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PRESS RELEASE

COURT OF APPEAL'S SUPPLEMENTARY GROUNDS OF DECISIONS CLARIFY OBLIGATIONS OF PROSECUTION

The Attorney-General's Chambers welcomes the supplemental grounds of decision released by the Court of Appeal in *Muhammad bin Kadar and Another v Public Prosecutor* [2011] SGCA 44 on Friday 26 August. In its supplementary grounds, the Court has clarified the obligations of the Prosecution to disclose what is referred to as “unused material” and how the disclosure framework developed by the Court is to sit alongside that created by Parliament under the Criminal Procedure Code (“CPC”) 2010.

2 The original judgment released on 5 July 2011 (*Muhammad bin Kadar and Another v Public Prosecutor* [2011] SGCA 32) departed from pre-existing law and overruled a previous decision of the High Court in *Selvarajan James v Public Prosecutor* [2000] SGHC 171. In so doing, a duty was imposed on the Prosecution to disclose “unused material”. “Unused material” is material which the Prosecution does not intend to use in the course of a trial to prove its case against an accused person. “Unused material” may encompass statements from witnesses, including those who upon investigation, turn out to have nothing to contribute to the

case; documents handed over by witnesses, which could run into volumes; and miscellaneous sources of information, some of which may not lead to anything material. The accepted position under Singapore law prior to *Kadar* was that there was generally no obligation at the pre-trial stage to disclose statements of witnesses that the Prosecution does not intend to call. As for unused statements of the accused, these would be disclosed after all the defence witnesses have given their testimonies in court so as to exclude the possibility of the accused or his witnesses tailoring their evidence at that stage.

3 CPC 2010 introduced a regime under which unused statements of the accused would be furnished to the defence if the defence had in turn disclosed its case to the Prosecution. CPC 2010 thus provides for a reciprocal regime of disclosure, requiring both sides to participate. The regime also applies only to certain types of cases and reflects a calibrated balancing of different interests. In particular, especially in the simpler cases, no disclosure regime would apply.

4 In its judgment in *Kadar*, the Court introduced a regime of disclosure that went beyond the requirements of CPC 2010. The Prosecution was concerned over the possibility that on one reading at least, the judgment appeared to contemplate a very broad extension to the Prosecution's duty of disclosure. This was certainly the position initially advocated by the appellant's counsel in the course of a 30-page submission upon the Prosecution's application for clarification of the judgment. It was because of concerns over the precise breadth of the disclosure obligations imposed by the Court that the Prosecution sought clarification.

5 The Prosecution's motion to clarify was heard on 19 August, and the Court of Appeal issued its clarificatory judgment on 26 August 2011 confirming that the intended and correct reading of its judgment was limited to requiring the Prosecution to consider such unused material as had in fact been turned over to the Prosecution by the investigating agencies. The Prosecution is not required to go beyond considering the material that is in its possession, but pursuant to *Kadar*, it will now consider whether any such unused material ought to be disclosed to the defence.

6 The Court of Appeal also confirmed that it was not departing from or varying the requirements of the written law, and hence that the obligation stated in *Kadar* does not override statutory provisions that exclude disclosure, including safeguards under the Misuse of Drugs Act and the Evidence Act. The judgment further clarified the appropriate timelines, including the application of those under CPC 2010 for relevant cases.

7 The Chief Prosecutor of the Criminal Justice Division, Mr Aedit Abdullah, in response to the clarificatory judgement, said “The Court of Appeal’s clarification is particularly welcome as it confirms that the decision has effected a small incremental development in the nature of the prosecution’s disclosure obligations. At a time when the CPC 2010 amendments are still fresh and being worked through in a spirit of collaboration between the defence bar and the prosecution, the clarificatory judgment is important in providing some guidance on this important issue.”

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