IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 40

Originating Summons No 716 of 2019 and Summons No 4854 of 2019

Between

Iskandar bin Rahmat

… *Applicant*

And

Law Society of Singapore

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Disciplinary procedures]
[Legal Profession] — [Disciplinary proceedings]
[Legal Profession] — [Professional conduct]
[Civil Procedure] — [Judgments and orders]

TABLE OF CONTENTS

Iskandar bin Rahmat
v
Law Society of Singapore

[2020] SGHC 40

High Court — Originating Summons No 716 of 2019 and Summons No 4854 of 2019
Valerie Thean J
7, 10 October 2019

28 February 2020

Valerie Thean J:

1 The applicant, Iskandar bin Rahmat, filed a complaint ("the Complaint") on 14 February 2018 with the Law Society of Singapore ("the Law Society") against his former lawyers, a team of six defence lawyers who had represented him during a preceding High Court murder trial ("the trial defence team"). An Inquiry Committee ("the IC") was appointed under the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") and, after considering submissions from Mr Iskandar and the trial defence team, issued its report ("the Report") recommending that the Complaint be dismissed. After considering the Report, the Council of the Law Society ("the Council") determined that no formal investigation was necessary and dismissed the Complaint.

2 In Originating Summons No 716 of 2019 ("OS 716/2019"), Mr Iskandar sought a review of the Council's determination and an order directing the Law

Society to apply to the Chief Justice for a Disciplinary Tribunal ("DT") to be appointed. On 10 October 2019, I dismissed Mr Iskandar's application with brief reasons, and now furnish grounds of decision for the same.

Background

3 Mr Iskandar's Complaint to the Law Society arose out of his murder trial in 2015, in which he was tried for two offences under s 300(*a*) of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") in respect of the deaths of a 67-year-old man ("D1") and his 42-year-old son ("D2").

4 On 4 December 2015, Tay Yong Kwang J (as he then was) convicted Mr Iskandar on both charges and sentenced him to suffer death: *PP v Iskandar bin Rahmat* [2015] SGHC 310 ("*Iskandar (HC)*") at [101] and [105].

5 On 3 February 2017, the High Court's decision was affirmed by the Court of Appeal: see *Iskandar bin Rahmat v PP and other matters* [2017] 1 SLR 505 ("*Iskandar (CA)*"). The appeal defence team comprised a fresh set of lawyers.

6 Mr Iskandar filed his Complaint against the trial defence team on 14 February 2018. He followed on with two further letters on 5 April and 7 May 2018. The Chairman of the Inquiry Panel appointed the IC on 3 August 2018. In the course of its work, the IC obtained written explanations from the trial defence team on 10 September 2018 ("the written explanation") and 20 November 2018 ("the further written explanation"). It also heard the four most senior members of the trial defence team on 23 October 2018. One of the remaining two lawyers was overseas and the other was on maternity leave. The IC heard Mr Iskandar orally on 10 December 2018 and 10 January 2019 at the Changi Prison Complex. The IC completed its Report on 7 February 2019. The

Report found no *prima facie* case of ethical breach or other misconduct, and recommended that no formal investigation was required and that the Complaint be dismissed. Having considered the Report, the Council of the Law Society was of the view that no formal investigation by a DT was necessary and informed Mr Iskandar of the same by a letter dated 20 March 2019.

7 Mr Iskandar thereafter brought the present application for a judge of the High Court to review the determination of the Council under s 96 of the LPA. While Mr Iskandar's application was filed out of time, the Law Society did not take any objection on this point. I granted Mr Iskandar an extension of time and heard parties on the application.

The application

Legal context of application

8 Under the LPA, the IC's role is "to determine if there is a *prima facie* case of ethical breach or other misconduct by a lawyer that warrants formal investigation and consideration by a DT": *Loh Der Ming Andrew v Law Society of Singapore* [2018] 3 SLR 837 ("*Andrew Loh*") at [62]. As part of its role, the IC "may sieve out and decline to refer to the DT any complaint that, even if taken at face value, would not raise sufficiently grave concerns as to warrant formal investigation": *Andrew Loh* at [68], citing the Court of Appeal in *Subbiah Pillai v Wong Meng Meng* [2001] 2 SLR(R) 556 ("*Subbiah Pillai*") at [32], [62]–[63].

9 The Council considers the IC's report and then makes a determination under s 87(1) of the LPA. While the Council has a responsibility to provide reasons for its determination if it is challenged, in practice, the Council can simply adopt the reasons of the IC: see *Andrew Loh* at [79]. This was the

situation in the present case. In an application under s 96 of the LPA, a judge is not reviewing the IC's conclusions directly, but is considering the Council's determination. Where the Council adopts the findings and reasoning of the IC, the judge is effectively required to assess the IC's report to consider if the Council's determination should be departed from. In so doing, the judge sits in the exercise of supervisory as well as appellate jurisdiction. In the exercise of its supervisory jurisdiction, the court is concerned with the legality of the IC's and Council's decision-making process, which includes concerns about natural justice: *Andrew Loh* at [82]. The appellate jurisdiction, on the other hand, requires the judge to "examine the substantive merits of the Council's and/or the Inquiry Committee's decision": *Andrew Loh* at [83]. When doing so, the judge will be slow to disturb or interfere with the Council's or IC's findings of fact, unless it can be shown that supporting evidence was lacking or there was a misunderstanding of the evidence or other exceptional circumstances existed which justified the court doing so: see *Wong Juan Swee v Law Society of Singapore* [1993] 1 SLR(R) 429 at [14].

10 In this application, Mr Iskandar sought to invoke both the supervisory and the appellate jurisdiction of the court under s 96 of the LPA. He contended that there were breaches of natural justice on the part of the IC, and that the IC's Report was tendered late. On the substantive merits, he had raised nine specific issues for the IC's consideration. He argued that the IC came to the wrong conclusion in relation to the issues raised. I deal with each contention in turn.

Assertions against the IC

Delay in IC's Report

11 At the hearing of the present application on 7 October 2019, Mr Iskandar pointed out that s 86(3) of the LPA envisages that any report of the IC should

be issued within six months of its appointment, even if an extension of time is given. In the present case, the Report was issued on 7 February 2019 although the IC was constituted on 3 August 2018. The Law Society clarified at the adjourned hearing before me on 10 October 2019 that a letter from the Chairman of the Inquiry Panel granting the IC an extension of time erroneously reflected the due date as Tuesday, 5 February 2019, instead of Monday, 4 February 2019. Subsequently, 5 and 6 February 2019 being Chinese New Year, the IC tendered its report on 7 February 2019. The Report was therefore, in effect, late by one working day.

12 In *Law Society of Singapore v Zulkifli bin Mohd Amin and another matter* [2011] 2 SLR 620 ("*Zulkifli*") at [35]–[36], which concerned a report that was 22 days late, the Court of Three Judges made clear that the timelines set by the LPA were not condition precedents to the exercise of the Law Society's powers. The modern approach was not to treat every breach as a disempowering or invalidating event, but instead, to look to legislative intent. Section 87(1A) of the LPA was intended to expedite the disposal of such proceedings, not "to put obstacles in the way of disciplining errant advocates and solicitors who were guilty of professional misconduct": *Zulkifli* at [36]. Further, no prejudice was suffered by the lawyer who complained of the delay in that case. In the present case, similarly, the time norm specified in s 86(3) of the LPA was intended to expedite proceedings against lawyers by ensuring timely IC reports, not to frustrate disciplinary proceedings. The one-day delay also did not occasion any prejudice to Mr Iskandar. I held that the one-day delay did not invalidate the Report of the IC.

Alleged breaches of natural justice by the IC

13 Mr Iskandar argued that the IC was biased, had acted in bad faith, and failed to address his complaints sufficiently. These allegations were unfounded. The IC had the benefit of three letters from Mr Iskandar, dated 14 February, 5 April and 7 May 2018. The IC first heard Mr Iskandar orally at the Changi Prison Complex on 10 December 2018. After the first hearing, the IC received an email dated 28 December 2018, ostensibly sent by Mr Iskandar's sister, requesting the IC to put any further questions for Mr Iskandar in writing and to obtain a written response from him. The IC felt that this was inappropriate, and decided instead to hear directly from Mr Iskandar on any remaining matters. The IC therefore went to the Changi Prison Complex a second time on 10 January 2019 and interviewed Mr Iskandar again. The IC had given Mr Iskandar sufficient opportunity to be heard. From the Report, it can be seen that the IC had adequately applied its mind to the specific facts raised in this case. Mr Iskandar has not pointed to any facts to support his allegations other than arguing that the IC had erred in failing to agree with his arguments. I did not find any merit in this assertion.

