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RATIONALISING THE PROCEDURE FOR JUDICIAL REVIEW IN SINGAPORE

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This article makes two broad arguments in relation to the procedure for judicial review in Singapore. First, it argues against the traditional view that O. 53 of the *Rules of Court* is a separate and exclusive procedure, confined to its express provisions. The correct view should be that the other Rules of Court and the powers of the court are not excluded unless contrary to the express provisions of O. 53. Second, the article considers the effect of a little-noticed amendment which has expanded the scope of the *Government Proceedings Act* to include proceedings for judicial review against the Government. The practical effect of both arguments in relation to the procedure for judicial review is also discussed.

I. INTRODUCTION

Not long ago the Chief Justice reiterated the role of judicial review in promoting good governance, affirmed the commitment of the courts to do what is right in law, and called for empathy with the judicial process, rather than angst or cynicism.[1] That is all as it should be. However, an effective system of judicial review requires, in the first place, a clear and effective procedure. This article examines whether this is true of the present regime. The article begins by revisiting the conventional view that the procedure for judicial review in O. 53 of the *Rules of Court*[2] is a separate and exclusive one, and considers the problems resulting from that view, even after the recent amendments to O. 53. The discussion then goes on to examine whether O. 53 was truly meant to be a separate and exclusive procedure, and makes the argument that it was not. The focus is then shifted to a little-noticed amendment in 1997 to the *Government Proceedings Act*,[3] and how that amendment has significantly altered, for the better, the procedure in proceedings for judicial review against the Government.

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1 Chan Sek Keong C.J., "Judicial Review—From Angst to Empathy" (2010) 22 Sing. Ac. L.J. 469 at 484, 485.

2 Cap. 322, R. 5, 2006 Rev. Ed. Sing. [*ROC*].

3 Cap. 121, 1985 Rev. Ed. Sing. [*GPA*].

II. The Present Scheme

A. *The Position before 1 May 2011*

Before 1 May 2011, it was conventional to treat the procedure for judicial review as governed by O. 53 of the *ROC*,[4] which relates to the prerogative orders of *mandamus*, prohibition and *certiorari*,[5] and the ordinary originating processes, relating to other remedies such as injunctions, declarations and damages. O. 53 is materially the same as the *RSC*, O. LIII before the reforms of 1977. It has been regarded, although not consistently, as a separate and exclusive procedure confined to its express provisions. Two broad shortcomings arise from this view.

The first is the limited range of remedies available under O. 53. In Singapore, this has been held to be the position by a line of authorities beginning with the judgment of T.S. Sinnathuray J. in *Re Application by Dow Jones (Asia) Inc.*,[6] where it was held that "there is no provision in our substantive law or our rules of court relating to procedure for this court to make orders of declarations or give other ancillary reliefs in an application made under O 53". Sinnathuray J.'s view was approved by the Court of Appeal in *Chan Hiang Leng Colin v. Minister for Information and the Arts*.[7] In the view of the Court of Appeal, "[i]t does not follow that because the High Court has the power to grant a declaration, it has the power to grant one in an application under [*ROC*] O 53".[8] The Court of Appeal found support for its view in the speech of Lord Diplock in *O'Reilly v. Mackman*,[9] where it was said that only the prerogative orders were available under O. LIII; other remedies could only be obtained by way of ordinary action. This meant that a plaintiff who claimed both the prerogative orders as well as other remedies had to bring two separate actions, even if his claims arose from the same set of facts and the same public law principles. The defendant public body was also placed in a curious position. In an application under O. 53 for the prerogative orders, the public body enjoyed a number of protections, principally the requirement for leave[10] and the three-month "soft" time bar for *certiorari*.[11] Conversely, in an ordinary action for other remedies, the public body enjoyed no such protections, even if the action was brought in parallel to an O. 53 application on the same facts and the same public law principles. The court was also put in an unusual position—in order to decide the preliminary question of whether or not a plaintiff had followed the correct procedure, the court had to first decide what would be the appropriate remedy if the plaintiff was successful.[12]

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4 In this article, the English *Rules of the Supreme Court* will be referred to as the "*RSC*" (accompanied by the year of the version being referred to, if necessary), and the Orders therein will be referred to using Roman numerals, *e.g.*, O. LIX. The Singapore *Rules of Court* will be referred to as the "*ROC*", and the Orders therein will be referred to using Arabic numbers, *e.g.*, O. 59.

5 In this article, the prerogative orders will be referred to by their more concise original names.

6 [1987] S.L.R.(R.) 627 at para. 14 (H.C.).

7 [1996] 1 S.L.R.(R.) 294 at para. 5 (C.A.).

8 *Ibid*.

9 [1983] 2 A.C. 237 at 283 (H.L.) [*O'Reilly*].

10 *ROC*, *supra* note 2, O. 53 r. 1.

11 *Ibid.*, O. 53 r. 1(6). The delay must be accounted for to the satisfaction of the judge hearing the leave application.

12 See *e.g.*, *Yip Kok Seng v. Traditional Chinese Medicine Practitioners Board* [2010] 4 S.L.R. 990.

The second shortcoming is the unavailability of interlocutory and evidentiary facilities. This can be illustrated with reference to the position on discovery, which is not expressly provided for in O. 53. In England, both Denning L.J.[13] and Lord Diplock,[14] whose eminence in administrative law need no introduction, have opined in *obiter dicta* that discovery was unavailable under O. LIII, apparently on the basis that there was no provision for discovery in it. The unavailability of discovery meant that decision-making processes were effectively unreviewable if they were not already publicly known. And, if the reasoning were extended into other areas, this would mean that interrogatories, cross-examination and interim relief would also be unavailable. The disadvantages of not having these facilities would be apparent to any litigator.

