1. ADMINISTRATIVE AND CONSTITUTIONAL LAW

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Introduction

1.1 In terms of administrative law, the decided cases showed some insight into the role of courts in relation to: handing over town council management to another political party after a general election, the susceptibility of professional bodies which are vested with statutory powers like the Law Society review committee to judicial review; as well as important observations on substantive legitimate expectations and developments in exceptions to the rule against bias on the basis of necessity, and how this may apply to private as opposed to statutory bodies. Many of the other cases affirmed existing principles of administrative legality and the need for an evidential basis to sustain an argument. For example, a bare allegation of bias without evidence cannot be sustained; allegations of bias cannot arise when a litigant is simply made to follow well-established court procedures.[1]

1.2 Most constitutional law cases revolved around Art 9 issues. Judicial observations on the nature or scope of specific constitutional powers were made in cases not dealing directly with constitutional arguments. See Kee Oon JC in *Karthigeyan M Kailasam v Public Prosecutor*[2] noted the operation of a presumption of legality and good faith in relation to acts of public officials; the Prosecution, in particular, is presumed "to act in the public interest at all times", in relation to all prosecuted cases from the first instance to appellate level. The Prosecution can change its sentencing position after giving effect to the public interest by giving "careful consideration to each case as far as possible", so as to assist the courts "fully and fairly in the decision-making process" with a view to arriving at "the correct outcome".[3] It was noted that it falls within the constitutional prerogative of the Public Prosecutor ("PP") to decide whether and what charge to frame against an offender; if the decision is taken not to frame an offender for each

1 *Lai Swee Lin Linda v Attorney-General* [2016] 5 SLR 476 at [73].
2 [2016] 5 SLR 779.
3 *Karthigeyan M Kailasam v Public Prosecutor* [2016] 5 SLR 779 at [14]–[16].

antecedent act, the Prosecution should not expect to be entitled to ask the courts to take these acts into account to enhance the sentence.[4]

1.3 Constitutional arguments which were weak on their merits received cursory treatment. In *Kho Jabing v Public Prosecutor*[5] ("*Kho Jabing (April 2016)*"), the Court of Appeal noted that Art 11, which constitutionalises the rule against double jeopardy, was not engaged, as an appeal made by the Prosecution against a sentence imposed by a re-sentencing judge at the first instance is not a second trial; the rule against double jeopardy "is that a person cannot be made to face more than one trial for the same offence".[6] Further, Art 11(1) does not prohibit the retrospective lowering of a sentence.[7]

1.4 The High Court in *Mohamed Shariff Valibhoy v Arif Valibhoy*[8] noted that the Parliament in enacting the Administration of Muslim Law Act[9] intended that the Islamic Religious Council be charged with the administration of Muslim law and the regulation of Muslim religious affairs, for the purposes of "protecting and safeguarding the Islamic religion in Singapore" consonant with Art 152(2) of the Constitution of the Republic of Singapore.[10] This reflects a commitment to legal pluralism.

ADMINISTRATIVE LAW

Scope of judicial review

1.5 The Parliament, through statute, has delegated disciplinary powers to professional bodies, which serves the public interest, such as the Law Society established under the Legal Profession Act[11] ("LPA"). In general, a body whose source of power is statutory and whose power has a public element to it is subject to judicial review, though this is not an absolute principle.

1.6 The question that arose in *Deepak Sharma v Law Society of Singapore*[12] was whether the decision of the review committee ("RC")

4 *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 at [62].
5 [2016] 3 SLR 135 at [125].
6 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [125].
7 *Kho Jabing v Attorney-General* [2016] 3 SLR 1273 at [9].
8 [2016] 2 SLR 301 at [22].
9 Cap 3, 2009 Rev Ed.
10 1985 Rev Ed, 1999 Reprint.
11 Cap 161, 2009 Rev Ed.
12 [2016] 4 SLR 192.

was susceptible to judicial review. The instance of alleged professional misconduct related to gross overcharging in relation to the costs two solicitors from WongPartnership LLP ("WP") sought to recover.

1.7 Deepak Sharma ("Mr Sharma")'s wife, Dr Susan Lim ("Dr Lim") was liable to pay costs to the Singapore Medical Council ("SMC") in relation to earlier disciplinary proceedings SMC brought against Dr Lim. SMC's solicitors from WP sent a bill of costs which prompted Mr Sharma to send a letter of complaint on 23 January 2014 to the Law Society against WP solicitors, Mr Alvin Yeo SC ("Mr Yeo SC") and Ms Melanie Ho ("Ms Ho"). It alleged gross overcharging, an action which amounted to grossly improper conduct and/or conduct unbecoming of members of an honourable profession. The leave application was consolidated with the substantive merits.

1.8 Mr Sharma was not a client or party to the proceedings against Dr Lim but a co-funder of her legal expenses. Woo Bih Li J found that although Mr Sharma was not a party but a stranger to the proceedings, the history and framework of the LPA indicates that "any person" can make a complaint to the Law Society.[13] This is consonant with the rationale underlying why solicitors are disciplined for professional misconduct, which is to maintain "the high standards and good reputation of the legal profession".[14] As such, it "should not matter who brings the complaint to the Law Society".[15] Where the conduct complained of is egregious and where the complaint is backed by evidence, there is a "public interest"[16] in having this conduct investigated and the solicitor disciplined regardless of who makes the complaint. Sufficient safeguards exist to prevent solicitors and the Law Society from being flooded with complaints, such as the need for complainants to provide statutory declarations and deposits.[17] To pitch standing requirements only to include parties to a proceeding will be "too restrictive".[18] Whether or not a complaint should be made should not turn on a *locus standi* requirement, but "whether there is substance in the complaint".[19] Thus, Mr Sharma did not have to establish standing before making a complaint under s 85(1) of the LPA to the Law Society.[20] Further, since Mr Sharma was found to have a "private right" that the RC review his complaint legally, rationally, and with procedural

13 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [59].
14 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [61].
15 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [63].
16 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [63].
17 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [65].
18 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [68].
19 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [73].
20 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [76].

propriety, he would also have standing to seek judicial review against a dismissal of his complaint.[21]

1.9 An RC was constituted under s 85(6) of the LPA to review the complaint. One of the arguments raised by the Law Society[22] was that given the disciplinary framework envisioned within the LPA, there were "compelling reasons" which rendered the RC's findings unamenable to judicial review, citing *Manjit Singh s/o Kirpal Singh v Attorney-General*[23] ("*Manjit Singh*"). The Court of Appeal in *Manjit Singh* had considered instances where statutory power may not be subject to judicial review, singling out factors such as the absence of a public element in relation to a statutory power or duty which may also be governed by private law remedies. Here, the Law Society accepted that the RC's power is statutory and has a public element, and the "compelling reason" it invoked was based on the argument that the Parliament has intended through the LPA's legislative framework "to oust the jurisdiction of the court *vis-à-vis* decisions by a review committee".[24]

1.10 Woo J noted that as an aspect of the rule of law, any statutory clause purporting to oust the court's jurisdiction to review the decisions of an inferior tribunal or public body exercising public functions will be strictly construed.[25] Where the Parliament is silent, it has to be "abundantly clear" that it is in fact its intention to oust the jurisdiction of the court.[26] Section 106 of the LPA is not found to contain such clear and explicit words as to preclude judicial review unless bad faith is shown.[27]

1.11 The LPA framework provides for various stages in a "clear escalation process"[28] that a complaint made to the chairman of the Law Society goes through, reflecting an "elaborate stepped process".[29] The chairman constitutes an RC to review the complaint. If the RC finds the complaint frivolous or lacking in substance, it will direct SMC to dismiss the complaint with reasons. If SMC dismisses the complaint and gives effect to the RC's decision, it is to provide the complainant with reasons for its dismissal. The LPA provides no further recourse thereafter.[30] For other cases, the complaint is referred back to the chairman who will then constitute an inquiry committee ("IC") to inquire into the

21 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [79].
22 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [23].
23 [2013] 2 SLR 844.
24 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [25].
25 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [26].
26 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [26].
27 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [43] and [47].
28 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [27].
29 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [33].
30 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [28].

complaint and to report its recommendations to SMC. If SMC decides that a formal investigation is unnecessary, the complainant may apply to a High Court judge to review the matter. The judge may either affirm SMC's determination or direct the Law Society to apply to the Chief Justice to appoint a disciplinary tribunal ("DT"). If SMC decides a formal investigation is necessary, it will apply to the Chief Justice to appoint a DT. Judicial review is provided for the various decisions the DT can make: if the DT determines that there is no cause of sufficient gravity for the disciplinary actions, the complainant, solicitor, or SMC may apply to a High Court judge to review the order. If the DT determines that there is cause of sufficient gravity for disciplinary actions, the Law Society will then apply for the matter to be heard by a court of three judges, whose decision is final and non-appealable.[31]

1.12 Thus, as Woo J observed, the LPA not only provided for how the complaint was to be dealt with at each stage of the process, but for "various recourses available to dissatisfied parties at some of these stages".[32] Despite this elaborate framework, it does not necessarily mean that the Parliament intends that the disciplinary process be "self-contained to the effect that any recourse outside of the LPA is excluded".[33] Despite the silence of the LPA, there is case law showing that judicial review is available for various stages of the disciplinary process, such as the decision of the IC.[34] Thus, the inclusion of the RC into the "stepped disciplinary process does not *per se* preclude its decisions from judicial review"; what is notable too is that the LPA is silent as to what recourse may avail a complainant when the RC directs SMC to dismiss the complaint, while making provision for recourse at other stages.[35]

1.13 To the extent that it was argued that Law Society decisions were unique and not subject to judicial review, Woo J invoked the principle in *Chng Suan Tze v Minister of Home Affairs*[36] that all power has legal limits and the rule of law demands that courts examine the exercise of discretionary power. It is "precisely the exercise of such *sui generis* statutory powers that judicial review is meant to police".[37] This analysis is not affected by s 91A of the LPA, introduced in 2008, which limits judicial review of DT decisions, and does not apply to RC decisions.[38] Woo J considered that the legislative silence in relation to RC decisions indicates that the Parliament only intends to restrict review over DT

31 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [32].
32 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [33].
33 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [33].
34 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [33].
35 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [33].
36 [1988] 2 SLR(R) 525 at [86].
37 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [34].
38 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [35].

decisions but not over RC decisions, which occurs at a different stage of the disciplinary process, and which continues to be subject to judicial review.[39]

1.14 The LPA scheme points towards the availability of judicial review over the process and not merits of RC decisions, as judicial recourse is provided to the complainant at other stages of the disciplinary process, if his complaint does not progress to the next stage.[40] Parliamentary reports indicate that the function of the RC, which was introduced in 2001, is to act as a "sifting mechanism"[41] although the availability of judicial review at this stage may delay the disciplinary process. As the RC decision represents "the most preliminary inquiry into the matter", Woo J noted it would be "odd" for the Parliament to have intended that there would be no recourse if the complaint was dismissed by the RC, leaving the complainant without remedy.[42] For the first time, the High Court found that the RC's findings and decisions were subject to judicial review.[43]

1.15 Mr Sharma argued that the RC had made various errors of law. First, he argued that the RC decision that professional misconduct by gross overcharging could not be established by objective evidence "in the absence of other impropriety" was an error in law.[44] Woo J found that a significant taxing down of a bill of costs could in and of itself suffice to constitute misconduct.[45] The RC did not err in law as all it had found was that a "significant reduction would not ordinarily amount to misconduct unless there was some other impropriety".[46] Second, he argued that one could not claim costs of getting up a case and court attendance for more than two solicitors, whereas the RC had reasoned that the fees claimed in a bill of costs could reflect the work of all solicitors involved.[47] However, Woo J held that the Two Solicitors Rule was based on the work reasonably done by a notional team of two solicitors, even if more than two solicitors were involved.[48] Woo J held that the RC decision stated that the hourly rates of the two WP solicitors were not excessive as they reflected the work of all solicitors involved; the RC was not saying it was permissible to include all the work of the solicitors irrespective of duplication; there was, therefore, no error of

39 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [38]–[39].
40 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [40].
41 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [41].
42 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [40].
43 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [49].
44 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [84].
45 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [101].
46 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [110].
47 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [118].
48 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [125].

law.[49] Third, Mr Sharma argued that the RC decision was impugned on grounds of illegality, irrationality, and procedural impropriety because of its reasoning that because Mr Yeo SC from WP was not involved in drawing up the bill of costs, he could not be guilty of professional misconduct.[50]

1.16 In relation to the test of irrationality, Woo J noted that contemporary formulations asked whether the decision fell "within the range of responses which a reasonable decision-maker might have made in the circumstances".[51] In relation to this test, the court must "always be alive to the danger of delving too deep into the merits of the decision".[52]

1.17 The RC in its decision was of the view that a solicitor can only be guilty of professional misconduct "based on his or her own personal conduct".[53] Because of this, the RC considered it necessary to seek clarification from WP as to the roles played by its two solicitors, Mr Yeo SC and Ms Ho, in relation to the matters complained of. The RC found that Mr Yeo SC was not involved in preparing the bill of costs or the related proceedings and so there was no misconduct on his part. Woo J said it was not for the RC to ascertain that Mr Yeo SC was not involved in the matter complained of and so not guilty of professional misconduct as the only evidence the RC considered was WP's self-serving clarification, although the Notes of Evidence of the taxation proceedings showed that Mr Yeo SC was not involved.[54] While an RC may be able to come to findings of fact to determine whether a complaint is frivolous or lacking in substance, it is not its task to perform the role of the IC to make findings on disputed facts.[55] In interpreting WP's clarification, the RC had not acted irrationally nor made an error in law, but it had "exceeded its remit". In principle, this entitled the court to set aside the RC's decision in respect of Mr Yeo SC's involvement.[56] Nonetheless, while the RC was not to reach the conclusion that it did base on WP's self-serving clarification, there was no reason to disturb the RC's decision with respect to the complaint against Mr Yeo SC, as there was no error of law.

