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PRIVATE COLUMBARIA APPEAL BOARD

APPEAL NO. 3/2020

BETWEEN

TUNG KWOK SHIM LAM	Appellant
and	
PRIVATE COLUMBARIA LICENSING BOARD	Respondent

Private Columbaria Appeal Board ("**Appeal Board**") -

Presiding Officer : Mr Frederick CHAN Hing-fai
Panel Members : Mr Lincoln HUANG Ling-hang, J.P.
Sr Spencer KWAN Tin-che
Mr Fred LI Wah-ming, S.B.S., J.P.
Mr Aaron WAN Chi-keung, B.B.S., J.P.

Date of Hearing (held in public): 3rd June 2021

Date of Handing down Decision with Reasons: 30th June 2021

DECISION

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1. This case raised in sharp focus certain important and far-reaching legal questions on (a) an applicant's *locus standi* before the Licensing Board under the **Private Columbaria Ordinance** (Cap. 630) ("**PCO**") when read together with the **Trustee Ordinance** (Cap. 29) ("**TO**") and (b) the power (if any) of the Appeal Board (on an appeal of the applicant) to receive and consider new materials that had not been placed by an applicant before the Licensing Board when it arrived at its adverse decision against the applicant and an appellant.

2. Before dealing with and determining these 2 questions, we would like to recite the parties' sensible consent to the Appeal Board to write and hand down this set of reasons for decision in English given the complexities of the legal issues and relevant case law involved when resolving those 2 questions. A separate set of Chinese translation of our decision will also be provided to the parties.

3. In terms of the procedural and factual narrative, we wish to provide a rough sketch in its skeletal minimum given our ultimate decision that the present case should be remitted back to the Licensing Board for it to reconsider the question on the *locus standi* of the Applicant and determine his application under PCO afresh, lest anything said here will be prejudicing the proper determination of that application to be processed by the Licensing Board anew.

4. On 4th September 2020, the Licensing Board promulgated its 3-page decision ("**the Decision**") wherein it dismissed the application lodged by the Applicant. In summary, the Licensing Board articulated and then relied on 2 broad bases to reach its conclusion.

5. Firstly, the Licensing Board decided that the Applicant (a natural person) did not have the relevant *locus standi* as an eligible applicant for "Tung Kwok Shim Lam Limited" ("**the Monastery**") given that under the relevant legal and extant proceedings instituted by the applicant under HCMP1200/2010 (that cited a number of respondents including the Secretary for Justice), the Applicant was yet to obtain the reliefs he was seeking that included (in the main) becoming the trustee for the Monastery and could act accordingly. In other words, the Licensing Board reached the firm and explicit view that it had not been provided with sufficient documents in relation to HCMP1200/2010 by the Applicant and it, therefore, could not be satisfied with the capacity to act for and *locus standi* of the Applicant to act for the Monastery under the PCO in relation to its application.

6. Secondly and in addition thereto, the Licensing Board recited a total of 8 miscellaneous grounds and decided that the Applicant could not satisfy the various technical requirements laid down in PCO culminating in the failure of the Applicant to satisfy it on the merits of the Application.

7. Pausing here, we wish to note the submission of the Respondent (through Ms. Eva Leung of counsel) to the effect that the Decision did not reveal that the Licensing Board had decided against the Applicant on his *locus standi* to act for the Monastery *qua* a properly appointed representative.

8. Despite the meticulous submissions of Ms. Eva Leung, we hold that on a plain reading of the Decision, the Licensing Board did, in express terms and more than once, discuss on matters regarding HCMP1200/2010 and drew the conclusion therefrom that it could not be satisfied on the basis of the written materials provided to it by the Applicant that the Applicant could properly act for the Monastery as its properly appointed representative. Indeed, the minutes of the meeting of the Licensing Board that was held on 14th August 2020 also recorded clearly (in paragraphs 2.4.6, 2.4.7, 3, 10-11 respectively) the mental gymnastics of the Licensing Board given the unmistakable recitals therein to the effect that at the meeting which the Applicant attended on 14th August 2020 in relation to the Application of the Monastery, he was expressly told in no uncertain terms by the Licensing Board that he could not act for the Monastery and could only be permitted to attend the meeting in his personal capacity as a natural person, not as a properly appointed representative on behalf of the Monastery. In fact, the Applicant attended that meeting with others and the Licensing Board also told them that they could not speak therein as they would be considered as mere attendees with no right of speech (in paragraph 3).