It will shortly be seen that the view of O. 53 as a separate and exclusive procedure has not been consistently held in the case law. But, for now, the purpose of the discussion is to highlight the problems which result from such a view.

B. *The Amendments of 1 May 2011 and the Position Today*

In England, O. LIII was reformed in 1977 by deleting the old provisions and introducing a new procedure called the "application for judicial review", which provided for other forms of relief, as well as interlocutory and evidentiary facilities.[15] This mode of reform impliedly affirmed the notion that O. LIII was a separate and exclusive procedure. Other jurisdictions also adopted reforms in the same vein.[16] In Singapore, the pre-1977 O. LIII was retained, as O. 53, until very recently, when two amendments, effective from 1 May 2011, were made to O. 53.[17] The first amendment was to r. 1(1), which now reads:

> 1.—(1) An application for a Mandatory Order, Prohibiting Order or Quashing Order (referred to in this paragraph as the principal application)—
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> (a) may include an application for a declaration; but
>
> (b) shall not be made, unless leave to make the principal application has been granted in accordance with this Rule.

The second amendment was the insertion of a new r. 7:

> *Power of Court to grant relief in addition to Mandatory Order, etc. (Order. 53, r. 7)*
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> 7.—(1) Subject to the Government Proceedings Act (Cap. 121), where, upon hearing any summons filed under Rule 2, the Court has made a Mandatory

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13 *Barnard v. National Dock Labour Board* [1953] 2 Q.B. 18 at 43 (C.A.).

14 *O'Reilly*, *supra* note 9 at 281.

15 *Rules of the Supreme Court (Amendment No. 3) 1977*, S.I. 1977/1955; see Part 54 of the latest version of the U.K. *Civil Procedure Rules 1998*, S.I. 1998/3132. The amendments followed the recommendations of the U.K. Law Commission in its "Report on Remedies in Administrative Law", Cmnd 6407 (1976) [U.K. Law Commission, "Report on Remedies"]. The Report followed an earlier Working Paper, which made broader recommendations which were not accepted: U.K. Law Commission, *Remedies in Administrative Law* (Working Paper No. 40) (11 October 1971).

16 *Judicial Review Procedure Act*, R.S.O. 1990, c. J-1, s. 2; *Judicature Amendment Act 1972* (N.Z.), 1972/130, s. 4; *Rules of the High Court 1980* (Malaysia), P.U. (A) 50/1980, O. 53; *Rules of the High Court* (H.K.), (Cap. 4, sub. leg. A), O. 53.

17 *Rules of Court (Amendment No. 2) Rules 2011* (S. 218/2011 Sing.).

Order, Prohibiting Order, Quashing Order or declaration, and the Court is satisfied that the applicant has a cause of action that would have entitled the applicant to any relevant relief if the relevant relief had been claimed in a separate action, the Court may, in addition, grant the applicant the relevant relief.

(2) For the purposes of determining whether the Court should grant the applicant any relevant relief under paragraph (1), or where the Court has determined that the applicant should be granted any such relief, the Court may give such directions, whether relating to the conduct of the proceedings or otherwise, as may be necessary for the purposes of making the determination or granting the relief, as the case may be.

(3) Before the Court grants any relevant relief under paragraph (1), any person who opposes the granting of the relief, and who appears to the Court to be a proper person to be heard, shall be heard.

(4) In this Rule, "relevant relief" means any liquidated sum, damages, equitable relief or restitution.

The new r. 1(1) makes clear that declarations can now be obtained under O. 53, subject to leave being granted to apply for the prerogative orders. The new r. 7 makes clear that the court may grant relief other than the prerogative orders or a declaration. However, this is subject to the condition that a prerogative order or a declaration has already been granted. The rationale for the condition is not immediately obvious, but in any event it is unlikely that injustice would result from it, since a court can easily frame an appropriate declaration as a precursor to ordering further relief.

The new rules substantially eliminate, insofar as remedies are concerned, the practical problems that arise from the view that O. 53 is a separate and exclusive procedure. But they do not affect the position on interlocutory and evidentiary matters, and in those areas it remains an important question whether O. 53 is, as it is often thought to be, a separate and exclusive procedure.

In this regard, it is significant that it is precisely in the area of interlocutory and evidentiary facilities that the conception of O. 53 as a separate and exclusive procedure has been most seriously compromised. The position on discovery and cross-examination serves to illustrate this. In the case of discovery, it was mentioned earlier that both Denning L.J. and Lord Diplock have opined that discovery was unavailable under O. LIII. However, the opposite view was taken by the U.K. Law Commission, who in proposing the 1977 reforms considered that the general power in *RSC*, O. XXIV r. 3 to order discovery was applicable.[18] The Law Commission confessed that it knew of no case where discovery had been ordered, but that does not, of course, negate the existence of the power. The opinion of the Law Commission appears, quite unaccountably, not to have been considered by Lord Diplock in *O'Reilly*, where the learned Law Lord stated the availability of discovery to be a key difference between O. LIII before and after the 1977 reforms.[19] The Singapore position is different. In *Lim Mey Lee Susan v. Singapore Medical Council*,[20] Philip

[18] U.K. Law Commission, "Report on Remedies", *supra* note 15 at para. 15. The equivalent *ROC* provision is O. 24 r. 1.

[19] *O'Reilly*, *supra* note 9 at 280, 281.

[20] [2011] SGHC 132 at para. 4 [*Susan Lim*].