49 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [132]–[134].
50 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [135].
51 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [139], quoting *Soomatee Gokool v Permanent Secretary of the Ministry of health and Quality of Life* [2008] UKPC 54 at [18].
52 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [139].
53 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [140].
54 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [145].
55 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [146].
56 *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [147].

Substantive review

1.18 In *Axis Law Corp v Intellectual Property Office of Singapore*,[57] the plaintiff, Axis Law Corporation, sought leave to commence judicial review proceedings against the defendant, the Intellectual Property Office of Singapore, which is a statutory board and separate legal entity. This arose out of a trade mark dispute the plaintiff had with the registered proprietor, Axis Intellectual Capital Pte Ltd. The plaintiff's application to amend its statement of grounds ("SOG") as part of its application to revoke the trade mark "AXIS" was refused by the Registrar. The plaintiff sought to quash the Registrar's decision as well as a mandatory order to direct the plaintiff to amend its SOG.

1.19 Section 25(*b*) of the Trade Marks Act[58] ("TMA") provides that the Registrar "may" at the written request of a person making an application or filing a notice or document for the purposes of the TMA, amend the application, notice or document if the Registrar "is of the opinion that it is fair and reasonable in all the circumstances of the case to do so". Under r 83 of the Trade Marks Rules[59] ("TMR"), the Registrar has the discretion to direct that procedural irregularities which in her opinion is not detrimental to any party's interests, may be corrected on such terms as the Registrar directs. Reference was also made to a Circular providing a list of non-exhaustive factors to be considered where the Registrar is deciding whether to grant leave for amendments after the close of proceedings, which necessitates a balancing exercise.[60]

1.20 The plaintiff argued that the Registrar's decision not to correct procedural errors under r 83 of the TMR was *ultra vires* on grounds of illegality and irrationality, while the defendant argued that there was no legal or factual basis to find that the Registrar's decision was illegal or irrational, such that leave should not be granted.[61]

1.21 The High Court held that leave should not be granted, as it did not have the power through a mandatory order "to direct the Registrar to exercise [his] discretion in a particular manner" (that is, to grant leave to the Plaintiff to amend its SOG).[62] As s 25 of the TMA uses the word "may" in relation to the Registrar's discretion to amend an application if it is fair and reasonable to do so, the court observed that the "Parliament has clearly given the Registrar the discretion to decide whether to grant

57 [2016] 4 SLR 554.
58 Cap 332, 2005 Rev Ed.
59 Cap 332, R 1, 2008 Rev Ed.
60 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [27].
61 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [44].
62 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [56].

applications for amendments".[63] Neither did the plaintiff satisfy the leave threshold of a *prima facie* case of reasonable suspicion that the Registrar's decision suffered from illegality or irrationality, in applying for a quashing order.

1.22 The claim that the Registrar had failed to take into account relevant considerations was "completely unsupported by the facts".[64] The Registrar was found to have considered all the seven factors listed in the non-exhaustive Circular, as articulated in her reasoning. Additional factors considered included the fact that it was open to the plaintiff to institute fresh proceedings against the trade mark, which the plaintiff had argued was an irrelevant consideration, but had failed to explain why.[65] The High Court found that this latter factor was a relevant consideration in the balancing process, between the public interest in rule compliance, and ensuring each case was properly adjudicated according to its merits, to secure justice between the parties.[66] Although the plaintiff claimed the Registrar had made errors of fact, it did not in its submission raise any of the exception to the general rule that factual errors are not reviewable, unless where there is no evidence, manifestly insufficient evidence, an error to precedent fact or a material fact.[67]

1.23 The claim for bad faith failed because the plaintiff alleged the Registrar acted in bad faith because she "applied the incorrect law" though the plaintiff failed to explain how the facts established bad faith.[68] It noted that "touchstone of bad faith in the administrative law context is dishonesty", as stated by the Court of Appeal in *Muhammad Ridzuan bin Mohd Ali v Attorney-General*[69] ("*Muhammad Ridzuan*"). In addition, the claim that the Registrar had fettered her discretion also failed because of a lack of evidence that the Registrar rigidly adhered to a policy of refusing applications to amend. The facts showed that in exercising her discretion, the Registrar considered all relevant factors and made a decision based on the case circumstances.[70]

1.24 The plaintiff's claim that the Registrar's decision to refuse the plaintiff's amendments failed, as it was not "so absurd that a reasonable decision maker could not have come to it".[71] As observed in *Chee Siok*

63 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [56].
64 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [59].
65 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [60].
66 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [60].
67 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [64].
68 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [66].
69 [2015] 5 SLR 1222.
70 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [67].
71 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [69].

Chin v Minister for Home Affairs,[72] for a decision to be irrational, it must be "so outrageously defiant of 'logic' and 'propriety' that it can be plainly seen that no reasonable person would or could come to that decision". Tay Yong Kwang J noted that it could not be said that "allowing the proposed amendments was the only decision that a reasonable and rational decision maker could have made"; considering the case circumstances and the Circular factors, he found it was "completely open to reasonable and rational decision makers to grant or to refuse the amendments".[73] Neither was the decision so "unduly harsh" as to become "irrational".[74] Although the plaintiff did not receive the desired outcome and would have to spend costs and inconvenience in instituting fresh proceedings, this was "not uncommon in any litigation".[75] The Registrar had in fact considered the prejudice either the registered proprietor or the plaintiff would suffer by her decision,[76] which distinguished the instant case from *Attorney-General v Venice-Simplon Orient Express Inc Ltd*.[77] In so doing, she decided that if the amendments were allowed, the registered proprietor would suffer "greater or equal prejudice"; this was a factor which militated against allowing the amendments.[78]

1.25 Ultimately, the plaintiff's originating summons was "nothing more than a disguised appeal on the merits of the decision",[79] which is not the role of the court in judicial review proceedings.

Natural justice – Right to be heard

1.26 The issue of whether a hearing can be fair when it is conducted in the absence of the person charged arose in the case of *Fong Chee Keong v Professional Engineers Board, Singapore*.[80] There, Fong Chee Keong was found guilty of a disciplinary charge under s 31G(1)(*a*) of the Professional Engineers Act[81] ("PEA"). One of the bases for a charge under s 31G(1)(*a*) of the PEA is if a person is convicted of an offence "involving fraud, dishonesty or moral turpitude or such defect in character which makes him unfit for his profession". Fong had been convicted under s 57(1)(*k*) of the Immigration Act[82] for making false statements to the Immigration and Checkpoints Authority ("ICA"). On

72 [2006] 1 SLR(R) 582 at [94].
73 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [69].
74 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [70].
75 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [70].
76 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [72].
77 [1995] 1 SLR(R) 533 at [22].
78 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [73].
79 *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [74].
80 [2016] 3 SLR 221.
81 Cap 253, 1992 Rev Ed.
82 Cap 133, 2008 Rev Ed.

receiving a complaint with respect to this conviction, the Professional Engineers Board Singapore ("PEB") instituted disciplinary proceedings against Fong and cancelled Fong's registration as a professional engineer.

1.27 Fong challenged the cancellation on various grounds, including the allegation that there had been a breach of natural justice in the conduct of the proceedings.

1.28 PEB sent Fong a notice to attend a disciplinary hearing on 20 January 2015. The day before, Fong sent a letter requesting a postponement as he would be overseas, until the fourth quarter of 2015. The hearing was postponed to 25 February 2015, which was communicated by a letter dated 21 January 2015. Fong was informed by letter and e-mail that PEB's disciplinary committee ("DC") could proceed with the hearing in his absence under r 31(2) of the Professional Engineers Rules[83] ("PER"). Fong was sent documentary evidence which PEB intended to adduce in support of the disciplinary charge, including Fong's criminal charge sheets and ICA press release containing the details of Fong's charges. On the day of the hearing on 25 February, Fong sent an e-mail stating he could not come because he was involved in a traffic accident.[84] He sent an e-mail purporting to be from the police confirming receipt of his police report, but the report number was incomplete. Fong requested postponement to 29 April 2015 as he would be overseas from early March 2015. The DC decided to proceed with the hearing *in absentia*. After hearing PEB's submission, the DC adjourned the hearing to 2 June 2015 to give Fong one more opportunity to respond to the charges against him. PEB later managed to get a copy of the police report concerning an alleged traffic accident which took place on 16 February and not 25 February as Fong implied.

1.29 PEB sent a notice to Fong on 9 April 2015 to inform him of the future hearing date. This was also e-mailed, PEB claimed, with soft copies of its written submissions, bundle of authorities, and documents referenced during the 25 February 2015 hearing. Fong denied receiving this. On 1 June 2015, Fong sent an e-mail enclosing a medical certificate and stating he could not attend the 2 June hearing.[85] The DC decided to proceed with the hearing in Fong's absence on the basis that the matter was not controversial as Fong had been convicted of the said criminal charge and had been given two opportunities to respond to the disciplinary charges, choosing to attend neither.[86]

83 Cap 253, R 1, 1990 Rev Ed.
84 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [7].
85 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [9].
86 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [10].

1.30 The High Court was exercising appellate jurisdiction under the terms of ss 31H(1) and 31H(3) of the PEA. Section 31H(3) provides that the High Court shall accept as "final and conclusive" any DC finding in relation to standards of professional conduct and ethics, unless the High Court considers this "unsafe, unreasonable or contrary to the evidence".

1.31 The High Court observed that the content of natural justice, which is "nowadays consonant with a duty to act fairly", varies according to case circumstances.[87]

1.32 Fong argued that he had not received a fair hearing because the DC had proceeded with disciplinary hearings in his absence and so acted unfairly.[88] The High Court held this was not so as there had been compliance with the procedural requirements under s 31E of the PEA, such as the Registrar serving a notice of the hearing 21 days before the hearing date. The DC was entitled under the PER to proceeding with the hearing in Fong's absence.[89]

1.33 On the facts, the High Court held that PEB had given Fong a fair opportunity to be heard, although "the right is not an unlimited one".[90] The court found that PEB had not only acceded to Fong's multiple requests to postpone the hearing, Fong had also been duly notified of the time and location of the hearing a few weeks beforehand. PEB even expressly informed Fong the hearing would proceed without him should he fail to attend. PEB had "bent over backwards to accommodate him".[91] Fong, on the other hand, had "sought to delay the matter time and again, at short notice and on rather tenuous bases".[92] Lee Seiu Kin J said that "it defies logic that the PEB would be under an obligation to postpone the matter indefinitely for someone who was seeking to evade it".[93] Fong had been given "every reasonable opportunity" to be heard but "had not made use of it". While the law requires a tribunal to give Fong an opportunity to be heard, "it [was] up to Fong to make use of that opportunity". In the instant case, the

87 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [23].
88 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [25].
89 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [27].
90 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [28].
91 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [28].
92 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [28].
93 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [28].

tribunal was not going through the motions but had "acted with utmost reasonableness", while Fong had been "unreasonable with his demands and deceptions". Fong had also been provided with information about the case he had to meet, including the disciplinary charge against him and the evidence PEB intended to adduce at the hearing.[94] In the course of their extended correspondence, Fong could have made representations to the DC even if personally unable to attend the hearing. Thus, the fact that Fong had not taken advantage of the opportunities available to him could not be used to support the allegation he had been denied the right to be heard.[95]

Duty to give reasons

1.34 Fong argued that PEB had failed to provide him with a wide-ranging series of documents, hindering him from making representations against the disciplinary charge.[96] Citing Woolf *et al* in *De Smith's Judicial Review*,[97] the court approved the view that the level of detail with respect to the particulars of allegations made against a person "must be such as to enable the making of 'meaningful and focused representations'".[98] As the proceedings against Fong were straightforward (conviction of a criminal charge), Lee J was satisfied that the information made available to him sufficed for him to make the necessary representations, as "the nature of the disciplinary charge did not warrant disclosure to the level of detail which he argued was necessary".[99]

1.35 Lee J noted that procedural propriety may be challenged on the basis of non-disclosure of reasons where "such disclosure is required under statute, by common law, or to enable an effective right of appeal".[100] Even though the PEA and the PER did not require PEB to disclose the reasons for the DC's decisions, this was set out in the record of disciplinary proceedings which was provided to Fong after he took

94 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [29].
95 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [29].
96 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [32].
97 Lord Woolf *et al*, *De Smith's Judicial Review* (Sweet and Maxwell, 7th Ed, 2013) at para 7-057.
98 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [34].
99 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [34].
100 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [35].

out the present proceedings. Fong argued that his ability to appeal against the DC's decision had been impaired because of this.[101]

1.36 The court noted it was "good practice" to disclose reasons as the affected party would then be enabled to understand the decisional basis and "might even obviate an appeal".[102] As there was no statutory requirement to do so, the failure to disclose reasons would not invalidate PEB's decision. At most, it made it "more difficult" for Fong to prepare for the appeal. Had PEB refused to provide Fong with the record of proceedings, Fong could have applied to court for it. Thus, no breach of natural justice was found.