9. In fact and prior to the Decision, the Applicant had provided the relevant copies of the originating summons in HCMP1200/2010 and explained that he was in full control and active management of the Monastery and the proceedings in HCMP1200/2010 already contained his requests for the relevant reliefs from the High Court. In the originating summons, the Monastery was described to be a charitable and religious trust within the meanings of TO and in particular, section 57A, TO was cited and relied on therein. Section 57A, TO provides that:

> "Charitable trusts
> Without prejudice to the generality of sections 56 and 57, the court may provide such relief, make such order, or give such direction, as it thinks just relating to a charitable trust upon an application made to it –
> (a) by –

(i) 2 or more persons who have the consent in writing of the Secretary for Justice to make the application;
(ii) the Secretary for Justice; or
(iii) all or any one or more of the trustees or persons administering the trust, or persons claiming to administer the trust, or persons otherwise interested in the trust; and

(b) either –
(i) complaining of a breach of the trust or supposed breach of the trust; or
(ii) for the purposes of the better administration of the trust".

10. On this Appeal, the Applicant is complaining (by way of his first ground of appeal and if we understood him correctly) that the Licensing Board erred in construing the pendency of HCMP1200/2010 as a bar to his supposed *locus standi* to pursue and press on the application on the Monastery's behalf. According to him, the Licensing Board should have taken into account the crucial fact that he was pursuing HCMP1200/2010 in a *bona fide* manner with a view to seeking the specific reliefs thereat and he therefore had the *locus standi* under section 57A(a)(iii), TO as at the very least a person "otherwise interested in the trust" in respect of the Monastery. He further argued that, by deciding against him in the Application on the erroneous ground of lack of the necessary *locus standi* to act on behalf of the Monastery, in effect, the Application was forced to fall into the thin end of the wedges.

11. Ms. Eva Leung, in riposte, referred us to Schedule 3, PCO that provides in Regulation 2(2) that:

"(2) The application must be signed –

...

(c) if the applicant is a body corporate – by a director or other officer concerned in the management of the body corporate authorised in writing to act for and on behalf of the body corporate".

12. It was submitted by Ms. Eva Leung that given that the Applicant had not produced any authorisation in writing by the Monastery, the Applicant could not possibly be a proper "applicant" and the Application that was purportedly made on the Monastery's behalf was a non-starter to begin with. The argument went on to state the Applicant's own admission in his

letters to the Licensing Board that HCMP1200/2010 was still pending with no definite outcome.

13. We see the force of this line of arguments. Upon reflection, however, we hold that the provision of Regulation 2, Schedule 3, PCO could not be of any avail to the Respondent on the question of the *locus standi* of the Applicant. It is true that Schedule 3, Regulation 2(2)(c), PCO laid down the procedural requirements if and when an applicant is a legal person (i.e. a limited company with a separate legal entity). However, one must not construe it alone without making full reference to Regulation 2(1), PCO that stipulated on "who may make an application" as follows:

> "(1) An application to which this Schedule applies may only be made by –
> (a) a person who operates, keeps, manages or in any other way has control of a columbarium; or
> (b) a person who intends to operate, keep, manage or in any other way have control of a columbarium".

14. We consider that Regulation 2(1), Schedule 3, PCO should be the proper starting point in considering the question on the proper status of an applicant to make an application under PCO, not Regulation 2(2), PCO.

15. According to what the Applicant had told the Licensing Board as to his *de facto* and extensive control and management of the Monastery as its supervising officer including the existing columbaria therein over the past years, the Applicant could have satisfied Regulation 2(1), Schedule 3, PCO qua his *de facto* status in the Monastery.