Pillai J. commented, *obiter*, that "whatever the historical position, discovery should, in principle, be available in all judicial review proceedings. As the English Law Commission has observed… O 24, r 1 of the ROC is unqualified in its application to "any party to a cause or matter" ".

Cross-examination has been definitely held to be available. The Singapore case is *Re Singh Kalpanath*,[21] where Chan Sek Keong J. allowed the cross-examination of the chairman of a disciplinary tribunal who was alleged to be biased. The learned judge referred to a number of English decisions, principally *R. v. Kent Justices, ex parte Smith*[22] and *R. v. Stokesley Yorkshire Justices, ex parte Bartram*,[23] which affirmed that cross-examination may be ordered.[24] In the latter decision, Lord Goddard C.J. ordered the deponents to be cross-examined on their affidavits on the basis of the court's general power under *RSC*, O. XXXVIII (presumably r. 2(3) thereof[25]), read with O. LIX r. 47 (discussed later[26]).

At the same time, it should be acknowledged that the body of case law relating to the unavailability of other reliefs under O. 53 has quite firmly, albeit impliedly, affirmed that O. 53 is a separate and exclusive procedure.

So, all in all, it is fair to say that the law remains unsettled as to whether O. 53 is a separate and exclusive procedure, or whether the court, in dealing with an O. 53 application, can draw on its powers as provided for elsewhere in the *ROC*. And, as mentioned, the answer to that question is of practical importance in considering the breadth of the court's interlocutory and evidentiary powers in an O. 53 application. It is therefore proposed to examine, in the next part of this article, whether O. 53, properly understood, is truly a separate and exclusive procedure.

III. Is O. 53 Really a Separate and Exclusive Procedure?

A. *The Position in Antiquity*

The examination begins with a consideration of the forms of action which dominated the common law until the late nineteenth century. The leading exposition is of course that by Maitland, and it is instructive to reproduce the following passage from his Lectures:[27]

> The keynote of the form of action is struck by the original writ, the writ whereby the action is begun. From of old the rule has been that no one can bring an action in the king's courts of common law without the king's writ; we find this rule in Bracton—*Non potest quis sine brevi agere*. That rule we may indeed say has not

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21 [1992] 1 S.L.R.(R.) 595 (H.C.).

22 [1928] W.N. 137 (Div. Ct.).

23 [1956] 1 W.L.R. 254 (Div. Ct.).

24 There is some discussion in the cases as to *when* cross-examination may be ordered. In *Re Singh Kalpanath*, *supra* note 21 at para. 22, Chan J. saw no difference between allowing cross-examination in an "exceptional case" and allowing cross-examination on "the justice of the case". For present purposes, it suffices to note that the cases recognise that the court has the power to order cross-examination.

25 *ROC*, *supra* note 2, O. 38 r. 2(3).

26 See text accompanying *infra* note 41.

27 F.W. Maitland, *The Forms of Action at Common Law*, ed. by A.H. Chaytor & W.J. Whittaker (Cambridge: Cambridge University Press, 1936), Lecture I at 4, 5 [footnotes omitted].

> been abolished even in our own day. The first step which a plaintiff has to take when he brings an action in the High Court of Justice is to obtain a writ. But there has been a very great change. The modern writ is in form a command by the king addressed to the defendant telling him no more than that within eight days he is to appear, or rather to cause an appearance to be entered for him, in an action at the suit of the plaintiff, and telling him that in default of his so doing the plaintiff may proceed in his action and obtain a judgment. Then on the back of this writ the plaintiff, in his own or his adviser's words, states briefly the substance of his claim—'The plaintiff's claim is £1000 for money lent', 'The plaintiff's claim is for damages for breach of contract to employ the plaintiff as traveller', 'The plaintiff's claim is for damages for assault and false imprisonment', 'The plaintiff's claim is to recover a farm called Blackacre situate in the parish of Dale in the county of Kent'. We can no longer say that English law knows a certain number of actions and no more, or that every action has a writ appropriate to itself; the writ is always the same, the number of possible endorsements is as infinite as the number of unlawful acts and defaults which can give one man an action against another. All this is new. Formerly there were a certain number of writs which differed very markedly from each other. A writ of debt was very unlike a writ of trespass, and both were very unlike a writ of *mort d'ancestor* or a writ of right. A writ of debt was addressed to the sheriff; the sheriff is to command the defendant to pay to the plaintiff the alleged debt, or, if he will not do so, appear in court and answer why he has not done so. A writ of trespass is addressed to the sheriff; he is to attach the defendant to answer the plaintiff why with force and arms and against the king's peace he broke the plaintiff's close, or carried off his goods, or assaulted and beat him. A writ of *mort d'ancestor* bade the sheriff empanel a jury, or rather an assize, to answer a certain question formulated in the writ. A writ of right was directed not to the sheriff but to the feudal lord and bade him do right in his court between the demandant and the tenant. In each case the writ points to a substantially different procedure.

And so it was with the prerogative writs of *mandamus*, prohibition and *certiorari*, which were issued out of the Court of the Queen's Bench:[28] the remedy afforded by each writ was inextricably bound to a procedure peculiar to the writ—the remedy was unavailable outside of that procedure, and within the procedure only the remedy was available. This was not something peculiar to the prerogative remedies, but was instead inherent in the juridical nature of the forms of action generally.

B. *The* Judicature Acts *and the* Crown Office Rules

For most of the law, the forms of action were swept away by the *Judicature Acts* of 1873[29] and 1875.[30] The Acts merged the various courts then existing in England into one Supreme Court of Judicature, comprising the High Court of Justice and

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[28] For an account of the history of the prerogative writs, see J.M. Evans, ed., *De Smith's Judicial Review of Administrative Action*, 4th ed. (London: Stevens & Sons Limited, 1980), Appendix I, "The Prerogative Writs: Historical Origins".