Natural justice – Excessive judicial interference

1.37 The issue of whether excessive judicial interference can render a trial unfair was raised in *Public Prosecutor v Chua Siew Wei Kathleen*.[103] A district judge acquitted the respondent of the charge of causing voluntary hurt to the complainant, a foreign domestic maid her sister employed, by slapping her cheek sometime in May 2012. In October 2012, the complainant left the condominium where she was employed through the sixth floor window and was eventually conveyed to a voluntary welfare organisation which assists migrant workers. She claimed she had endured physical abuse from the hands of the respondent and her family members, had not been allowed to use the telephone at home and locked in when left alone on weekends.

1.38 See JC found the Prosecution's case rested on the maid's bare allegation, whose evidence he found tentative. In contrast, the respondent's evidence was found to be compelling. She stated that she had scolded the complainant but never inflicted any form of physical hurt.[104] Further, the complainant had been given an access card to leave the house to run errands and was at liberty to use the home telephone.

1.39 The Prosecution appealed against the judgment on two grounds, one of which related to natural justice. That is, the district judge's various interventions while the respondent was being cross-examined prevented the Prosecution from having a fair opportunity to present their case. The Prosecution was, thus, not permitted to pose questions to the respondent which could have affected how the court

101 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [35].
102 *Fong Chee Keong v Professional Engineers Board, Singapore* [2016] 3 SLR 221 at [36].
103 [2016] 2 SLR 713.
104 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [11].

evaluated the respondent's evidence.[105] The district judge was found to have had an unduly narrow focus in only allowing evidence related to the alleged 12 May incident, thus hampering the Prosecution's ability to present their case fully by restricting the ambit of cross-examination.[106]

1.40 See JC noted that excessive judicial interference in the conduct of a trial can give rise to four possible challenges; the Prosecution relied on two grounds: first, where numerous interruptions can be "so intrusive" that they "unduly hamper" a party in the conduct of a case; second, when the judge "descends into the arena" in assuming a quasi-inquisitorial role, engaging in "such sustained questioning" that his ability to evaluate the case by both sides disinterestedly is impaired.[107]

1.41 The district judge shut down certain relevant lines of reasoning, such as the nature of the relationship between the complainant and respondent and what the respondent's alleged motivation for the slap might be.[108] See JC found that the notes of evidence were full of examples where the Prosecution was stopped in the "the midst of a line of potentially relevant questioning".[109] From reviewing the transcript, See JC found that the judicial interruptions grew in frequency and intensity such that the Prosecution was "compelled to move to a different line of reasoning".[110] While the respondent had spent some two hours giving all evidence, it was hard to say that the Prosecution had been "prolix or dilatory in their conduct of her cross examination", indicating that the judge's testy comments (for example, "I spent already one hour on the bench") were unwarranted.[111] Considering the overall impression, See JC found that the comments of the district judge chastising the Prosecution "went beyond the merely intemperate" and as a whole, indicated the Prosecution was being "prejudiced and unfairly impeded in the conduct of their case".[112]

1.42 See JC also held that the district judge had descended into the arena in his comments and questions to the Prosecution; he showed himself "partisan in his interventions", by repeatedly interrupting their lines of cross-examination which he argued did not relate to the facts in the charge. The district judge during the course of the trial had openly stated that the Prosecution's case theory was "unsustainable".[113] This

105 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [19]–[20].
106 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [23].
107 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [24].
108 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [26] and [28].
109 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [28].
110 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [31].
111 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [31].
112 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [32].
113 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [39].

indicated a closed mind and inability to impartially weigh evidence.[114] From the record, it was clear the district judge had "taken a position" that the charge lacked particulars and was defective, and that the complainant's testimony was wanting for lack of specificity. He then pursued this "in such a way that he undermined his ability to weigh the evidence impartially".[115]

1.43 See JC found that the district judge's excessive interruptions unfairly prejudiced the Prosecution in presenting its case.[116] Though not argued, See JC stated that:[117]

> … the manner in which the trial was conducted would lead a fair-minded reasonable person with knowledge of the relevant facts observing the proceedings to apprehend a reasonable suspicion of bias on the part of the district judge. It would at the very least reasonably lead one to ask whether he had certain preconceived notions and whether he had pre-judged the case even before hearing all the evidence.

A re-trial before another judge in a trial *de novo* was ordered.

Apparent bias

1.44 One of the arguments raised in *Kho Jabing v Public Prosecutor*[118] ("*Kho Jabing (May 2016)*") was whether there was apparent bias in so far as one of the judges of appeal who were part of the majority in re-sentencing Kho Jabing ("Kho") was also a member of the *coram* which convicted Kho of homicide.

1.45 When Kho was found guilty of murder in 2011, the sentence of death was mandatory then. Subsequently, the Parliament amended the Penal Code[119] which provides that the kind of conviction of murder for which Kho was found guilty of will no longer be subject to the mandatory death penalty; instead, the judge will have the discretion to impose death or life imprisonment. The Penal Code (Amendment) Act 2012[120] permitted convicted persons like Kho, who were already sentenced to suffer death under the old mandatory regime, to apply for re-sentencing, following the amended law.[121]

114 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [33].
115 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [40].
116 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [41].
117 *Public Prosecutor v Chua Siew Wei Kathleen* [2016] 2 SLR 713 at [41].
118 [2016] 3 SLR 1259.
119 Cap 224, 2008 Rev Ed.
120 Act 32 of 2012.
121 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259 at [5].

1.46 What the relevant judge decided in 2011 was whether Kho was guilty of the offence; what he was called upon to decide in 2015 was what the appropriate sentence should be for the appellant's crime of committing murder. These were "completely different" issues.[122] As such, the judge concerned was not being asked "to revisit or review his own earlier decision".

1.47 Chao Hick Tin JA noted that trial judges in courts all over the world, who decide on the guilt of an accused person are "routinely required to pass sentence on them straightaway".[123] The trial judge, being familiar with the case, was "best placed to do this", including under Singapore's re-sentencing regime;[124] indeed, it was "the correct and ideal thing to do". So, too, the position of the judge here was "analogous"[125] to a trial judge who first convicts an accused person and is then asked to pass sentence on him after various Penal Code amendments conveyed a limited sentencing discretion to judges, where previously a mandatory sentence had to be imposed. As such, there was no "logical basis" to argue that the involvement of the judge in 2011 meant the decision made by the court in 2015 was "tainted by apparent bias".[126] Had the amended law been in force when the applicant was charged for murder, "the *same* coram would have determined both the issues of conviction *and* sentence" [emphasis in original].[127] Thus, no apparent bias was evident in this case.

Apparent bias, prejudgment, and the principle of necessity

1.48 The question of whether the principle of necessity in cases of apparent bias should apply to private associations and clubs arose in *Sim Yong Teng v Singapore Swimming Club*[128] ("*Sim Yong Teng*"). The appellants, who were husband and wife, were suspended from the Singapore Swimming Club ("Club") because the husband had been convicted of the offence of insider trading.

1.49 The Club Rules provided that membership could be suspended if a member was convicted of an offence involving moral turpitude or dishonesty.

122 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259 at [5].
123 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259 at [6].
124 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259 at [6].
125 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259 at [7].
126 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259 at [7].
127 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259 at [7].
128 [2016] 2 SLR 489.

1.50 Six members of the Club's management committee ("MC1") took a decision on 3 April 2013 to suspend the appellant's family membership on the basis that conviction for insider trading was an offence implicating moral turpitude. The appellants commenced proceedings in court to set aside the 3 April 2013 decision on various grounds, including the lack of a quorum.

1.51 The Club elected a new management committee ("MC 2013/2014") before judgement was delivered. To cure the lack of quorum, eight members of MC 2013/2014 signed letters on 25 July 2013 indicating their support of the 3 April decision, which the High Court set aside.

1.52 On 8 October 2013, six members of MC 2013/2014 reheard the complaint against the husband. All six had signed the 25 July letter. The other members were left out for conflict of interest. At this hearing, the husband was told by the chairman of MC 2013/2014 that the committee came to the hearing with an open mind, giving the appellant the opportunity to state his case. The decision was taken that insider trading implicates moral turpitude and a 5:1 majority decided to suspend the family membership. The 8 October decision was challenged before the High Court for being in breach of natural justice but this application failed on the basis that MC 2013/2014 was constituted out of necessity and that there was no apparent bias.

1.53 A P Rajah J in *Anwar Siraj v Tang I Fang*[129] ("*Anwar Siraj*") had implicitly accepted that principle of necessity applies in Singapore, although the case itself seemed to indicate that the principle is more applicable to public bodies rather than private disciplinary tribunals. The Court of Appeal reserved its view on whether as a matter of law, the principle applies to private associations like the Club.[130]

1.54 The Court of Appeal held that the judge should have disqualified all six members of MC 2013/2014 from hearing the complaint against Sim Yong Teng ("Sim") on grounds that they had already prejudged the issue, and that the principle of necessity had no application in this case.[131]

1.55 The Court of Appeal found that the appellant had not clearly distinguished whether their argument based on prejudgment rested on actual or apparent bias, but concluded from their submissions that they had proceeded on the basis of apparent bias. This arose from the

129 [1981–1982] SLR(R) 391.
130 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [43].
131 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [43].

conduct of the MC 2013/2014 members in signing the 25/7/2013 Letters in support of MC1's decision of 3 April 2013.

1.56 The primary objection against the rule against prejudgment is where a decision-maker surrenders its judgment such that it approaches a matter with a closed mind; it prohibits the reaching of "a final, conclusive decision" before being aware of all relevant arguments and evidence the parties intend to put before the arbiter.[132]

1.57 Chan Sek Keong SJ ("Chan SJ") characterised the distinction between apparent bias and prejudgment as "crucial" in the immediate case.[133] The MC 2013/2014 members had decided through signing the letter the complaint against Sim "on an informal basis" before they became empanelled as MC 2013/2014 to formally decide the same complaint against Sim.

1.58 The Court of Appeal disagreed with the High Court's finding that the 25/7/2013 Letters indicated a predisposition of the writers, consistent with a willingness to hear and weigh all relevant evidence, that these were merely expressions of a provisional view and not prejudgment and a closed mind. The judge considered that the fact Sim was given a full hearing from MC 2013/2014 went towards showing they had not closed their minds to the matter.[134]

1.59 The judge in the High Court had found that the six members of MC 2013/2014 had not closed their minds on the basis that the chairman told the plaintiff they had come to a hearing with an open mind and that one of the six had disagreed with the majority's opinion.[135] Chan SJ stated that the "mutually reinforcing chain of reasoning is apparent from these findings". Even if one dissenting member's vote was evidence of an open mind, it "did not follow that the other five members had not closed their minds".[136] Arguably, this could be "the exception that proved the rule". The Court of Appeal disagreed that the 25/7/2013 Letters constituted provisional, rather than considered views on whether the six members of MC 2013/2014 agreed with the decision of MC1. Further, there was no occasion on which they were asked to give their "final views on the matter".[137] The letters, as submitted to the trial judge, were meant to convey that had they been the MC1 members, they would have made the same decision as MC1

132 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [50].
133 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [52].
134 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [55].
135 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [59].
136 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [60].
137 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [61].

did to protect the Club's reputation.[138] The Court of Appeal considered that the letters indicated the MC 2013/2014 members had prejudged the complaint against Sim, stating that more scepticism was warranted with respect to the chairman's assurances to Sim to the effect the MC 2013/2014 members were not biased.[139] The letters would most certainly raise a reasonable suspicion or apprehension of bias "in the mind of a fair and well-informed observer", whatever the state of mind of the MC 2013/2014 members.[140]

1.60 While all the MC1 members had disqualified themselves from rehearing Sim's case as they had already decided the complaint against him, the Court of Appeal noted that the six members of MC 2013/2014 were "in exactly the same position [or] even worse".[141] MC1 heard Sim in person before finding against him while MC 2013/2014 "condemned Sim without hearing him".[142] The Court of Appeal stated that even if expressed in a private or formal setting, a "considered decision is still a decision", as bias shown in private is as unacceptable as that shown in public.[143] Thus, the 25/7/2013 Letters sufficed to constitute prejudgment of the complaint against Sim, such that any "reasonable, fair-minded and fully informed observer" looking at the case circumstances on 12 September 2013 would have formed the view that the MC 2013/2014 members had shown prejudgment amounting to apparent bias.

