

BETWEEN

S ROZAIMARLENNY DSLJ ABD RAHMAN

Appellant

AND

LAW SOCIETY OF BRUNEI DARUSSALAM

Respondent

**(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 11 of 2024)**

Before: Steven Chong, C.J., Sir Nicholas Blake and Sir Peter Gross JJA

Date of Hearing: 15 June, 2026.

Date of Judgment: 10 September, 2026.

Headnote:

- *Application by way of Originating Summons for wide-ranging discovery in Law Society Disciplinary proceedings – application refused – appeal to Court of Appeal dismissed on grounds: (1) that a proper policy choice had been made against a general discovery obligation in such proceedings; and (2) that the High Court lacked jurisdiction to entertain the Originating Summons; alternatively, that the application was barred by Art. 84C of the Brunei Constitution (“Art 84C”) and/or s.6A of the Specific Relief Act (Cap. 109) as amended (“s.6A”).*
- *The Law Society’s approach to Rule 9 revisited by the Court; without in any way undermining Art. 84C and/or s.6A, or giving a declaration or other relief which the Court of Appeal is not entitled to do, the Court expressed real concern as to the Law Society’s interpretation of Rule 9 of the Legal Profession (Disciplinary Committee Proceedings) Rules (“Rule 9” and “the Rules”), namely, that it was not required to disclose (in addition to documents on which it intended to rely) documents in its possession, custody or control (if any) which might reasonably be considered capable of undermining its case or of assisting the case of the other party in those proceedings – the Court*

favoured the contrary view, to the effect that Rule 9 extended to and encompassed an obligation on the Law Society to disclose documents in its possession, custody or control which might reasonably be considered capable of undermining its case or of assisting the case of the practitioner in disciplinary proceedings – McCarthy v Visitors to the Inns of Court & Anor. [2013] EWHC 3253; [2015] EWCA Civ 12 furnished cogent persuasive authority supportive of the Court's view

- *Though the remedy of judicial review is barred, a party dissatisfied with disclosure by the Law Society in disciplinary proceedings is not without recourse to the Court by way of a variety of statutory routes, for instance, paragraphs 61 and 62 of the Legal Profession (Law Society of Brunei Darussalam) Order (S42/2003, as amended) ("the Order"), paragraph 55(2)(b) of the Order and (where applicable) paragraph 71 of the Order – these statutory routes envisage recourse to the Court without undermining the bar on judicial review - to the extent that it suggested otherwise, Lt. Col. (Rtd.) Hj. Harif Bin Hj. Ibrahim v The Council of the Law Society Brunei Darussalam (High Court of Brunei Darussalam) (Originating Summons No. 14 of 2023) disapproved; Ong Jin Huat v The Law Society of Brunei Darussalam (Court of Appeal of Brunei Darussalam) (Civil Appeal No. 8 of 2022) preferred.*
- *Furthermore Rule 12 (of the Rules) was not to be overlooked, providing for the Law Society Disciplinary Committee or its Chairman to give directions, inter alia, with regard to disclosure*
- *While the Court of Appeal (given the bar on judicial review) is not entitled to grant relief by way of a declaration or injunction, the Court was not powerless, in the short term, to craft a roadmap capable of adoption by the Appellant and the Law Society (if so minded) in their own best interests – the possibility discussed of the Appellant making a confined application for discovery (limited to documents in the Law Society's possession, custody or control which might reasonably be considered capable of undermining its case or of assisting the case of the Appellant) pursuant to Rule 12 and for the Disciplinary Committee or its Chairman to consider it – the Court was confident that the Law Society, when exercising its public function in disciplinary proceedings would wish to act with, at the least, elementary fairness – the Law Society would further have well in mind the roles of the Chief Justice and the Supreme Court and would be alert to the Court's reluctance to lend its support to any enforcement process in the event of doubts as to the fairness of the procedure*

- *For the long-term, the Court urged that action should be taken to remedy the unsatisfactory state of affairs concerning Rule 9 – such action could include guidance to be given by the Law Society as to the interpretation of Rule 9 in line with the Court’s view, alternatively consideration should be given to amending Rule 9 to give effect to and embed the Court’s view as to its true meaning and ambit.*

Appellant in person.

Mr. Eric Siow Kin Seong (Messrs J Cheok Eric) for Respondent.

Cases cited:

The Council of the Law Society of Brunei Darussalam v Sivabalan a/l Sankaran (Court of Appeal of Brunei Darussalam) Civil Appeal No. 1 of 20212); [2012] BLR 222

Azril Anwar Bin Hj. Ahmad v The Chief Registrar, Supreme Court (High Court of Brunei Darussalam) (Originating Summons No. 23 of 2017)

McCarthy v Visitors to the Inns of Court & Anor [2013] EWHC 3253 (Admin)

Ong Jin Huat v The Law Society of Brunei Darussalam (Court of Appeal of Brunei Darussalam) (Civil Appeal No. 8 of 2022)

Lt. Col. (Rtd.) Hj. Harif Bin Hj. Ibrahim v The Council of the Law Society of Brunei Darussalam (High Court of Brunei Darussalam) (Originating Summons No.14 of 2023)

J U D G M E N T

Sir Peter Gross, J.A.:

INTRODUCTION

1. This dispute concerns discovery in disciplinary proceedings brought by the Law Society of Brunei Darussalam (“the Law Society”), together with the possible recourse for a party to such proceedings dissatisfied with the discovery given by the Law Society.
2. The matter comes to this Court by way of an Appeal from the Judgment of Edward Timothy Starbuck Woolley, JC, dated 11 June 2024 (“the Judgment” and “the Judge” respectively), refusing the Plaintiff’s (“the Appellant’s”) application, made by Originating Summons dated 9 December 2023 (“the

Originating Summons”), for discovery of documents said to relate to ongoing disciplinary proceedings (“the Disciplinary Proceedings”) instituted by the Law Society, on a complaint made by a client of the Appellant’s firm in October 2022 (“the complainant”).