16. In this connection, we further note that the originating summons in HCMP1200/2010 had clearly indicated the legal basis on which the Applicant said he could have the necessary capacity to act for the Monastery in relation to the Application. As recited above, section 57A, TO affords another legal footing of affording the proper *locus standi* to a person in relation to the proper administration and management of the Monastery. In our considered view, the Licensing Board came to the erroneous decision when it did not take into the effect of (a) Regulation 2(1), Schedule 3, PCO and more importantly, (b) section 57A(a)(iii), TO (whether individually and cumulatively) when determining on the important and threshold question of whether in law and fact, the Applicant

had the necessary *locus standi* to make the application for the statutory benefits under PCO on the Monastery's behalf.

17. On the question of *locus standi* and prior to the appeal hearing held on 3rd June 2021, we have invited the parties to make further written submissions on the Court of Appeal's decision of **Sik Chiu Yuet v. Secretary for Justice & Others** [2018] 4 HKLRD 194. We consider that this decision provides ample fortification to our view (that is different from the one reached by the Licensing Board) that the question on a person's *locus standi* as an applicant for an application under PCO should be construed widely and purposively in the present case.

18. There, the applicant sued his fellow monks and the Secretary for Justice and complained about gross misadministration of the monastery to which he was a member. The manager of the monastery took out an interlocutory application and sought to strike out the applicant's claim for reliefs under section 57A, TO and succeeded at first instance before Lisa Wong J who struck out the applicant's claim on the conventional ground that he did not have the requisite *locus standi* to proceed further.

19. On appeal, the Court of Appeal (Lam VP, Cheung JA and Poon JA) allowed the appeal and set aside the striking out order.

20. In construing section 57A(a)(iii), TO and the phrase of "persons otherwise interested in the trust", Lam VP (after reviewing the English case law on the English equivalent of section 57A, TO and the relevant materials leading to the enactment of the same provision in Hong Kong) held that:

> "40. In the context of the present appeal, we hasten to add that the interest in question need not be a legal interest or duty. Having said that, the applicant must be able to pinpoint some greater interest than those of ordinary members of the public in the due administration of the trust".

21. Cheung JA agreed and added a succinct yet scholarly analysis of the development of Chinese Buddhism in the Mainland China and Hong Kong and concluded that in the context of the HKSAR, the Courts must take into the specific and local contexts of how Buddhism has been fully developing and thriving here and that would mandate and dictate the proper judicial inquiry into the ambit and scope of section 57A(a)(iii), TO when construing

the legal concept of "persons otherwise interested in the trust" (see: §§52-55).

22. Poon JA (as the Chief Judge of the High Court then was) also concurred and added that:

> "57. It is axiomatic that in construing a statutory provision, the court must bear in mind its context and purpose. While a particular statutory provision is modelled on some comparable provision in another common law jurisdiction, the relevant law in that jurisdiction may well inform the construction of the provision at hand. But it is not definitive. For one thing, our statutory regime may be markedly different from the foreign one. For another, our local circumstances may be materially different, too. Such differences may well drive the court to a different conclusion, in terms of statutory construction, from that in the foreign jurisdiction.
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> 58. Here, as demonstrated by my Lords, while it would appear that s.57A of the Trustee Ordinance is modelled on s.33(1) of the 1993 English Charities Act, there are significant differences between the local and English statutory regimes. And the local circumstances pertaining to Buddhist temples as charities are not found in England. These differences must materially bear on the proper construction of s.57A. They lead us to a wider construction than that adopted by the Judge on "persons otherwise interested in the trust" and a different conclusion on the facts of the present case".

23. We gratefully adopt the guidance provided therein on how to determine a person's *locus standi* in the statutory context of section 57A(a)(iii), TO in the light of the extant proceedings under HCMP1200/2010. Therefore, we hold that insofar as the Licensing Board decided and concluded that the Applicant did not have the necessary *locus standi* in the Application under PCO merely because HCMP1200/2010 had not been concluded, it had erred in law and this decision must be set aside as contrary to the Court of Appeal's authority in the **Sik Chiu Yuet's Case** to which we are bound.