[29] *Supreme Court of Judicature Act, 1873* (U.K.), 36 & 37 Vict., c. 66.

[30] *Supreme Court of Judicature Act, 1875* (U.K.), 38 & 39 Vict., c. 77.

the Court of Appeal.[31] More importantly, the *RSC* 1883[32] ushered in a unitary civil procedure which was neutral as to the substantive claim being brought. For example, as pointed out by Maitland, the writ of summons we know today is a blank slate upon which any claim can be endorsed.

However, the reforms did not affect proceedings on the Crown side of the Queen's Bench Division of the High Court, the Division which inherited the jurisdiction formerly belonging to the Court of the Queen's Bench,[33] in particular the jurisdiction to issue the prerogative writs. This was provided for in *RSC* 1883, O. LXVIII:

> 1. Subject to the provisions of this order, nothing in these rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters: —
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> (*a*.) Criminal proceedings;
>
> (*b*.) *Proceedings on the Crown side of the King's Bench Division;*
>
> (*c*.) Proceedings on the Revenue side of the King's Bench Division;
>
> (*d*.) Proceedings for Divorce or other Matrimonial Causes.
>
> [Emphasis added]

Proceedings on the Crown side therefore remained governed by the old practice until 1885, when the *Crown Office Rules 1886*[34] were enacted. The *Crown Office Rules 1886* were annulled and replaced by the *Crown Office Rules 1906*. Both sets of rules expressly imported some parts of the *RSC* 1883 which are immaterial for our purposes.[35] What is important is that both set of rules preserved the notion of there being a procedure peculiar to *mandamus*, prohibition and *certiorari*. Under the *Crown Office Rules 1906*, *certiorari* was governed by r. 12 to r. 31, *mandamus* by r. 46 to r. 69 and r. 125, and prohibition by r. 70, r. 71 and r. 126. It was therefore entirely appropriate to continue to speak of writs of *mandamus*, prohibition and *certiorari* and indeed the *Crown Office Rules* continued to use that terminology.[36]

C. *The 1938 Amendments*

All this was changed by the *Administration of Justice (Miscellaneous Provisions) Act, 1938*.[37] In the House of Commons, the Attorney-General, Sir Donald Somervell

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31 *Supreme Court of Judicature Act, 1873*, *supra* note 29, ss. 3, 4.

32 *Rules of the Supreme Court, 1883*, reprinted as amended in *The Statutory Rules & Orders Revised to December 31, 1903*, vol. 12 (London: Printed under the Authority of His Majesty's Stationery Office, 1904) [*Statutory Rules & Orders Revised*] at 54–417.

33 *Supreme Court of Judicature Act, 1873*, *supra* note 29, s. 34. Section 34 referred to "[a]ll causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction, if this Act had not been passed". It appears, from Professor de Smith's account, that the prerogative writs were only issued "pre-eminently" from the Court of Queen's Bench: Evans, *supra* note 28 at 587. Whatever the true position, the prerogative writs (and later the prerogative orders) were in practice issued by the Queen's Bench Division: see below.

34 *Crown Office Rules 1886* in *Statutory Rules & Orders Revised*, *supra* note 32 at 418–545.

35 See F.H. Short & F.H. Mellor, *The Practice on the Crown Side of the King's Bench Division of His Majesty's High Court of Justice*, 2nd ed. (London: Stevens & Haynes, 1908), Appendix A, "Rules of the Supreme Court, 1883, applied to proceedings on the Crown side as far as applicable".

36 The procedure and practice on the Crown side when the *Crown Office Rules* still applied are covered in Short & Mellor, *ibid.* The monograph is out of print and it is believed that the Supreme Court library holds the only extant copy in public circulation in Singapore.

37 (U.K.), 1 & 2 Geo. VI, c. 63.

(later Lord Somervell), explained in moving the Second Reading of the Bill that:[38]

> Clauses 7 to 12 [*i.e*. ss. 7 to 12 of the Act] deal with quite a different matter. They arise out of certain recommendations by the Business of Courts Committee, and deal with proceedings in the Crown side of the King's Bench Division, and in particular with what are called prerogative writs of mandamus, prohibition and certiorari. The whole and sole object of this Clause is to simplify what is of use and to abolish what is obsolete. Those who have at present a right to get a writ of mandamus, prohibition [or] certiorari will have exactly the same right if the Bill is passed, but the procedure by which they get it is simplified. A mass of quite obsolete matter in the Crown Office Rule will be able to be abolished, and the actual form of the procedure will be intelligible and in accordance with the general procedure provisions with regard to orders of the Court to-day. It will be as intelligible as the normal orders made by a court, whereas at present it is encumbered by a mass of unintelligible archaic matter, much of which is disregarded at present but which cannot be got rid of without authority. The broad effect of it is that the court will be able to make an order in the ordinary form.

The relevant Part of the Act is that encompassing ss. 7 to 12 and entitled "Amendment of Law with respect to proceedings heretofore usually dealt with on the Crown side of King's Bench Division". In that Part, the relevant sections are ss. 7 and 10. Section 7 provided that:[39]

> *Orders of mandamus*, *prohibition and certiorari to be substituted for prerogative writs of mandamus, prohibition and certiorari*
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> 7.—(1) The prerogative writs of mandamus, prohibition and certiorari shall no longer be issued by the High Court.
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> (2) In any case where the High Court would, but for the provisions of the last foregoing subsection, have had jurisdiction to order the issue of a writ of mandamus requiring any act to be done, or a writ of prohibition prohibiting any proceedings or matter, or a writ of certiorari removing any proceedings or matter into the High Court or any division thereof for any purpose, the Court may make an order requiring the act to be done, or prohibiting or removing the proceedings or matter, as the case may be.
>
> (3) The said orders shall be called respectively an order of mandamus, an order of prohibition and an order of certiorari.