3. By way of background, the Appellant is a solicitor on the roll of qualified practitioners and a member of the Law Society. She had acted for the complainant in respect of a claim for damages arising out of a road traffic accident on 12th May 2018. The complainant complained to the Law Society about the conduct of the Appellant and others concerned with that litigation.
4. In, with respect, a characteristically succinct Judgment, the Judge summarised the underlying facts as follows:

*“1. ...The complaint was referred to a Committee of Inquiry which reported to the defendant, who determined that there should be a formal investigation by a Disciplinary Committee which was duly appointed by the Chief Justice.
2. The basis of the plaintiff’s application is that there are a number of documents which have not been disclosed by the defendant in the course of the disciplinary proceedings which may assist the plaintiff to understand the complaint made and to assist her defence to it. She also relies on the principle of fairness and says that there has been a lack of transparency in the proceedings.”*

5. The Law Society resisted the Appellant’s application on two principal grounds. First, that the application was in the nature of Judicial Review, a route barred by Art. 84C of the Brunei Constitution (“Art. 84C”). Secondly, that the Court had no jurisdiction because discovery in such proceedings is governed by statutory rules made under the Legal Profession Act (Cap 132) (“the LPA”), not by the general Rules of the Supreme Court (“RSC”).
6. The Judge upheld both grounds advanced by the Law Society. The essence of the Judge’s reasoning was set out at [3] – [7] in the Judgment:

“3. The defendant’s first objection to the application relies on section 84C of the Constitution of Brunei Darussalam which states that the remedy of

judicial review is not available in Brunei, and that the plaintiff's application is in the nature of a judicial review of a decision by the Law Society.

4. There have been a number of authorities in recent years which have found that decisions by the Law Society, when carrying out a public function, fall under this provision and are not subject to judicial review. They have also found that the conduct of disciplinary procedures falls within their public functions...

5. The plaintiff contends that the application is fundamentally procedural, aimed at ensuring a comprehensive and fair hearing, and goes on to say that discovery does not equate to judicial review but is a procedural right. This may well be the case in High Court proceedings to which the rules of court apply, but this application is not part of any High Court action but is in respect of Law Society disciplinary proceedings. It is therefore governed by the Legal Profession Act and rules, not the High Court rules and in particular not Order 24. Mr Siow for the defendant has pointed out that, in any event, the Court does not have jurisdiction to hear such an application, which is not related to any High Court proceedings, but is in isolation against the Law Society. ...

6. The rules as to discovery in disciplinary proceedings are set out in the rules under the Legal Profession Act, and in particular rule 9, where it is provided that each party to the proceedings shall furnish the secretary to the committee seven copies of the list of documents on which he intends to rely on every other party one copy. There is also provision for inspection and copies to be supplied. There is no rule providing for an application for further discovery or, it appears, a requirement for discovery of any document upon which a party does not intend to rely but which may aid the other party. This is the entirety of the procedural rules as to discovery in such proceedings...

7. While I have some sympathy for those who feel that they have identified procedural lapses in such matters taken up by the Law Society, the law is now clear on this, that any attempt to question decisions made in the disciplinary procedures before the Court must be rejected under section 84C, and for this reason alone this application must be dismissed. In addition, I agree with the submission of the defendant that the Court has no jurisdiction to make an order in matters not part of the High Court proceedings, particularly where the subject, in this case discovery of documents, is already governed by other statutory rules."

7. The Judge went on (at [8]) to dismiss the Appellant's application with costs.

8. We were grateful to the Appellant, who represented herself on the Appeal, and to Mr Siow, who represented the Law Society, for their submissions, written and oral.
9. At the time of the Appeal Hearing the next stage of the Disciplinary Proceedings was due to take place between 6-9 July, 2026. At the conclusion of the Appeal Hearing we gave a Direction to the effect that the Disciplinary Proceedings should not proceed pending the Judgment on this Appeal. Very properly, Mr Siow made it plain that regardless of the Law Society's case on the Court's jurisdiction, that Direction would be respected and followed.

THE LEGISLATIVE FRAMEWORK

10. The relevant governing provisions are contained in the Legal Profession (Law Society of Brunei Darussalam) Order (S42/2003, as amended by S56/2003 and S20/2006, "the Order") made pursuant to the LPA. The Order is augmented by the Legal Profession (Disciplinary Committee Proceedings) Rules, S92/2010 ("the Rules"). We start with the provisions of the Order.

THE ORDER

11. As there stated, the Law Society was established by paragraph 3.
12. Paragraph 4 sets out the purpose and powers of the Law Society. Insofar as here relevant, paragraph 4(1)(a) provides as follows:

"(1) The purposes of the Society shall be –

(a) to maintain and improve the standards of conduct and learning of the legal profession in Brunei Darussalam;"

13. The regime for disciplinary proceedings, *inter alia* against solicitors, is contained in Part 3 of the Order, paragraphs 45-71. It is instructive to set out these provisions at a little length.