Assertions against the trial defence team

14 I come then to the substantive issues, which were nine assertions put forward by Mr Iskandar regarding the conduct of his trial. In order to put these nine issues in context, I first set out the relevant facts concerning Mr Iskandar's trial.

The High Court trial

15 The undisputed facts were as follows. Mr Iskandar was an investigation officer with the Singapore Police Force. Deep in debt, he devised a plan to rob

the first deceased ("D1") of money from his Certis CISCO safe deposit box. Pretending to be a police officer setting up a sting operation, Mr Iskandar told D1 that his safe deposit box was a target and advised him to remove the box's contents and to set up a closed-circuit television camera instead. Convinced by Mr Iskandar, D1 followed his instructions and brought his savings home with him, while Mr Iskandar followed as an "escort". At D1's home, D1 and subsequently, D1's son, D2, were stabbed to death by Mr Iskandar.

16 Where the Prosecution and Defence differed was in respect of Mr Iskandar's intention. The Prosecution contended that Mr Iskandar had stabbed D1 and D2 to death with the intention of causing death, hence fulfilling the requirements under s 300(*a*) of the Penal Code. Mr Iskandar used two arguments in his defence. First, he argued that he was entitled to rely on Exception 2 (exceeding the right of private defence) or Exception 4 (sudden fight) under s 300 of the Penal Code ("Exception 2" and "Exception 4" respectively). In relation to D1, his case was that D1 had realised that he had been cheated by Mr Iskandar, and in retaliation, attacked Mr Iskandar with a knife: *Iskandar (HC)* at [56]–[57]. In relation to D2, his case was that D2 had seen him putting D1 on the floor and charged at Mr Iskandar. Without realising that the knife was in his hand, Mr Iskandar swung at D2 and ended up stabbing him: *Iskandar (HC)* at [61]. In the alternative, Mr Iskandar argued that he did not intend to cause death, but only had the intention of causing injuries to D1 and D2 sufficient in the ordinary course of nature to cause death, such that he only had the *mens rea* needed for the offence in s 300(*c*) of the Penal Code: *Iskandar (HC)* at [44].

17 In the High Court, Tay J found that the Prosecution had proven beyond a reasonable doubt that Mr Iskandar had killed D1 and D2 with the intention of causing their deaths. In particular, Tay J concluded as follows:

(a) Mr Iskandar had formed the intention to kill D1 as part of his plan. Mr Iskandar's claim that he was only intending to perform a "grab-and-run" of the money was not believable. He would have known that D1 would be able to identify him: *Iskandar (HC)* at [73]. The alleged plan involved so many contingencies that "only a very foolish prospective thief would adopt it": *Iskandar (HC)* at [75]. Mr Iskandar would not have been so foolish, especially after the level of thought he had put into the initial ruse to trick D1. Further, Mr Iskandar had a number of opportunities to execute the "grab-and-run" but had, inexplicably, chosen not to do so: *Iskandar (HC)* at [76]–[78].

(b) There was no explanation for how D1 would have come to realise that he was being tricked by Mr Iskandar. For all intents and purposes, the evidence was clear that D1 had trusted Mr Iskandar. There was no additional source of information that would have allowed D1 to uncover the ruse: *Iskandar (HC)* at [79]–[80]. As this was allegedly D1's motivation for attacking Mr Iskandar first, the latter's claims were less believable.

(c) There was no reason why D1 would have become so angry immediately as to use a knife to attack Mr Iskandar. Other details of Mr Iskandar's account also did not make sense. On the one hand, Mr Iskandar had claimed that D1's right hand was raised with the knife. On the other hand, the evidence clearly established that D1 was suffering from a knee condition and he would have had to use his right hand to support himself as he was coming down the stairs from the dining room to the living room. In addition, D1's knee condition would have precluded him from moving at the speed that Mr Iskandar's account required: *Iskandar (HC)* at [81].

(d) When D2 came into the house, he would have seen Mr Iskandar lowering D1's body to the floor. Even if he had tried to attack Mr Iskandar, it was clear that he was only trying to protect D1 or to stop Mr Iskandar. The right of private defence would have belonged to D2, not Mr Iskandar. In addition, there was no sudden fight as D2 had only managed to exclaim, "Pa!" before being attacked by Mr Iskandar: *Iskandar (HC)* at [86].

(e) In relation to Mr Iskandar's *mens rea*, Mr Iskandar had formed the intent to kill D1 as part of his plan to take the money he wanted (see above at [17(a)]). His intent to kill D2 was formed when D2 appeared or just before D2 arrived at the house. The number of wounds on each deceased's vital areas showed that "they were cruelly, deliberately and forcefully inflicted": *Iskandar (HC)* at [87].

(f) As for the knife, the evidence indicated that it was Mr Iskandar's. First, it was part of his plan not to leave any witnesses. Second, D1 had not used a knife against Mr Iskandar. Third, Mr Iskandar had not gone into the kitchen beyond the doorway. Fourth, Mr Iskandar could remember the details of the knife despite it having been covered in blood. Fifth, Mr Iskandar had given inconsistent evidence on the features of the blade, which indicated that he was trying to change his evidence after he had heard D1's wife testify that there were no serrated blades in the house: *Iskandar (HC)* at [97]–[98].

18 As can be seen, the key areas of dispute were in relation to the events that occurred in D1's house, especially as they related to the exceptions under s 300 of the Penal Code and to the *mens rea* for the s 300(*a*) charge.

The appeal

19 On appeal, Mr Iskandar raised an additional defence of diminished responsibility under Exception 7 to s 300 of the Penal Code. In support of his new arguments, two criminal motions were filed, being:

(a) Criminal Motion No 14 of 2016 ("CM 14/2016"), filed on 19 July 2016, which was an application for leave to adduce new evidence on appeal, namely, a forensic pathology report prepared by Dr Ong Beng Beng ("Dr Ong") dated 13 July 2016; and

(b) Criminal Motion No 17 of 2016 ("CM 17/2016"), filed on 5 August 2016, which was an application for leave to adduce new evidence on appeal, namely, a forensic psychiatrist report on Mr Iskandar prepared by Dr John Bosco Lee ("Dr Lee") dated 3 August 2016.

20 For CM 17/2016, after considering the requirements for adducing new evidence on appeal, the Court of Appeal admitted Dr Lee's report into evidence. Nevertheless, the Court of Appeal rejected the defence of diminished responsibility, holding that the initial psychiatric report by the Prosecution's psychiatrist, Dr Jerome Goh ("Dr Goh"), which had been tendered at trial, was more reliable for the following reasons:

(a) It was more contemporaneous and was consistent with Mr Iskandar's self-assessment given to the police in his statements: *Iskandar (CA)* at [99].

(b) The new symptoms reported appeared to be an afterthought: *Iskandar (CA)* at [100].

(c) Mr Iskandar's explanations that he did not feel comfortable opening up to Dr Goh at first, did not want to tarnish the Singapore Police Force's reputation, and did not want his family to suffer the stigma attached to a psychiatric condition, were not credible. Mr Iskandar did not actually have any problem opening up to Dr Goh, as reflected in the initial psychiatric report: *Iskandar (CA)* at [102], and he had failed to raise any symptoms or his discomfort with Dr Goh since then: *Iskandar (CA)* at [103].

(d) The reported symptoms, especially his claim that his mind had gone blank, was inconsistent with the detailed evidence that he had given at trial: *Iskandar (CA)* at [105]–[107].

21 The Court of Appeal therefore concluded that there was no factual basis on which diminished responsibility could operate and the defence was dismissed.

22 As for the other criminal motion, the Court of Appeal dismissed CM 14/2016. Dr Ong's report dealt with the characteristics of the knife and asserted that Mr Iskandar's wounds were more consistent with self-defence rather than self-inflicted injuries. The Court of Appeal was of the view that the characteristics of the knife were immaterial to the case, and pointed out that Dr Ong acknowledged it was possible for the injuries to have been self-inflicted, although that was qualified as being a remote possibility.