24. In the course of this Appeal, the Respondent took the principled stance that "any materials" that have been placed by the Appellant before the Appeal Board should not be even considered. The Respondent's

argument is twofold. Firstly, it is submitted that under section 87, PCO, any person to the appeal (whether the Appellant or the Respondent) is prevented and completely barred by section 87(2), PCO from adducing new evidence (whether documentary or otherwise) for the purpose of the pending appeal. Secondly and more fundamentally, the terms of section 87(2), PCO are plain and clear to prevent the Appeal Board from even considering the new evidence altogether.

25. In this connection, apart from relying on the exact wordings of section 87(2), PCO, the Respondent relied heavily on the recent decision of another panel of the Appeal Board (differently constituted) chaired by Dr. William Wong SC in **Appeal Case No. 4/2019** that was promulgated on 23rd June 2020 in Chinese (see: §§16-22). In gist, it was held in **Appeal Case No. 4/2019** that under the clear provisions of section 87(2), PCO when construed purposively with the legislative intent behind it, an appellant would be completely barred from adducing new evidence that had not been tendered to the Licensing Board and before it reached its decision that was under appeal before the Appeal Board. Alternatively, it was further held that any admission of the new evidence must also fully satisfy the stringent and 3-limb requirements laid down in the famous decision of **Ladd v. Marshall** [1954] 1 WLR 1248:

(a) The new evidence could not have been obtained with reasonable diligence for use in the court below;

(b) The new evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive;

(c) The new evidence must be such as is presumably to be believed or apparently believable, although it need not be incontrovertible.

26. Given our conclusion above on the first question that goes to the *locus standi* of the Appellant and our direction and order that that particular question should be reconsidered afresh by the Licensing Board in the light of our views stated herein with the inevitable result that the entire application of the Appellant should be considered by the Licensing Board afresh as if it came before it for the very first time (*de novo*), any view on the part of this panel of the Licensing Board on the alleged absence of the power and jurisdiction of the Appeal Board to consider on the admission of new evidence in the context of an appeal will necessarily be obiter and said "by the way" in terms of decision-making in a quasi-judicial context,

we felt considerable deference and hesitation in tackling this question on the "jurisdiction".

27. Be that as it may and given that the Appeal Board has previously invited the parties to make written submissions on a relevant English Court of Appeal's decision of **British Telecommunications plc v. Office of Communications (Hutchison 3G UK Ltd intervening)** [2011] 4 All ER 372 ("**the British Telecommunications' Case**") and the point had been fully argued before us at the appeal hearing held on 3rd June 2021, with much diffidence and the greatest respect to the Appeal Board previously chaired by Dr. William Wong SC in **Appeal Case 4/2019**, we hold that when properly construed, section 87(2), PCO does not constitute a procedural bar against the Appeal Board and contrary to the submissions made by Ms. Eva Leung. We hold that the Appeal Board does have the power and right to consider a piece of new material and evidence for the purpose of conducting the appeal.

28. In this connection, we start with the exact wording of section 87(2), PCO that provides:

> "(2) Subsection (1)(a) does not entitle a person to require the Appeal Board to receive and consider any material that had not been made available to the Licensing Board at any time before the decision under appeal was made".

29. One must hark back to section 87(1), PCO that is termed as follows:

> "(1) … in the hearing of an appeal, the Appeal Board may –
>
> subject to subsection (2), receive and consider any material –
>
> whether by way of oral evidence, written statements, documents or otherwise; and
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> whether or not it would be admissible in a court".

30. In construing section 87(1) and (2), PCO together and purposively, we are of the view that one must not forget the empowering provisions in the other sub-paragraphs of section 86, PCO:

> "(11) In determining an appeal, an Appeal Board may –
>
> (a) confirm, reverse or vary the decision appealed against;

(b) substitute its own decision for the decision appealed against; or

(c) make any other order that it thinks fit".

31. The first relevant observation to make is that the powers under section 86(11), PCO are wide-ranging and substantial so much so that section 86(12) provides clearly that "the decision of the Appeal Board shall be final". We further note that given the finality prescribed in PCO by the Legislature, it could have been very easy if the Legislature were to impose a complete procedural bar in respect of the new evidence on appeal, for the Legislature to say so in plain and easy to understand provisions. This the Legislature did not do and instead opted for the terms of the section 87(2), PCO with the key phrase that "does not entitle a person to require the Appeal Board to receive and consider any material that had not been made available to the Licensing Board at any time before the decision under appeal was made".