14. As to the initial stages:

- (1) Paragraph 45 of the Order provides that the Supreme Court has jurisdiction over advocates, solicitors and legal officers.
- (2) Paragraph 46 empowers the Chief Justice to authorise referral to a disciplinary committee on due cause being established on application to the Court (paragraphs 46 (3) through to 46 (6)).
- (3) Paragraph 47 applies to practising advocates and solicitors who shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll, suspended from practice for any period not exceeding 5 years or censured.
- (4) The paragraph goes on to describe various ways in which due cause can be shown including paragraph 47(2)(h) where such person has been guilty in Brunei Darussalam or elsewhere of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession.
- (5) To initiate disciplinary proceedings, the Chief Justice may appoint a chair and members of the Inquiry Committee (paragraph 48), which operates under time limits before reporting the outcome to the (Law Society) Council: paragraph 50; see too, *The Council of the Law Society of Brunei Darussalam v Sivabalan a/l Sankaran (Court of Appeal of Brunei Darussalam) Civil Appeal No. 1 of 20212*; [2012] BLR 222 (“Sivabalan”), an authority to which we later return.
- (6) A complaint about the conduct of a solicitor made to the Council of the Law Society shall be referred to the Inquiry Committee (paragraph 49(1)).
- (7) Where an Inquiry Committee is of the opinion that an advocate and solicitor should be called upon to answer any allegation made against him, the Inquiry Committee shall give the party concerned due notice and a reasonable opportunity to be heard if so desired. Furthermore, the Inquiry Committee is dutybound to give due consideration to any explanation given by the advocate and solicitor (paragraph 50(6)). The focus of the Order on procedural due process is at once apparent.

- (8) The report of the Inquiry Committee shall, among other things, deal with the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee and, if in the view of the Inquiry Committee no formal investigation by a Disciplinary Committee is required, the Inquiry Committee shall recommend to the Council —
 - (a) a penalty sufficient and appropriate to the misconduct committed; or
 - (b) that the complaint be dismissed (paragraph 50(7)).
- (9) The Inquiry Committee may investigate misconduct that is revealed by its investigation whether or not it is the subject of a complaint or the complaint has been withdrawn: paragraphs 50 (8) to (10).
- (10) On receipt of the Report from the Inquiry Committee the Council may decide that the complaint should be dismissed; that there is no conduct serious enough to merit formal proceedings, or that formal proceedings are needed and the matter be referred to the Disciplinary Committee: paragraph 51(1).
- (11) If the Inquiry Panel concluded that no formal proceedings were needed but the Council disagrees it may apply to the Chief Justice for permission to refer the matter to a Disciplinary Committee: paragraph 51 (2).

15. Where the Council decides that there should be a formal investigation:

- (1) It must apply to the Chief Justice to refer the matter to the Disciplinary Committee: paragraph 53.
- (2) The Chief Justice appoints the members and chair of the Disciplinary Committee: paragraph 54.
- (3) The Rules to be applied by the Disciplinary Committee are made by the Council: paragraph 55.
- (4) For the purpose of any complaint or matter heard and investigated by a Disciplinary Committee under this Order, paragraph 55(2) provides —

- (a) the Disciplinary Committee may administer oaths; and
- (b) the Society or the person making the complaint and the advocate and solicitor to whom the complaint relates and (if so instructed by the Disciplinary Committee) the secretary of the Disciplinary Committee may issue writs of subpoena ad testificandum and of duces tecum (paragraph 55(2)(b)).
- (c) No person shall be compelled under any such writ to produce any document which he could not be compelled to produce at the trial of an action.
- (d) The writs referred to in sub-paragraph (2)(b) shall be served and may be enforced as if they were writs issued in connection with a civil action in the High Court.
- (e) Any person giving evidence before a Disciplinary Committee shall be legally bound to tell the truth.

Pausing there, paragraph 55(2)(b), providing for the issuing of subpoenas is itself instructive and we return to it, below.

- (5) The Disciplinary Committee must issue a report within a time frame set by the Rules and must decide amongst other things whether a cause of sufficient gravity for disciplinary action exists: paragraph 57 (c).
- (6) If the Disciplinary Committee delays in issuing its report the Law Society may apply to the Chief Justice for directions: paragraph 57 (3).
- (7) The Chief Justice amongst others must be supplied with a copy of the Report: paragraph 57 (4).
- (8) Where a case of sufficient gravity is found the Law Society may apply to a Judge for an order that there is sufficient cause for the solicitor concerned to be struck off: paragraphs 58(1) and 63.
- (9) A complainant who made a complaint to the Law Society and is aggrieved by the decision of the Council that there is no need for a formal investigation or no finding that there has been misconduct of sufficient gravity to merit more than a financial penalty may apply to a Judge by

originating summons for an order that the Chief Justice give directions to the Society: paragraph 61.

(10) Where the Disciplinary Committee has found that no conduct of sufficient gravity exists for a sanction other than a financial one, the complainant, the advocate or solicitor concerned may apply to a Judge by originating summons: paragraph 62.

(11) Paragraph 63 applies to an order absolute that an advocate or solicitor be struck off the roll and shall be heard by a panel of three judges of the Supreme Court from whose decision there shall be no appeal

(12) Paragraph 70(1) is perhaps of interest as to the origins of this scheme; it is in the following terms:

“In any proceedings under this Part, any publication purporting to be printed under the authority of the General Council of the Bar in England or the Law Society in England setting out any rules or decisions made under the respective authority of those bodies relevant to the subject matter of the proceedings shall, until the contrary is proved, be the evidence thereof.”

16. Section 71 is of separate interest and is headed *“No action in absence of bad faith”*. It is in these terms:

“No action or proceeding shall lie against the Attorney General, the Society, the Council, a Disciplinary Committee or an Inquiry Committee or any member therefore for any act or thing done under this Order unless it is proved to the Court that the act or thing was done in bad faith or with malice.”

17. From this review the following may be noted at this stage:

(1) The role of the Chief Justice and Supreme Court in both appointing key personnel and reviewing the adequacy of their decision making is apparent.

(2) No sanction of striking off for serious misconduct can be enforced unless and until the Supreme Court is satisfied that sufficient cause is shown.

- (3) In a case of potential serious misconduct, the solicitor concerned has an opportunity to know the case against them, make submissions and challenge the evidence before the Inquiry or Disciplinary Committee as appropriate.

