IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 51

Originating Summons No 514 of 2018
Summonses Nos 2032 and 3118 of 2018

Between

Lee Pheng Lip Ian

… Plaintiff

And

(1) Chen Fun Gee
(2) Venkataraman Anantharaman
(3) Yeow Kok Leng Vincent
(4) Tan Jin Hwee
(5) Singapore Medical Council

… Defendants

JUDGMENT

[Administrative Law] — [Judicial review]

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Lee Pheng Lip Ian
v
Chen Fun Gee and others and other matters

[2019] SGHC 51

High Court — Originating Summons No 514 of 2018 and Summonses Nos 2032 and 3118 of 2018
Woo Bih Li J
25 September 2018, 10, 11 January 2019

4 March 2019 Judgment reserved.

Woo Bih Li J:

Introduction

1 On 14 February 2014, the Singapore Medical Council ("SMC") made a complaint against the plaintiff, a registered medical practitioner, to the chairman of the Complaints Panel ("CP") pursuant to s 39(3)(*a*) of the Medical Registration Act (Cap 174, 2004 Rev Ed). The complaint was subsequently laid before a Complaints Committee ("CC"). On 30 April 2015, the SMC sent a further letter to the chairman of the CP with additional information about the plaintiff. This additional information was subsequently laid before the CC as well. For the purposes of this judgment, I will refer to the complaint made by the SMC on 14 February 2014 and the additional information provided by the SMC on 30 April 2015 collectively as "the Complaint". Over the course of conducting its inquiry into the Complaint, the CC applied in writing to the

chairman of the CP for 13 extensions of time ("EOTs") to complete its inquiry, and the chairman granted these EOTs to the CC. The CC completed its inquiry on 12 February 2018 and determined that a formal inquiry was necessary. The CC thus ordered that an inquiry into the Complaint be held by a Disciplinary Tribunal ("DT").

2 On 2 May 2018, the plaintiff filed Originating Summons No 514 of 2018 ("OS 514/2018") against the defendants. The defendants are the chairman of the CP (the first defendant), the members of the CC (the second to fourth defendants), and the SMC (the fifth defendant).

3 The Medical Registration Act in force as at 14 February 2014 was an amended version of the 2004 Revised Edition. The disciplinary proceedings under the Medical Registration Act involving the plaintiff nevertheless run to the present day, and the Medical Registration Act currently in force as at the date of this judgment is an amended version of the 2014 Revised Edition. In spite of this, the relevant provisions of the Medical Registration Act cited for the purposes of this judgment remain the same notwithstanding the different versions of this piece of legislation. In this judgment, references to statutory provisions will thus be to provisions of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("MRA") in force as at the date of this judgment unless otherwise stated.

4 OS 514/2018 is the plaintiff's application for, *inter alia*, leave to apply for:

> (a) a quashing order to quash all applications by the CC to the chairman of the CP pursuant to s 42(2) for EOTs for the CC to complete its inquiry into the Complaint;

(b) a quashing order to quash all grants of such EOTs by the chairman of the CP to the CC pursuant to s 42(2);

(c) a quashing order to quash the CC's order that an inquiry into the Complaint be held by a DT; and

(d) a prohibiting order to prohibit the SMC from referring the Complaint to the chairman of the CP.

5 Summons No 2032 of 2018 ("SUM 2032/2018") is the plaintiff's application for discovery of documents, which the defendants opposed. Summons No 3118 of 2018 ("SUM 3118/2018") is the first and second defendants' application for the interrogatories without order served on them by the plaintiff to be withdrawn.

6 I heard submissions from the plaintiff and the defendants on all three applications and reserved judgment.

Background

7 I set out the background facts in chronological order as far as possible. I point out first that the background facts involve three main chains of correspondence: (i) the correspondence between the Ministry of Health ("MOH") and the plaintiff (which includes letters the plaintiff sent to the Minister for Health), (ii) the correspondence between MOH and the SMC, and (iii) the correspondence between the plaintiff and the SMC prior to the SMC making a complaint against the plaintiff to the chairman of the CP, and thereafter the correspondence between the plaintiff and the SMC Investigation Unit which acted under the CC's directions.

8 The plaintiff was practising as a medical practitioner at Integrated Medicine Clinic ("the clinic"). The clinic was licensed to him under the Private Hospitals and Medical Clinics Act (Cap 248, 1999 Rev Ed) ("PHMCA").

9 On 3 April 2013, MOH sent a letter to the plaintiff which, *inter alia*, noted that the clinic offered some non-mainstream services in addition to mainstream medical services, and alleged that there were contraventions of certain subsidiary legislation under the PHMCA.[1] The plaintiff sent a letter in reply to MOH's letter. Thereafter, there was further correspondence between MOH and the plaintiff.

10 On 31 July 2013, MOH sent a letter to the SMC to inform it that the plaintiff was offering some non-mainstream services in addition to mainstream medical services, and that MOH was concerned over the appropriateness of the medical management of some of the clinic's patients.[2]

11 Following from the plaintiff's correspondence with MOH, it appears that the plaintiff was, *inter alia*, dissatisfied with how MOH maintained its position that he/the clinic was offering non-mainstream services which he/the clinic should not provide. On 11 September 2013, the plaintiff sent a letter to the Minister for Health primarily to contend against the allegation that he was offering non-mainstream services.[3]

12 In the meantime, on 24 September 2013, the SMC sent a letter to MOH to seek clarification from MOH concerning its letter dated 31 July 2013 and to request certain documents.[4]

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1 1Statement Annex 2 pp 73–75.

2 1Statement Annex 3 p 210.

3 See 1Statement at paras 53, 55; 1Statement Annex 6 pp 235–241.

13 On 27 September 2013, MOH sent a letter to the plaintiff in reply to his letter dated 11 September 2013, and stated at para 2:[5]

> 2 We have … noted your feedback on the practise of integrated medicine. We understand SMC is reviewing this matter and you may like to wait for the outcome of the SMC's deliberations.

