejudice a narrow definition. In that case, two brothers were accused of robbing and murdering an old woman at her home. One of the accused made a confession, but this statement was taken without a warning administered. The statement was also not read back to the accused, and he was not given the opportunity to make corrections or sign the statement. As the Court of Appeal was of the view that these irregularities were both manifest and deliberate violations of the Criminal Procedure Code, the confession was inadmissible.[35] Specifically, the court said it was invoking its inherent power to exclude the evidence because its prejudicial effect exceeded its probative value.[36] A consequence of framing this act of exclusion in terms of inherent power is that even though the evidence in this case (a confession) was governed by the Criminal Procedure Code, the power may well be exercised in the context of the Evidence Act too, since it is conceivable that an inherent power can, and should, be exercised in the contiguous domain of evidence law.[37]

9 As regards the meaning of prejudice, it seems clear that the Court of Appeal equated it with the lack of reliability, at least in the context of this decision. It explicitly rejected the notion that the court's function included ensuring minimum standards of law enforcement; it also denied that the court's exclusionary discretion was founded on broad conceptions of fairness.[38] Instead, on no less than nine occasions, it mentioned how the reliability of the confession had been compromised.[39] In other words, the procedural requirements in taking statements set

34 [2011] 3 SLR 1205.
35 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [140]–[147].
36 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [140]–[147].
37 See generally Jeffrey Pinsler, "The Court's Discretion to Exclude Evidence in Civil Cases and Emerging Implications in the Criminal Sphere" (2016) 28 SAcLJ 89.
38 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [52]–[68].
39 *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 at [55]–[68] and [117].

out in the Criminal Procedure Code were put in place to ensure the integrity of evidence, and the flagrant violations committed resulted in the exclusion of the evidence on that basis. There was nothing in the judgment that gave prejudice any meaning beyond the lack of reliability.

D. Immediate aftermath of the 2012 amendments to the Evidence Act

10 The applicability of the court's inherent power to questions of admissibility under the Evidence Act found judicial support in subsequent cases. This came about around the same time as the 2012 amendments to the Evidence Act, which, as briefly alluded to earlier, broadened the gateways to admitting hearsay evidence under s 32[40] and expert opinion evidence under s 47.[41] At the same time, Parliament included clauses (what would eventually become ss 32(3) and 47(4)) that state that evidence found relevant under s 32 or s 47 "shall not be relevant if the court is of the view that it would not be in the interests of justice to treat it as relevant". During the debates on these clauses, the Law Minister said that these clauses gave the courts "discretion to exclude … [which] ensures that the expanded exceptions are not abused. This is in addition to the court's inherent jurisdiction to exclude prejudicial evidence".[42]

11 The first notable case that attempted to pull all the threads together – *Phyllis Tan*, *Kadar*, and the interests of justice test – was *ANB v ANC*.[43] There, the parties were going through a divorce and the wife hired a PI to obtain incriminating information from the husband's computer. This act would have constituted offences under the Penal Code 1871[44] and Computer Misuse Act 1993.[45]

40 For instance, hearsay evidence is now admissible if there is agreement between parties.
41 For instance, expert evidence is now admissible if the court is "likely to derive assistance", as opposed to the previous standard which focused more the skill of the expert.
42 *Parliamentary Debates, Official Report* (14 February 2012), vol 88 at p 1128 (K Shanmugam, Minister for Foreign Affairs and Minister for Law).
43 [2014] 4 SLR 747.
44 2020 Rev Ed.
45 2020 Rev Ed.

After surveying the said authorities, the High Court concluded that courts do have "an exclusionary discretion, one that stems from the inherent discretion of the court to prevent injustice at trial … courts exist to dispense justice and are vigilant to prevent injustice … Having said that, resort to the inherent jurisdiction is made sparingly".[46] On appeal, although the Court of Appeal did not agree with the High Court's claim that the exclusionary discretion would necessarily be exercised less stringently in civil cases,[47] it supported the conclusion that the discretion was "inherent" and (in criminal proceedings at least) exercising the discretion involved weighing probative value and prejudicial effect – but stopped short of saying what prejudicial effect entailed.[48] It also left open the question of whether prejudicial effect could mean something more in the context of ss 32(3) and 47(4), noting that "interests of justice" is likely to have a different meaning from the freestanding common law conception of the court's exclusionary discretion.[49]

12 At around the time *ANB v ANC* was decided, the High Court in *Wan Lai Ting v Kea Kah Kim* had provided a preview to how this question might be answered.[50] The plaintiff claimed to be the beneficial holder of a company's shares. He said that the legal owner had transferred the interest in the shares to him, and this transfer was recorded in a signed document witnessed by the owner's mother-in-law, Lau. As Lau was old and lived abroad, the plaintiff applied to admit two affidavits of evidence-in-chief sworn by her as hearsay evidence under s 32(1) of the Evidence Act. The plaintiff also said testimony by video link was too expensive. In holding that it would not be in the interests of justice to admit the evidence, the court pointed to the unreliability of Lau's evidence, given the cognitive impairment she was suffering from; such unreliability was compounded by the defendant not