THE RULES

18. For present purposes, Rule 9 is central and provides as follows:

“(1) Each party shall, within 14 days after the defence has been furnished to the secretary pursuant to rule 8, furnish –

- (a) the secretary with seven copies of the list of the documents on which he intends to reply; and*
- (b) every other party with one copy of the list of the documents on which he intends to rely.*

(2) Any party may inspect the documents included in the list furnished by any other party within 14 days after the date the list is furnished.

(3) A copy of any document mentioned in the list furnished by any party shall, on application by the party requiring it be furnished to that party by the other within 3 working days after receipt of such application.”

19. Provision is made (by Rule 12) for the Disciplinary Committee or the chairman to give the parties directions for the conduct of the matter and (by Rule 13) for pre-hearing conferences.

20. Rule 23(1) provides that *The Evidence Act (Cap. 108)* (“the Evidence Act”) applies to proceedings before the Disciplinary Committee in the same manner as it applies to civil and criminal proceedings.

21. Importantly, in our judgment, Rule 25 provides as follows:

“Subject to these Rules, the Disciplinary Committee shall have power to regulate its own proceedings and, in doing so, the Disciplinary Committee shall have regard to the practice and procedure of the courts.”

Art.84C

22. In *Azril Anwar Bin Hj. Ahmad v The Chief Registrar, Supreme Court* (High Court of Brunei Darussalam) (Originating Summons No. 23 of 2017), a case involving a challenge to a decision to refuse an advocate and solicitor a practicing certificate, the Hon. Gareth John Lugar-Mawson, JC colourfully described Art. 84C as follows (at [30]):

“To be brutally frank, in bringing this application the Applicant has run slap-bang into the solid brick wall that Article 84C is. It is a brick wall of infinite height and width, it has foundations of infinite depth, there is no way over it, there is no way round it, and there is no way under it.”

23. Art 84C is headed “*No judicial review*” and provides as follows:

“(1) The remedy of judicial review is and shall not be available in Brunei Darussalam.

(2) For the avoidance of doubt, there is and shall be no judicial review in any court of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion by His Majesty the Sultan and Yang Di-Pertuan, or any party acting on his behalf or under his authority or in the performance of any public function, under the provisions of this Constitution or any written law or otherwise, including any question relating to compliance with any procedural requirement governing such act or decision.

(3) In this Article, ‘judicial review’ means proceedings instituted by any manner whatsoever including, but not limited to, proceedings by way of –

(a) an application for any of the prerogative orders of mandamus, prohibition and certiorari;

(b) an application for a declaration or an injunction;

...

(d) any other suit or action relating to or arising out of any act, decision,...or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion conferred on ...any party acting...in the

performance of any public function, under the provisions of...any written law”

THE SPECIFIC RELIEF ACT

24. By an Order made by His Majesty the Sultan and Yang Di-Pertuan under s.83(3) of the Constitution of Brunei Darussalam, the *Specific Relief Act (Amendment) Order, 2004*, the *Specific Relief Act (Cap. 109)* was amended as follows (“s.6A”):

“Insertion of new section 6A into Chapter 109.

2. The Specific Relief Act is amended by inserting the following new section immediately after section 6 –

‘Judicial review.

6A. [1] It is hereby declared that, for the avoidance of doubt and without prejudice to any other provision of this Act, the remedy of judicial review is and shall not be available in any court in respect of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise an power, authority or discretion by His Majesty the Sultan and Yang Di-Pertuan, or any party acting on his behalf or under his authority or in the performance of any public function, including any question relating to compliance with any procedural requirement governing such act or decision.

[2] In this section, ‘judicial review’ means proceedings instituted by any manner whatsoever including, but not limited to, proceedings by way of –

...

(b) an application for a declaration or an injunction;

...

(d) any other suit or action relating to or arising out of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion conferred on His Majesty the Sultan and Yang Di-Pertuan, or any party acting on his behalf or under his authority or in the performance of any public function.”

THE UNDERLYING FACTS

25. Some elaboration on the underlying facts is unavoidable. We begin with the terms of the Originating Summons. In a wide-ranging application, the Appellant sought discovery of the following documents:

“a) All written correspondence and communication, including emails and text messages exchanged between the Defendant, the Inquiry Panel and Inquiry Committee appointed by the Defendant, with Md Azad Hossein, referred to in the Affidavit in Chief of Md Azad Hossain;

b) All written correspondence and communication, including emails and text messages exchanged between the Defendant, the Inquiry Panel and Inquiry Committee appointed by the Defendant, with SM Abdullah, referred to in the Affidavit in Chief of SM Abdullah;

c) All written correspondence and communication, including emails and text messages exchanged between the Defendant, the Inquiry Panel and Inquiry Committee appointed by the Defendant, with Jamil Bin Shahbudin;

d) The original copy of the Statutory Declaration dated 25th February 2023 executed by Md Azad Hossain and the original copy of the payment receipt; and,

e) A copy of Md Azad Hossain’s passport exit stamp departing Dhaka, Bangladesh, and the corresponding entry stamp upon arrival in Brunei Darussalam, covering the period from 2020 to 2023.”

26. In essence, the Appellant suggested a somewhat tangled background to the complaint, involving the complainant making a number of statements (not all of which might have been to the same effect). She went so far as to cast doubt on the authenticity of the complainant’s signatures on certain of the documents. According to the Appellant, she learnt during a discussion with a Bangladeshi translator that *“...there had been significant misunderstandings and miscommunications that contributed to the initiation of the dispute.”* In what the Appellant termed *“a genuine effort to resolve the misunderstandings amicably”*, she said that she and the complainant entered

into (what she termed) “a Settlement Agreement on 20th December 2023” – though no such agreement has been produced for the Court’s consideration. That said, the Appellant has produced an “Affidavit of Retraction” from the complainant, dated 4 May 2024 (“the retraction statement”) apparently withdrawing his complaint and averring that he had willingly entered into the Settlement Agreement. The Law Society’s disclosure, the Appellant alleged, did not include all the documents which are or were in the Law Society’s possession, custody or control. Her requests to the Law Society for further disclosure had been refused or not acted upon.