14 On 30 September 2013, MOH sent a letter to the SMC in reply to the SMC's letter dated 24 September 2013 and enclosed some documents.[6]

15 Thereafter from October 2013 to December 2013, there was further correspondence between the plaintiff and MOH.[7] Separately, the plaintiff also wrote letters to the SMC in October 2013 and December 2013, enclosing patient testimonials, to which the SMC acknowledged receipt in January 2014.[8]

16 On 14 February 2014, the SMC sent a letter to the chairman of the CP to make a complaint against the plaintiff pursuant to s 39(3)(*a*).[9] In the letter, the SMC referred to and enclosed (i) MOH's letter to the SMC dated 31 July 2013, (ii) the SMC's letter to MOH dated 24 September 2013, (iii) MOH's reply to the SMC dated 30 September 2013, and (iv) the plaintiff's letters to the SMC in October 2013 and December 2013 enclosing patient testimonials. The SMC stated that it had considered all this information and decided to refer the plaintiff to the chairman of the CP pursuant to s 39(3)(*a*).

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4 1Statement Annex 7 p 244.

5 1Statement Annex 6 p 242.

6 See 1Statement Annex 7 p 245.

7 See 1Statement at paras 60, 62.

8 See 1Statement at paras 60, 62.

9 1Statement Annex 10 p 499.

17 According to the defendants, on 8 May 2014, the CC was appointed and this complaint from the SMC was laid before the CC for its inquiry into the complaint.[10] The CC thereafter directed the SMC Investigation Unit to carry out an investigation into the complaint. On 1 September 2014, the SMC Investigation Unit sent a letter giving the plaintiff notice of the complaint, pursuant to ss 44(1) and 44(2), and inviting the plaintiff to give any written explanation he may wish to offer.[11] On 20 October 2014, the plaintiff sent a letter to the SMC Investigation Unit providing an explanation.[12]

18 Separately, there was further correspondence between the plaintiff and MOH in 2014 and 2015.

19 On 11 March 2015, MOH sent a letter to the plaintiff stating that in accordance with the PHMCA, MOH would not renew the plaintiff's clinic licence upon the expiry of his current clinic licence on 16 March 2015.[13] MOH stated that this decision was based on the inspection findings from February 2013 to March 2015 that the clinic had repeatedly not complied with the licensing requirements under the PHMCA and its subsidiary legislation in prescribing certain treatments.

20 On 16 March 2015, the plaintiff's clinic licence expired. On 27 March 2015, the plaintiff sent a letter to the Minister for Health to appeal against MOH's decision not to renew his clinic licence.[14]

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10 See Chen Fun Gee's (the first defendant's) affidavit dated 14 June 2018 at para 29.

11 See 2Statement Annex 15 pp 879–880.

12 See 2Statement Annex 18 pp 1248–1260.

13 3Statement Annex 22 pp 1460–1461.

14 3Statement Annex 23 pp 1463–1468.

21 On 10 April 2015, MOH sent a letter to the SMC to refer the plaintiff for further investigations for inappropriate prescriptions of certain treatments, which MOH termed non-evidence-based.[15] These were the same treatments for which MOH had decided not to renew the plaintiff's clinic licence, as stated in MOH's letter to the plaintiff dated 11 March 2015 (see [19] above).

22 On 30 April 2015, the SMC sent a letter to the chairman of the CP referring to the SMC's letter of complaint dated 14 February 2014 against the plaintiff (see [16] above).[16] The SMC then stated that MOH had sent a further letter dated 10 April 2015, which the SMC enclosed with its letter. The SMC stated that it had considered this "additional information" submitted by MOH on the plaintiff and would be grateful if the chairman of the CP could place MOH's letter dated 10 April 2015 together with the SMC's letter of complaint dated 14 February 2014 before the CC.

23 In the meantime, on 18 May 2015, the plaintiff sent a letter to the Minister for Health requesting a reply to his earlier letter dated 27 March 2015 (see [20] above).[17] On 29 May 2015, MOH sent a letter to the plaintiff informing him that MOH had requested the SMC to form an advisory committee to consider his appeal, and that he would be notified of the outcome in writing.[18]

24 According to the defendants, the additional information provided by the SMC in its letter dated 30 April 2015 (see [22] above) was subsequently laid before the CC in June 2015.[19]

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15 3Statement Annex 24 pp 1522–1523.

16 3Statement Annex 25 p 1525.

17 3Statement Annex 26 p 1529.

18 3Statement Annex 26 p 1530.

19 Venkataraman Anantharaman's affidavit dated 14 June 2018 ("the second defendant's

25 Thereafter in February 2016 and March 2016, there was correspondence between the SMC Investigation Unit and the plaintiff following from the SMC Investigation Unit's letter dated 1 September 2014 and the plaintiff's letter dated 20 October 2014 (see [17] above).[20] To recapitulate, this was in relation to the complaint made by the SMC on 14 February 2014.

26 Subsequently, on 22 June 2016, the SMC Investigation Unit sent a letter giving the plaintiff notice of the additional information provided by the SMC in its letter dated 30 April 2015 (see [22] above).[21] This was again pursuant to ss 44(1) and 44(2), and the SMC Investigation Unit invited the plaintiff to give any further written explanation he may wish to offer in response to the additional information.

27 In this letter, the SMC Investigation Unit also referred to the additional information as "the Second Complaint". As mentioned at [1] above, for the purposes of this judgment, I will refer to the complaint made by the SMC on 14 February 2014 and the additional information/the Second Complaint collectively as "the Complaint". The arguments of the parties do not turn on this point.

28 On 15 September 2016, the plaintiff sent a letter to the SMC Investigation Unit providing his further written explanation.[22]

29 Returning to the plaintiff's appeal against MOH's decision not to renew his clinic licence, MOH subsequently sent a letter dated 24 April 2017 to the

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affidavit") at para 15.

20 See 1Statement at paras 133–136; 3Statement Annex 27 p 1532.

21 See 3Statement Annex 28 pp 1567–1568.

22 See 3Statement Annex 30 pp 1582–1586.

plaintiff informing him that the Minister had decided to allow the plaintiff's appeal and had directed that his clinic licence be renewed for six months subject to the condition that he strictly comply with MOH's guidelines on the provision of non-evidence-based medicine.[23] MOH also stated that it would write to the SMC to clarify its letter dated 10 April 2015 (see [21] above). MOH also provided instructions on how the plaintiff could apply to renew his clinic licence.