The clear effect of s. 7 was to sever the remedies afforded by the prerogative writs from the peculiar procedures attached to them—the remedies were to be retained, while the procedures were to be discarded. Or, as succinctly put in the marginal note, orders of *mandamus*, prohibition and *certiorari* were to be substituted for the prerogative writs of *mandamus*, prohibition and *certiorari*. The necessary result of this was that the substantive law no longer required a separate procedure for *mandamus*, prohibition and *certiorari*—that was left up to the procedural law.

The abolition of the old procedure necessitated the creation of new procedures, and in this regard s. 10 provided:

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[38] U.K., H.C., *Parliamentary Debates*, vol. 335, col. 1323 at 1328 (9 May 1938).

[39] In this article, marginal notes to legislative provisions are reproduced as italicised headers.

10.—(1) Rules of court shall be made under section ninety-nine of the Supreme Court of Judicature (Consolidation) Act, 1925, —

(a) prescribing the procedure in cases where an order of mandamus, prohibition or certiorari is sought, or proceedings are taken for an injunction under the last foregoing section [which replaced the writ of *quo warranto* with an injunction];

(b) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any order or before any such proceedings are commenced;

(c) requiring that, where leave is so obtained, no relief shall be granted and no ground relied upon, except with the leave of court, other than the relief and grounds specified when the application for leave was made.

Following the 1938 Act, the Rule Committee enacted the *Rules of the Supreme Court (Divisional Courts) 1938*.[40] Rule 1 revoked the *Crown Office Rules 1906*. Rule 2 substituted the existing *RSC*, O. LIX with a new set of rules, of which r. 3 to r. 9 are substantially the same as *ROC*, O. 53 as it stands today. The only relevant difference for present purposes is that O. LIII required the application for the prerogative orders to be made by way of originating motion—an originating process which has now been abolished—while *ROC*, O. 53 requires an originating summons. Rule 4(*l*) amended r. 1 of O. LXVIII by *inter alia* omitting paragraph (*b*.), which excluded the *RSC* from proceedings on the Crown side.[41] Rule 47 positively provided that:

> Subject to the provisions of this Order, the Rules of the Supreme Court, 1883, shall apply, so far as applicable, to proceedings to which this Order relates, in like manner as they apply to other proceedings in the Supreme Court.

What was the effect of these amendments? Certainly, and as r. 47 provided, the express provisions of O. LIX, being more specific, had to apply in derogation from the general provisions in the *RSC*. But, where the provisions of O. LIX were silent, it must follow that the rest of the *RSC* continued to apply, insofar as they were relevant. This was implied by the amendment to O. LXVIII r. 1, which removed proceedings on the Crown side from the list of proceedings excepted from the operation of the *RSC*, and expressly provided for by O. LIX r. 47, which provided for the application of the *RSC* 1883 subject to the provisions in O. LIX. This meant that the general powers to order discovery, interrogatories, and cross-examination of deponents to affidavits, all applied to an application under O. LIX for the prerogative orders.

It should also be noted, although the point is now mainly of historical interest, that there was nothing in O. LIX which limited the court's powers to give all appropriate relief, and nothing to suggest that such a limitation should be implied. Indeed, such an implied limitation would be contrary to the absorption of Crown proceedings into the general body of civil procedure, subject only to the express provisions of O. LIX. It would, more generally, also violate the principle, now stated in *ROC*, O. 2 r. 1,[42] that procedural irregularities are not fatal and that the court may still deal with the matter as it deems fit. This principle, more than any other, decisively released the

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[40] S.R. & O. 1938/1577.

[41] See text accompanying *supra* note 33.

[42] The equivalent of *RSC* 1883, O. LXX r. 1.

death grip that procedure had on substance in the days of the forms of action, and justified Lord Bowen's view of civil procedure after the *Judicature Acts*:[43]

> A complete body of rules—which possesses the great merit of elasticity, and which (subject to the veto of Parliament) is altered from time to time by the judges to meet defects as they appear—governs the procedure of the Supreme Court and all its branches. In every cause, whatever its character, every possible relief can be given with or without pleadings, with or without a formal trial, with or without discovery of documents and interrogatories, as the nature of the case prescribes—upon oral evidence or upon affidavits, as is most convenient. Every amendment can be made at all times and all stages in any record, pleading, or proceeding that is requisite for the purpose of deciding the real matter in controversy. It may be asserted without fear of contradiction that it is not *possible* in the year 1887 for an honest litigant in her Majesty's Supreme Court to be defeated by any mere technicality, any slip, any mistaken step in his litigation. The expenses of the law are still too heavy, and have not diminished *pari passu* with other abuses. But law has ceased to be a scientific game that may be won or lost by playing some particular move.

It seems fairly clear, therefore, that the case law was wrong to have held that the court in an O. 53 application was confined to the making of prerogative orders.

D. *The 1965 Consolidation*

Further changes took place in 1965. The various *RSC*s which had been made since 1883, and which hitherto existed as separate pieces of legislation, were consolidated pursuant to the recommendations of the Evershed Committee.[44] The parts of O. LIX relating to *mandamus*, prohibition and *certiorari* were taken out and put into a separate Order, O. LIII. Order LIX rule 47 was not included in the consolidated *RSC*.