27. The Law Society’s position throughout has been that it complied with its obligations as to discovery under Rule 9 of the Rules.

28. It is convenient to note here that, on 21 September 2023, the Secretary of the Disciplinary Committee, responding to the Appellant, after asserting that the Disciplinary Committee acted independently from the Law Society and the Inquiry Panel, suggested that:

“Moving forward, please direct your request for documents to Messrs J Cheok Eric [the Law Society’s appointed solicitors] and/or you may wish to make a formal application for directions or orders to be made in this respect”.

It appears that no application was made by the Appellant for directions for specific disclosure of documents to the Chairman of the Disciplinary Committee. Instead, the Appellant launched this application to the Court for general disclosure.

THE RIVAL CASES ON THE APPEAL

29. (A) The case for the Appellant: Turning to a brief outline of the rival cases on the Appeal, the Appellant submitted that:

(1) Her application was a procedural request for disclosure, not a judicial review, and was therefore not barred by Art. 84C or s.6A;

(2) The statutory structure and functions of the Law Society placed it outside of the scope of Art. 84C and s.6A;

(3) The Court had a “*residual jurisdiction*” to order disclosure to ensure procedural fairness where statutory rules were silent or inadequate.

30. The documents of which discovery was sought by way of the Originating Summons were admittedly within the possession of the Law Society; they were crucial to her appeal in the light of the history of the complaint, including the complainant’s retraction of it. The complainant had left Brunei and would not be attending the disciplinary proceedings, yet the Law Society was proposing to rely on the truthfulness of the account they had disclosed. The complainant could not be cross-examined. It was thus all the more important that the Law Society disclosed other relevant statements, so that the Appellant was shown the full picture. She intended to test the differing versions.
31. The Law Society had simply refused to disclose the material but had not identified the refusal decision nor any details relating thereto. The safeguards in the (delegated) legislation were ineffective without judicial means to ensure compliance; therefore, Court intervention, provided by statute, must survive. Where the Law Society acted under statute and the statute provided a route for Court intervention, the Court might exercise jurisdiction accordingly.
32. The Judge had erred; the Appeal should be allowed and the Judgment overturned.
33. (B) *The case for the Law Society*: Mr Siow submitted that the Judgment should be upheld and the Appeal dismissed. Mr Siow’s over-arching submission was this: (i) at the time of the issue of the Originating Summons, there was no cause or matter before the High Court between the Appellant and the Law Society; (ii) in such circumstances, the High Court lacked jurisdiction to hear an application for discovery against the Law Society; (iii) the only way, therefore, that the Appellant could advance her application was by way of (disguised) judicial review; but (iv) that route was barred by Art. 84C and s.6A.

34. Properly analysed, the Appellant's complaint that the Law Society had refused her request for discovery of the documents or had failed to make a decision regarding that request, involved her seeking (in the case of the former) an order for certiorari, alternatively (in the case of the latter) an order for mandamus. As the Law Society was carrying out a public function, neither remedy was sustainable; thus, the Originating Summons was frivolous and vexatious, and an abuse of process. Moreover, as the High Court lacked jurisdiction in the first place, there was no room for any residual jurisdiction.
35. Further and in any event, the Law Society maintained (in its Affidavit in Opposition dated 23 May 2024, at para. 6.7) that the documents sought by the Appellant were irrelevant as they only came into existence subsequent to the facts and matters giving rise to the complaint.
36. The Law Society had complied with its duty of discovery *under the Rules* by serving the Appellant with its List of Documents, its Further List of Documents and its Bundle of Documents. Any document which it had not disclosed would not be part of the evidence adduced to the Disciplinary Committee.
37. While maintaining the distinction between the law as it was and the law as some might say it ought to be, Mr Siow (rightly and realistically) accepted that prosecuting counsel in Disciplinary Proceedings was under a duty to be fair; furthermore, he accepted or averred that it was or had been open to the Appellant to apply to the Disciplinary Committee for discovery, even though there was no express provision to that effect.

DISCUSSION AND CONCLUSIONS

38. It is convenient to proceed under the following broad headings:
- (A) Art 84C and s.6A;
 - (B) The immediate outcome of the Appeal;
 - (C) Rule 9 revisited;
 - (D) The way ahead – short-term;
 - (E) The way ahead - long-term.

39. (A) *Art. 84C and s.6A*: Nothing in this Judgment is intended to cast doubt upon the “brick wall” (Azril Anwar, *supra*, at [30]) constituted by Art. 84C and s. 6A, barring judicial review in the cases to which they apply in Brunei Darussalam, or should be read as so doing. The bar (whether by way of Art. 84C, s.6A, or both, it matters not) applies widely, *inter alia*, to claims for declarations, injunctions, *certiorari* and *mandamus*. The public policy is clear. That the bar applies to the Law Society in the exercise of its public functions is indisputable and settled by authority; it is likewise clear that those public functions include disciplinary proceedings. It is unnecessary to go beyond *Sivabalan (supra)*, at p.13, where Mortimer P, giving the Judgment of this Court said:

“There is no doubt, therefore, that the Law Society and its delegate, in pursuing the proceeding which we have outlined [i.e., disciplinary proceedings], were acting in the performance of a public function under the provisions of a written law. Moreover, the declarations and the injunction were sought and granted to judicially review those proceedings. Such review was prohibited by ...[Art.]...84C and should not, therefore, have been granted.”

40.(B) *The immediate outcome of the Appeal*: We have no doubt that the Judge was right to dismiss the Appellant’s application and that the Appeal (as such) must be dismissed.