30 The plaintiff however did not restart the clinic.

31 From May 2017 to August 2017, there was further correspondence between the SMC Investigation Unit and the plaintiff. During this period, on 14 July 2017, MOH wrote a letter to the SMC to clarify its letter dated 10 April 2015 (see [29] above).[24]

32 According to the defendants, on 12 December 2017, the CC decided to order that an inquiry into the Complaint be held by a DT.[25]

33 On 12 February 2018, the CC sent a letter to the plaintiff informing him that the CC had completed its inquiry into the Complaint and had ordered that an inquiry into the Complaint be held by a DT.[26]

34 Over the course of conducting its inquiry since 8 May 2014 (see [17] above), the CC had applied in writing to the chairman of the CP for 13 EOTs to complete its inquiry. The CC had made these applications pursuant to s 42(2).

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23 3Statement Annex 32 p 1641.

24 See 3Statement Annex 34 pp 1661–1662.

25 See the second defendant's affidavit at para 135.

26 3Statement Annex 37 p 1916.

It had made eight of these 13 applications for EOTs after its extended deadline to complete its inquiry.[27] The chairman of the CP had granted all 13 EOTs to the CC. The chairman had granted these EOTs pursuant to s 42(2). A table of the dates of the 13 applications for EOTs and other information is attached in the Annex to this judgment.

SUM 2032/2018 and SUM 3118/2018

35 It is not necessary for me to address an issue raised by the first to fourth defendants as to whether they are proper parties to OS 514/2018.

36 In relation to SUM 2032/2018 and SUM 3118/2018, it was the plaintiff's position at the hearing that he required discovery of documents and answers to interrogatories for his leave application in OS 514/2018. The plaintiff was seeking discovery and answers to interrogatories to provide the court with more evidence to substantiate his claims in OS 514/2018 that, *inter alia*, s 42(2) had not been complied with by both the CC and the chairman of the CP.

37 The defendants had filed reply affidavits in OS 514/2018 to explain the actions they had taken in relation to the CC's proceedings concerning the plaintiff. However, the reply affidavits were short of documents to support their responses. It may be that the defendants had not produced before the court the best available evidence to substantiate their responses concerning the actions that they had taken.

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[27] While the parties informed the court that the CC had made *seven* of these 13 applications for EOTs after its extended deadline to complete its inquiry (see *eg*, Defendants' Written Submissions at para 229), the CC in fact made *eight* applications after its extended deadline (the eighth pertained to the 13th application for an EOT).

38 Given this state of affairs, I will proceed to consider the plaintiff's application in OS 514/2018 on the basis that s 42(2) might not have been complied with. This was after all what the plaintiff sought to prove by seeking discovery and answers to interrogatories, and was the basis for OS 514/2018.

OS 514/2018

39 Sections 42(1) and 42(2) state:

> **Commencement of inquiry by Complaints Committee**
>
> 42.—(1) A Complaints Committee *shall*, within 2 weeks after its appointment, commence its inquiry into any complaint or information, or any information or evidence referred to in section 44(5), and *complete its inquiry not later than 3 months* after the date the complaint or information is laid before the Complaints Committee.
>
> (2) Where a Complaints Committee is of the opinion that it will not be able to complete its inquiry within the period specified in subsection (1) *due to the complexity of the matter or serious difficulties encountered by the Complaints Committee in conducting its inquiry*, the Complaints Committee may apply in writing to the chairman of the Complaints Panel for an extension of time to complete its inquiry and the chairman may grant such extension of time to the Complaints Committee as he thinks fit.
>
> …
>
> [emphasis added]

Parties' arguments

40 The parties raised many arguments in support of their respective positions.

41 On the one hand, the plaintiff submitted that he had satisfied the requirements for leave to be granted for him to apply for the various quashing orders and prohibiting order.[28]

42 The plaintiff argued that s 42(2) is a mandatory provision in two main aspects: (i) the time when a CC is to apply for an EOT, and (ii) the reasons why the EOT is applied for and subsequently granted. The plaintiff consequently argued that the CC's inquiry into the Complaint was *ultra vires*, because some of its applications for EOTs did not satisfy the precedent facts stipulated in s 42(2).[29] The plaintiff also argued that the chairman of the CP acted unlawfully and/or irrationally in repeatedly granting EOTs to the CC.[30]

43 The plaintiff further submitted that he had suffered substantial prejudice (i) as a result of non-compliance with s 42(2),[31] and (ii) as a result of the inordinate delay in the prosecution of disciplinary proceedings against him for matters arising from over nine years ago in September 2009.[32] In relation to (ii), the plaintiff argued that at common law, such inordinate delay amounted to an abuse of process or breach of natural justice.[33]

44 The plaintiff submitted that it was thus irrational for the CC to order that an inquiry into the Complaint be held by a DT.[34]

45 On the other hand, the defendants argued that a CC's application to the chairman of the CP for an EOT to complete its inquiry into a complaint is not amenable to judicial review and cannot be quashed.[35] They contended that the

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28 See Plaintiff's Submissions for OS 514/2018 at para 84.