1.61 As for the principle of necessity, this is to allow a decision maker who is disqualified on grounds of bias, to decide a complaint or dispute where there is no other person or tribunal to hear the case or where his participation is needed to form a quorum.[144] The principle is applied to statutory tribunals to ensure they can discharge their statutory functions.[145] Thus, this rule implicitly expresses the principles that statutes may explicitly exclude the rules of natural justice.

1.62 The Court of Appeal noted that the Singapore courts have applied the principle of necessity to bodies which are not statutory tribunals, like the disciplinary committees of social clubs or private associations to impose sanctions on their members for breach of Club Rules. The trial judge had proceeded on this assumption in applying it to the Club, causing the Court of Appeal to ask whether the necessity

138 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [61].
139 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [61].
140 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [62].
141 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [63].
142 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [63].
143 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [63].
144 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [65].
145 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [65].

principle "should be extended to apply to private associations to enable them to exercise their functions".[146]

1.63 The Court of Appeal first examined cases from Australia, England, and Canada in relation to the principle of necessity before reviewing Singapore case law. It noted that Mason CJ and Brennan J, in *Laws v Australian Broadcasting Tribunal*,[147] found that even where apparent bias attaches to all members of a tribunal, the rule of necessity applies to ensure the tribunal can discharge its statutory functions. The principle "gives expression to the principle that the rules of natural justice cannot be invoked to frustrate the intended operation of a statute which sets up a tribunal and requires it to perform the statutory functions entrusted to it". Thus, rules of natural justice may be displaced by statute. The function, according to Deane J, is "to prevent a failure of justice or a frustration of statutory provisions", which will be to "consequent public or private detriment".[148] This rule is qualified in so far as it will cause "positive and substantial injustice", as it cannot be presumed as a matter of legal policy that the rule of necessity should be an "instrument of injustice". Furthermore, where applicable, "it applies only to the extent that necessity justifies".[149]

1.64 Whether the principle of necessity should apply depends on an examination of all the circumstances of the case, in relation to matters like conflict of interest and the acquisition of extrinsic knowledge. Where these are caused by the party otherwise entitled to complain about bias, this may dictate a negative answer to the question whether the operation of the principle will cause positive and substantial injustice; a positive answer may be warranted where the adjudicator caused the conflict of interest or extrinsic knowledge.[150]

1.65 The principle of necessity is grounded in the "rule of law" serving to prevent "a failure of justice", according to the Supreme Court of Canada in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*.[151] As the principle causes injustice, it should be rarely applied and in the instant case, institutional rather than personal bias was involved in so far as the judges had to decide on matters relating to the extent to which provincial legislatures could reduce the

146 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [66].
147 (1990) 170 CLR 70 at [39].
148 *Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70 at [12]–[13], cited in *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [68].
149 *Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70 at [12], cited in *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [68].
150 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [68]; see also *Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70 at [13].
151 [1998] 1 SCR 3 at [6].

salaries of provincial court judges, that is, themselves. Whichever judge is involved will have to decide a matter to which he has a pecuniary interest.

1.66 The English position is that necessity be rarely applied, and according to De Smith,[152] that part of the decision-making body which is affected should be removed, where possible.[153]

1.67 Essentially, the application of the principle of necessity, to which there are limitations, requires a choice between the lesser of two evils: between denying a hearing to both parties and *permitting* "a limited risk of injustice to one".[154]

1.68 The *Singapore* cases clearly recognised limits to the principle of necessity, such as where the statute provides an alternative, unbiased person may take the place of an adjudicator tainted with bias, as in *Anwar Siraj*.

1.69 Warren L H Khoo J allowed the principle of necessity to apply in *Chiam See Tong v Singapore Democratic Party*[155] ("*Chiam See Tong*"), even though Chiam See Tong objected to five of the nine central executive committee ("CEC") members hearing the complaints against him, for breach of party discipline, as he had criticised them in public, leading to the disciplinary proceedings.[156] His objections to another four members was rooted in the fact they would not be able to vote independently as they were employed by the town councils chaired by two CEC members whom he had criticised. Chiam was expelled from the Singapore Democratic Party ("SDP") and challenged this decision for breach of the rules of natural justice, as it was biased.

1.70 Khoo J observed that the relationship between Chiam and SDP was based on contract in the form of the SDP Constitution, which provided that the CEC was responsible for disciplining party members.[157] There was no alternative tribunal and Chiam had contractually agreed that the CEC should act in adjudicative capacity under cl IV(d). It was theoretically possible for the nine "biased" CEC members to withdraw, leaving four CEC members to which Chiam had no objection, but Khoo J found that the "remnants of the CEC" was not equivalent to a hearing by the whole CEC. While individual members

152 Lord Woolf *et al*, *De Smith's Judicial Review* (Sweet and Maxwell, 7th Ed, 2013) at para 10-067.
153 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [70].
154 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [69].
155 [1993] 3 SLR(R) 774.
156 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [77].
157 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [78].

could be disqualified for bias, where the overwhelming majority of the CEC were implicated, it gave rise to a "serious question" of whether "what is left is the kind of body which the constitution contemplates should be the body to take charge of such matters". The CEC, out of necessity, had to sit in judgment over Chiam, as there was no alternative tribunal and otherwise, SDP "would be powerless to act against the alleged infractions of discipline".

1.71 Chan SJ noted that the CEC members in *Chiam See Tong* were all judges in their own cause and applying the principle of necessity to enable them to participate in the matter "would not have changed the inevitable outcome".[158] The principle of necessity "could be a source of injustice in such situations" and would result in what the principle sought to prevent – a "failure of justice". Khoo J resolved the question of how to prevent a failure of justice by finding on the facts that Chiam had not been given a fair hearing. In contrasting *Chiam See Tong* with the present case outcome, the "potential inconsistency and unsatisfactory consequence" of applying the necessity principle to clubs and private associations was demonstrated.

1.72 Chan SJ identified "two other possible solutions" to the problem in *Chiam See Tong*.[159] First, the judge could have interpreted the disciplinary rules as only allowing unbiased CEC members to hear the charges against Chiam, as nothing in the SDP disciplinary rules expressly provide that all CEC members must hear a disciplinary charge. Although Chiam had applied for the whole of CEC to be disqualified, on cross examination, he conceded he would have been prepared to appear before the four unbiased CEC members. Chan SJ noted that "if the CEC had taken the trouble to question Chiam on this, a qualified CEC could have been constituted to hear the complaints against him".[160] A second and "neater" solution would have been for Khoo J to hold that the principle of necessity only applies "to bodies exercising statutory functions" and not to non-statutory private committees. If there was no quorum because biased CEC members were excluded, then it would be "too bad for the SDP". Chan SJ opined that "the court should have allowed fairness to Chiam to prevail over the need for certain members of the CEC to be judges in their own cause." Had the court so held, perhaps SDP would have reconstituted a bias-free impartial CEC panel to hear the complaints against Chiam without breaching natural justice, "if the stakes were high enough" for the good of the political party. SDP could have done this by "amending the constitution of SDP to enable

158 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [79].
159 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [80].
160 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [80].

disciplinary issues to be resolved without breaching the rules of natural justice".[161]

1.73 Lastly, in *Khong Kin Hoong Lawrence v Singapore Polo Club*,[162] Tan Siong Thye JC accepted that the principle of necessity applied to the Singapore Polo Club, a social club, though not in the case circumstances for various reasons. First, there was an alternative forum as the Disciplinary Tribunal of five committee members could have delegated their disciplinary powers to a sub-committee. Second, it was possible under the rules to change the composition of the Disciplinary Tribunal, all five members of which were subject to a statement by Khong Kin Hoong Lawrence, which criticised the conduct of all of them for amending the results of a no confidence motion against them. Two other committee members "untainted by bias" could have been co-opted. Three, two of the "untainted" committee members were absent from the committee meeting. In the last two examples, it would have been possible to have a majority of the five-member quorum who were neutral; had the two untainted members been present at the committee meeting, their presence would have enhanced the perception of justice been done. Thus, as far as possible, justice must be seen to be done.[163]

1.74 None of the Singapore cases considered the question of whether the principle of necessity should apply to private entities, as opposed to public statutory bodies. The trial judge in *Sim Yong Teng* was of view that it should not be confined to statutory bodies, based on the fact that the courts in *Anwar Siraj* and *Chiam See Tong* held that it did, as did two Malaysian cases and the Indian Supreme Court decision of *Amar Nath Chowdhury v Braithwaite and Co Ltd*.[164] The Court of Appeal was unaware of any other decision from a commonwealth decision that applied the principle of necessity to bodies exercising non-statutory functions, which they considered "for good reason".[165]

1.75 The Court of Appeal located the purpose of the necessity rule in the need to allow statutory tribunals and judicial bodies to hear matters where they have a personal or institutional interest, as otherwise, the operation of the statutory provision will be frustrated "with consequent public or private detriment", undermining confidence in the administration of justice.[166] With respect to administrative bodies, the principle of necessity "preserves the public confidence in the performance

161 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [80].
162 [2014] 3 SLR 241.
163 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [83].
164 AIR 2002 SC 678; see also *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [84]–[85].
165 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [85].
166 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [85].

of statutory functions". In contrast, in relation to private entities, where the purpose of the necessity principle is to advance their own private interests, where this conflicts with the interests of justice, the latter should prevail over the former.[167]

1.76 The Court of Appeal considered as "sound" the logic of not applying the principle of necessity to non-statutory bodies. To do otherwise will be "to prefer an intolerable risk of failure of justice" or indeed a "complete failure of justice" such that the rationale for the principle will be lost. Natural justice must, thus, prevail over contractual rights when exercised unjustly or seen to be exercised unjustly.[168] There is no reason to subordinate natural justice rules to "interests involving the private gain or loss in terms of reputation or social values of non-statutory private bodies" and, thus, "no reason to subject the defendant to prejudice, actual or potential".[169] The Court of Appeal went so far as to note that where prejudgment amounts to actual bias, where a closed mind is brought to a hearing, the principle of necessity should not apply as this will "merely give lip service to the principle" as the decision-maker will make a "manifestly unjust decision".[170] Such a hearing will be "an empty procedural formality".[171]

1.77 Private associations could change their rules to ensure that disciplinary hearings are conducted in a way that do not breach rules of natural justice, or find alternative means to appoint other members to remove the appearance of bias.[172] In contrast, statutory tribunals are governed by statutory rules which are intended to apply in situations where apparent bias is present, to "give effect to the statutory scheme, and not to frustrate it".[173] Necessity rules apply when it is "legally impossible" to have anyone other than the appointed authority to hear the case.[174] In other cases, that authority must do all in its capacity to remove the bias.[175]

1.78 The Court of Appeal identified the strongest reason for not applying the principle of necessity to non-statutory bodies as this can make it "a source of injustice rather than a bulwark against injustice"; this will take place if the rule of law is undermined by permitting private

167 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [86].
168 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [86].
169 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [86].
170 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [88].
171 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [88].
172 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [89]–[90].
173 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [89].
174 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [92].
175 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [92].

entities "to adopt disciplinary [proceedings] and other control rules" exempting them from observing natural justice.[176]

1.79 On the facts of the case, MC 2013/2014 had not done everything in its capacity that was "practically possible" to remove the bias associated with the 25/7/2013 Letters. Chan SJ stated that the "one easy and simple thing" the members of MC 2013/2014 could have done, were they that troubled by Sim's continued membership, would be to resign from their management positions and allowing "new untainted members" to be co-opted or elected;[177] the hearing of Sim could then take place, albeit after a delay, but this would have been justifiable "if the reputation of the Club was at stake".[178] The Court of Appeal considered that the Judge should have not invoked the principle of necessity and disqualified all six MC members on grounds of prejudgment amounting to actual or apparent bias. It underscored that courts disqualify decision-makers from decision-making because of apparent bias "notwithstanding his assurances that he has an open mind" as bias is often unconscious.[179]

1.80 On the facts, the Court of Appeal found evidence of actual prejudgment in the 25 July 2013 letter and, thus, the members of MC 2013/2014 were disqualified from hearing the complaint against Sim. It held that the principle of necessity does not apply to social clubs and even if it did, MC 2013/2014 had not done all it could to ensure an impartial management committee of the Club would hear the complaint. Clubs can always change their rules to constitute alternative panel of adjudications so biased members will not hear matters affecting the right of a member. This will allow justice to be done and seen to be done. The 8 October 2013 decision was declared null and void and the appellants were entitled to general damages.

Substantive legitimate expectations

1.81 The issue of substantive legitimate expectations ("SLEs"), which Tay J stated should be an independent ground of review in *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority*[180] ("*Chiu Teng*"), was raised in *SGB Starkstrom Pte Ltd v Commissioner for Labour*,[181] although it could not be sustained on the facts.[182] This is because the case involved

176 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [93].
177 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [95].
178 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [95].
179 *Sim Yong Teng v Singapore Swimming Club* [2016] 2 SLR 489 at [96].
180 [2014] 1 SLR 1047.
181 [2016] 3 SLR 598.
182 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [35].

two private parties, whereas a substantive legitimate expectation stems from a clear promise made by a government body to a private person. Nonetheless, the High Court made certain useful observations on SLEs as they may be adopted and applied in Singapore.