41.First, the terms of the application contained in the Originating Summons (set out above) entail a full-blown application for discovery. However, the Order and the Rules governing the procedure for disciplinary proceedings plainly make no provision for a discovery application of this nature. In our view this was a deliberate policy choice; our duty is to give effect to that choice. There are good reasons for it, essentially to avoid disciplinary proceedings becoming bogged down in discovery skirmishing. It is likewise a perfectly proper policy choice. Natural justice and procedural fairness do not require a general discovery obligation.

42.Secondly, we agree with and accept Mr Siow’s over-arching submission. Either the Court lacked jurisdiction to entertain the Originating Summons; alternatively, the necessary approach to overcome that obstacle inevitably

resulted in the barring of the application by Art. 84C and/or s.6A. In short, the route followed by the Appellant was a procedural dead-end.

43. As (C)Rule 9 revisited: The decision to dismiss the Appeal is not, however, the end of the matter in the particular circumstances of this case. Without in any way undermining the application of Art. 84C and/or s.6A, the approach to Rule 9 adopted by the Law Society gives rise, with respect, to real concern (as the Judge himself noted). We are satisfied, merely from the fact of the Appeal being before us, that we have jurisdiction to give expression to our own views as to the true construction of Rule 9, albeit stopping short of giving a declaration or other relief which we are not entitled to do. Equally, we are satisfied as a matter of policy concerning public confidence in the Law Society's regulatory functions that we should exercise that jurisdiction to express the views which follow.

44.*First*, the Order and the Rules comprise a statutory scheme which, amongst its other attributes, is designed to ensure the fair conduct of hearings in disciplinary proceedings. It would be surprising were it otherwise and, realistically construed, the scheme leaves no real doubt in this regard, a point exemplified by Mr Siow's proper acceptance of the duty of fairness resting on prosecuting counsel in such disciplinary proceedings. To begin with, the involvement of the Chief Justice and the Supreme Court in the scheme, as already highlighted, is a powerful pointer towards the importance of fairness; neither the Chief Justice nor the Court could endorse an unfair scheme: see, paragraphs 45 - 48, 53, 54, 57, 58, 61 and 63 of the Order, all referred to above. Next, paragraph 50 of the Order (see above) deals explicitly with various aspects of procedural fairness. Further, and so far as they expressly go, the provisions of Rule 9 ensure that a party is entitled to inspect and take copies of documents upon which another party intends to rely; thus, by way of illustration, if the Law Society relies on the evidence of a complainant to prove misconduct, it must provide the statement of the complainant on which it relies.

45.*Secondly*, the vice or difficulty affecting the Law Society's construction of Rule 9 is that the Law Society denies any obligation to disclose documents it has which might reasonably be considered capable of undermining its case or of assisting that of the practitioner in disciplinary proceedings. Suppose then

that the complainant has made more than one statement to the various bodies investigating and determining a complaint and suppose further that there were material differences and inconsistencies between such statements. On the Law Society's case it appears that it can pick and choose which statement/s it relies on and suppress material that might be relied upon to challenge it. As it seems to us, even without the benefit of authority, this is flatly contrary to any principle of fairness in either criminal or disciplinary proceedings.

46. As it happens, guidance, very much in point, is available from English authority. We observe at once that, over and above the justification for seeking guidance from other common law sources, we are fortified here in doing so by the cross-reference to English professional bodies contained in paragraph 70 of the Order (set out above).

47. In *McCarthy v Visitors to the Inns of Court & Anor* [2013] EWHC 3253 (Admin), the Administrative Court was faced with a similar rule contained in the England and Wales disciplinary rules for the Bar. The Bar Standards Board ("the BSB" a regulatory body which prosecutes disciplinary cases against barristers) took the view that its disclosure obligation under the applicable rule (rule 7(1)(a)) was satisfied by disclosure of the statement on which it relied but did not extend to a prior draft of that statement which was or may have been capable (on the facts) of discrediting the witness in question. The conclusions of Moses LJ were trenchantly expressed (at [22]); the failure of the BSB to disclose the draft statement had been a breach of rule 7; moreover, it was unfair. Earlier, Moses LJ had said this:

"17. ...it seems to me beyond question that in disciplinary proceedings with the potential for such grave consequences, draft statements capable of being used to discredit a witness should be disclosed. After all, the Visitors themselves had recognised that Rule 7(1)(a) is 'consistent with the criminal process'...The criminal process ...had for nearly 80 years recognised the obligation to disclose statements which were potentially of use for the purposes of cross-examining witnesses..."

18. The prosecution in criminal cases acknowledges that it is difficult for them to judge the extent to which any inconsistency might be deployed by the

defence. No one responsible for the prosecution would hesitate in disclosing a previous draft of statement such as that which was finally signed and served...After all, if there is no inconsistency, the prosecution has nothing to lose and if there is, there is no warrant for concealing it. I can see no basis why the position should be any different in relation to disciplinary proceedings brought on behalf of the Bar Standards Board and I find it hard to understand why there was any difficulty in recognising this obligation in March 2011 or why it took over a year to publish a policy which did acknowledge that duty. The demands of elementary fairness impose such an obligation.”

For other reasons, despite these criticisms, Moses LJ declined to quash the decision of the Visitors to the Inns of Court dismissing Mr McCarthy’s appeal from the Bar Disciplinary Tribunal (“the Tribunal”) seeking remission of the underlying matter to the Tribunal.