29 See Plaintiff's Submissions for OS 514/2018 at paras 86–87, 108.

30 See Plaintiff's Submissions for OS 514/2018 at para 88.

31 See Plaintiff's Submissions for OS 514/2018 at para 91.

32 See Plaintiff's Submissions for OS 514/2018 at para 134.

33 See Plaintiff's Submissions for OS 514/2018 at paras 92, 133.

34 See Plaintiff's Submissions for OS 514/2018 at para 93.

35 See Defendants' Written Submissions at paras 196, 209.

CC's application for an EOT is an expression of opinion that has no discernible legal effect upon the exercise of discretion by the chairman of the CP to grant an EOT.[36]

46 The defendants also submitted that s 42(2) is a directory provision.

47 The defendants further argued that it was premature for the plaintiff to apply for leave to apply for a quashing of the CC's order that an inquiry into the Complaint be held by a DT, given that the CC's order was not an ultimate decision or action with substantive legal consequences.[37] The defendants also submitted that any alleged delay by the CC in completing its inquiry into the Complaint did not result in the making of a prohibiting order (see [4(d)] above) which effectively circumscribes the SMC's ability to prosecute a complaint.[38]

48 The defendants also argued in their written submissions that pursuant to s 68, in order to obtain leave to apply for the various quashing orders and prohibiting order, the plaintiff must also prove to the court that the acts of the CC, of the chairman of the CP and of the SMC were done in bad faith or with malice.[39]

Whether s 42(2) is directory or mandatory

49 From the parties' submissions, the main issue in these proceedings was whether s 42(2) is a directory provision or a mandatory provision. I thus address this issue first.

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36 See Defendants' Written Submissions at paras 199, 208.

37 See Defendants' Written Submissions at paras 211–212.

38 See Defendants' Written Submissions at para 264.

39 See Defendants' Written Submissions at para 182.

50 In determining whether a provision is directory or mandatory, the court is required to determine Parliament's intention to ascertain whether non-compliance would invalidate the thing done under the provision (see *Lim Mey Lee Susan v Singapore Medical Council* [2012] 1 SLR 701 ("*Lim Mey Lee Susan*") at [39]; *Chai Choon Yong v Central Provident Fund Board and others* [2005] 2 SLR(R) 594 at [43]–[45]).

51 As mentioned, the plaintiff argued that s 42(2) is a mandatory provision in two main aspects: (i) the time when a CC is to apply for an EOT, and (ii) the reasons why the EOT is applied for and subsequently granted. This would mean that a non-compliance with s 42(2) invalidates a CC's application for an EOT or the grant of an EOT by the chairman of the CP to a CC. On the other hand, the defendants argued that s 42(2) is a directory provision. This would mean that even if there was non-compliance with s 42(2), that would not invalidate a CC's application for an EOT or the grant of an EOT by the chairman of the CP to a CC.

52 I briefly mention the plaintiff's general arguments as to why s 42(2) is a mandatory provision. The plaintiff argued that in introducing the predecessor provisions of ss 42(1) and 42(2), the Minister for Health Mr Yeo Cheow Tong expressly stated that "[t]o ensure that complaints are dealt with expeditiously, each [CC] will be given three months to complete its preliminary investigations" (*Singapore Parliamentary Debates, Official Report* (25 August 1997) vol 67 at col 1566). The plaintiff thus submitted that Parliament was clear in its intention for s 42(1) to be complied with strictly in that a CC is to complete its inquiry not later than three months, and any EOT granted by the chairman of the CP pursuant to s 42(2) must be limited.[40]

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[40] See Plaintiff's Submissions for OS 514/2018 at para 100.

53 The plaintiff also argued that Parliament did intend that certain defects in a CC's procedure would not invalidate an act of the CC and expressly provided for them, but Parliament did not provide as such for non-compliance with s 42(2).[41] For instance, s 40(4) states: "No act done by or under the authority of a Complaints Committee shall be invalid in consequence of any defect that is subsequently discovered in the appointment or qualification of the members or any of them."

Time when a CC is to apply for an EOT

54 I address first the issue pertaining to the time when a CC is to apply for an EOT. The plaintiff argued that under s 42(2), a CC must apply to the chairman of the CP for an EOT before its deadline to complete its inquiry, *ie*, before its initial deadline of three months (s 42(1)) or before any extended deadline. In this case, the CC in fact applied for EOTs after some of the extended deadlines to complete its inquiry (see [34] above). Consequently, the plaintiff argued that such non-compliance with s 42(2) necessarily invalidated the CC's applications for EOTs.

55 The terms of s 42(2) do not expressly stipulate when a CC is to apply for an EOT. The terms of s 42(2) may seem to suggest that a CC is to apply for an EOT before its initial or extended deadline to complete its inquiry as the terms refer to a CC being of the opinion that it will not be able to complete its inquiry within the specified period. However, in considering the predecessor provision of s 42(2) which is materially similar to s 42(2), the High Court in *Chai Chwan v Singapore Medical Council* [2009] SGHC 115 ("*Chai Chwan*") was of the view that the wording of the predecessor provision allowed the CC

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41 See Plaintiff's Submissions for OS 514/2018 at paras 103–104.

to apply for an EOT "at any time before or even after the three-month expiry date" (see [44]).

56 In any case, even if s 42(2) requires a CC to apply for an EOT before its initial or extended deadline to complete its inquiry, I am of the view that Parliament did not intend for any such omission to invalidate the CC's application for an EOT. In the absence of clear words to suggest invalidation for non-compliance, it could not have been Parliament's intention that even an accidental oversight to apply for an EOT before a deadline would result in the disproportionate consequence that the CC can no longer continue its inquiry. Likewise, Parliament could not have intended that an application made a few days late would have such a disproportionate consequence. What purpose would it serve to interpret s 42(2) to mean that an application for an EOT after a CC's deadline is invalid? If an application for an EOT were invalidated for such a reason, this would merely mean that the same complaint would be laid before a new CC, with the risk that this cycle might be repeated if the new CC also does not apply for an EOT before its deadline. This would unnecessarily complicate and lengthen the process of inquiry into that complaint. Furthermore, if, for the sake of argument, the complaint cannot be laid afresh before a new CC because of double jeopardy or a similar argument, that would mean that the registered medical practitioner who was the subject of inquiry would escape liability on a technicality.

57 It is important to note that the MRA does not stipulate a long-stop date by which a CC has to complete its inquiry. Parliament was cognisant of this fact given that in the parliamentary debates on 11 January 2010 for the Second Reading of the Medical Registration (Amendment) Bill (Bill 22 of 2009), the Minister for Health Mr Khaw Boon Wan acknowledged suggestions for such a long-stop date (*Singapore Parliamentary Debates, Official Report* (11 January

2010) vol 86 at cols 1954–1955). However, the Minister stated that the SMC would "make every effort to conclude the investigations of every complaint within a reasonable time". Parliament did not thereafter legislate a long-stop date by which a CC has to complete its inquiry.