These changes were not substantive in nature. As the *Supreme Court Practice 1967* states:[45]

> The basic feature of the new Rules of the Supreme Court 1965 is that they have been produced by way of revision, not reform. It was, presumably, no part of the terms of reference of the Rule Committee to introduce fundamental changes in practice and procedure. The result is that the new Rules make comparatively few substantial changes, and they do not fundamentally alter the methods of procedure in the Supreme Court. The former Rules have been revised, re-drafted,

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[43] Charles Synge Christopher, Baron Bowen, "Progress In the Administration of Justice During the Victorian Period" in Committee of the Association of American Law Schools, ed., *Select Essays in Anglo-American Legal History*, vol. 1 (Boston: Little, Brown, and Company, 1907) 516 at 541 [emphasis in original].

[44] *Rules of the Supreme Court (Revision) 1965*, S.I. 1965/1776. See the recommendation in U.K., Committee on Supreme Court Practice and Procedure, "Second Interim Report", Cmd 8176 (1951) at para. 117 that "a complete revision of the Rules be immediately put in hand". According to the authors of the *Supreme Court Practice 1967*, vol. 1 (London: Sweet & Maxwell Ltd., 1967) [*Supreme Court Practice 1967*] at ix, some 144 Orders and Rules made since 1883 were revoked by the 1965 consolidation.

[45] *Supreme Court Practice 1967*, *ibid.* at x.

> rewritten, re-arranged, re-cast, re-worded, re-stated; some obsolete and archaic provisions have been discarded; account has been taken of some former practice directions, and of changes in practice; occasionally, decisions of the Court have been incorporated and some have been negative. The process has been one of codification and consolidation, of tidying-up, of clarifying and re-stating. Yet the new product retains the basic structure of the old.

The only change which requires discussion is the omission of O. LIX r. 47 from the consolidated Rules. The Rule was certainly otiose—it was framed with reference to the *RSC* 1883, which had been revoked as part of the consolidation. But did the omission of O. LIX r. 47 also mean that O. LIII was excluded from the operation of the rest of the *RSC* 1965? That seems highly doubtful. The general rule of interpretation is that the general applies until and unless displaced by the specific. In this connection, while O. LIII has its specific requirements, there is nothing in it that even comes close to excluding the operation of the whole of the *RSC* 1965. Separately, O. I r. 2 (which derived *inter alia* from O. LXVIII r. 1[46]) did not include proceedings on the Crown side in the list of proceedings excluded from the operation of the *RSC*. Further, if the omission of O. LIX r. 47 was intended to have the effect that O. LIII was excluded from the operation of the rest of the *RSC* 1965, this would be a significant change from the previous regime, which would have been picked up by the *Supreme Court Practice 1967*. However, there was nothing to this effect.

E. *Order 53*

Order LIII found its way into our civil procedure as *ROC*, O. 53. The two Orders are substantially the same. The only difference which should be mentioned is that O. LIII required the application for the prerogative orders to be made by way of originating motion—an originating process which has now been abolished in Singapore—while *ROC*, O. 53 requires an originating summons. If anything, this difference fortifies the earlier analysis—while the powers of the court in an originating motion were not spelt out in the *ROC*, the powers of the court in an originating summons are clearly established.

Drawing the threads of the foregoing analysis together, it is submitted that the correct conception of O. 53 is this. *First*, the express provisions of O. 53 apply in derogation from the general provisions of the *ROC*. *Second*, just like elsewhere in civil procedure, where O. 53 is silent, the *ROC* should apply, to the extent that they are relevant. *Third*, just like elsewhere in civil procedure, where O. 53 is silent, the powers of the court are not curtailed. It should be added, for perspective, that the foregoing propositions would be wholly trite had they been asserted in respect of any other Order. But such is the weight of the authorities in favour of the view that O. 53 is a separate and exclusive procedure, that the assertion of this view requires the extended analysis undertaken above.

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[46] See text accompanying *supra* note 33.

The main practical effects of this conception of O. 53 are as follows. *First*, pursuant to the express provisions introduced by the recent amendments, the court can order any appropriate relief in an O. 53 application, subject to a prerogative order or declaration being granted. (Formerly, in the absence of any express provision on the availability of other relief, the court would have been able to grant any appropriate relief without precondition. Under the new amendments this is no longer possible.) *Second*, since there are no express provisions to the contrary, the court's general interlocutory and evidentiary powers are applicable. These include the court's powers in originating summonses to give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof, in particular ordering the taking of oral evidence and cross-examination.[47] These also include the court's general powers to order discovery by any party,[48] to order interrogatories by any party,[49] and to order the deponent to an affidavit to be cross-examined.[50] *Third*, since there are no express provisions to the contrary, the court may grant any *interim* relief it sees fit.

Thus understood, O. 53, read with the relevant Rules of Court, affords a fair and balanced procedure for judicial review, protecting both the interests of the applicant and the respondent. Under the recent amendments to r. 1 and r. 7, the court can effectively order all appropriate remedies (since, as mentioned, it should be relatively easy to give declaratory relief as a precursor to other reliefs). Separately, the court may, under its powers in the general part of the *ROC*, order discovery, cross-examination and interrogatories, and, these being discretionary in nature,[51] there is little scope for abuse by litigants. The court may also order interim relief in appropriate cases. All this means that there are less reasons for a plaintiff to proceed outside of O. 53, and, correspondingly, makes it more likely that the defendant public body will be protected by the O. 53 requirement for leave.