48. Mr McCarthy appealed to the Court of Appeal [2015] EWCA Civ 12, where a constitution presided over by Burnett LJ (as he then was) allowed his appeal on the basis of the unfairness of the process occasioned by the disclosure failure. As Burnett LJ expressed it (at [2]), the unfairness of the BSB lay in failing to disclose a statement of the principal witness against the barrister; the witness had provided two statements but only the second had been disclosed. If anything, the tenor of Burnett LJ’s judgment was even more scathing; he said this (at [17]):

“What happened was extraordinary. A conscious decision was taken by an official at the BSB which had the effect of subverting the rules which provide for disclosure and furthermore suggested that he was blind to any sense of fairness in the conduct of a disciplinary prosecution...The Tribunal was concerned with very serious allegations which had the potential to destroy a professional reputation and bring to an end a professional career...”

49. The decision in *McCarthy* is of course not binding on us, but it stands as cogently persuasive authority. Insofar as it is open to us to do so, we read Rule 9 as meaning that the Law Society’s obligation to disclose the documents on which it intends to rely extends to and encompasses an obligation to disclose documents in its possession, custody or control which might reasonably be considered capable of undermining its case or of

assisting the case of the practitioner in disciplinary proceedings. Elementary fairness demands no less.

50. *Thirdly* (and briefly), we reject Mr Siow's submission that as the documents in question sought by the Appellant postdate the disputed events, they are therefore irrelevant. That submission is not, or not necessarily, correct. Should the Law Society be in possession (etc.) of statements from the complainant or others which might reasonably be considered capable of undermining its case or of assisting the case of the Appellant, such documents might well be of relevance.

51. *Fourthly*, though the remedy of judicial review is plainly barred, it does not follow that a party dissatisfied with disclosure by the Law Society is without recourse to the Court. A variety of statutory routes suggest themselves. By way of examples:

(1) Paragraphs 61 and 62 of the Order (and see further below) expressly provide for recourse to the Court.

(2) Paragraph 55(2)(b) of the Order, together with Rule 11, permit the issuing of writs of subpoena *ad testificandum* and *duces tecum*. These provisions are instructive. It follows that if a party to disciplinary proceedings is otherwise capable of satisfying the strict documentary identification requirements attaching to subpoenas, that party could issue a *subpoena duces tecum* against the Law Society to produce the document/s in question. The fairness of disciplinary proceedings ought not to hinge on the happenstance of documentary identification; if a subpoena is capable of being obtained, extending beyond the documents intended to be relied upon by the Law Society, so too the route of discovery (limited to documents essential to achieve elementary fairness) ought likewise to be open.

(3) Paragraph 71 permits private law claims for damages in negligence or breach of statutory duty to proceed, if (but of course only if) bad faith or malice can be proved: see, *Sivabalan*, at pp. 13-14; *Ong Jin Huat v The Law Society of Brunei Darussalam* (Court of Appeal of Brunei Darussalam) (Civil Appeal No. 8 of 2022), at [41]. We hasten to add that there is no suggestion of bad faith or malice in the present case.

(4) The importance of these examples from the statutory scheme itself is that they envisage the possibility of recourse to the Court without in any way undermining the bar on judicial review provided by Art 84C and/or s.6A.

52. Fifthly, for completeness, we take the opportunity to add the following.

(1) Section 63 of the LPA provides as follows:

“The Law Society of Brunei Darussalam shall be a body corporate...with power...to sue and be sued in its corporate name and to acquire and dispose of property, both movable and immovable and to do and to perform such other acts as bodies corporate may be law perform.”

No argument was advanced before us, rightly in our view, that section 63 impacted on the bar on judicial review contained in Art. 84C and/or s.6A in connection with the Law Society’s performance of its public functions. We think that section 63 is a necessary provision enabling the Law Society to conduct its everyday activities, such as property transactions and entering into contracts. It is also a reminder that outside the proper sphere of Art. 84C and/or s.6A, the Law Society does not enjoy any special immunity in Brunei Law. Accordingly, section 63 of the LPA does not advance the argument before us, and we say no more of it. Statutory remedies, to which we return next, are a different matter.

(2) In *Lt. Col. (Rtd.) Hj. Harif Bin Hj. Ibrahim v The Council of the Law Society of Brunei Darussalam* (High Court of Brunei Darussalam) (Originating Summons No.14 of 2023), the Applicant in those proceedings applied by originating summons for an order to review and/or set aside the decision of the Disciplinary Committee of the Law Society. The Law Society’s response was that any application to review the proceedings of the Disciplinary Committee was prohibited under Art. 84C. At p.3, Woolley JC, after referring to *Sivabalan (supra)*, said this:

“The applicant here submits that he makes this application under paragraph 62(1)(b) of the Legal Profession Order...which allows him to apply to a judge if he is dissatisfied with the determination of the Disciplinary Committee.

However, there is no denying the fact that, under whatever provision such an application is made, it remains a challenge to the findings of the Disciplinary Committee and is asking the Court to review them. This is precisely what the case quoted above [i.e., Sivabalan] was dealing with and the applicant is unable to distinguish the situation here.

I am bound by that decision and find that the Law Society is correct in their submission that the decisions of the Disciplinary Committee are immune from judicial review and this application must accordingly be dismissed.”

53. We do not comment on the correctness of the decision in *Ibrahim* or the true ambit of the application there pursued by the Applicant. Respectfully, however, we part company with Woolley JC on the general proposition that an application under paragraph 62 (or paragraph 61) of the Order generally falls within the bar provided by Art 84C (or s.6A), or that *Sivabalan* so holds. First, and to the contrary, *Sivabalan* suggests that a statutory remedy under paragraph 71 of the Order was not precluded by the bar on judicial review. Secondly, any proposition such as that apparently advanced by Woolley JC is in conflict with the (admittedly *obiter*) *dicta* in *Ong (supra)*, at [42]. Thirdly, significantly and more generally, it is necessary to distinguish statutory appeals or remedies from judicial review. In Brunei Darussalam, the discretionary common law remedy of judicial review has been excluded by the Constitution, but statutory remedies have not been. It would be a far-reaching conclusion and a source of great uncertainty and potential injustice to construe the Constitution as impliedly repealing any express statutory remedy apparently available to parties to legal proceedings. We, therefore, with respect, disagree with the observations of Woolley JC in *Ibrahim* which we have highlighted and take the view that they should not be followed; instead, in our view, the observations in *Ong* (at [42]) are correct.