58 This is unlike the regime under the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") for disciplinary proceedings in relation to regulated legal practitioners. Under s 86(3) of the LPA, there is a long-stop date for an Inquiry Committee (the body serving a similar function as a CC) to report its findings, where any EOT granted to the Inquiry Committee "shall not extend beyond the period of 6 months from the date of the appointment of that Inquiry Committee".

59 Therefore, although I accept that the intent behind s 42(1) and s 42(2) was for inquiries to be completed expeditiously, this does not mean that the CC's failure to seek an EOT before its deadline leads to the disproportionate consequence advocated by the plaintiff, *ie*, that the CC can no longer continue its inquiry.

Reasons why an EOT is applied for and subsequently granted

60 I address next the issue pertaining to the reasons why an EOT is applied for by a CC and subsequently granted by the chairman of the CP to the CC.

61 The plaintiff argued that under s 42(2), a CC can only apply for an EOT if, first, the CC is of the *opinion* that it will not be able to complete its inquiry before its deadline due to the complexity of the matter or serious difficulties encountered in conducting its inquiry. Second, there must *in fact* be such complexity or serious difficulties.[42] I will consider these two preconditions

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42 See Plaintiff's Submissions for OS 514/2018 at paras 108(b)–108(c).

together as the adequacy of a CC's reasons for applying for an EOT. In this case, the CC applied for 13 EOTs. The plaintiff argued that when making all 13 applications for EOTs, the CC did not hold the requisite opinion, and the matter was not complex and the CC did not encounter serious difficulties in conducting its inquiry.[43] In its 13 applications to the chairman of the CP for EOTs, the CC does not seem to have provided such reasons to the chairman to justify the applications for EOTs.[44] Consequently, the plaintiff argued that non-compliance with s 42(2) by the CC in not having adequate reasons for applying for EOTs necessarily invalidated the CC's applications for EOTs.

62 In relation to the chairman of the CP, the plaintiff argued that under s 42(2), the chairman can only grant an EOT if he thinks that the CC will not be able to complete its inquiry before its deadline due to the complexity of the matter or serious difficulties encountered by the CC in conducting its inquiry. In this case, the plaintiff argued that the chairman granted EOTs to the CC as a matter of course without considering whether the EOTs were justified by the complexity of the matter or the serious difficulties the CC encountered in conducting its inquiry.[45] Consequently, the plaintiff argued that such non-compliance with s 42(2) also necessarily invalidated the chairman's grants of EOTs.

63 On this point, the High Court in *Chai Chwan* was of the view that the predecessor provision of s 42(2), which is materially similar to s 42(2), conferred upon the chairman of the CP a discretion that was "not based on any conditions that must be satisfied" before he could exercise his discretion to grant an EOT (at [40]). The High Court stated that the language of "as he thinks fit"

43 See Plaintiff's Submissions for OS 514/2018 at paras 114–115.

44 See Plaintiff's Bundle of Documents (Extensions of Time).

45 See Plaintiff's Submissions for OS 514/2018 at paras 122–123.

in the provision was "in plain and unfettered terms" (at [40]). The High Court took the view that nowhere in the legislation did it mention the matters which the chairman should have regard to when exercising his discretion to grant an EOT (at [42]).

64 I have my doubts as to whether s 42(2) should be interpreted to mean that the discretion of the chairman of the CP in granting an EOT is not based on any conditions that must be satisfied. It is arguable that the phrase "as he thinks fit" in s 42(2) refers only to the discretion of the chairman with regard to the length of the EOT he decides to grant, and that the chairman still has to satisfy himself that the CC will not be able to complete its inquiry before its deadline "due to the complexity of the matter or serious difficulties encountered by the [CC] in conducting its inquiry". Otherwise, it is illogical that a CC should seek an EOT on such reasons (only) but the chairman of the CP does not have to satisfy himself that such reasons exist.

65 For present purposes, I assume that there is non-compliance with s 42(2) when a CC and the chairman of the CP respectively do not act in the manner that the plaintiff argued they have to act under s 42(2) (see [61]–[62] above).

66 I consider the implications if a CC's non-compliance with s 42(2), because of the inadequacy of its reasons for applying for an EOT, necessarily invalidates the CC's application for an EOT.

67 First, a registered medical practitioner who is the subject of the CC's inquiry could easily make a challenge against the reasons for which the CC applied for an EOT, regardless of whether there was any merit to his challenge.

68 Second, even if there was some merit in such a challenge, much time and effort would have to be expended by all concerned to meet the challenge. The present case is a case in point. The plaintiff sought discovery of documents and answers to interrogatories to scrutinise the reasons for the CC's applications for EOTs. There might also be lengthy arguments as to whether the reasons met the statutory requirements.

69 Third, even if it could be easily established that a CC's reasons for applying for an EOT could not withstand scrutiny, this brings us back to the question mentioned at [56] above, *ie*, what purpose would it serve to interpret s 42(2) to mean that the application for the EOT is invalid? If the same complaint may be laid before a new CC, this would give rise to the scenario mentioned, *ie*, the process of inquiry into that complaint would be complicated and lengthened with the risk that the cycle might be repeated. Moreover, if the complaint cannot be laid afresh before a new CC, that would mean that the registered medical practitioner who was the subject of inquiry would escape liability on what could still be considered a technicality.

70 On the other hand, the plaintiff argued that to allow a CC to obtain multiple EOTs easily would defeat the purpose of s 42(1) which was to ensure the expeditious conclusion of its inquiry into a complaint. It would also not be in the interest of the registered medical practitioner in question or the public for undue delays in the conclusion of an inquiry.

71 The plaintiff also raised the point that a CC may not have good reasons for applying for an EOT and its inquiry process would thereby become unnecessarily prolonged should the EOT be granted to it.