It might be asked, quite understandably: why was all this not picked up in England before 1977, when the old O. LIII was still in force? The most immediate response must be, as mentioned earlier, that the conception of O. LIII as a separate and exclusive procedure was never consistently held, particularly in the areas of discovery and cross-examination. It might well be that, had there been greater pressure on this area of law, the inconsistencies would have been detected and resolved, one way or the other. It is suggested that there are two possible reasons why this did not happen. The first is the relatively late development of administrative law—as late as 1963 Lord Reid was commenting that "[w]e do not have a developed system of administrative law—perhaps because until fairly recently we did not need it".[52] The second is that there was a ready alternative to the real or perceived difficulties with O. LIII and the substantive law of that time—proceeding by ordinary action to obtain a declaration.[53] In fact, the popularity of this alternative led Professor Wade to observe that "certiorari and prohibition might almost be put out of business by the rapidly developing

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47 *ROC*, *supra* note 2, O. 28 r. 4(2)-(4).
48 *Ibid.*, O. 24 r. 1.
49 *Ibid.*, O. 26 r. 1.
50 *Ibid.*, O. 38 r. 2(2).
51 In contrast to writs, where, for example, discovery is automatic: *ibid.*, O. 25 r. 8(1)(a).
52 *Ridge v. Baldwin* [1964] 1 A.C. 40 at 72 (H.L.).
53 *O'Reilly*, *supra* note 9 at 281, Lord Diplock.

remedy of declaration, aided where necessary by injunction".[54] It is suggested that, for these reasons, the view that O. LIII was a separate and exclusive procedure was never subject to serious challenge or rethinking—there is no actual English decision before 1977 to this effect. Evidence of the unformed state of thinking in this area of the law can be found in the Law Commission's analysis of the law when making the recommendations that led to the reforms of 1977. The Law Commission noted the applicability to O. LIII of the general powers under the *RSC* to order discovery and cross-examination.[55] But these powers did not arise from the express provisions of O. LIII, and the Law Commission did not consider the incongruity between their existence on the one hand, and on the other hand the theory that O. LIII was a separate procedure under which ordinary remedies could not be obtained because they were not expressly provided for. The Law Commission did comment, without elaboration, that the special procedure in O. LIII was incompatible with giving other relief.[56] But it is not clear at all why this was so—certainly, the Rules Committee in Singapore, in making the 2011 amendments to O. 53, must have taken the view that availability of other relief under O. 53 without any further reform would not cause any great problems.

In any case, it is submitted, for the reasons stated earlier, that the historical reasons for taking a restrictive view of O. 53 as a separate and exclusive procedure are far from convincing. On the contrary, there are good reasons for reinterpreting O. 53 to afford a more effective procedure for judicial review. This can be achieved via judicial action. In this regard, it is pertinent to note that the Singapore decisions which have impliedly affirmed the separate and exclusive nature of O. 53 have done so in the context of remedies, and in particular declaratory relief. These decisions have now been overtaken by the recent amendments to O. 53. Outside of remedies, the only relevant Singapore decisions on the nature of O. 53 are *Re Singh Kalpanath*[57] and *Susan Lim*,[58] both of which impliedly rejected the view of O. 53 as separate and exclusive by affirming the applicability of powers outside of the express provisions of O. 53 to order cross-examination and discovery respectively. It is therefore entirely open to future courts to follow these two cases in making suitable interlocutory and evidentiary orders when so empowered by the *ROC* and required by the justice of each case.

IV. The Effect of the *Government Proceedings Act*

Before 1997, a discussion of the procedure for judicial review would have begun and ended with O. 53 and its relationship with the other Rules of Court. But, following an amendment to the *GPA* in 1997, it is now necessary to consider the effect of that Act on proceedings for judicial review against the Government.

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54 H.W.R. Wade, *Administrative Law*, 5th ed. (Oxford: Clarendon Press, 1982) at 570.
55 U.K. Law Commission, "Report on Remedies", *supra* note 15 at para. 15.
56 *Ibid.* at para. 21.
57 *Supra* note 21.
58 *Supra* note 20.

A. *The* Government Proceedings Act*: Generally and the Definition of "Civil Proceedings"*

The *GPA* was based on the U.K. *Crown Proceedings Act, 1947*.[59] The Acts respectively governed civil proceedings by or against the Government in Singapore and the Crown in the U.K. The U.K. Act was not, and is not, concerned with judicial review—s. 38(2) provides that:

> "civil proceedings" includes proceedings in the High Court or the county court for the recovery of fines or penalties, but does not include proceedings on the Crown side of the King's Bench Division.

Professor Glanville Williams, in his commentary to the U.K. Act, explains that:[60]

> The last limb of the definition is an obscure way of saying that the term does not include proceedings in the King's Bench Division on the criminal side... or proceedings in relation to habeas corpus, mandamus, prohibition, certiorari, and injunction in the nature of quo warranto. These last four proceedings appear to be all that is left of the former civil proceedings on the Crown side of the King's Bench Division, for the other civil proceedings on this side are either obsolete or abolished.

This was originally also the case for the *GPA*, which when it was first enacted as a colonial Ordinance[61] stipulated that:[62]

> "civil proceedings" means proceedings of whatever kind of a civil nature before a court and includes proceedings for the recovery of fines and penalties and an application at any stage of a proceeding, *but does not include such proceedings as would in England be brought on the Crown side of the Queen's Bench Division*.