46 *ANB v ANC* [2014] 4 SLR 747 at [50].
47 *ANB v ANC* [2014] 4 SLR 747 at [51].
48 *ANB v ANC* [2015] 5 SLR 522 at [29].
49 *ANB v ANC* [2015] 5 SLR 522 at [31].
50 [2014] 4 SLR 795.

being afforded the opportunity to cross-examine Lau to test the strength of the evidence.[51]

13 It was only in *Gimpex Ltd v Unity Holdings Business Ltd*[52] ("*Gimpex*") that the interests of justice test was perceptibly broadened to include considerations beyond relevance and reliability. This case involved a dispute over the quality of a coal shipment and the issue was whether reports evaluating the quality of the coal could be admitted since the makers of the report were not available to testify. The Court of Appeal held that factors that may be considered by the court in determining the interests of justice include any harm that might compromise fair adjudication, costs, delays, potential for misleading or confusing the court, unreliability, procedural oppressiveness, and substantive unjustness.[53] But while some of these factors went beyond mere epistemic considerations, two things remain unclear for present purposes: first, whether the interests of justice test (in the sense of the additional factors) is applicable outside s 32 (or s 47 for the matter); and second, assuming it did, whether illegally obtained evidence would be caught by any of these factors.

III. Most recent developments and observations

14 Contemporaneous developments have provided some clues to the answers to these questions, albeit obliquely. In *Micheal Anak Garing v Public Prosecutor*[54] ("*Garing*"), the accused set out one night with two friends with a plan to commit robbery. In the span of less than half a day, the trio attacked four victims, with the final victim succumbing to his injuries. The accused, who had used a weapon in all the attacks, argued that evidence of the first three attacks should not be admitted to prove the murder

51 *Wan Lai Ting v Kea Kah Kim* [2014] 4 SLR 795 at [17]–[23]. For a decision that expounded on the importance of the right to cross-examination in an adversarial system, see *Teo Wai Cheong v Crédit Industriel et Commercial* [2013] 3 SLR 573.

52 [2015] 2 SLR 686.

53 *Gimpex Ltd v Unity Holdings Business Ltd* [2015] 2 SLR 686 at [106]–[108].

54 [2017] 1 SLR 748.

charge as it was prejudicial.[55] The Court of Appeal first noted that the evidence was undeniably prejudicial, in the sense of its potential to incriminate the accused.[56] However, it held that the evidence was not admitted here for the purpose of showing the accused's violent tendencies; rather, if the evidence was rejected, "the court would have only a truncated version of the material events which might not shed true light on the attack carried out on the deceased, especially because all four attacks occurred within a short span of time".[57] The evidence was thus admissible under either s 6 (a general relevancy provision on *res gestae*) or s 14 (a specific relevancy provision on similar fact).[58]

15 Next, in *Sulaiman bin Jumari v Public Prosecutor*[59] ("*Sulaiman*"), the accused was convicted of trafficking diamorphine. On the day of his arrest, he confessed that the drugs found in his house belonged to him and that he intended to sell them. At trial, he argued that the statement was not made voluntarily as he was under the influence of drugs when it was taken. The Court of Appeal noted that Explanation 2(*b*) to s 258(3) of the Criminal Procedure Code did provide that the mere fact that an accused person was intoxicated would not render a statement inadmissible.[60] Nonetheless, pursuant to *Kadar*, the court had "a residual discretion at common law to exclude evidence where its prejudicial effect outweighs its probative value".[61] This discretion "applies to statements which, despite having been found or accepted to be voluntary … suffer from some form of unfairness in terms of the circumstances and process by which they were obtained".[62]

55 *Micheal Anak Garing v Public Prosecutor* [2017] 1 SLR 748 at [6].
56 *Micheal Anak Garing v Public Prosecutor* [2017] 1 SLR 748 at [8].
57 *Micheal Anak Garing v Public Prosecutor* [2017] 1 SLR 748 at [8] and [10].
58 *Micheal Anak Garing v Public Prosecutor* [2017] 1 SLR 748 at [9] and [11]. A corollary is that general relevancy provisions can be subject to the probative value–prejudicial effect analysis as well, though if prejudice in this context means the lack of relevance, there is no need to inquire beyond the relevancy criteria in the relevancy provisions of the Evidence Act 1893 (2020 Rev Ed).
59 [2021] 1 SLR 557.
60 *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 at [41]–[43].
61 *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 at [44].
62 *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 at [45].