72 There was some force in these arguments.

73 However, the words of May LJ in *Regina v Chief Constable of the Merseyside Police, Ex parte Calveley and Others* [1986] 1 QB 424 ("*Calveley*") at 439 come to my mind:

> … Unnecessary delay in legal and analogous proceedings, such as the disciplinary ones in the instant case, is of course to be deplored, but it does occur and, in the absence of mala fides, should not tempt one to resort to judicial review where no real abuse or breach of natural justice can be shown.

This was also cited with approval by the Court of Appeal in *Tan Tiang Hin Jerry v Singapore Medical Council* [2000] 1 SLR(R) 553 ("*Tan Tiang Hin Jerry*") at [50].

74 At present, each CC may be required to inquire into discrete complaints against more than one registered medical practitioner. For example, in this case, the CC was apparently inquiring into seven discrete complaints against various registered medical practitioners at one time.[46] This, plus the fact that the members of a CC are volunteers who do not work full-time on the CC and have other responsibilities (see s 40(1)),[47] means that unfortunately, it will not be surprising that a CC will have to seek at least an EOT to complete its inquiry.

75 It is also likely that a CC will need to seek EOTs for reasons other than the complexity of the matter or serious difficulties it encountered in conducting its inquiry. The mere reason that more time is required to inquire into each of the discrete complaints before the CC is not likely to constitute such a serious difficulty as is envisaged in s 42(2). By way of another example, the reason that the schedules of the members of the CC are such that they have difficulty in getting suitable dates to meet together on enough occasions to complete their

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46 See the second defendant's affidavit at para 21.

47 See Defendants' Written Submissions at paras 7–8.

inquiry is also not likely to constitute such a serious difficulty as is envisaged in s 42(2).

76 This is not a satisfactory situation. I agree that a CC's inquiry should be concluded as expeditiously as possible.

77 However, I am of the view that the plaintiff's contentions, to invalidate a CC's application for an EOT because of the inadequacy of its reasons for its application, will result in an even more unsatisfactory situation. The process of inquiry by the CC will become unworkable in reality. Challenge upon challenge will be mounted and the same complaint may have to be laid before a new CC again and again. Alternatively, the whole process comes to nought if the chairman of the CP is not even entitled to lay the complaint before a new CC in such circumstances.

78 I mention again that the MRA does not stipulate a long-stop date by which a CC has to complete its inquiry (see the discussion at [57]–[59] above). Therefore, although I accept that the intent behind s 42(1) and s 42(2) was for inquiries to be completed expeditiously, this does not mean that the intent was also that the inadequacy of a CC's reasons for applying for an EOT leads to the disproportionate consequence advocated by the plaintiff, *ie*, that the CC can no longer continue its inquiry.

79 On balance, I therefore am of the view that in the absence of clear words to the contrary, Parliament did not intend for the inadequacy of a CC's reasons for applying for an EOT to invalidate the CC's application for an EOT.

80 For the same reasons, I am of the view that Parliament did not intend to invalidate the grant of an EOT by the chairman of the CP to the CC simply

because the chairman did not grant such EOT on the basis of the complexity of the matter or serious difficulties encountered by the CC in conducting its inquiry.

81 I have mentioned that a CC may be required to inquire into discrete complaints against various registered medical practitioners at a given time. It is likely that multiple applications for EOTs, whether for the same complaint or for discrete complaints, are likely to be made by the CC to the chairman of the CP. Conversely, the chairman will be receiving multiple applications for EOTs and this is all the more so as there may be more than one CC appointed at a given time. If the chairman of the CP has to satisfy himself that each CC has adequate reason for each application for an EOT to hold the opinion that the EOT is required because of complexity or serious difficulties, then he too will be inundated and the scheme will be unworkable. The requirements in s 42(2) are meant to encourage the expeditious conclusion of an inquiry by the CC but not to frustrate the entire process.

Directory provisions

82 In summary:

(a) If a CC applies for an EOT after its initial or extended deadline to complete its inquiry, the CC's application for an EOT is not invalidated.

(b) If a CC's application for an EOT is made without adequate reasons, because:

(i) the CC is not of the opinion that the matter is complex or that it encountered serious difficulties in conducting its inquiry; and/or

(ii) there is in fact no such complexity or serious difficulties,

the CC's application for an EOT is not invalidated.

(c) If the chairman of the CP grants an EOT to a CC without in fact holding the opinion that the CC will be unable to complete its inquiry before its deadline due to the complexity of the matter or serious difficulties it encountered in conducting its inquiry, the chairman's grant of the EOT is not invalidated.

83 It follows then that applications made by the CC for EOTs or the grants of such EOTs by the chairman of the CP under s 42(2) cannot be challenged on the grounds of illegality and irrationality. *A fortiori*, they also cannot be challenged under the precedent fact principle of review.

84 In this regard, I observe that the parties in *Chai Chwan* did not seem to have argued whether the predecessor provision of s 42(2), which is materially similar to s 42(2), was a directory provision or a mandatory provision. The High Court consequently did not make any comment on this. Instead, the High Court considered whether the chairman of the CP had granted EOTs to the CC irrationally. This might have arisen because of the submissions before the High Court.

85 Further, I note that in the present case there was no allegation that there was a breach of the rule of fair hearing or of the rule against bias, on the part of the CC or the chairman of the CP.

86 This does not mean that a registered medical practitioner who is the subject of the CC's inquiry is completely at the mercy of the process. If indeed he has suffered substantial prejudice as a result of any alleged non-compliance,

he may seek an order to end the process. If a plaintiff suffered substantial prejudice as a result of some non-compliance with a directory provision, the thing done under that provision may be invalidated (see *Tan Tiang Hin Jerry* at [39], [48]–[51]). Indeed, the plaintiff did argue that he had suffered substantial prejudice.