23 The Court of Appeal also rejected Mr Iskandar's other arguments on appeal. In relation to his conviction for D1's murder, the Court of Appeal made the following findings:

(a) Whereas Mr Iskandar's defence required D1 to have uncovered the ruse, the evidence indicated that D1 had trusted Mr Iskandar and there was no evidence to suggest that he had started to suspect him: *Iskandar (CA)* at [38]–[41].

(b) Even if D1 had found out about the scheme, it was unbelievable that he would have become so angry that he would attack Mr Iskandar with a knife: *Iskandar (CA)* at [43].

(c) The number and severity of wounds on vulnerable parts of the body led to the inference that there was an intention to cause death. Mr Iskandar could have stopped at any time but did not. Further, he had used his left hand to muzzle D1, which contradicted his claim that he was only intending to loosen D1's grip on him: *Iskandar (CA)* at [45].

(d) The origin of the knife was immaterial to the appeal and Mr Iskandar's conviction.

(e) Exception 2 did not apply because Mr Iskandar had failed to prove that D1 attacked him first and because, even if D1 had attacked him first, he had failed to seek help from the authorities when he had reasonable opportunity to do so: *Iskandar (CA)* at [52]–[53].

(f) Exception 4 did not apply as D1 did not attack him first: *Iskandar (CA)* at [57].

24 In relation to his conviction for D2's murder, the Court of Appeal found that:

(a) Mr Iskandar must have known that he had the knife in his hand when he attacked D2. The multiple stabs and cuts to vulnerable parts of

D2's body showed that he had the intention to cause D2's death: *Iskandar (CA)* at [60];

(b) Exception 2 did not apply because Mr Iskandar was the aggressor and he had intended to do more harm than was necessary: *Iskandar (CA)* [62]–[63]; and

(c) Exception 4 did not apply as Mr Iskandar had taken undue advantage of and acted cruelly towards D2: *Iskandar (CA)* at [65].

The substantive issues

25 I have detailed the findings of the High Court and the Court of Appeal because the nine issues raised by Mr Iskandar must be considered in the context of these various findings. These issues may be analysed in three broad categories:

(a) I term "Category (a)" the assertions regarding various exhibits at trial – namely, (i) a failure to provide all scene photographs (the first issue), (ii) a failure to study the photographs properly to verify the amount of cash recovered from a bag placed in the storeroom (the second issue), and (iii) a failure to raise at trial the issue of a baton found in D1's car (the fifth issue).

(b) I term "Category (b)" the assertions relating to witnesses – namely, (i) a failure to call Mr Iskandar's family members at trial (the third issue), (ii) the dispensation from attendance at trial of various witnesses whose evidence were admitted by statements (the fourth issue), (iii) a failure to appoint a defence psychiatrist (the eighth issue), and (iv) a failure to appoint a defence pathologist (the ninth issue).

(c) I term "Category (c)" the assertions relating to Mr Iskandar's instructions – namely, (i) a failure to carry out instructions penned in a bundle used for his committal proceedings (which Mr Iskandar referred to as the "PI Bundle") (the sixth issue), and (ii) a failure to make amendments to the Opening Address (the seventh issue).

Category (a): Exhibits

(i) Not providing the full set of photographs

26 In his Complaint, Mr Iskandar asserted that the trial defence team failed to give him all the photographs of the scene after the committal hearing. Further, when he raised the issue, a member of the trial defence team told him that there were too many photographs and he could not provide the photographs to him.

27 In its written explanation, the trial defence team conceded that they had not shown Mr Iskandar the full set of 700 photographs. There was only one full set, although they denied stating they could not furnish the photographs to Mr Iskandar. Their evidence was that the relevant photographs had been included in the Agreed Bundle, and that they had discussed the photographs with Mr Iskandar. In their further written explanation, the trial defence team exhibited a copy of three sets of scene photographs from the Agreed Bundle, from pages 574 to 616, 796 to 804, and 915A1 to 915A7.

28 Mr Iskandar's rejoinder, which the IC did not accept, was that he had not been given the Agreed Bundle, but only a limited number of photographs, from pages 796 to 804 of the Agreed Bundle, and that these had been included because they were annexed to a witness's statement.

29 In the present application, apart from rehearsing his initial complaint, Mr Iskandar argued that the IC had erred in its appreciation of the facts. First, he argued that, contrary to the trial defence team's claims, he did not receive photographs in the Agreed Bundle other than those at pages 796 to 804. He argued that the page numbers given by the trial defence team (see [27] above) were incorrect as he had checked these pages in his Record of Proceedings, which included the Agreed Bundle, and did not find those photographs there.[1] Second, he also argued that it was not acceptable that only "relevant" photographs would be shown, as all photographs would have been before the Court.[2] Third, even if the "relevant" photographs had been provided, the trial defence team was still in breach of their duties because he had needed all of the photographs to provide instructions, and further, citing *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 ("*Tan Phuay Khiang*") at [42], he argued that documents received by a legal practitioner as the client's agent belong to the client and must be handed to the client.[3]

30 In my judgment, the IC's determination was justified. All parties accept that the full set of around 700 photographs had not been given to Mr Iskandar at the outset. Contrary to Mr Iskandar's assertions, there is no evidence that photographs had been wilfully withheld from him, nor is there any evidence of a request on his part to see the entire set of 700 photographs. It appears, rather, that a practical decision had been taken given the sheer number of photographs that were taken during investigations. As is common in criminal trials, a selected set of relevant photographs was then included in the Agreed Bundle. Further,

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1 Applicant's Written Submissions at paras 30–31.

2 Applicant's Written Submissions at para 32.

3 Applicant's Written Submissions at paras 33–35.

the IC was entitled to conclude that Mr Iskandar had received the photographs in the Agreed Bundle. In its further written explanation, the trial defence team had exhibited copies of the photographs from the Agreed Bundle.[4] Mr Iskandar's argument before me that the page numbers cited by the trial defence team did not match his Record of Proceedings is not cogent, as the page numbering of the Record of Proceedings used on appeal would differ from that of the Agreed Bundle used at trial. Based on the photographs exhibited by the trial defence team, I saw no reason to doubt the trial defence team's claim that the relevant photographs had been provided to Mr Iskandar. His assertion wholly lacked substantiation.

(ii) Failing to conscientiously study the scene photographs

31 The second issue raised in Mr Iskandar's Complaint was that the trial defence team did not study the photographs conscientiously to ascertain the amount of money shown in the photographs. According to Mr Iskandar, this would have amounted to approximately $700,000 in cash. Arising from this omission, Mr Iskandar argues, the trial defence team omitted to argue on his behalf that D1 could have become enraged and attacked him to protect such a substantial sum of money.

32 The trial defence team responded that it was not clear how Mr Iskandar had concluded that the police had seized more than $700,000 from the photographs. In any case, it was not disputed at trial or on appeal that there was a large sum of money in the bag. Further, it was speculative to have relied on the amount of money to argue that D1's response would have been violent.

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4 Tab A to the Further Written Explanation dated 20 November 2018.

33 The IC concluded that it was clear at a glance of the relevant photographs that a large sum was involved and the trial defence team could not be criticised for not using the photographs to count each note. Furthermore, the Court of Appeal had already been informed that the sum was more than $600,000.[5]

34 In the present application, Mr Iskandar elaborated that the point he would have made was one of a number of points that would have established that D1 attacked him first.[6] He claimed that the trial defence team had failed to discharge their duties conscientiously and they did not know the case well enough.[7] Further, he argued that the trial defence team should not be allowed to speculate as to the possible weight of the argument that the substantial sum involved would have more likely led D1 to use violence.[8] Mr Iskandar also added that the trial defence team had been dishonest in its explanation that this argument would not have been material when the trial defence team stated that there was no fact to suggest that D1 had uncovered Mr Iskandar's ruse.[9] Finally, he noted the absence of any attendance notes to show that the photographs had been discussed with him.

35 It is important to note that the exact sum of money in the bag had no relevance to the High Court's or Court of Appeal's decision. There was no need to have counted the notes in the photograph. In the context of the defences that were run at trial and on appeal, the exact value of money involved was not in

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5 The Report at [32].