32. In mounting the valiant arguments on behalf of the Respondent on the complete bar in respect of new evidence on an appeal, Ms. Eva Leung argued further and pressed upon us that the Appeal Board should proceed with the appeal as if we were sitting as a Court of First Instance Judge in a properly constituted judicial review proceedings and could only proceed on the very limited and conventional bases therein. She argued that we could not deal with the merits of the Appeal by way of a rehearing as if we are sitting as the Court of Appeal. No authority was cited for these propositions and with great respect and despite the eloquence of Ms. Eva Leung's submissions, we hold that the powers of the Appeal Board are not so limited or restrained. The powers (as recited above) afforded under section 86(11), PCO and the finality of our decisions on an appeal from the Licensing Board clearly mean that the Appeal Board is fully entitled to consider the merits of an Appeal on a holistic basis and cannot be arbitrarily restricted or somehow circumscribed to the traditional grounds in judicial review proceedings.

33. Returning to the purposive construction of section 87, PCO as a whole, we are of the firm view that the proper construction is that the Appeal Board can take into all materials placed by any party to the appeal just that a party to the appeal does not have the absolute right or entitlement and discretion to ask the Appeal Board to admit a new piece of evidence. The proper perspective on admission of a new piece of evidence should be

from the viewpoint of the Appeal Board. Given the adversarial nature of an appeal under PCO, it will be incumbent on a party (in most cases) to take the initiative to apply to adduce a new piece of evidence. Once the application is on foot, the other party will be entitled to make submissions on it and at the end of the day, it will be for the Appeal Board to decide (using the threshold of "good reasons being shown") on whether to admit the new evidence. Again, section 87(2), PCO will be fully complied with as the applicant for the new evidence could not have the absolute right or "entitlement" to "require" the Appeal Board to receive and consider the new evidence. Only the Appeal Board has the unfettered discretion and right to admit the new evidence in question and such a discretion and right to do so must be exercised on a principled basis on the threshold of "good reasons".

34. It must be common sense that the mere fact that section 87(2), PCO provides that a party to the Appeal does not have "entitlement" does not mean that the Appeal Board, in exercising its power under section 87(1), PCO could not allow (after hearing full submissions on admissibility) to rule on it.

35. Construed thus, we do not consider that section 87(2), PCO constitutes any procedural bar on admitting new evidence. At the hearing, submissions on the following case scenarios were rehearsed to test the validity of the sweeping submissions made by the Respondent on the power and jurisdiction of the Appeal Board to admit new evidence:

(a) Suppose on the date of the Decision (4th September 2020), the Licensing Board made a decision premised upon a ruling on a question of law and on the hearing of the Appeal (3rd June 2021), the Court of Final Appeal handed down an authoritative ruling (assuming with full retrospective effect) nullifying altogether the legal finding made by the Licensing Board, according to the Respondent's arguments, under section 87(2), PCO, that ruling from the Court of Final Appeal (being "new material" within the meaning of section 87(2), PCO) could not even be taken into account by the Appeal Board;

(b) In the specific context of the present case and let us assume that at the date of the hearing of the Appeal, the Court of First Instance granted an order (whether after a full contest or consent

> order) that the Appellant should be constituted the properly appointed trustee of the Monastery, on account of the statutory construction of the Respondent, that new development must also be ignored by the Appeal Board as if that order under HCMP1200/2010 has never materialised.

36. In the circumstances, we do not consider that section 87(2), PCO should be construed as the Respondent has contended as it will be giving rise to obvious anomalies and most draconian and unjust results in particular when our decision in the Appeal Board is said to be final under section 86(12), PCO.

37. As far as necessary, we are of the view that the judgment of Toulson LJ (as the late Lord Toulson then was) in the **British Telecommunications' Case** is illuminating and directly applicable to section 87, PCO. We also disagree with Ms. Eva Leung's submissions in seeking to distinguish that decision on the strength of the exact provisions recited in §20 in Toulson LJ's judgment. With respect, what was said by Toulson LJ in that decision is also applicable here (see: §§60-61).