1.82 Rodney Tan, the brother of an injured employee employed by SGB Starkstrom Pte Ltd, first commenced a claim for statutory compensation ("Disputed Claim") under the Work Injury Compensation Act[183] ("WICA") on his behalf on 20 May 2010. This is a lower-cost alternative. He later decided to bring a common law claim against the appellant for workplace negligence. Under s 33(2)(*a*) of the WICA, a common claim cannot be brought if a claim has already been made under the WICA regime. Rodney Tan decided that the WICA claim made was invalid in law as he was not authorised to make the claim on his brother's behalf, having been appointed his deputy under the Mental Capacity Act[184] on 23 August 2012. The Commissioner for Labour eventually decided that the Disputed Claim and Notice of Assessment issued were invalid. Rodney Tan commenced judicial review proceedings on his brother's behalf to quash the Commissioner's initial decision that the Disputed Claim was valid. The appellant commenced separate judicial review proceedings to quash the Commissioner's subsequent decision that the Notice of Assessment was issued in error. The High Court held that the Disputed Claim was invalid as Rodney Tan was not then properly authorised to bring a claim for compensation under the WICA on his brother's behalf at the material time. One of the issues raised on appeal by the appellant was that it had an SLE that the Disputed Claim was valid and that it had discharged its liability to the Injured Employee for the accident.

1.83 Sundaresh Menon CJ traced the origins of the SLE doctrine in English law to the decision in *R v North and East Devon Health Authority ex parte Coughlan*.[185] After a grievous traffic accident, Miss Coughlan resided in Newcourt Hospital and later moved to Mardon House after the Health Authority gave her a clear promise that Mardon House would be her home for life. In 1998, the Health Authority decided to close down Mardon House. Coughlan challenged this decision by way of judicial review on the basis that she had a legitimate expectation that Mardon House would be her home for life. The Court of Appeal granted Coughlan the substantive relief she sought, ordering the Health Authority not to close down Mardon House.[186] It held that a public authority may be required to give effect to the

183 Cap 354, 2009 Rev Ed.
184 Cap 177A, 2010 Rev Ed.
185 [2001] QB 213.
186 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [37].

substance of a legitimate expectation where "to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power". In so doing, the court will have to weigh fairness against any overriding interest relied on to change the policy. In so doing, Lord Woolf held that the court is not only concerned with the decision-making process but the "fairness of the outcome" with respect to the affected person.[187]

1.84 Menon CJ noted that since the decision in *Chiu Teng*, the question of SLEs has not been considered by Singapore courts and stated that the observations made *obiter* were offered based on the assumption that the doctrine is part of Singapore law.[188] He noted that the High Court in *Chiu Teng* located the normative reason for accepting SLEs on the basis that there is no reason in principle why individuals or corporations who make plans relying on existing publicised representations by a public authority should not have that reliance protected.[189] Tay J had asked: "[i]f private individuals are expected to fulfil what they have promised, why should a public authority be permitted to renege on its promises or ignore representations made by it?"[190]

1.85 Menon CJ noted that the doctrine of SLEs essentially seeks "to bind public authorities to representations" whether made by express statement or past practice and policy, about how their powers will be exercised in the future, in circumstances where the plaintiff detrimentally relies on that representation.[191] As the doctrine applies in "a contest between a public authority and an individual", it has no application here where the contest "is only between two individuals".[192] The Commissioner for Labour was caught by a claim between the Injured Employee and the appellant and had not made any representations about how she would exercise her powers or how she intended to act.[193] The doctrine of SLEs is one concerned with regulating executive powers in situations where the individual is adversely affected. Menon CJ noted that even if the present proceedings took the form of judicial review, this was "probably an unnecessary expansion" of the dispute between the appellant and the injured employee.[194] All the Commissioner for Labour had done was to intimate

187 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [38].
188 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [41].
189 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2014] 1 SLR 1047 at [112].
190 *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2014] 1 SLR 1047 at [112].
191 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [41].
192 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [42].
193 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [43].
194 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [44].

how she assessed the status of the Disputed Claim and her assessment of the quantum of the claim, which did not involve an undertaking of what she would or would not do.[195] She could do nothing to bind the position of the Injured Employee to resort to the WICA process and was not "an interested party".[196]

1.86 Menon CJ noted that the traditional understanding of judicial review is that it is concerned with the legality rather than the merits of the decision-making process, and that the role of the court in judicial review differs from that of an appellate court. He identified three justifications for this account of judicial review: the constitutional doctrine of the separation of powers, the need to uphold parliamentary intent in vesting certain powers in the executive, and lastly, a pragmatic concern about institutional competence.[197] As such, accepting the SLE doctrine as part of Singapore law "would represent a significant departure from our current understanding of the scope and limits of judicial review".[198] This would require a redefinition of the Singapore approach to the separation of powers and the relative roles of the judicial and executive branches of the Government.[199] He noted that the "difficulties" inherent in adopting this doctrine "should not be underestimated", given that Australia and Canada numbered among the jurisdictions have rejected it.[200] The matter should be left to a future occasion where the "nuanced questions that remain to be determined" can be appropriately addressed.

1.87 The SLE doctrine would entail "a more searching scrutiny of executive action" beyond the three Government Communications Headquarters ("GCHQ")'s grounds of review. In *Coughlan*, the English Court of Appeal had to decide whether the public interests invoked by the public authority outweighed the private interests of the applicant in having her SLEs protected. Menon CJ considered that the crux of the issue was not whether to protect SLEs, but rather, "*which body should decide* whether the particular expectation … is to prevail over the countervailing interests that may be at stake" [emphasis in original].[201] Furthermore, one did not necessarily face a binary choice between recognising and not recognising an SLE, as a "third way" could be found. For example, the public authority could be required "to confirm that it has considered its representation in coming to its conclusion" or be required to give reasons for its assessment that the public interest

195 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [47].
196 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [50].
197 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [58].
198 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [59].
199 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [59].
200 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [60].
201 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [62].

justifies defeating any legitimate expectation, which could be reviewed under the traditional GCHQ framework of illegality, irrationality, and procedural impropriety.[202] A future court would be the appropriate forum to examine and weigh all these possibilities.

Running of town councils

1.88 The Court of Appeal in *Attorney-General v Aljunied-Hougang-Punggol East Town Council*[203] played a role in relation to issues arising from the handover of one town council to another after the 2015 General Elections. Specifically, this related to the disclosure of financial documents relating to the transferred constituency.

1.89 Before the 2015 General Elections, a town comprising three constituencies was managed as a single administrative unit by the respondent town council, then known as the Aljunied–Hougang–Punggol East Town Council, run by the Workers' Party. The auditor-general performed an audit into the finances of the respondent town council which revealed various financial lapses in non-compliance with the Town Councils Act[204] ("TCA") and the Town Councils Financial Rules[205] ("Financial Rules"). The Court of Appeal later made certain orders designed to compel the respondent to comply with its financial obligations under the TCA and Financial Rules.

1.90 After the General Elections in 2015, the Punggol East Constituency ("PEC"), which was under the purview of the respondent changed hands and was, henceforth, administered by the Pasir Ris–Punggol Town Council ("PRPTC"), run by parliamentarians from the governing People's Action Party. The Town Councils (Declaration of Towns) Order 2015[206] provided for the transfer of all property, rights, and liabilities connected with PEC to PRPTC. PRPTC sought access to financial documents related to the affairs of PEC which the respondent had in its possession which was resisted on the basis of confidentiality. This was because the documents sought contained information not only with respect to PEC, but other constituencies in the original town.

1.91 Before a Court of Appeal hearing, the respondent agreed to hand over "Category 1 documents" to PRPTC without conditions, relating solely to the affairs of PEC. With respect to "Category 2 documents", which related not only to PEC but other parts of the

202 *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [63].
203 [2016] 5 SLR 1039.
204 Cap 329A, 2000 Rev Ed.
205 Cap 329A, R 1, 1998 Rev Ed.
206 S 577/2015.

original town, the court ordered that PRPTC be given access subject to limits rooted in considerations of confidentiality. PRPTC and the respondent were not able to successfully negotiate the terms on which PRPTC would have access to the Category 2 documents. PRPTC applied to the court for orders that Category 1 and Category 2 documents be handed over forthwith.

1.92 The Court of Appeal held that as the entity statutorily charged with administering PEC, PRPTC had an interest in reviewing PEC's finances. PRPTC was the entity in whom all the rights, liabilities, and property connected with PEC was vested and, thus, had an interest in ensuring compliance with the court orders to remedy any breaches of the TCA relating to PEC. It had a proprietary interest in the financial documents relating to the PEC affairs and was *prima facie* entitled to have access to these documents.[207]

1.93 The court ordered the handing of Category 1 and 2 documents to PRPTC. As Category 1 documents related only to PEC, "no issue of the balancing of interests [arose]".[208] In relation to Category 2 documents, if there were specific and identifiable confidentiality concerns, disclosure could be withheld on that basis. Claims for protection under the law of confidentiality had to be accompanied by specific particularities rather than global claims of protection.[209] However, PRPTC in its use of Category 2 documents could only use it in furtherance of its legitimate legal interests, which related broadly to its general mandate to control and manage the common property of the areas it controlled for the residents' benefit, and to manage its financial affairs in a manner consistent with the requirements of the TCA and Financial Rules.[210] There was a need to balance the interests of PRPTC against the legitimate countervailing interests of Aljunied–Hougang Town Council in relation to confidential aspects of the documents not only relating to PEC but the other parts of the town not under PRPTC control.[211]

207 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 5 SLR 1039 at [2] and [7].
208 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 5 SLR 1039 at [12].
209 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 5 SLR 1039 at [13], [14] and [18].
210 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 5 SLR 1039 at [16].
211 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 5 SLR 1039 at [7].

CONSTITUTIONAL LAW

Article 9

1.94 The constitutionality of s 33B of the Misuse of Drugs Act[212] ("MDA") was challenged in *Prabagaran a/l Srivijayan v Public Prosecutor*[213] ("*Prabagaran*").

1.95 Under this *sui generis* criminal law provision, the court has the discretion to sentence a person who is convicted of an offence punishable by death with life imprisonment instead. This is contingent on the satisfaction of two statutory requirements stated in s 33B(2). First, the convicted person must show his involvement was that of being a drug courier under s 33(2)(*a*) and that under s 33(2)(*b*), the PP certifies the person has substantively assisted "in disrupting drug trafficking activities within or outside Singapore". This is "a legislative prescription for the exercise of judicial power to be conditional upon the exercise of executive power".[214] The sole ground of judicial challenge in the exercise of this power is if it can be proved that the determination "was done in bad faith or with malice".[215]

1.96 Section 33B came into force on 1 January 2013. The present case involved four criminal motions challenging the constitutionality of various MDA provisions, specifically ss 33B(2)(*b*), 33B(4), and 33(1) read with the MDA Second Schedule ("Impugned Provisions"). Some of the applicants were convicted before the Misuse of Drugs (Amendment) Act 2012[216] ("Amendment Act") came into force and some after. The relevant MDA provisions were challenged on two main grounds: first, that they violated the separation of powers principle embodied in the Singapore Constitution; second, Art 9(1) of the Constitution was violated because the Impugned Provisions were not "law" capable of depriving the applicants of their lives and personal liberty.

1.97 The problem dogging the contention that s 33B of the MDA is unconstitutional was that if this were correct, the court would have to "disregard" s 33B as though it was never enacted[217] and sentence the applicants under the Second Schedule, which would generally mean they would suffer the punishment of death.

212 Cap 185, 2008 Rev Ed.
213 [2017] 1 SLR 173.
214 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [2].
215 Misuse of Drugs Act (Cap 185, 2008 Rev Ed) s 33B(4).
216 Act 30 of 2012.
217 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [15].

1.98 The Court of Appeal found that three of the four applicants could have raised the current constitutional arguments earlier in their appeals; the court took "exception to such a drip-feeding approach which clearly squander[ed] valuable judicial time" and stressed it would not allow such tactics to be deployed as means to delay the conclusion of the case.[218] It, thus, had "sufficient basis" to decline to hear these three applicants, all of whom were convicted and sentenced after the Amendment Act.

1.99 The Court of Appeal held that the sentencing powers in the Second Schedule of the MDA, to impose capital punishment, are not contingent on the constitutionality of s 33B and would still apply even if s 33B was invalid. The three applicants had been convicted of sentences attracting the mandatory death penalty; in the normal course of things, these sentences would be carried out unless they could show they satisfied s 33B's requirements, which would give the courts "an additional sentencing option".[219]

1.100 Section 33B, as is clear from legislative intent, is a "carve-out" from the Second Schedule of the MDA which authorises the mandatory death penalty for the relevant offence.[220] The Court of Appeal also rejected the "reverse" severability argument in pointing out that even if s 33B was unconstitutional, it could be severed without affecting the Second Schedule which had been in operation for "an appreciable period of time" before s 33B was enacted.[221] The Parliament's intent does not indicate that a new capital punishment framework is contemplated in enacting s 33B, such that it will be considered indivisible from the mandatory death penalty.[222] No "major sea-change" to the mandatory death penalty regime is intended.[223]

1.101 The Court of Appeal clarified the operation of the doctrine of severability, pointing out that the court examined the amending statute rather than the amended statute to ascertain if unconstitutional portions can be severed from the Act.[224] This is because if an amendment is unconstitutional, it will not change the pre-existing statute.