6 Applicant's Written Submissions at para 46.

7 Applicant's Written Submissions at para 52.

8 Applicant's Written Submissions at para 54.

9 Applicant's Written Submissions at paras 56–57

issue. It was accepted in the High Court that there was a large sum of money in the bag. Further, it was accepted in the Court of Appeal that the sum was more than $600,000. Even so, the Court of Appeal rejected Mr Iskandar's argument that D1 had attacked him first. Both the High Court and Court of Appeal found that D1 had trusted Mr Iskandar. In particular, the reasoning of the Court of Appeal turned on factors *other than* the sum of money involved. These included the absence of any evidence that D1 had uncovered the ruse, the evidence from D1's wife that he was not a violent person and that D1 would have known he could not win in a fight in the light of his knee condition and age, as well as the inconsistencies in Mr Iskandar's account of events. A specific count of the money in the photographs was irrelevant to Mr Iskandar's defence.

(iii) Failing to raise the issue of a baton found in D1's car

36 A baton had been found under the driver's seat in D1's car. Mr Iskandar had wished to show that D1 was someone who was capable of using the baton, and therefore, that D1 was likely to have attacked him first. He had given instructions to the trial defence team to do so, but this was not done, and he had not agreed that the issue should not be raised.

37 The trial defence team explained that Mr Iskandar had raised the issue at various breaks during the trial, but after lead counsel Mr Shashi Nathan and co-lead counsel Mr Ferlin Jayatissa considered the point, they decided that the mere fact that a baton was found in the car was not enough to show that D1 was a violent person or would have used such an item in a fight. They then explained this to Mr Iskandar and the latter acknowledged their advice.[10]

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10 Written Explanation dated 10 September 2018 at para 30.

38 The IC accepted the trial defence team's explanation. In particular, it noted that Mr Iskandar's notes on the issues had a question mark, indicating that it was a question for the trial defence team to consider and render advice on. This supported the trial defence team's explanation.

39 In the present application, Mr Iskandar argued that the IC had erred in placing so much weight on the question mark. This was because that was not the only instance when he had communicated this point to the trial defence team. He had also done so at interviews before the trial and in discussions during the trial.[11] He added that the argument concerning the baton was "neither inherently incredible or illogically [*sic*] impossible" and so the trial defence team should have followed his instructions.[12]

40 I saw no reason to disturb the IC's conclusion. The primary grounds for the IC's conclusion were that the trial defence team's explanation was to be preferred. The question mark supported the fact that there had been discussion between Mr Iskandar and the trial defence team. In this case, where there was no evidence that D1 attacked Mr Iskandar first, it would have been speculative to allege that D1 attacked first simply on the basis of a baton found in D1's car. The baton could have been there for any number of reasons. It is reasonable to conclude, as the IC did, that the trial defence team explained that the matter was not relevant when Mr Iskandar raised the point, and that Mr Iskandar had accepted their advice.

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11 Applicant's Written Submissions at para 110.

12 Applicant's Written Submissions at para 117.

Category (b): Witnesses

(i) Failing to call family members

41 In his Complaint, Mr Iskandar claimed that the trial defence team failed to execute the agreed plan that was stated in the Case for the Defence ("CFD"), which included calling his family members to testify that he was not a violent person and would not have intended to kill D1 and D2. He further sought to adduce Whatsapp messages that he had sent to his family to prove his remorse.

42 The trial defence team explained to the IC that while that was the initial plan, Mr Iskandar had then changed his instructions as he did not want to put his family through the difficult experience of testifying in court, especially since the evidence that they would give was unlikely to assist him. In support of their version of events, the trial defence team exhibited an attendance note from a meeting on 10 October 2015, which recorded Mr Iskandar's instructions as: "Request for Parents to be dispensed with but sister is ok."[13] While the CFD filed on 28 October 2015 listed his father, mother and sister as witnesses, Mr Nathan clarified that this was because he had advised Mr Iskandar that they could be listed first and the decision of whether or not to call them could be made later. This was after Mr Iskandar had indicated that he might not want them to be called to testify.[14] During the course of trial, Mr Iskandar confirmed that he did not want his family members to be called.

43 The IC concluded that it was not uncommon for witnesses initially listed in the CFD to not be called. Further, even if the family members had been called,

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13 Further Written Explanation dated 20 November 2018 at para 9.

14 Further Written Explanation dated 20 November 2018 at para 8.

this would not have been material evidence. Therefore, the IC accepted the trial defence team's explanation for why the family members were not called.[15] Finally, if the complainant had really wanted to call them, he could have mentioned this at trial, certainly at the close of the Prosecution's case or after he had taken the stand.[16]

44 Mr Iskandar raised the following arguments before me. First, he referred to Notes of Arguments from 19 and 26 October 2015 to show that the trial defence team had known that Mr Iskandar wanted to call his family members as witnesses. The Notes of Arguments from 19 October 2015 show Mr Nathan communicating to Tay J in Chambers that the Defence witnesses would include Mr Iskandar's mother and sister. On 26 October 2015, Mr Nathan asked for Mr Iskandar to take the stand in the week of 9 November, and for his mother and sister to give evidence after that. Both of these documents therefore indicate that the Defence was still going to call his family members as of 26 October 2015.[17] Second, he argued that it was illogical for him to have refused to call witnesses who might aid his case in whatever way, especially in the face of capital charges.[18] Third, as they were his family members, they would have been willing to testify for him.[19] Finally, Mr Iskandar made the point that the trial defence team had lied when it stated that the CFD was approved only on 28 October 2015 because that was the next time they could secure a prison visit.[20]

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15 The Report at [38].

16 The Report at [39].

17 Applicant's Written Submissions at para 62.

18 Applicant's Written Submissions at para 66.

19 Applicant's Written Submissions at para 67.

20 Applicant's Written Submissions at paras 68–69.

45 I address Mr Iskandar's last point first. The reference to 28 October 2015 was a typographical error. Trial would have started by that date, and a CFD would typically be filed prior to trial. My check of the eLitigation system showed that it was filed on 28 September 2015, and as Mr Iskandar noted, he was visited on that date by members of the trial defence team. In the circumstances, I did not give any weight to the date. In any event, it was not disputed that the CFD listed family witnesses who were subsequently not called; the issue was whether Mr Iskandar consented to their not being called. In my view, the remaining facts show that Mr Iskandar's assertion does not have any factual basis. The Notes of Arguments that he cited are consistent with the trial defence team's account of what had happened. Up until 26 October 2015, it remained Mr Iskandar's instruction that his family members should be called. They were not. Mr Iskandar argues that this was because the trial defence team decided to disobey his instructions. I find this incredible. After having listed the family members as witnesses in the CFD, and having told the Court *twice* that some of them would be called, there was no reason why the trial defence team would simply not call the witnesses. They had no incentive whatsoever not to do so, and there is no suggestion that it would have been difficult for them to have done so. Further, the trial defence team's account of Mr Iskandar's change in instructions during the course of trial included a very cogent reason for that decision: he did not want his family to go through the trauma of testifying in court where the benefit to his defence would be minimal. And indeed, such evidence would have been marginal. The Prosecution's case was not centred on his general conduct, but rather his specific acts and intention to kill D1 and D2 on the day in question. The IC's conclusion that Mr Iskandar gave instructions not to call his family upon advice was supported by the evidence.

(ii) Dispensation of witnesses

46 Mr Iskandar complained that the trial defence team did not tell him that a large number of witnesses would be dispensed with. Of the 102 Prosecution witnesses, only 17 were called and cross-examined. Mr Iskandar claimed that he was under the impression that the non-critical witnesses for the Prosecution would be called in the first tranche, and the critical witnesses and Defence witnesses would be called in the second. In particular, Mr Iskandar complained that Vernon Voon ("Mr Voon") of the Overseas-Chinese Banking Corporation ("OCBC") was not called. In his account, a member of the trial defence team told him that parties were being called to see the judge in chambers. When counsel returned to Court, Mr Iskandar contended, she informed him that the judge had said that most of the witnesses would be dispensed with. When he claimed that it was unfair, she said that they were the judge's instructions. He argued that the trial defence team had agreed to the dispensation of witnesses without consulting him and obtaining his consent.

47 In response, the trial defence team sought to clarify the steps taken with respect to the list of witnesses to be called. The sequence of events set out in their further written explanation was as follows:

(a) After the committal hearing on 25 July 2015, Mr Jayatissa, who was lead counsel prior to Mr Nathan coming on board in September 2015, had discussed the calling of witnesses with Mr Iskandar at a meeting on 27 July 2015.[21]

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21 Further Written Explanation dated 20 November 2018 at para 10.