38. In terms of the applicability of the **Ladd v. Marshall** requirements, we also endorse what Toulson LJ had said in the **British Telecommunications' Case** that the **Ladd v. Marshall** requirements are not applicable in relation to an appeal from the decision of an administrative body to an appeal tribunal (see: §§71-73). With respect, we echo these wise words of Toulson LJ:

> "72. … Since the introduction of fresh evidence is not a matter of right, in the event of a dispute about its admission I would regard it as the responsibility of the party who wants to introduce it to show a good reason why the CAT[1] should admit it. The question for the CAT would be whether in all the circumstances it considers that it is in the interests of justice for the evidence to be admitted. I would not attempt to lay down any more precise test, nor would I attempt to lay down a comprehensive list of relevant factors or suggest how they should be balanced in a particular case".

[1] Competition Appeal Tribunal.

39. In **Appeal Case 4/2019**, one of the policy reasons on which Dr. William Wong SC relied on for ruling that section 87(2), PCO represented a complete bar on new evidence on appeal in the Appeal Board was the expediency of disposing a pending application under PCO that imposed a strict timeline with a deadline that fell on 29th March 2018 (see: §19(3)-(4)). Again, with the greatest respect, we reach the contrary view and hold that given the stringent timeline and the strict statutory deadline, there is even more incentive and imperative for the Appeal Board to carefully consider the entire circumstances in relation to an application that had been dismissed by the Licensing Board and in the event of a final appeal lodged and proceeded with in the Appeal Board. To do otherwise, we hold, would be treating the statutory regime and its timelines as rigid straitjackets.

Submissions post-hearing

40. At the hearing, the Appeal Board invited both parties to make further written submissions *solely* on the jurisdiction of the Appeal Board to remit the present case to the Licensing Board for reconsideration afresh in the event that the Appellant's arguments on *locus standi* were to prevail. On 9th June 2021, pursuant to the directions of the Appeal Board, the Respondent filed a set of detailed written submissions on the power (if any) of the Appeal Board to remit the case to the Licensing Board under section 86(11), PCO that provides:

> "In determining an appeal, an Appeal Board may –
>
> (a) confirm, reverse or vary the decision appealed against;
>
> (b) substitute its own decision for the decision appealed against; or
>
> (c) make any other order that it thinks fit".

41. In gist, the Respondent submitted (through the written submissions jointly prepared by Mr. Jenkin Suen SC and Ms. Eva Leung) that given section 86(11), PCO is silent on the power of the Appeal Board to make an order for remitting the case to the Licensing Board for reconsideration afresh (unlike, for example, section 21(3), **Administrative Appeals Board Ordinance** (Cap 442) which has the express power to "send back" to the respondent for the consideration on such relevant matters the Administrative Appeals Board may so order), the Appeal Board has no power to make a remittal order to the Licensing Board.

42. It was further argued that the common law doctrine regarding the implication of a power to remit in the statutory context of a particular ordinance (in accordance with the ruling made by the Court of Final Appeal in **Sin Chung Yin Ronald v. Dental Council of Hong Kong** (2016) 19 HKCFAR 528, see: §§95-108, *per* Ribeiro PJ) is restricted to strict necessity and under PCO, such a common law doctrine could not be invoked by the Appeal Board.

43. As held by Ribeiro PJ in **Sin Chung Yin Ronald's Case** (that was most fairly cited for our consideration by Mr. Jenkin Suen SC and Ms. Eva Leung in the best traditions of the Bar), the mere fact that under the particular ordinance (**Dentists Registration Ordinance** (Cap 156)), there is no provision on a remittal order is immaterial. What is material is the fact that the Court of Appeal enjoys a wide range of powers under the **High Court Ordinance** (Cap 4) and **Rules of High Court** (Cap 4A, subsidiary legislation) to deal with an appeal. Similarly, in the present case, we hold that we must return to the exact provisions and wordings used in section 86(11), PCO to determine the question on whether the Appeal Board has the necessary power to remit the case back to the Licensing Board.