Substantial prejudice

87 The plaintiff alleged he suffered prejudice in various ways such as:

(a) the plaintiff's livelihood had been destroyed as a result of MOH refusing to renew his clinic licence for 3.5 years from 16 March 2015, without his having been found guilty of any disciplinary offence, and this result exceeded the most severe punishment that a DT can impose on him;[48]

(b) the plaintiff no longer has the financial wherewithal to afford senior counsel or the necessary expert witnesses;[49] and

(c) the plaintiff's ability to defend himself before a DT has been severely compromised particularly because he is no longer able to contact several of his patients who were the subject of the Complaint to serve as witnesses,[50] and the abilities of the plaintiff and his patients to recall events from the material time would have been compromised by the time of a hearing before the DT.[51]

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48 See Plaintiff's Submissions for OS 514/2018 at paras 66, 68–69, 72, 137–138, 146(a).

49 See Plaintiff's Submissions for OS 514/2018 at para 73(a).

50 See Plaintiff's Submissions for OS 514/2018 at paras 73(c), 135.

51 See Plaintiff's Submissions for OS 514/2018 at para 73(b).

88 It was undisputed that 13 applications for EOTs were made by the CC and granted by the chairman of the CP such that although the CC commenced its inquiry into the Complaint on 8 May 2014 (see [17] above), its decision to order that an inquiry be held by a DT was made only on 12 December 2017 (see [32] above), *ie*, after around 3.5 years.

89 On the point of the plaintiff's alleged loss of livelihood, the parties argued whether the CC's alleged delay in completing its inquiry was responsible for the plaintiff's loss of livelihood when MOH refused to renew the plaintiff's licence to operate the clinic. The plaintiff argued that MOH's refusal to renew his clinic licence was directly related to how long the CC's inquiry was taking,[52] while the defendants argued that the evidence showed otherwise.

90 As set out in the background facts, there was correspondence between MOH and the plaintiff from 2013 to 2015. It was subsequently MOH's decision not to renew the plaintiff's clinic licence when it expired on 16 March 2015. MOH had made its decision in accordance with the PHMCA, and based on the inspection findings from February 2013 to March 2015 that the clinic had repeatedly not complied with the licensing requirements under the PHMCA and its subsidiary legislation in prescribing certain treatments (see [19] above). The plaintiff then appealed against this decision to the Minister for Health. MOH thereafter sent a letter to the plaintiff on 24 April 2017 informing him that the Minister had decided to allow the plaintiff's appeal and had directed that his clinic licence be renewed for six months subject to the condition that he strictly comply with MOH's guidelines on the provision of non-evidence-based medicine (see [29] above).[53]

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52 See Plaintiff's Submissions for OS 514/2018 at para 56.

53 3Statement Annex 32 p 1641.

91 While the plaintiff argued that there was some evidence that MOH was awaiting the outcome from the SMC following MOH's letter dated 31 July 2013 informing the SMC of the plaintiff's practices (see [10] and [13] above), the short point is that, even if this was so, the SMC and the CC were not responsible for the decision of MOH in refusing to renew the plaintiff's clinic licence, or the decision of the Minister in allowing the plaintiff's appeal, or any interval or delay in between.

92 It is also unclear if MOH was awaiting any outcome from the SMC before deciding whether or not to renew the plaintiff's clinic licence. Also, as it turned out, the Minister allowed the plaintiff's appeal before the CC (or the DT) reached a decision on the Complaint.

93 I also do not accept that the SMC was responsible for the decision of the Minister in allowing the plaintiff's appeal just because MOH had requested the SMC to form an *advisory committee* to consider his appeal (see [23] above). This advisory committee was constituted pursuant to s 10(2)(*a*) of the PHMCA,[54] consisting three SMC members as the SMC may designate. The defendants have stated on affidavit that none of the members of the CC was a member of this advisory committee.[55]

94 Moreover, the plaintiff's argument that he had been without a clinic licence and practice for 3.5 years (see his written submissions for OS 514/2018 at para 69), as a result of the CC's delay, and that this exceeded the most severe punishment that a DT can impose on him presented an inaccurate picture. The plaintiff had used the duration of 3.5 years but this period was calculated from 16 March 2015 (when MOH decided not to renew his clinic licence) to the date

[54] See 3Statement Annex 26 p 1530.

[55] See the second defendant's affidavit at para 141(c).

of his written submissions of 19 September 2018 to the court. However, as mentioned, MOH had sent a letter to the plaintiff on 24 April 2017, around two years later from 16 March 2015, informing him that his clinic licence would be renewed. It is a separate matter if the plaintiff decided not to restart the clinic (see [30] above).

95 The plaintiff's alleged loss of livelihood for a period of time is also different in nature from a possible finding that he was guilty of some disciplinary offence.

96 For completeness, I would mention that the plaintiff's clinic licence was initially not renewed by MOH apparently because the plaintiff was prescribing certain treatments. This forms the subject of the Complaint made by the SMC to the chairman of the CP, *ie*, the subject of the CC's inquiry, since MOH had sent the letters to the SMC informing it of the plaintiff's practices (see [10] and [21] above). There was no suggestion that MOH would still have refused to renew the plaintiff's clinic licence even if he agreed not to prescribe such treatments for the time being. There was also no suggestion that the plaintiff was precluded from practising as a locum while MOH refused to renew his clinic licence.

97 In the light of the above, the plaintiff's argument that he "has been condemned unheard", in being deprived of his livelihood without having been found guilty of any disciplinary offence, is also unsustainable.[56] MOH's refusal to renew the plaintiff's clinic licence was not because he had been found guilty of a disciplinary offence.

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[56] See Plaintiff's Submissions for OS 514/2018 at paras 68, 138.

98 As for the plaintiff's contention that he no longer has the financial wherewithal to afford senior counsel or the necessary expert witnesses, in line with what I have mentioned, the CC did not cause the plaintiff any alleged loss of livelihood. It is also unclear what financial resources the plaintiff actually has but I need not say any more on this point.

99 I turn to the plaintiff's point about his ability to defend himself before a DT. It is premature to conclude that even if the plaintiff truly cannot contact the patients he seeks to serve as witnesses, he would be prejudiced in presenting his case before a DT.