(b) On 28 September 2015, Mr Nathan discussed the same issue with Mr Iskandar, with Mr Jayatissa and another member of the trial defence team in attendance. Here, they allege that Mr Iskandar had specifically requested for one "DSP Borhan bin Said" and one "SSI2 Nurussufiyan bin Ali" ("SSI Nurussufiyan") to be called to be cross-examined.[22] An attendance note for this meeting was tendered.[23]

(c) On 7 October 2015, members of the trial defence team met with the Prosecution for a discussion on which witnesses would be needed.[24] The results of this discussion were communicated in a letter to the Prosecution dated 9 October 2015. In the letter, the trial defence team confirmed that it would require 78 witnesses for cross-examination but the attendance of 23 other witnesses could be dispensed with.[25]

(d) On 12 October 2015, Mr Jayatissa and two members of the trial defence team met with Mr Iskandar and updated him on the outcome of the discussion on 7 October, showing him the list of witnesses. No attendance note could be retrieved for this meeting.[26]

(e) On 19 October 2015, the day before the trial was scheduled to start, parties met with Tay J in Chambers. At this pre-trial conference, parties canvassed the issues and the Judge intimated that the focus of the trial should be on the events *in* D1's house, with the cross-examination

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22 Further Written Explanation dated 20 November 2018 at paras 11–12.

23 Tab G to the Further Written Explanation dated 20 November 2018.

24 Further Written Explanation dated 20 November 2018 at paras 12–13.

25 Tab H to the Further Written Explanation dated 20 November 2018.

26 Further Written Explanation dated 20 November 2018 at para 14.

of witnesses whose evidence was not directly related to the same to be dispensed with.

(f) On 20 October 2015, the first day of trial, Mr Nathan and Mr Jayatissa explained what had occurred during the previous day's pre-trial conference to Mr Iskandar prior to the commencement of court proceedings. They went through what issues were not being contested and, as a result, which witnesses did not need to be cross-examined. Having explained all of these, Mr Iskandar agreed and gave his consent to proceed as discussed.[27] As a result, only 17 witnesses were ultimately called for cross-examination.

48 The IC found that the trial defence team had discharged their duty to Mr Iskandar. The IC could not accept Mr Iskandar's claims that no one had told him about the dispensation of any of the 102 Prosecution witnesses. Further, the IC did not accept Mr Iskandar's claim that he did not ask for SSI Nurussufiyan to be made available for cross-examination, as the latter was not a material witness and there was no other reason for him to be called except on Mr Iskandar's instructions. In addition, Mr Iskandar had failed to raise any of these complaints at trial. Finally, the IC considered the Notes of Arguments from 20 October 2015 which showed that Mr Nathan was keenly aware of the discomfort that Mr Iskandar was feeling over the small number of witnesses. This showed that the trial defence team was aware of the problem and it was therefore unlikely that they would have run the risk of dispensing witnesses without obtaining Mr Iskandar's consent.

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27 Further Written Explanation dated 20 November 2018 at para 17.

49 The IC had assessed the evidence of both the trial defence team and Mr Iskandar, and I accepted their finding that the dispensation of witnesses had been discussed with Mr Iskandar and his approval obtained. Contrary to Mr Iskandar's scepticism about why an initial list dated 9 October 2015 included 78 witnesses when the trial defence team later claimed that they did not need to be called, this reflected good practice in criminal trials. At the committal stage, the Prosecution will have identified every piece of pertinent evidence and the witnesses through whom that evidence may be adduced. Many of these witnesses would be formal ones introducing undisputed evidence. In this case, and as recorded by Tay J in his judgment, it was after a pre-trial conference that *both* the Prosecution and Defence re-assessed their cases and determined which issues were actually in dispute: *Iskandar (HC)* at [2] and [102].

50 I deal with OCBC's Mr Voon specifically as Mr Iskandar was especially unhappy about his not being called. It was not disputed at any time that Mr Iskandar was deep in debt. Mr Iskandar stated he wanted to have Mr Voon cross-examined to reveal OCBC's heavy-handed dealings with him. I accepted the trial defence team's account that they had advised Mr Iskandar that Mr Voon would not contribute anything material to the Defence's case, and that Mr Iskandar had agreed with that advice. It was not contested that Mr Iskandar was heavily in debt, that OCBC was a major creditor, and that the entire plan was set in motion because Mr Iskandar faced bankruptcy. There was no need to cross-examine Mr Voon to get the point across. The issue was ultimately irrelevant to the murder charges. The trial defence team appropriately exercised their professional judgment in advising him on this matter and I find no basis for concluding as a matter of fact that Mr Iskandar had not agreed to this course of action after having received advice.

51 Therefore, I agreed with the IC that this specific assertion does not disclose any *prima facie* case of breach or misconduct that would warrant referral to a DT.

(iii) Failing to appoint a defence psychiatrist

52 Mr Iskandar contended that it was part of the original defence plan to call a psychiatrist for the Defence in order to counter Dr Goh's psychiatric report. Mr Iskandar relied on the Notes of Arguments from 19 October 2015, which recorded Mr Nathan as saying that the defence of diminished responsibility was a possibility, and that the Defence had contacted Dr Tommy Tan ("Dr Tan") but he had not yet seen Mr Iskandar. Subsequently, on 26 October 2015, Mr Nathan is recorded as stating that the Defence was no longer relying on the defence of diminished responsibility. Mr Iskandar contended that this decision was made without consulting him.

53 The trial defence team explained that Mr Iskandar had not raised the issue of a possible psychiatric condition, or that he was relying on diminished responsibility. It was only when Mr Nathan was appointed that he suggested to Mr Iskandar that Dr Tan be allowed to review Dr Goh's psychiatric report.[28] At first, the trial defence team believed that they would have enough time to let Dr Tan review the report, as it was their impression that the expert evidence would be taken only in the second tranche of the trial. However, as the issues at trial were narrowed down and when they began dispensing with witnesses, the trial defence team realised that Dr Tan might not have time to review the report and examine Mr Iskandar. Therefore, they asked Dr Tan to urgently review the

[28] Written Explanation dated 10 September 2018 at para 37.

documents first to see if his evidence would be helpful to the Defence's case.[29] After Dr Tan did so, he then explained that he was unlikely to disagree with Dr Goh's assessment.[30] The trial defence team then explained this to Mr Iskandar, highlighting the fact that any examination by Dr Tan would be less reliable as it would have taken place years after the incident, and in any case, Dr Tan's view was that he was unlikely to find evidence of any disorder. Mr Iskandar did not suggest that he wanted to rely on the defence of diminished responsibility at any time and did not ask for a second opinion.

54 Some attendance notes were recovered and put before the IC, as follows:

(a) A note dated 1 November 2013[31] recorded that members of the trial defence team and Mr Iskandar had *considered* seeking a psychiatric report, but also stated, "Clearly not for diminished responsibility".

(b) A note dated 23 September 2014,[32] in relation to a pre-trial conference on that date, recorded Mr Jayatissa informing the Assistant Registrar that the initial psychiatric report did not indicate any need for a further report. Further, he clarified that there were no instructions from Mr Iskandar to send him for examination to obtain such a report.

(c) A note dated 18 June 2015,[33] which recorded a meeting between members of the trial defence team and Mr Iskandar in prison. The note recorded various discussions about Mr Iskandar's likely defence, but did

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29 Written Explanation dated 10 September 2018 at para 38.

30 Written Explanation dated 10 September 2018 at para 38.

31 Tab Q to the Further Written Explanation dated 20 November 2018.

32 Tab R to the Further Written Explanation dated 20 November 2018.

33 Tab T to the Further Written Explanation dated 20 November 2018.

not make reference to the defence of diminished responsibility or any psychiatric evidence.

55 Other relevant documentary evidence included:

(a) A set of emails dated 21 to 22 September 2015[34] between Ms Chin and Mr Jayatissa, in which Mr Jayatissa informed Ms Chin and the trial defence team of his discussion with Dr Tan.

(b) An email chain dated 7 October 2015[35] between members of the trial defence team and Dr Tan, recording Mr Jayatissa's request to Dr Tan to review the necessary documents and give his input on those documents. In particular, Mr Jayatissa expressed his hope to engage Dr Tan if the latter should find that a further psychiatric assessment would be useful to Mr Iskandar's case.

(c) The Notes of Argument dated 19 October 2015, which recorded Mr Nathan informing the Court that the defence of diminished responsibility was only a possibility.