1.102 The applicants argued that the unconstitutional part of s 33B can be severed, relating to the substantive assistance certification,

218 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [19].
219 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [25].
220 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [26].
221 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [30].
222 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [31].
223 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [32].
224 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [32].

leaving the "courier" requirement intact.[225] Effectively, all the applicants, it was argued, could be sentenced or re-sentenced to life imprisonment under s 33B if s 33B(2)(*b*) was severed. The Court of Appeal affirmed the doctrine of severability, pointing to the case of *Tan Eng Hong v Attorney-General*[226] ("*Tan Eng Hong*") where the court held that Art 4 "provided for the unconstitutional part of a law to be severed while retaining the remaining part in the statute". It examined authority from Malaysia, Australia, and America,[227] concluding that all the cases "speak with one voice", that in the exercise of severance, "legislative intent is paramount".[228] If this was not the case, if the courts interpreted the law contrary to parliamentary intent, this would "effectively confer upon the judiciary legislative powers and violate the principle of separation of powers".[229] These foreign decisions indicate that central to severing an invalid portion of an act is the "effect of such excisions on the operation of the Act as a whole". It has to be shown that the Parliament intended in enacting the Act, which is in partial breach of the Constitution, that even if some provisions are severed, the Act shall continue to be given effect.[230] On this basis, the argument on severing the "substantive assistance certificate" requirement while retaining the "courier" requirement was not sustainable; this is because, as was noted in *Quek Hock Lye v Public Prosecutor*[231] ("*Quek Hock Lye*") and *Muhammad Ridzuan*,[232] the primary intent of the amendment is not to save certain couriers from the death penalty out of compassion; the goal is to disrupt drug trafficking activities by incentivising couriers to provide information which will enhance law enforcement capabilities in the war against drugs.[233]

1.103 The applicants also argued that the courts rather than the PP should decide whether substantive assistance was given under s 33B, drawing on Art 162 of the Constitution which they argued would enable the court to delete s 33B(4) and the phrase "the Public Prosecutor certifies to any court that, in his determination" in s 33B(2)(*b*) and so amend s 33B. Article 162 is a transitional clause and the Court of Appeal held that this argument was "off the mark".[234] Article 162 only applies to laws existing at the time of the commencement of the Constitution or those laws enacted but not yet brought into force at that date. Thus,

225 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [33].
226 [2012] 4 SLR 476 at [59].
227 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [34]–[35].
228 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [36].
229 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [36].
230 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [37].
231 [2015] 2 SLR 563 at [35].
232 *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 at [46].
233 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [37].
234 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [41].

s 33B is not such a law and does not fall within the ambit of Art 162.[235] The 2012 Amendment Act is governed by Art 4 where in appropriate cases, the doctrine of severability can apply.

1.104 The Court of Appeal noted that the High Court in *Attorney-General v Wain Barry J*[236] had held that Art 162 does not apply to every law but only laws already enacted before the commencement of the Constitution.[237] However, it noted that the court in *Tan Eng Hong* took a contrary view that Art 162 applies to all laws, although these statements were *obiter*, as it was only concerned with whether Art 4 can apply to laws predating the Constitution. It held that it could, read with Art 162. The court in *Tan Eng Hong* considered that Art 162 was a mechanism meant to allow the continuation of laws predating the Constitution but that the "purport" of Art 162 is "not really that different" from Art 4; the difference lay only in the "manner in which they apply".[238] While Art 162 allows the court to construe all laws to conform with the Constitution, Art 4 provides the power to void such laws.[239] In the present case, what was at stake was whether Art 162 could apply to laws enacted after the commencement of the Constitution.[240]

1.105 After tracing the origins of the Art 162 clause to Art 105(1) of the Constitution of the State of Singapore, the Third Schedule of the Sabah, Sarawak and Singapore (State Constitutions) Order in Council 1963[241] and s 121 of the Singapore (Constitution) Order in Council 1958,[242] the Court of Appeal concluded it is "more likely" that the "framers" considered that the phrase "law which have been not brought into force" sufficiently conveys that Art 105(1) does not include laws which have not yet been enacted, being a transitional provision.[243]

1.106 The appellants argued that the power of the PP to issue certificates of substantive assistance under s 33B(2)(*b*) violates the separation of powers, which was acknowledged to be part of the basic structure of the Constitution in *Mohammad Faizal bin Sabtu v Public Prosecutor*[244] ("*Faizal*"). As s 33B(4) provides, this may only be challenged on grounds of bad faith and malice.

235 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [41].
236 [1991] 1 SLR(R) 85.
237 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [43].
238 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [44].
239 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [44].
240 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [46].
241 GN No S 1 of 1963.
242 SI 1958 No 1956.
243 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [48].
244 [2012] 4 SLR 947 at [11].

1.107 Section 33B(2)(*b*) concerns "a legislative prescription" that the court's discretion to sentence particular offenders "be conditioned by an executive decision" (namely, the PP's certification) that an offender has "substantively assisted the [Central Narcotics Bureau 'CNB']" in disrupting drug trafficking activities. Attention was drawn to the parallel this had with *Faizal*, in so far as legislation directed the court to consider instances where the CNB director had admitted offenders to drug rehabilitation centres under s 34(2)(*b*) of the MDA.[245] Chan Sek Keong CJ there held that it was irrelevant that one of these factors was an executive discretion as this did not involve the Executive interfering with the sentencing function of the courts.[246] There, it was held that the power to prescribe punishment is a legislative rather than judicial power; the court has the power to exercise its sentencing discretion as conferred by statute, and to select the appropriate punishment.[247]

1.108 The appellants argued that s 33B(2)(*b*) "effectively enables the Executive to directly or indirectly select the sentence to be imposed",[248] noting the court's observance in *Faizal* of three cases where legislation conferring power on the Executive was found to intrude on the court's sentencing power and so violate the separation of powers.[249] The court did not find any of these cases persuasive with respect to s 33B(2)(*b*).

1.109 The Court of Appeal noted that the offender will generally not be in a position to "say much" about the PP's exercise of discretion under s 33B(2)(*b*) in deciding whether to certify that an offender had rendered substantive assistance in assisting the CNB in disrupting drug trafficking activities. This is because the basis for such assessment is outcome-based, whether the assistance "yielded actual results",[250] not whether the offender has co-operated in good faith. Section 33B(2)(*b*) prescribes "a subjective assessment of an objective condition for the triggering of an alternative sentence". The Court of Appeal thought there was "great merit"[251] to the view expressed by Choo Han Teck J in *Public Prosecutor v Chum Tat Suan*[252] to the effect that the PP is "duty-bound" to certify a convicted person has rendered substantive assistance if the facts so justify. At any rate, the determination of the PP, whose discretion is not unfettered, can be challenged on the basis of unconstitutionality, bad faith, or malice if the offender is able to raise a *prima facie* case of

245 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [58].
246 *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947 at [48].
247 *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947 at [60].
248 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [63].
249 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [62].
250 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [64].
251 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [65].
252 [2016] SGHC 27 at [9].

reasonable suspicion of breach of the relevant standard.[253] Nonetheless, the Court of Appeal took note of the fact that the determination of whether there has been a disruption to the drug trade is an "operational one", which depends on the intelligence of the CNB and "wider considerations" engaging the "distinctive expertise" of the CNB and PP, which "may not be appropriate or even possible to determine in court".[254]

1.110 The applicants argued that the judicial sentencing role is compromised, given the legislatively prescribed requirement of an executive act as a precondition to sentencing, that is, the certificate of substantive assistance. In reviewing cases from the Commonwealth, the Court of Appeal took note of the fact that although the legislature can select "whatever factum it wishes as the 'trigger' of a particular legislative consequence",[255] there are limits to this, in so far as it cannot enact a law under which a court was subject to an executive directive for the content of a judicial decision, referencing French CJ in *State of South Australia v Totani*[256] ("*Totani*"). The Court of Appeal held that regardless of where the limits to this lie, they were satisfied that the executive determination under s 33B(2)(*b*) do not violate the separation of powers.[257] In this respect, the PP's discretion is limited to considering whether substantive assistance has been rendered in aid of disrupting drug trafficking attitudes, not what sentence he thought a particular offender should have.[258]

1.111 The Court of Appeal found that the applicant's reliance on *Totani* was not compelling as the facts of *Totani* were "far removed" from the present case, involving the imposition of a control order which imposed a sentence without a finding of guilt; this control order was executive, not judicial in nature.[259] No such concern arose in the present case as the court determined the guilt of the party and imposed a sentence under the terms of the Second Schedule of the MDA. Judicial impartiality is "left intact", as where the requirements of s 33B(2) are made out, the court still has the discretion to decide whether to sentence the offender for life imprisonment, where s 33B(1)(*a*) applies.[260] It drew from the case of *United States of America v Robert Huerta*[261] ("*Huerta*"), which dealt with Title 18, s 3553(e) of the US Code, which the minister

253 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [66].
254 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [67].
255 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [75].
256 (2010) 242 CLR 1 at [71].
257 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [76].
258 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [76].
259 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [77].
260 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [77].
261 878 F 2d 89 (2nd Cir, 1989).

for law expressly acknowledged s 33B of the MDA to be modelled on.[262] It endorsed the reasoning in *Huerta* that there are "significant institutional incentives for the Prosecution to exercise sound judgment and to act in good faith in deciding whether to make a Section 3553(e) motion". Sentencing is not "inherently or exclusively a judicial function" and has been "a peculiarly shared responsibility among the branches of government" rather than the "exclusive constitutional province of any one Branch".[263]

Articles 9(1) and 9(6) – Unlawful detention?

1.112 The appellant in *Faisal bin Tahar v Public Prosecutor*[264] pleaded guilty in respect of drug offences under the MDA. He was sentenced under s 33A(1) of the MDA enhanced punishment regime and received a "Long Term Imprisonment" or "LTI sentence". This requires the meeting of two conjunctive conditions, that the accused had one previous admission and one previous conviction for consuming a specific drug under s 8(*b*).

1.113 He appealed against the mandatory minimum sentence he received on the basis that the sentence was based on an allegedly unconstitutional 2010 admission to a drug rehabilitation centre ("DRC") which was based on positive urine test results, such that the sentence itself was unconstitutional and should be set aside.

1.114 The constitutional argument turned on Art 9(1) as admission into a DRC constituted a deprivation of personal liberty, which must be "in accordance with law". This admission was done pursuant to s 34(2)(*b*) of the MDA, a "law-creating instrument"[265] under which the director of the CNB is authorised to order a person to be detained in an approved institution for the purpose of undergoing "treatment and rehabilitation" where he is satisfied that this is necessary following a medical examination or based on the results of a urine test.[266]

1.115 Counsel for the appellant argued that detention in the DRC can only be valid under Art 9 if it falls within the scope of Art 9(6) of the Constitution. This makes an exception for laws relating to drugs misuse which allow the arrest and detention of a person for treatment and rehabilitation from the operation of Art 9. See JC correctly found this

262 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [79].
263 *Morrison v Olson* 487 US 654 (1988).
264 [2016] 4 SLR 501.
265 *Faisal bin Tahar v Public Prosecutor* [2016] 4 SLR 501 at [49].
266 *Faisal bin Tahar v Public Prosecutor* [2016] 4 SLR 501 at [49].

contention to be "without merit"[267] and a "complete *non sequitur*"[268] as Art 9(6) is in nature a savings provision narrowing the scope of the preceding Art 9 sub-clauses. Article 9(6) provides that no law shall be invalid merely because it does not comply with the procedural due process protections under Arts 9(3) and 9(4).[269] The appellant's argument neither engaged Art 9(1), 9(3), nor 9(4) as it related to the assertion that his DRC admission constituted an unsanctioned deprivation of liberty.

1.116 The appellant argued that admission to a DRC had to last for at least six months to be unconstitutional; he was released before the expiry of six months. Further, the stated purpose of the admission was for him to undergo treatment or rehabilitation, which the appellant alleged he did not receive. Thus, it was argued that the DRC admission was thereby "purely punitive" and, therefore, unconstitutional as the exercise of the power prescribed in s 34(2) of the MDA for such purposes amounts to vesting an exclusively judicial power in the hands of the executive.[270] See JC held that whether the appellant had received treatment while at the DRC or whether the detention period was less than six months was "neither here nor there"[271] as his sentence was based on the fact that he had consumed drugs on two prior occasions. If the DRC admission was ordered based on a determination that the appellant had consumed a controlled drug, it would be proper for a court to take the DRC admission into account when considering an LTI sentence.