54. *Sixthly*, it should not be overlooked that the statutory scheme provides its own internal route for ventilating concerns (*inter alia*) as to discovery. Thus, which may be of particular significance here (see the discussion immediately following), Rule 12 provides for the Disciplinary Committee or its Chairman to give directions for the conduct of the matter. As it seems to us, a party to disciplinary proceedings dissatisfied with the disclosure given by the Law Society would be entitled to apply to the Disciplinary Committee or its Chairman for directions in this regard.

55.(D) *The way ahead – short-term*: Having regard both to our concerns about the Law Society’s construction hitherto of Rule 9 and to the constraints flowing from the policy-based bar to judicial review, we turn our attention to the way ahead – looking, first, at the short-term. We accept that we are not entitled to grant relief by way of a declaration or injunction. We do *not* accept that we are powerless to craft a roadmap capable of adoption by the Appellant and the Law Society (if so minded) in their own best interests.

56. We take as our starting point the suggestion dated 21 September 2023 from the Secretary of the Disciplinary Committee (set out above) that the Appellant make a formal application for directions or orders. As we construe it, such an application would be made to the Disciplinary Committee or its Chairman for directions under Rule 12 (referred to above). While on the view we take of the matter, the Appellant would not be entitled to make a wide-ranging application for discovery in the manner set out in the Originating Summons, the Appellant would be well advised to consider making an application for discovery confined to documents in the Law Society’s possession, custody or control which might reasonably be considered capable of undermining its case or of assisting the case of the Appellant in the Disciplinary Proceedings. Obvious examples would be inconsistent statements (if such there be) from the complainant.

57. So far as concerns the position of the Law Society and the Disciplinary Committee:

(1) Although permitting such an application to proceed would give rise to some delay, given the extent of delay to date and the concerns relating to this issue, the Disciplinary Committee could, as it seems to us, properly agree to entertain such an application.

(2) If the Disciplinary Committee did entertain a confined discovery application (a matter for that Committee to decide), it would be entitled to have regard to the practice and procedure of the courts when adjudicating upon the application (Rule 25, set out above).

(3) We are confident that the Chairman of the Disciplinary Committee and all concerned at the Law Society, when exercising this public function, will wish to act with, at the least, elementary fairness complying with the basic tenets of natural justice.

(4) The Disciplinary Committee and the Law Society will furthermore have well in mind the roles of the Chief Justice and the Supreme Court (see paragraphs 58 and 63 of the Order, above) and will be alert to the Court's obvious reluctance to lend its support to any enforcement process in the event of doubts as to the fairness of the procedure.

58. While, to reiterate, this Court is not entitled to give declaratory relief or to grant an injunction, the above steps, if taken by both the Appellant and the Law Society would create the conditions capable of facilitating a short-term solution to the immediate problem. We do not of course pre-judge the outcome of any such confined disclosure application, fairly considered. That is a matter for the Disciplinary Committee or its Chairman, not for us.

59. (E) *The way ahead - long-term*: Regardless of a short-term solution to the present case, we would respectfully but strongly urge that action is needed to remedy, for the long-term, the unsatisfactory state of affairs concerning Rule 9.

60. For reasons already noted, we do not advocate importing some general duty of disclosure. Two possibilities present themselves. First, if the Law Society accept that Rule 9 is to be interpreted in accordance with the (English) decision in *McCarthy (supra)*, then guidance to that effect should be issued by the Law Society as to the true ambit of the Rule and how it will discharge its duties where it is in possession (etc.) of material that might reasonably be capable of undermining its own case or of assisting the case of the other party to disciplinary proceedings. That is the simplest solution.

61. Secondly, if, however, there is concern that such a solution provides an insufficiently secure or lasting foundation for the future, we invite consideration to be given to amending Rule 9, to give effect to and embed the view we have expressed as to its true meaning and ambit:

(1) First, to make it plain that, in disciplinary proceedings, the Law Society, in addition to disclosing the documents on which it intends to rely, must disclose documents in its possession, custody or control which might reasonably be considered capable of undermining its case or of assisting the case of the other party in those proceedings;

(2) Secondly, to provide a mechanism, analogous to that currently contained in Rule 11 for subpoenas, for a dissatisfied party to apply to Court for such particular disclosure, where an application to the Disciplinary Committee under Rule 12 has not resolved the matter.

The precise drafting of such an amendment is for others; our concern is to state the principle involved. A solution of this nature would obviate (or at least reduce) the risk of the Court refusing a potentially meritorious application to strike off an advocate or solicitor for potential misconduct because there had been an egregious disclosure failure resulting in unfairness in the disciplinary process.

OVERALL CONCLUSION, DISPOSAL and COSTS

62. Although the Law Society has won the “battle” of the Appeal considered in isolation, the “war” over the Law Society’s duty of disclosure in disciplinary proceedings has produced a more equivocal outcome – and the Appeal may be considered as having contributed to a clarification of that duty that is in the public interest.

63. In the circumstances, we think that practical justice is done by: (1) making no order for costs on the Appeal; (2) leaving the Judge’s decision on costs undisturbed.

64. We add only this by way of parting reflection. The Law Society fulfils a difficult but vital function in maintaining standards in the legal profession. In order to maintain public confidence, it is essential that it approaches this task in a manner that is both fair and seen to be fair.



DATO SERI PADUKA STEVEN CHONG, C.J.



SIR NICHOLAS BLAKE, J.A.,



SIR PETER GROSS, J.A.