(d) The Notes of Argument dated 22 October 2015, which recorded Mr Nathan informing the Court that Dr Tan was not able to examine Mr Iskandar until November that year, and Tay J's instructions to Mr Nathan for Dr Tan to interview Mr Iskandar in prison over the following few days.

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34 Tab N to the Further Written Explanation dated 20 November 2018.

35 Tab P to the Further Written Explanation dated 20 November 2018.

(e) The Notes of Argument dated 26 October 2015, which recorded Mr Nathan confirming with the Court that the defence of diminished responsibility would not be relied upon.

56 The IC concluded that the attendance notes from 1 November 2013 and 23 September 2014 contradicted Mr Iskandar's claim that it was agreed from the outset that they would engage a defence psychiatrist. Further, the emails and the Notes of Argument supported the trial defence team's claims that the idea of appointing a psychiatrist was introduced when Mr Nathan was appointed. The IC accepted the trial defence team's explanation that they had sought Dr Tan's advice and, when Dr Tan said that he was unlikely to differ from Dr Goh, explained the matter to Mr Iskandar, and then confirmed with Tay J on 26 October 2015 that they were not going to rely on the defence of diminished responsibility. The documentary evidence supported the trial defence team's timeline and explanation.

57 In the present application, Mr Iskandar argued that the trial defence team did not inform him about Dr Tan's opinion and the developments concerning the psychiatric evidence.[36] Mr Iskandar also argued that if Dr Tan's opinion was not favourable, then the trial defence team was obliged to look for another psychiatrist who would be able to help. To this end, he also cited the fact that the appeal lawyers were able to engage Dr Lee to provide a psychiatric report which they sought to admit as further evidence on appeal.[37] He contended that he was not adequately advised by the trial defence team as he was not aware, until subsequently at the appeal stage, that his experiences could constitute

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36 Applicant's Written Submissions at para 174.

37 Applicant's Written Submissions at para 185.

abnormal mental conditions.[38] Further, Mr Iskandar argued that the Court of Appeal's decision to give little weight to Dr Lee's report was a result of the trial defence team's failure to adduce psychiatric evidence at trial.

58 I was unable to accept Mr Iskandar's arguments. I agreed with the IC that the documentary evidence, particularly the attendance notes from 1 November 2013 and 23 September 2014, confirm the trial defence team's account that there was no instruction to appoint a defence psychiatrist from the outset. If this was so, it is consistent with the trial defence team's explanation that the idea to consider appointing the psychiatrist was introduced by Mr Nathan. The subsequent documents match the trial defence team's explanation that Dr Tan's assessment was ultimately not useful for the Defence case, and therefore, the decision was made not to call a defence psychiatrist (as recorded in the Notes of Argument on 26 October 2015).

59 Furthermore, the Court of Appeal's assessment of Dr Lee's report (as set out at [20]–[21] above), rather than assisting Mr Iskandar's criticism as he suggested, supported Dr Tan's view and the trial defence team's advice not to adduce psychiatric evidence. That the trial defence team's assessment of the potential weight of such evidence was sound was illustrated by the Court of Appeal's treatment of Dr Lee's report on appeal. The criticisms made by the Court of Appeal would have applied equally to a report tendered at trial, in particular, that Dr Goh's view was proximate in time and that any such defence contradicted the rest of Mr Iskandar's evidence.

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[38] Applicant's Written Submissions at para 187.

60 Mr Iskandar's arguments appear to be premised on a mistaken understanding of a lawyer's role in assisting an accused person with his defences. Defence counsel takes instructions from the accused and considers what defences, if any, are reasonable and supported by the facts. In this case, Mr Iskandar's instructions to the trial defence team did not reveal facts giving rise to a defence of diminished responsibility. When Dr Tan's initial impression was that he would not differ from Dr Goh's assessment, it was sufficient for the trial defence team to communicate this to Mr Iskandar and then to move on. The purpose of engaging Dr Tan was to assess the possible relevance of psychiatric evidence to the Defence's case, not because it was clear that there was any factual premise upon which to raise the defence of diminished responsibility. In an email dated 22 September 2015 from Mr Jayatissa to a junior member of the team, the former highlighted: "Dr Tan said that it does not appear to be hat [*sic*] the defence is likely to be one that involves a psychiatric condition, I informed Dr Tan that we are seeking his input on the state of mind that Iskandar might have been during the attacks and the state he was in after he left the scene." In this context, it was appropriate for the trial defence team to have pursued the line of inquiry by engaging Dr Tan and then to accept Dr Tan's professional advice, which in any event later proved to be sound.

61 Therefore, I found that the IC was entitled to conclude that the eighth assertion did not have merit.

(iv) Failing to appoint a defence pathologist

62 Mr Iskandar contended that it was agreed that a defence pathologist would be called in order to address, firstly, the Prosecution's scene reconstruction by Dr Henry Lee; secondly, the autopsy report by Dr Gilbert Lau,

and thirdly, the DNA evidence from Dr Christopher Syn.[39] He was not consulted when the trial defence team decided not to call Dr Porntip Rojanasuran ("Dr Porntip") after the Prosecution indicated that it was no longer relying on the scene reconstruction report by Dr Henry Lee. Mr Iskandar also relied on the pathologist report that he had adduced in the Court of Appeal.

63 The trial defence team's explanation primarily emphasised that the plan was always to call a defence pathologist for the sole purpose of addressing Dr Henry Lee's scene reconstruction report. It was initially Mr Jayatissa's idea to engage a pathologist to do so.[40] Subsequently, Mr Nathan advised Mr Iskandar that it would be necessary to call an expert to rebut Dr Henry Lee's report.[41] At all times, Dr Porntip was only supposed to counter Dr Henry Lee's reconstruction report.[42] On 26 October 2015, when the Prosecution decided not to call Dr Henry Lee, there was no longer any need to call Dr Porntip. This was explained to Mr Iskandar on 29 and 30 October 2015. From the close of the Prosecution's case to when the Defence's case opened, Mr Iskandar did not raise any issue about the calling of a defence pathologist. In its written explanation, the trial defence team also countered Mr Iskandar's claim that Dr Porntip would also have testified about the length of the blade. The trial defence team took the position that this evidence was immaterial, citing the Court of Appeal's determination in support.[43]

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39 See also Applicant's Written Submissions at paras 196–197.

40 Written Explanation dated 10 September 2018 at para 48.

41 Written Explanation dated 10 September 2018 at para 49.

42 Written Explanation dated 10 September 2018 at para 52.

43 Written Explanation dated 10 September 2018 at para 53.

64 The IC concluded that Mr Iskandar's complaint could not be believed. It was odd that he did not raise the issue when Mr Nathan informed the Court that Mr Iskandar was the only witness for the Defence on 30 October 2015. Further, he did not raise the issue when he was in Court to be cross-examined, on 9 November 2015. The IC cited an instance when Mr Iskandar was able to voice his own opinion during an interview with the IC on 10 December 2018 as evidence that Mr Iskandar was not meek and would have raised the issues at the appropriate times if his account was in fact true.

65 Before me, Mr Iskandar pointed to attendance notes on 1 November 2013[44] and 23 September 2014[45] which indicated the importance of forensic evidence, especially the scene reconstruction, to the Defence case. He further highlighted that the Notes of Argument from 20 October 2015 recorded Mr Nathan as saying that the Defence might need to call Dr Porntip "[e]ven for Gilbert Lau's autopsy report" and "[i]f Henry Lee is called, [the Defence] definitely will call Porntip". Mr Iskandar argues that these extracts support his argument that the Defence was going to call a pathologist even if Dr Henry Lee was not called, because Mr Nathan had made these statements even after Tay J had asked the Prosecution whether they really needed to call Dr Henry Lee.[46] Mr Iskandar also argued in detail that the evidence concerning the knife was material to his case.[47]

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44 Tab Q to the Further Written Explanation dated 20 November 2018.

45 Tab R to the Further Written Explanation dated 20 November 2018.

46 Notes of Argument for 19 October 2015.

47 Applicant's Written Submissions at paras 206–207.

66 These arguments were not substantiated by the documents. The attendance notes that he cited do indicate the importance of forensic evidence, but do not indicate any firm intention to call a pathologist for the Defence. Indeed, it buttressed the trial defence team's claim that their focus was on ensuring that the scene reconstruction did not undermine Mr Iskandar's defence. This was entirely consistent with the trial defence team's explanation that Dr Porntip was not needed if Dr Henry Lee was not called. Their primary goal was to prevent any scene reconstruction adduced by the Prosecution from affecting Mr Iskandar's defence. Once the Prosecution chose not to adduce the scene reconstruction report, there was no longer any need to call a pathologist for the Defence.