1.117 See JC found that the admission to the DRC satisfied the s 34(2) of the MDA's requirements and was, thus, constitutional as a legally sanctioned act of detention. He pointed out, following *Ramalingam Ravinthran v Attorney-General*[272] ("*Ramalingam*"), that a presumption of legality applies with respect to the act of a public official; good faith is to be presumed in the absence of contrary evidence. Thus, the appellant bore the burden to prove the director exercised his discretion unlawfully, rather than the Prosecution having to discharge an evidential burden showing that the motive behind the admission order was to subject the appellant to treatment and rehabilitation. Further, s 34(3) does not mandate a minimum detention of six months.

267 *Faisal bin Tahar v Public Prosecutor* [2016] 4 SLR 501 at [34].
268 *Faisal bin Tahar v Public Prosecutor* [2016] 4 SLR 501 at [48].
269 *Faisal bin Tahar v Public Prosecutor* [2016] 4 SLR 501 at [48].
270 *Faisal bin Tahar v Public Prosecutor* [2016] 4 SLR 501 at [51].
271 *Faisal bin Tahar v Public Prosecutor* [2016] 4 SLR 501 at [46].
272 [2012] 2 SLR 49 at [47].

1.118 See JC also rejected the argument that the DRC admission was punitive and involved the executive exercising the judicial power to punish, which would violate the separation of powers principle. Section 34(2) of the MDA does not violate this principle as the power to detain a person under the MDA at a DRC is not punitive, but "properly seen as an incident of the executive power to administer the laws" relating to the treatment and rehabilitation of drug addicts under the MDA.[273]

Article 9(1) – Fundamental rules of natural justice/vagueness

1.119 A constitutional issue raised in *Kho Jabing (April 2016)*, under which the applicant was sentenced to a mandatory death penalty after conviction for murder, pertained to the content of the constitutional standard of "fundamental rules of natural justice", first declared by the Privy Council in *Ong Ah Chuan v Public Prosecutor*[274] ("*Ong Ah Chuan*"). The Court of Appeal in *Yong Vui Kong v Public Prosecutor*[275] ("*Yong Vui Kong (2015)*") clarified that these rules do not contain "substantive legal rights";[276] it stated that the "fundamental rules of natural justice in the common law are therefore *procedural* rights aimed at securing a fair trial" [emphasis in original].[277]

1.120 The Court of Appeal held that it has inherent power to reopen a concluded criminal appeal to prevent a miscarriage of power as a facet of judicial power conferred under Art 93 of the Constitution. This power of review is exercised as part of its statutorily conferred appellate jurisdiction, which is not exhausted by rendering a decision on the merits. This power is justified where sufficient material is placed before it allowing for the conclusion that there has been a miscarriage of justice. Further, it stressed the importance of the principle of finality as "a function of justice" as a functioning legal system would not be possible "if all legal decisions were open to constant and unceasing challenge".[278] This would erode general confidence in the criminal process as "an entrenched culture of self-doubt engendered by abusive and repetitive attempts to re-litigate matters" already decided.[279] This applies even in death penalty cases, notwithstanding the "irreversibility" of capital punishment. It is to no one's benefit "for there to be an endless inquiry into the same facts and the same law with the same raised

273 *Faisal bin Tahar v Public Prosecutor* [2016] 4 SLR 501 at [55].
274 [1979–1980] SLR(R) 710.
275 [2015] 2 SLR 1129.
276 *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [62].
277 *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [64].
278 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [47].
279 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [47].

hopes and dashed expectations that accompany each such fruitless endeavour".[280]

1.121 Bringing forth a new legal argument which raises constitutional points will not itself suffice, as much turns on the merits of the points raised.[281] In *Ramalingam*[282] and *Quek Hock Lye*,[283] new constitutional arguments in relation to capital offences were successfully raised, but the Court of Appeal in *Kho Jabing (April 2016)* stated these should be confined to their facts.[284] Those two decisions should not be taken to mean that there is an "automatic right of review" whenever "new legal arguments involving constitutional points are raised in a capital case".[285]

1.122 In this present case, it was argued that the imposition of the death penalty was unconstitutional as the decision to do so was not unanimous; it was argued that one fundamental rule of natural justice is that a death sentence has to be imposed by a unanimous verdict, this being "a common law rule of ancient vintage" commented upon by eminent common law jurists including Sir William Blackstone, Sir James Fitzjames Stephen and Lord Devlin.[286] When Singapore still had criminal trials by jury, s 211 of the Criminal Procedure Code[287] provided that a guilty verdict in all cases could only be returned by a unanimous jury or by a 5:2 majority with the concurrence of the presiding judge. Jury trials were abolished in 1971 but thereafter, it continued to apply in capital cases in so far as offenders facing capital charges were tried by two judges who had to agree on the offender's guilt for there to be a conviction under s 185(2) of the Criminal Procedure Code.[288] This requirement was abolished in 1992.

1.123 Counsel for the applicant argued that the "modern manifestation" of the unanimous verdict rule is that if the High Court chooses not to impose the death sentence, the Court of Appeal can only reverse the High Court decision and impose a death sentence only if the decision to do so is unanimous. Counsel submitted that the requirement in s 31(1) of the Supreme Court of Judicature Act,[289] which prescribes that appeals are to be decided with the opinion of the majority of judges on the *coram*, should not apply to appeals against the imposition of capital

280 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [50].
281 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [76].
282 *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 at [17].
283 *Quek Hock Lye v Public Prosecutor* [2015] 2 SLR 563 at [20].
284 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [74].
285 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [74].
286 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [104].
287 Cap 132, 1955 Rev Ed.
288 Cap 113, 1970 Rev Ed.
289 Cap 322, 1999 Rev Ed.

sentences.[290] The Court of Appeal held that the authorities cited by counsel at best stood for the proposition that a decision at first instance by lay jurors convicting an accused person facing a capital charge must be unanimous; it did not extend to requiring that an appellate judicial body composed of professional judges must be unanimous in making a decision to impose a death sentence.[291] In terms of practice, since the abolition of criminal trials by jury, Singapore courts have affirmed convictions in capital cases by a majority.[292] At most, the common law rule of unanimity in capital cases, if it exists, only applies to lay juries and not criminal appeals heard by appellate courts composed of professional judges. In addition, the Court of Appeal was not convinced that this rule of unanimity is a fundamental rule of natural justice as these must be "universal rules which apply at all times and cannot be abrogated, even by [the] Parliament".[293] The Court of Appeal delved into the historical basis of the unanimity rule, drawing from an academic article by Raoul G Cantero and Robert M Kline.[294] It highlighted various factors, including the fact that in medieval times, the belief was that there was only "one correct answer to a conflict" such that correct verdicts had to be unanimous. Further, it was only in the 15th century that the Parliament allowed legal decisions to be made by majority rather than unanimity. From this examination, the Court of Appeal concluded that the rule of unanimity is not universal as it is "too particular and too idiosyncratic to the jury system as it originated in medieval England" and, thus, is not a "universal rule of criminal law for all capital offences, wherever and howsoever prosecuted".[295] The Court of Appeal opined that it will not even apply the rule of unanimity to modern criminal jury trials, noting that since the English Criminal Justice Act 1967, juries have been permitted to return verdicts by majority decision.[296]

1.124 As the so-called rule of unanimity is not a fundamental rule of natural justice, the Parliament is free to derogate from this, in allowing majority verdicts to be returned for capital cases.[297]

290 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [105].
291 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [107].
292 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [108].
293 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [109].
294 Raoul G Cantero and Robert M Kline, "Death is Different: The Need for Jury Unanimity in Death Penalty Cases" (2009–2010) 22 St Thomas L Rev 4 at 29.
295 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [111].
296 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [111].
297 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [112].

The meaning of "law"

1.125 Under a 2012 amendment to the Penal Code,[298] provision was made that offenders sentenced to death can apply for re-sentencing for a term of life imprisonment and caning in lieu of the death sentence. The appellant in *Kho Jabing v Attorney-General*,[299] who had been convicted of an offence of murder in 2010, appealed to be re-sentenced and his application was granted by the High Court. On appeal, the Court of Appeal by a majority of 3:2, allowed the appeal and reinstated the death sentence. Subsequently, the appellant filed two criminal motions to the Court of Appeal to set aside the death sentence which failed. He then filed two originating summonses to the High Court seeking a declaration to the effect that the sentence for a murder conviction was unconstitutional.

1.126 The Court of Appeal considered it an abuse of process to use the court's civil jurisdiction to mount an attack of a decision made by the court pursuant to its criminal jurisdiction.[300] It found that the originating summons sought to relitigate matters fully argued and considered by the Court of Appeal in *Kho Jabing (April 2016)*. Two of the applicant's arguments raised to support his appeal related to Art 9(1), which had allegedly been breached on two grounds.

1.127 First, it was argued that the test set by the Court of Appeal to determine when to impose a death sentence is too vague, lacking that quality of certainty needed for it to be considered "law" under Art 9(1). This reiterated the argument raised at his first criminal motion which was rejected and *res judicata*.[301] The Court of Appeal stated it was plainly wrong to say the test is not "sufficiently precise" and, hence, unconstitutional. The "outrage test" in *Kho Jabing v Attorney-General*[302] required an inquiry into whether the offender displayed "so blatant a disregard for human life", where his actions were so "grievous an affront to humanity and so abhorrent" that it warranted the imposition of the death penalty. This required the court to do what it always does in sentencing, to ensure "the punishment fits the crime". This test is supposed to provide "useful signposts and guidance for future courts" and, thus, to improve the "principle of consistency in sentencing".[303] The Court of Appeal also stated that the vagueness complained of "is no

298 Penal Code (Amendment) Act 2012 (Act 32 of 2012).
299 [2016] 3 SLR 1273.
300 *Kho Jabing v Attorney-General* [2016] 3 SLR 1273 at [2].
301 *Kho Jabing v Attorney-General* [2016] 3 SLR 1273 at [5].
302 [2016] 3 SLR 1273 at [6].
303 *Kho Jabing v Attorney-General* [2016] 3 SLR 1273 at [6].

more than the indeterminacy that is inherent in the sentencing exercise". Sentencing is "not a mathematical exercise".[304]

1.128 Second, it was argued that the re-sentencing regime is unconstitutional in denying the appellant the right to a fair trial, violating Art 9(1). The appellant said that he was denied a right to lead evidence which could have been relevant to sentencing; the Court of Appeal pointed out the appellant had "expressly declined" to do so before the High Court judge hearing his re-sentencing application; in addition, the appellant could have made a fresh application to lead further evidence during his 2015 appeal but did not. He could not now say he was denied a right to a fair trial.

1.129 It was argued in *Prabagaran* that s 33B(2) of the MDA breached Art 9(1), based on three strands.

1.130 Firstly, s 33B(2)(*b*) breaches the fundamental rules of natural justice which are embodied in the word "law" in Art 9(1). The MDA falls within the expression "law" set out in Art 2(1) of the Constitution. The Court of Appeal in *Yong Vui Kong v Attorney-General*[305] ("*Yong (Clemency)* 2011") endorsed the decision of the Privy Council in *Ong Ah Chuan*[306] that "law" in Arts 9(1) and 12 are not to be construed literally but be understood as embodying "fundamental rules of natural justice".

1.131 The Court of Appeal in *Yong (Clemency)* 2011 held that there is "no substantive difference" between fundamental (constitutional) rules of natural justice and those at common law, although the former operate to invalidate unconstitutional legislation while the latter invalidate administrative law decisions. Pursuant to this, the applicants raised the fair-hearing rule and the rule against apparent bias as grounds for challenging the validity of s 33B(2)(*b*).

1.132 The applicants argued that they had received no fair hearing as the determination of whether substantive assistance had been rendered in relation to disrupting drug trafficking activities was to them an "opaque" process. They had not received any notice of the factual allegations on which the PP's decision was based and had no opportunity to dispute the PP's decision, except on the basis of the statutorily provided for grounds in s 33B(4), that is, bad faith and malice. Essentially, the applicants sought an adjudicative process to challenge the factors that the PP took into account in deciding whether to issue a certificate of substantive assistance.

304 *Kho Jabing v Attorney-General* [2016] 3 SLR 1273 at [7].
305 [2011] 2 SLR 1189.
306 *Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710 at [26].

1.133 The Court of Appeal noted that given the PP's expertise in assessing the operational value of assistance rendered and his being "uniquely suited" to do so, the fair-hearing rule in this context did not require giving the offender an opportunity to address the PP on extra-legal factors "which the offender would be in no position to comment on".[307] The applicants, on other occasions, had the opportunity to provide information to the CNB and, thereby, to be heard.[308] Furthermore, treating the grant of a certificate as a matter that should be dealt with at trial would "seriously jeopardise" the "entire battle against drug trafficking" and the "general interest of society".[309]

1.134 In relation to the argument that conferring discretion on the PP to certify whether an offender has given substantive assistance raises the question of apparent bias, the Court of Appeal noted that the PP was chosen to exercise this discretion as the powers of that office are only exercised in the general public interest, the PP is independent and there are "institutional incentives for it to operate with integrity", as observed in *Ramalingam*.[310] The applicants appeared to assume that "the PP would only exercise his prosecutorial powers wholly with a view to obtaining the maximum permissible sentence".[311] The Court of Appeal considered this assumption inaccurate given that the PP only acted in the public interest. Thus, there was no need to adopt a strictly adversarial stance and further, it was within the public interest to secure an appropriate sentence.[312] The Court of Appeal noted that the number of offenders given such certificates "attests to the non-partisan manner" in which the PP has undertaken his functions.[313]

1.135 Second, the applicants argued that the MDA as a piece of legislation is absurd and arbitrary and, thus, does not constitute "law" for the purposes of Art 9(1),[314] offering six reasons for this, some of which had been canvassed in previous cases.