44. We further hold that when read as a whole and purposively, section 86(11), PCO does empower the Appeal Board to remit the matter back to the Licensing Board to reconsider. Otherwise, for example, in the event that the Appeal Board exercises its express statutory power under section 86(11), PCO to "reverse" the decision under appeal in this case without giving the sequential order that the case should therefore be remitted to the Licensing Board for reconsideration, both parties (the Appellant and the Respondent) would be placed in a procedural limbo. On the one hand, the decision of the Licensing Board was reversed and therefore for all intent and purposes, there is (because of a successful appeal) no more decision made by the Licensing Board, yet on the other hand, the application lodged by the Application would be considered still pending and "not decided and to be decided" by the Licensing Board. Such anomalies would not arise if we construe section 86(11), PCO purposively and infer or imply or just hold that section 86(11), PCO and sub-clause (c) termed as "make any other order that it thinks fit" means what it says and includes a power to remit a matter to the Licensing Board for reconsideration and a new decision.

45. We also hold, that in any event, the Appeal Board does have the power (albeit not expressly so) under section 86(11), PCO to remit a case to the Licensing Board for reconsideration in the event that the primary decision of the Licensing Board is "reversed" thereunder. In this connection, we seek to rely on the sage words of Ribeiro PJ in the **Sin Chung Yin Ronald's Case** where it was said:

> "103. These provisions are intended to supplement enactments which create a right of appeal to the Court of Appeal, making it unnecessary for them to spell out these general powers on each occasion. Order 59 r.10(4) is important. First, it indicates that the powers conferred by the earlier sub-rules are intended to apply in tandem with the Court of Appeal's powers "for allowing the appeal or … affirming or varying" the decision appealed from. And secondly, it empowers the Court of Appeal to "make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties".
>
> 104. Those latter words are apt to cover a situation where the Court of Appeal considers a remitter appropriate consequential upon its disposal of the appeal. Thus, it may for instance decide to reverse the Council because of a procedural flaw, but think that, on the merits, there may have been serious professional misconduct which ought to be investigated. The Court may thus order a remitter so that the merits of the real question in controversy - the charge of unprofessional conduct - can properly be determined".

46. With respect, we do not accept the Respondent's argument to the effect that a ruling that the Appeal Board does have the necessary power and jurisdiction to order a remitter to the Licensing Board would open a flood-gate of multiple and revolving appeals by an applicant to the Appeal Board from a decision (on a remitter order of the Appeal Board) of the Licensing Board. Undoubtedly, each appeal (regardless of whether it was made because of a remitter order made by the Appeal Board or a fresh decision made on the application) will have to be scrutinised by the Appeal Board upon its full merits in strict accordance with the procedural regime imposed by the PCO and the exact procedural pathway by which a particular appeal has landed before the Appeal Board from the Licensing Board should not be any relevance to the determination on the merits of the appeal to be conducted by the Appeal Board.

47. In the circumstances, we make the following orders:

(1) That the Appeal be allowed with the case be remitted and sent back to the Licensing Board to reconsider the Application on the question of *locus standi* of the Applicant in view of our views thereon expressed above and that the Licensing Board shall reconsider the Application of the Appellant as a whole afresh on a *de novo* basis;

(2) The Decision be set aside and reversed accordingly.

48. Lastly, we wish to record our gratitude to both parties for their helpful submissions (both written and oral) and assistance rendered to the Appeal Board.

(Signed)

Mr Frederick CHAN Hing-fai
(Presiding Officer)

(Signed)

Mr Lincoln HUANG Ling-hang, J.P.

(Signed)

Sr Spencer KWAN Tin-che

(Signed)

Mr Fred LI Wah-ming, S.B.S., J.P.

(Signed)

Mr Aaron WAN Chi-keung, B.B.S., J.P.

Appellant : Represented by Mr 梁耀漢 (別名: 釋性耀)

Respondent : Represented by Ms. Eva Leung of counsel (on 3rd June 2021) and was led by Mr. Jenkin Suen SC (on 9th June 2021) instructed by Messrs. Gallant.