67 The Notes of Argument from 20 October 2015 also do not support Mr Iskandar's argument. Mr Nathan's reference to Dr Lau's autopsy report was tentative, at highest. The emphasis was on Dr Porntip's rebuttal of Dr Henry Lee's report. Furthermore, the fact that this was stated a day after Tay J had asked the Prosecution if they would consider whether Dr Henry Lee's evidence was needed for the case does not mean that the defence was planning to call Dr Porntip *regardless* of the Prosecution's position, as Mr Iskandar suggests. On 20 October 2015, it was simply the case that the Prosecution had not yet confirmed whether they were going to call Dr Henry Lee. It was not in fact an indication of the Defence's plan to call a pathologist.

68 Furthermore, Mr Iskandar's arguments concerning the knife are misplaced. His contentions appear to be directed at re-opening the issue of whether the length and provenance of the knife were material to his conviction. But the Court of Appeal had concluded that these were not material facts. The appellate defence team's application to adduce a pathologist report on appeal was dismissed by the Court of Appeal on the ground that the conclusions were

not material to the appeal. That coheres with the trial defence team's explanation that Dr Porntip was only required to respond to Dr Henry Lee's report.

69 Therefore, I found no reason to depart from the IC's findings and concluded that this assertion was without merit.

Category (c): Instructions

(i) Mr Iskandar's notes in his "PI Bundle"

70 On 20 October 2015, Mr Iskandar had handed over to the trial defence team a sheaf of papers constituting his notes on the bundle used in his committal proceedings (these were previously termed preliminary inquiries, and therefore he referred to the bundle as the "PI Bundle"). These notes included written notes on 52 witnesses, as well as notes on the Prosecution's and Defence's case theories, documentary evidence, and general observations and remarks. Mr Iskandar complained that the trial defence team had failed to carry out instructions written in those notes.

71 The trial defence team took the position that the notes were not intended to be taken as firm instructions, but were points that Mr Iskandar had asked them to consider whether to incorporate into the case. Further, the trial defence team highlighted that the notes were prepared *before* the agreement to dispense with a significant number of witnesses. As such, the notes for those witnesses no longer had any use. Insofar as the points were raised, however, they did consider and incorporate relevant points into their cross-examinations and arguments.[48] In their further written explanation, they stated that they had

[48] Written Explanation dated 10 September 2018 at paras 31–33.

"scanned through" the notes and then explained the issue concerning the dispensation of witnesses, to which Mr Iskandar agreed.[49] Mr Iskandar then allegedly never raised the issue of the notes again.

72 The IC accepted the trial defence team's explanation. It considered that the notes included questions and were therefore not firm instructions. In addition, the notes had been written before the decision to reduce the number of witnesses.

73 I did not see any basis to depart from the IC's position. These notes would have been taken at a very early stage of the process. At each stage, it is the responsibility of counsel to update their client and initiate further discussion. As the trial defence team pointed out, many of the witnesses were thereafter dispensed with. Many of the notes were framed as points that Mr Iskandar was inviting the trial defence team to consider, or potential issues that could be raised in the course of the trial. Some notes would have been superseded by events and new instructions would have arisen as the trial unfolded. It would have been incumbent on the trial defence team to seek new instructions even where it might contradict the previous notes. Further, a perusal of Mr Iskandar's notes showed that the trial defence team had taken on board many of these points and acted consistently with those points raised. For example, Mr Iskandar's account of how D1 and D2 had attacked him were written in the notes and came across in the evidence, and these assertions were considered by the High Court and later, the Court of Appeal.

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49 Further Written Explanation dated 20 November 2018 at para 23.

(ii) Opening Address for the Defence

74 Mr Iskandar complained that the trial defence team had failed to comply with his instructions to amend the initial Opening Address for the Defence; the unamended Opening Address had focused too much on the reduction from s 300(*a*) to s 300(*c*) and did not emphasise the reduction to s 299 of the Penal Code, by way of the exceptions under s 300.

75 The trial defence team explained that the various versions of the Opening Address did not differ in substance, only in form. Each of the versions put forward the position that the primary defences were the exceptions under s 300 of the Penal Code, with the alternative position that the appropriate charge was under s 300(*c*) of the Penal Code. The trial defence team acknowledged that there was confusion over which version of the Opening Address to use, and admits that an amended Opening Address was not tendered to Court. However, Mr Nathan did clarify the Defence position orally in court. Subsequently, they handed a copy of the Opening Address with Mr Nathan's oral statements to Mr Iskandar.[50]

76 The Opening Address in its unamended form read at para 9:

> Iskandar's primary defences to the charges of committing murder are that he reacted in such manner *firstly*, in the exercise of his right of private defence and *secondly*, in response to sudden fights that occurred between parties at the material times. Should this Honourable Court find that Iskandar's responses exceeded his right of Private defence, it is humbly pleaded that his actions nevertheless did not reflect a clear intention to cause death but were only an intention to cause injuries sufficient in the ordinary course of nature to cause death under section 300(c) of the Penal Code.
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> [emphasis in original]

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50 Written Explanation dated 10 September 2018 at paras 34–36.

77 The IC analysed the Opening Address and noted that it did make reference to Exceptions 2 and 4. Either of these defences, if successful, would have brought the offences under s 299 of the Penal Code. The IC noted the Opening Address could have been confusingly worded, but that any confusion on how these two arguments related were resolved by the oral exchange between the Deputy Public Prosecutor, Mr Nathan and the Court at the time. This was consistent with the Supplementary Case for the Defence filed in Court and the letter to the Prosecution dated 16 October 2015. That Mr Iskandar's case was clear to the trial judge was evident from the judgment: *Iskandar (HC)* at [44] and [70]. The IC was of the view that Mr Iskandar's complaint was misconceived.

78 In my view, the IC was entitled to come to its conclusion. The object of the Opening Address is to frame the Defence's case for parties and the Court. It was clear from the following exchange in the courtroom that all concerned were aware that Exceptions 2 and 4 would involve a reduction of the charges under s 299 of the Penal Code, and the reference to s 300(*c*) was an alternative if the Exceptions did not apply:[51]

> Court: I see nothing to clarify, really.
>
> Lau: All right, yes, yes.
>
> Court: He's just saying "I exercise my private defence. If I have exceeded, it becomes the 300(c) case", that's all.
>
> Lau: All right.
>
> Nathan: Yes, that's exactly my point.

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[51] Notes of Evidence, 30 October 2015 at p 8, ln 24–29 at Tab K to the Further Written Explanation dated 20 November 2018.

79 I note here that Mr Iskandar's account of his criticisms of the Opening Address supports my conclusion earlier that he had authorised the decisions not to call his family members, a psychiatrist or a pathologist. It would have been plain from the Opening Address and the meticulously vetted amended version that these particular witnesses were not being relied upon. If he expected to rely on these witnesses, Mr Iskandar would have raised the issue. His failure to do so belies his third, eighth, and ninth assertions.

Concluding observations on Mr Iskandar's nine assertions

80 Mr Iskandar's case against the trial defence team was framed as a lack of diligence, a failure to keep him informed on the progress of the case and to explain developments in his case, a failure to follow his instructions, a failure to advance his case using all legal means, and a failure to pursue all reasonable defences. These are duties found in rr 12, 17, 21, and 73 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("PCR 2010"), which is the version of the rules that is applicable to his case.

81 The evidence indicated that at each point, the trial defence team had rendered advice, and sought and obtained the relevant instructions. It is also clear, from the analysis above, that the various exhibits, witnesses, and evidence, now emphasised by Mr Iskandar, were not relevant to his defence at trial. Mr Iskandar's true discontentment, it seemed, was that the trial defence team had not prolonged his trial by use of all means imagined. As the IC noted in its Report at paragraph 79, Mr Iskandar's dissatisfaction appears to have arisen primarily because the second tranche of the trial dates was vacated in the light of the conclusion of the trial in the first tranche. It may be apt to observe here that counsel's overriding duty is to the court. Rule 54 of the PCR 2010 states that counsel's duty to conduct a case which he considers most

advantageous to the client is subject to "the interests of justice, public interest and professional ethics". Rule 55 of the PCR 2010 goes on to provide that:

> **55**. An advocate and solicitor shall at all times — …
>
> (*b*) use his best endeavours to avoid unnecessary adjournments, expense and waste of the Court's time; and
>
> (*c*) assist the Court in ensuring a speedy and efficient trial and in arriving at a just decision.