100 The inquiry to be held by a DT into the Complaint pertains to the issue of the plaintiff offering some *non-mainstream* services and concerns over the appropriateness of the medical management of some patients. The plaintiff himself believes that the Complaint would come under para 4.1.4 of the SMC Ethical Code and Ethical Guidelines,[57] which states:

> 4.1.4 Untested practices and clinical trials
>
> A doctor shall treat patients according to generally accepted methods and use only licensed drugs for appropriate indications. A doctor shall not offer to patients, management plans or remedies that are not generally accepted by the profession, except in the context of a formal and approved clinical trial.
>
> …

101 In this regard, evidence from the plaintiff's patients does not necessarily address the question as to whether the plaintiff's management plans or remedies were generally accepted by the profession. The defendants made a similar submission.[58]

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57 See Plaintiff's Submissions for OS 514/2018 at para 67.

58 See Defendants' Written Submissions at para 252(b).

102 Based on the present evidence, I do not accept that any alleged non-compliance with s 42(2) by the CC and/or the chairman of the CP resulted in the plaintiff suffering substantial prejudice such that it merits the invalidation of the CC's order that an inquiry into the Complaint be held by a DT.

Whether there was inordinate delay in the prosecution of disciplinary proceedings amounting to an abuse of process

103 Given my finding that the plaintiff had not suffered any of the substantial prejudice he alleged, I do not have to address his argument as to whether at common law, there was inordinate delay in the prosecution of disciplinary proceedings against him such as would amount to an abuse of process or breach of natural justice (see [43] above).

Whether the leave application was premature

104 I briefly address the issue of whether the leave application in OS 514/2018 was premature. I accept that the leave application was not premature *only* to the extent that the plaintiff's arguments were premised on substantial prejudice that he had suffered as a result of any alleged non-compliance with s 42(2). If the plaintiff had been successful in persuading the court that he had suffered substantial prejudice as a result, his remedy might have included, *inter alia*, the quashing of the CC's order that an inquiry be held by a DT.

105 However, in so far as the rest of the plaintiff's arguments did not concern substantial prejudice suffered as a result of any alleged non-compliance with s 42(2), I find that the leave application was premature. The words of May LJ in *Calveley* at 439 (just before those quoted at [73] above) are also relevant in this regard:

> … prima facie the present applicants should be left to their statutory appeals in the course of which the tribunal can consider not only the point based on the failure to give notice under regulation 7 in time and also the question of delay, but in addition the general merits of the case. Although judicial review can provide an effective, convenient and relatively swift remedy, it should only be granted, particularly where the basis of the application is merely delay in taking the necessary proceedings, where this can properly be described as amounting to an abuse of process. …

106 Likewise, the plaintiff still has the opportunity to argue his case before a DT and before the High Court for any appeal thereafter. Before a DT and the High Court, the plaintiff may raise issues concerning the alleged delay by the CC in completing its inquiry for them to be taken into account in determining the plaintiff's liability and sanction, should liability be established (see *Lim Mey Lee Susan* at [40]; *Jen Shek Wei v Singapore Medical Council* [2018] 3 SLR 943 at [167]–[169]).

Section 68

107 I also make some brief comments on s 68. Section 68 states:

> **No action in absence of bad faith**
>
> 68. No action or proceedings shall lie against the Medical Council, a Complaints Committee, a Disciplinary Tribunal, the Health Committee or any other committee appointed by the Medical Council or any member or employee thereof for any act or thing done under this Act unless it is proved to the court that the act or thing was done in bad faith or with malice.

108 As mentioned, the defendants argued in their written submissions that pursuant to s 68, the plaintiff must, in his leave application in OS 514/2018, also prove to the court that the acts of the CC, of the chairman of the CP and of the SMC were done in bad faith or with malice (see [48] above). This point was not expanded on or pursued during oral arguments and the plaintiff did not respond to this point.

109 I doubt that s 68 precludes or limits the commencement of judicial review proceedings. However, without full arguments from the parties and in the light of my decision, I do not have to say more on this provision.

Further remarks

110 In the light of the reasons above, I also do not have to address the remaining arguments of the parties. Many of them would be academic for the purposes of these proceedings.

111 I deal with one further point. I agree with the defendants that the plaintiff should have filed an affidavit in support of OS 514/2018 verifying all the facts he relied on, as required under O 53 r 1(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).[59] The plaintiff did not do this but instead included such facts in his statement in support of OS 514/2018. It is unclear why the plaintiff did not file the supporting affidavit accordingly.

Conclusion

112 For the foregoing reasons, I dismiss OS 514/2018. I thus dismiss SUM 2032/2018. I make no order on SUM 3118/2018 which is now academic.

113 I will hear the parties on costs.

114 I had directed that no DT proceedings relating to the Complaint against the plaintiff were to be commenced pending the outcome of OS 514/2018 and judicial review proceedings if any. For avoidance of doubt, that direction ceases to apply from the date of this judgment.

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[59] See Defendants' Written Submissions at paras 187–189.

115 I add that nothing that I say here is to bind the hands of the DT and the High Court if they have to determine whether the plaintiff had in fact suffered substantial prejudice as a result of any alleged delay by the CC in completing its inquiry.

116 While the plaintiff has not succeeded, any undue delay in concluding an inquiry is not satisfactory. The relevant authorities should redress the situation so that complaints of undue delay are a thing of the past.

Woo Bih Li
Judge

Liew Wey-Ren Colin (Essex Court Chambers Duxton (Singapore Group Practice)) for the plaintiff;
Thio Shen Yi SC and Thara Rubini Gopalan (TSMP Law Corporation) for the defendants.

Annex

The CC's 13 applications for EOTs

EOT	Deadline	Date of application for EOT	Status
1	7 August 2014	8 July 2014	
2	7 November 2014	30 January 2015	Late
3	7 May 2015	19 June 2015	Late
4	7 August 2015	20 August 2015	Late
5	7 November 2015	9 November 2015	Late
6	7 February 2016	3 February 2016	
7	7 May 2016	13 May 2016	Late
8	7 August 2016	1 August 2016	
9	7 November 2016	28 November 2016	Late
10	7 February 2017	24 January 2017	
11	7 March 2017	15 March 2017	Late
12	7 June 2017	29 May 2017	
13	7 December 2017	14 December 2017	Late