1.136 To the argument that offenders would have to choose between providing substantive assistance and waiving any defences which might be inconsistent, and raising those defences and facing a death penalty, it

307 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [86].
308 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [86].
309 *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 at [66], quoted in *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [87].
310 *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 at [53], cited in *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [89].
311 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [88].
312 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [88].
313 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [89].
314 *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489.

had previously been held in *Public Prosecutor v Chum Tat Suan*[315] that there is "nothing invidious about an offender having to elect between whether to cooperate and whether to give evidence to his defence".[316] Even though the PP did not provide reasons for refusals to issue a certificate, it was not impossible to challenge the exercise of the PP's discretion by highlighting circumstances raising a *prima facie* case of reasonable breach of the relevant standard, which would shift the evidentiary burden to the PP.[317]

1.137 The Court of Appeal noted that the Art 9(1) test of arbitrariness relates to the purpose of the law, as Quentin Loh J held in *Tan Eng Hong v Attorney-General*.[318] This is a similar inquiry to that undertaken under Art 12(1).[319] The Court of Appeal held that not only is s 33B(2)(*b*) rational, the purpose of the law which seeks to enhance "law enforcement capabilities in the war against drugs" is clear.[320] As stated in *Quek Hock Lye*,[321] there is a rational relation between the differentia and object sought to be achieved, that is to gain assistance from offenders (couriers) to provide leads for the CNB to identify suppliers and drug kingpins outside Singapore. The outcome orientation which guides the giving of certificates is necessary, to avoid situations where drug couriers will be "primed with beautiful stories most of which will be unverifiable but on the face of it, they have cooperated, they did their best". Were this allowed, the deterrent value of the death penalty would be diminished.[322]

1.138 The Court of Appeal also noted that s 33B(2)(*b*) needs not be the "best means" to further the statutory objective, and the fact that some couriers will not be able to provide substantive assistance by dint of their relatively "low" role in a syndicate does not render the provision absurd or arbitrary. Neither can the provision be absurd and arbitrary because there is a "remote possibility" that the information will bear fruit "only after a long while". This is "speculative and highly unlikely" because offenders are generally and usually convicted years after their initial arrest, furnishing the CNB with the opportunity to follow up on any information given, "until there is no realistic prospect of any further progress".[323]

315 [2015] 1 SLR 834 at [80].
316 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [92].
317 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [92].
318 [2013] 4 SLR 1059 at [39].
319 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [93].
320 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [93].
321 *Quek Hock Lye v Public Prosecutor* [2015] 2 SLR 563 at [36].
322 *Singapore Parliament Reports (Hansard)* (14 November 2012) vol 89 at col 1.49 pm (Mr K Shanmugam, Minister for Foreign Affairs and Minister for Law), quoted in *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [94].
323 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [95].

1.139 Third, the applicants argued that the Impugned Provisions are contrary to the rule of law, as they are based on "unstable and uncertain standards" as the award of a certificate of substantive assistance may depend on the operational necessities of the CNB and other factors unknown to the offender, and bearing no relation to the gravity of the offences committed.[324] The Court of Appeal held that the standards the offender had to meet were not uncertain; the real objection of the applicant was the assessment of whether substantive assistance was provided. To the extent it was suggested that the CNB may lack resources to follow up on information provided, this was found to be "purely speculative".[325]

1.140 Furthermore, it was inaccurate to state there are no legal limits on the PP's power as s 33B(4) stipulates specific grounds of review, bad faith, malice, as well as unconstitutionality.[326] It remains an open question whether the court's power of review goes further.[327]

Cruel and inhuman punishment for an eight-year wait

1.141 In *Chijioke Stephen Obioha v Public Prosecutor*,[328] the applicant brought a criminal motion on 16 November 2016 to stay the execution of the death sentence imposed on him. This was scheduled to take place on 18 November 2016 after he was found guilty beyond reasonable doubt of the drug trafficking charges preferred against him on 30 December 2008. The substantive argument was that Art 9(1) of the Constitution was breached, in so far as the "mental anguish and agony" he had suffered owing to the "inordinate delay" of about eight years since the day the sentence was pronounced but not executed amounted to a form of cruel and inhuman punishment. Art 9(1) safeguards the right not to be deprived of life and personal liberty "save in accordance with law".

1.142 The applicant called for a revisiting of the legal position laid down in *Yong Vui Kong v Public Prosecutor*[329] ("*Yong Vui Kong (2010)*") that there is no constitutional prohibition against inhuman punishment. He argued that the Court of Appeal in *Yong Vui Kong (2010)* had erred in interpreting the Constitution by taking an "originalist" approach[330] and urged the court to reconsider its approach to interpreting the

324 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [96].
325 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [97].
326 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [98].
327 *Prabagaran a/l Srivijayan v Public Prosecutor* [2017] 1 SLR 173 at [98].
328 [2017] 1 SLR 1.
329 [2010] 3 SLR 489.
330 *Chijioke Stephen Obioha v Public Prosecutor* [2017] 1 SLR 1 at [12].

Constitution, considering the fact the Legislature has reviewed the mandatory death penalty regime.[331]

1.143 The Court of Appeal held that the applicant had failed to raise any argument which would merit revisiting the principle laid down in *Yong Vui Kong (2010)*, noting that this position had been affirmed in *Yong Vui Kong (2015)* and that the court in *Yong Vui Kong (2010)* had concluded that there is no express or implied prohibition against inhuman punishment "based on an extensive and comprehensive analysis of the history and text of the Constitution".[332] Following from *Yong Vui Kong (2015)*, the applicant's argument had "no constitutional footing to stand on", as the Court of Appeal had affirmed that fundamental rules of natural justice are procedural rights aimed at securing a fair trial, and do not speak to the post-trial punishment of fairly convicted criminals; further, the court would not read "unenumerated rights" into the Constitution as this would be undemocratic and contrary to the rule of law.[333]

1.144 The case of *Jabar bin Kadermastan v Public Prosecutor*[334] where the Court of Appeal considered whether the "death row phenomenon" is inhuman punishment does not appear to be discussed here, with the court there noting that it is "inevitable"[335] that prisoners on death row will suffer mental anguish which do not amount to a contravention of their constitutional rights. A prisoner should not be able to benefit from the accumulation of time spent on death row through exhausting all available appeal and clemency procedures.[336]

1.145 On examining the facts, the Court of Appeal noted that there had been no undue delay. The applicant had "the full benefit and opportunity of the trial and appeal process";[337] this included filing motions to reopen the concluded criminal appeal which was dismissed, withdrawing an opportunity to apply for re-sentencing under s 33B of the MDA (between February 2013–2015) and failing to give any explanation as to why a stay of execution should not be lifted.[338] The applicant's application for clemency was rejected on 24 April 2015. The Court of Appeal noted the applicant had "ample time and opportunity" to bring a motion based on the present argument after he had been granted a stay of execution in Criminal Motion No 12 of 2015

331 *Chijioke Stephen Obioha v Public Prosecutor* [2017] 1 SLR 1 at [12].
332 *Chijioke Stephen Obioha v Public Prosecutor* [2017] 1 SLR 1 at [13].
333 *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [75].
334 [1995] 1 SLR(R) 326.
335 *Jabar bin Kadermastan v Public Prosecutor* [1995] 1 SLR(R) 326 at [46].
336 *Jabar bin Kadermastan v Public Prosecutor* [1995] 1 SLR(R) 326 at [62].
337 *Chijioke Stephen Obioha v Public Prosecutor* [2017] 1 SLR 1 at [6].
338 *Chijioke Stephen Obioha v Public Prosecutor* [2017] 1 SLR 1 at [6].

("CM 12/2015").[339] The material he was currently relying on was "reasonably available" to him during the hearing of CM 12/2015 and there was "no reason for him to wait until the days" before the scheduled execution to file the present application.[340]

1.146 The Court of Appeal found that on the facts, there was no cruel, inhuman, or degrading punishment;[341] the only purpose of the current application was to "put in motion a mechanism" to delay execution of sentence, and that this 11th-hour application constituted a "calculated and contumelious abuse of the process of the court".[342] This was similar to the abuse of process where the same offender files "multiple applications in dribs and drabs to prolong matters *ad infinitum*" as in *Kho Jabing (May 2016)*,[343] contrary to the principle of finality, that a functioning legal system has to terminate legal challenges to legal decisions after the appellate and review processes have run their course.[344] Thus, the application was dismissed.

Article 12

1.147 The Art 12 guarantee of equal protection and equal treatment under the law does not protect an absolute standard of equal treatment; rather, it requires only that like be treated alike. The issue in *Novelty Dept Store Pte Ltd v Collector of Land Revenue*[345] was whether Art 12 was violated by the award of different compensation made to two properties compulsorily acquired in the same exercise.

1.148 Compulsory acquisition is regulated by the Land Acquisition Act,[346] constituting "a regime that pits the interests of the individual landowner against those of the State".[347] In acquiring land, it is clear that the State does not need to achieve equality of result in every case of land acquisition, as stated in *Eng Foong Ho v Attorney-General*.[348]

1.149 The appellant was disgruntled with the compensation award it received from the Collector of Land Revenue for the compulsory acquisition of 31 Tuas West Drive (originally S$13.2m, later adjusted

339 *Chijioke Stephen Obioha v Public Prosecutor* [2017] 1 SLR 1 at [7].
340 *Chijioke Stephen Obioha v Public Prosecutor* [2017] 1 SLR 1 at [7].
341 *Chijioke Stephen Obioha v Public Prosecutor* [2017] 1 SLR 1 at [17].
342 *Chijioke Stephen Obioha v Public Prosecutor* [2017] 1 SLR 1 at [8].
343 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 1259 at [3].
344 *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [47].
345 [2016] 2 SLR 766.
346 Cap 152, 1985 Rev Ed.
347 *Novelty Dept Store Pte Ltd v Collector of Land Revenue* [2016] 2 SLR 766 at [23].
348 [2009] 2 SLR(R) 542 at [25], cited in *Novelty Dept Store Pte Ltd v Collector of Land Revenue* [2016] 2 SLR 766 at [36].

upward to S$14.2m by the Land Acquisition Appeals Board), compared to the award of S$29.2m made to Cambridge Industrial Trust for its land ("CIT land"). The appellant argued that the same methodology (which would include that used for sales involving Sale and Leaseback ("SLB") arrangements and Jurong Town Corporation standard factories) which was applied to the CIT land should have been used to assess its land, arguing that its true market value was S$23m.

1.150 The Court of Appeal held that Art 12 did not apply as both properties were not similarly situated. It pointed out several differentiating factors, two of which are discussed here. First, the appellant's land, unlike the CIT land, was not subject to any SLB arrangements. Under SLB arrangements, a property owner "sells the property and simultaneously leases it back from the purchaser". This finance-driven transaction is attractive to both seller/lessee and buyer/lessor and, hence, enhances the value of properties under SLB arrangements, attracting a price premium, as the land brings with it a "recurring stream of income".[349] As such, sales involving SLB arrangements were "inappropriate comparables" to use in assessing the market value of the appellant's land and in trying to draw such a comparison, the appellant was "effectively seeking an unjustified windfall".[350]

1.151 Furthermore, as a wide range of SLB arrangements were possible, it would be "artificial" to estimate the enhanced value that might be imputed to the appellant's land under an imaginary SLB arrangements. Any attempt to estimate the price of a potential SLB arrangement "would be conjectural and purely speculative in nature".[351] The Court of Appeal concluded the Land Acquisition Board had not erred in treating land subject to an SLB arrangement as different from the appellant's land and not comparable in assessing market value.[352]

1.152 Second, the appellant's land had a purpose-built factory on it and, thus, sales involving property with standard factories would also be inappropriate comparables as standard factories were in greater demand and commanded higher rent, as these were more adaptable to a wide range of industrial users.[353]

1.153 Thus, the Art 12 challenge failed as the appellant's land and the CIT land were not alike for the purposes of assessing their market value.

349 *Novelty Dept Store Pte Ltd v Collector of Land Revenue* [2016] 2 SLR 766 at [27].
350 *Novelty Dept Store Pte Ltd v Collector of Land Revenue* [2016] 2 SLR 766 at [28].
351 *Novelty Dept Store Pte Ltd v Collector of Land Revenue* [2016] 2 SLR 766 at [30].
352 *Novelty Dept Store Pte Ltd v Collector of Land Revenue* [2016] 2 SLR 766 at [33].
353 *Novelty Dept Store Pte Ltd v Collector of Land Revenue* [2016] 2 SLR 766 at [34].