16 How then do these two cases add to what has been highlighted so far? First, although neither case pertained to s 32 or s 47 of the Evidence Act, it is notable that the court did not refer to the interests of justice or the various factors spelt out in *Gimpex* when deciding if the evidence in question should be denied admissibility – the inquiry was strictly along the lines of weighing probative value and prejudice. This seems to confirm that the non-epistemic factors espoused in *Gimpex* may not be applicable outside s 32 or s 47 of the Evidence Act. Second, although *Sulaiman* made a reference to unfairness, the court clarified that "[a]t its core, the exclusionary discretion is concerned with … reliability" and "in its exercise of its residual discretion to exclude evidence, the court is concerned essentially with … reliability".[63] Just as the court did in *Kadar*, the court in *Sulaiman* equated prejudice with unreliability.[64]

17 As for the impact of *Garing* and *Sulaiman* on the subject of improperly obtained evidence, it would seem that since non-epistemic grounds to exclude relevant evidence only find expression thus far in ss 32 and 47 jurisprudence, unless the improperly obtained evidence falls under s 32 or s 47, the only line of inquiry open is whether the evidence is prejudicial – but strictly in the sense of either lacking probative value or being unreliable. One must keep in mind too that in *Phyllis Tan*, the argument that founding a prosecution on entrapment evidence would not amount to an abuse of process under Singapore law.[65] This is consistent with the characterisation of the court's inherent

63 *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 at [45]–[46]. Notably, in 2018, subsection (5A) was added to s 258, which provides that confessions of a co-accused may not be taken into consideration by the court "if the prejudicial effect of the confession on that person outweighs the probative value of the confession". Prejudicial effect in the context of s 258(5A) must surely refer principally to unreliability too.

64 A narrow reading of this case, or *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*") for the matter, is that prejudice is only equated with unreliability in the context of statements under the Criminal Procedure Code 2010 (2020 Rev Ed), but as mentioned, the court in *Kadar* had grounded the discretion in the court's inherent power, which is presumptively applicable across multiple contexts. See also *Law Society of Singapore v Shanmugam Manohar* [2021] SGHC 201 at [116].

65 *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) at [138].

power as being limited to rejecting relevant evidence only in very narrow circumstances.

18 In this connection, it is also instructive to see how other common law jurisdictions have codified rules to address the issue of improperly obtained evidence. The terms prejudice and unfairness also feature, but the explicit connection to illegally obtained evidence is what makes the difference. In the UK, the court "may refuse to allow evidence on which the prosecution proposes to rely … if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it".[66] In Australia, the court "must refuse to admit evidence adduced by the prosecutor if its probative value is outweighed by the danger of unfair prejudice to the defendant";[67] more pertinently, evidence that is obtained "improperly or in contravention of an Australian law … is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting [the] evidence".[68] In New Zealand, if the court finds that the evidence has been improperly obtained, it must "determine whether or not the exclusion of the evidence is proportionate to the impropriety by means of a balancing process that gives appropriate weight to the impropriety and takes proper account of the need for an effective and credible system of justice".[69]

19 It would not be fanciful to suggest that the underlying premise of the aforementioned rules in the UK, Australia and New Zealand is that the accused has certain rights in relation to how evidence is obtained against him. As can be seen, there is little to sustain the conclusion that, save for s 32 or s 47 of the Evidence

66 Police and Criminal Evidence Act 1984 (c 60) (UK) s 78(1).
67 Evidence Act 1995 (Cth) (Australia) s 137.
68 Evidence Act 1995 (Cth) (Australia) s 138(1). Factors to consider include the importance of the evidence, the nature of the offence, the gravity of the impropriety, and international human rights.
69 Evidence Act 2006 (New Zealand) s 30(2)(*b*). Factors to consider include the importance of any right breached and the seriousness of the intrusion on it, the intent behind the impropriety, the nature and quality of the evidence, the seriousness of the offence, and the urgency in obtaining the evidence.

Act, prejudice simpliciter can accommodate such a prospect. This is so regardless of whether the discretion is grounded on the court's inherent power or conceptualised as a common law rule, as a broad range of case law has yet to venture beyond relevance and reliability considerations. What remains to be seen is if the interests of justice factors elucidated in *Gimpex* would ever explicitly extend their applicability beyond ss 32 and 47 of the Evidence Act. Until that happens, *Phyllis Tan* would continue to stand for the proposition that the court has no discretion to exclude improperly obtained evidence, unless reliability has clearly been compromised.[70]

70 Postscript: The Rules of Court 2021, which are effective April 2022 and meant to modernise civil procedure by making proceedings more efficient and effective, have introduced "interests of justice" to no fewer than a dozen provisions in the subsidiary legislation. These provisions cover a broad range of scenarios: the court's general powers (O 3 r 2), whether a court should amend or strike out a pleading (O 9 r 16), whether a court should allow a broader scope of discovery (O 11 r 1), and which parties that may attend hearings (O 15 r 1), to name a few. It is difficult to predict how the test of interests of justice would develop from this point onwards. On the one hand, the Rules of Court are principally concerned with civil procedure, and not admissibility. On the other hand, the interests of justice test, which previously only found expression in the Evidence Act, is now explicitly a guide for the court's discretion (albeit on matters of civil procedure), and this discretion clearly contemplates non-epistemic factors. However, to the extent that these factors have more to do with procedural fairness rather than substantive rights, the views put forth in this article about *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 remain unchanged.