In pursuit of this object, counsel are "personally responsible" for the conduct of the case and "shall exercise personal judgment upon the substance and purpose of statements made and questions asked": r 60(*a*) of the PCR 2010. As Lord Denning MR remarked in *Rondel v Worsley* [1966] 3 WLR 950 at 962:

> It is a mistake to suppose that [the barrister] is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice.

82 Looking at the matter as a whole, there was no *prima facie* case of ethical breach or other misconduct by the six-member trial defence team that warranted formal investigation and consideration by a DT. To the contrary, both the prosecution and trial defence teams were praised for "their highly professional attitude and their full cooperation with the process of justice" by the trial judge: *Iskandar (HC)* at [102]. Such professionalism is indispensable to the sound administration of justice; without it, the legal profession will be unable to play its part in upholding the rule of law.

83 A last matter I should mention is that Mr Iskandar criticised the lack of contemporaneous attendance notes. As is clear from the analysis above, where comprehensive notes were taken or retained, they furnished a more robust defence to the allegations. In this case, much of the dispute turned on conversations between Mr Iskandar and various members of the trial defence

team which were either not recorded, or the records of which have been lost. While the absence of notes does not *ipso facto* deprive the respondent's testimony of all credibility, the courts may in appropriate cases draw an adverse inference against the respondent: see *Tan Phuay Khiang* ([29] *supra*) at [82]. In each case, the totality of the evidence should be considered in whether to accept the respondent's account, including the omissions in notetaking and their reasons: see *Lam Kwok Tai Leslie v Singapore Medical Council* [2017] 5 SLR 1168 at [34] in the context of medical misconduct. In the present case, in making its assessment, the IC had interviewed the trial defence team and Mr Iskandar, assessed written submissions from both sides and considered the entire circumstances. There was sufficient basis for preferring the trial defence team's account. Having reviewed the matter, I agreed with its conclusions.

84 As a general matter, nevertheless, the guidance of the Court of Three Judges in *Law Society of Singapore v Leong Pek Gan* [2016] 5 SLR 1091 at [48] is instructive:

> We find this particularly troubling in the light of repeated judicial pronouncements that an advocate and solicitor has a duty to keep contemporaneous notes and diligently document each stage of the transaction which he is handling, especially *any significant advice* rendered to the client. This would include taking attendance notes meticulously and faithfully throughout the course of his retainer (see *Lie Hendri Rusli* ([38] *supra*) at [63]). The importance of a solicitor keeping contemporaneous attendance notes as a record of the communications between him and his clients was more recently reiterated by the Singapore Court of Appeal in *Mahidon Nichiar bte Mohd Ali v Dawood Sultan Kamaldin* [2015] 5 SLR 62 (at [97], [105] and [155]). In the absence of credible contemporaneous records, the court may come to the view that an adverse inference should be drawn against the solicitor: see *Tan Phuay Khiang* at [82].
>
> [emphasis in original]

85 No doubt there are many practical constraints: matters turn up in the midst of trial, defence counsel often consult their clients while their clients sit

in the dock, and coordination between solicitors from different firms is crucial. Counsel should well note the guidance of VK Rajah JC (as he then was) in *Lie Hendri Rusli v Wong Tan & Molly Lim (a firm)* [2004] 4 SLR(R) 594 at [64] that there is no requirement to take verbatim notes; it is the substance of the client's instructions that is important for the record.

Law Society's application for a sealing order

86 I deal now with Summons No 4854 of 2019 ("SUM 4854/2019"). The Law Society sought an order that the record of OS 716/2019 be sealed to the extent of the IC's Report dated 7 February 2019, and that no inspection of or access to the said Report be permitted.

87 The Law Society's application for the court to exercise its inherent power to seal the Report was premised on *BBW v BBX* [2016] 5 SLR 755 ("*BBW*"), where a sealing order was given, and s 66 of the LPA. Section 66 of the LPA reads as follows:

> **Proceedings of Council, Review Committee and Inquiry Committee to be confidential**
>
> **66.**—(1) *Except insofar as may be necessary for the purpose of giving effect to any resolutions or decisions of the Council and any Review Committee or Inquiry Committee*, confidentiality shall be maintained in *all proceedings conducted by the Council, its staff and the Review Committee or Inquiry Committee*.
>
> (2) Notwithstanding subsection (1), the Chief Justice or the Attorney-General may require the Council to disclose to him any matter or information relating to any complaint of misconduct or disciplinary action against any advocate and solicitor.
>
> [emphasis added in italics]

88 The rationale of the section appears to be for the protection of lawyers against frivolous complaints: *Andrew Loh* at [162], citing the *Report of the*

Select Committee on the Legal Profession (Amendment) Bill (Parl 7 of 1986, 16 October 1986) at B209. From the words of s 66(1) of the LPA, its scope is expressly tied to the "proceedings conducted by the Council, its staff, and the Review Committee or Inquiry Committee". When an application under s 96 of the LPA is made, the ensuing proceedings are court proceedings. From a plain and ordinary reading of the section, it does not deal with the issue of such documents in the context of court proceedings. This is consistent with Woo J's observations in *Andrew Loh* at [162] that it was not clear whether the section shields the identities and voting records of the Council from disclosure in a context where an allegation of bias is laid against the Council before the court, although he did not have to and therefore did not decide the point. In any case, even if s 66 of the LPA applies to court proceedings, in the case of written IC reports that furnish reasons for the IC's decision (such as the Report in question), I read the section as envisaging the possibility that such reports could be made public where necessary. This is because the section opens with an exception for giving effect to the decisions of the IC: "[e]xcept insofar as may be necessary for the purpose of giving effect to any resolutions or decisions of the […] Inquiry Committee".

89 Coming to the issue of the inherent jurisdiction of the court to seal a document, here the court balances the interests sought to be protected with that of open justice: see, for example, *BBW* at [39]. As stated by Lee Seiu Kin J in *Tan Chi Min v The Royal Bank of Scotland plc* [2013] 4 SLR 529 at [14], the principle of open justice serves to promote public confidence in the administration of justice by requiring decisions of judges in court proceedings to be amenable to public scrutiny. Where, however, the interest in maintaining confidentiality outweighs the need to maintain open justice, the courts have been willing to grant sealing orders. *BBW* was such a case where the matter

concerned an indemnity agreement related to an arbitration. The public policy that arbitrations are to be kept confidential is reflected in ss 22 and 23 of the International Arbitration Act (Cap 143A, 2002 Rev Ed). While the indemnity agreement was not an arbitration agreement, there was substantial overlap such that the evidence in the case, in the absence of a sealing order, would compromise the confidentiality of the related arbitration. Balanced against this interest, *BBW* concerned a private contractual agreement and there was nothing to suggest that there was any countervailing and legitimate public interest weighing in favour of disclosure: *BBW* at [36]–[38].

90 In contrast, in the present case, there was a countervailing and legitimate public interest pertinent. The principle of open justice, relevant as a general matter, serves to promote public confidence in the administration of justice. This rationale applies with even greater force where the issue at hand is the judicial scrutiny of the discipline of lawyers. The bar plays a critical role in the community's access to justice. Matters pertaining to their conduct concern the day to day administration of justice as a practical matter. In the present case, Mr Iskandar faced trial on capital charges and was sentenced to death thereafter. He made allegations against his trial defence team, whose appointments were either from the publicly funded Legal Assistance Scheme for Capital Offences, or *pro bono*. Under the scheme of the LPA, such allegations are to be considered by a committee of their peers. Members of this trial defence team were thus dealt with by the IC, which gave its reasons in its Report. Mr Iskandar's application to a judge of the High Court under s 96 of the LPA necessarily concerns the Report. Sealing such reports may cause issues with the open reporting of cases and judgments in their usual manner. As with any other document filed in court, it should be subject to the usual court conventions relating to inspection.

91 Therefore, I dismissed the Law Society's application for a sealing order in SUM 4854/2019.

Conclusion

92 Accordingly, I dismissed both OS 716/2019 and SUM 4854/2019. I made no order on costs.

Valerie Thean
Judge

Applicant in person;
P Padman (KSCGP Juris LLP) for the respondent.