That the definition of "civil proceedings" controlled the ambit of the Act was made clear in both Singapore and U.K. decisions. The Singapore decision is *Re Fong Thin Choo*, concerning an application for prohibition, where Chan Sek Keong J. held as follows:[63]

> State counsel argued that since the court could not grant an injunction against the Government or any of its officers, it could not issue prohibition as it would have the effect of granting an injunction. No authority was cited for this proposition. If the argument were valid, it would follow that prohibition as a remedy against the government had been abolished by s 27 since its enactment. In my view, the argument was plainly wrong. Section 27 of Cap 121 affects "civil proceedings", which expression is defined to mean:
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> > proceedings of whatever kind of a civil nature before a court and includes proceedings for the recovery of fines and penalties and an application at any

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59 10 & 11 Geo. VI, c. 44.

60 Glanville Llewelyn Williams, *Crown Proceedings: An Account of Civil Proceedings By and Against the Crown as Affected by The Crown Proceedings Act, 1947* (London: Stevens & Sons Limited, 1948) at 117.

61 No. 58 of 1956, Sing.

62 *Ibid.*, s. 2(2) [emphasis added].

63 [1991] 1 S.L.R.(R.) 774 at paras. 15, 16 (H.C.) [emphasis in original; paragraph numbers omitted].

> stage of a proceeding, *but does not include such proceedings as would in England be brought on the Crown side of the Queen's Bench Division*.
>
> The Crown side of the Queen's Bench Division is concerned with judicial review proceedings and not civil proceedings. Section 27 did not and was not intended to affect the court's jurisdiction in judicial review proceedings.

The U.K. decision is *Davidson v. Scottish Ministers*,[64] where the House of Lords considered, in the context of an appeal from Scotland, the ambit of s. 21 of the U.K. Act (s. 27 of our Act). By way of framing the issue, Lord Nicholls of Birkenhead explained how s. 21 was to be construed in English law:[65]

> The issue is whether a petition to the Court of Session by way of judicial review falls within section 21 at all. For this purpose what matters is the meaning of the phrase 'civil proceedings' in section 21. This phrase governs the scope of both section 21(1) and section 21(2).
>
> In English law the phrase 'civil proceedings' is not a legal term of art having one set meaning. The meaning of the phrase depends upon the context. For instance, the phrase is often used when contrasting civil proceedings with criminal proceedings. So used, and subject always to the context, civil proceedings will readily be regarded as including proceedings for judicial review.
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> This usage was not intended in the 1947 Act. That is clear beyond doubt. Proceedings on the Crown side of the King's Bench Division were the predecessors to applications for judicial review, and the definition of 'civil proceedings' in section 38 of the Act states expressly that 'civil proceedings' does not include proceedings on the Crown side. Thus section 21 was not applicable to Crown side proceedings.

Given that the definition of "civil proceedings" controlled the ambit of the *GPA*, it is hugely significant that the original definition of "civil proceedings" was deleted in 1997 by a *Statute (Miscellaneous Amendments) Act*[66] and substituted with the following definition:[67]

> "Civil proceedings" means proceedings of whatever kind of a civil nature before a court and *includes proceedings for judicial review* and recovery of fines and penalties and an application at any stage of a proceeding.

In moving the Second Reading of the Bill, the Minister of State for Law only stated that the Bill "brings together amendments made to a number of written laws which are mainly of a procedural or administrative nature".[68] There was no reference in his speech or the short debate thereafter to the amendment of the definition of "civil proceedings" in the *GPA*. This is unfortunate—the *GPA*, like its U.K. counterpart, was originally designed to apply to proceedings in private law by and against the Government, and it would have been instructive to understand why it was extended to include proceedings for judicial review against the Government.

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64 [2005] UKHL 74.
65 *Ibid.* at paras. 14-16 [paragraph numbers omitted].
66 No. 7 of 1997, Sing.
67 *Ibid.*, s. 2(2) [emphasis added].
68 Sing., *Parliamentary Debates*, vol. 67, col. 1548 (25 August 1997).

But, whatever the subjective intentions of the policymakers, the plain language of the amended definition, which must prevail, makes it clear beyond doubt that the *GPA* now applies, in some ways at least, to proceedings for judicial review against the Government.[69] Similarly, *ROC*, O. 73, which gives effect to the procedural provisions of the *GPA*, must now be regarded as applicable to proceedings for judicial review against the Government.

As elaborated below, the result of applying the expanded definition to some of the substantive provisions of the *GPA* is a significant departure from the procedure for judicial review as it is commonly understood. What is more, the provisions of the Act, being statutory in nature, would override the *ROC* in the event of any inconsistency. The following analysis will therefore not only undertake the linguistic exercise of applying the expanded definition to the substantive provisions, but will also examine if the result makes sense from a policy point of view. In some matters the policy considerations will repeat what has been said with regard to O. 53, but this is necessary in the interest of clarity.

B. *Section 27*

It is more convenient to deal with the more specific provisions first. The first provision in this regard is s. 27, which provides that:

> (1) In any civil proceedings by or against the Government the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between private persons, and otherwise to give such appropriate relief as the case may require:
> Provided that—
> (a) where in any proceedings against the Government any such relief is sought as might in proceedings between private persons be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and
> (b) in any proceedings against the Government for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property or to the possession thereof.
>
> (2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.

Read together with s. 2(2), s. 27 confers upon the court the power, in proceedings for judicial review against the Government, to make all such orders as it has

[69] Theoretically, proceedings for judicial review can be brought by the Government against other public bodies. However, this is unlikely to happen in practice, and the discussion will therefore refer only to proceedings for judicial review against the Government.

power to make in proceedings between private persons, and otherwise to give such appropriate relief as the case may require. This must include declaratory relief, damages and injunctions. The prohibition of injunctive relief and orders for specific performance in proviso (a) is inapplicable because it only applies when such relief "might in proceedings between private persons be granted". There is no equivalent to judicial review in proceedings between private persons. Proviso (b) is unlikely to be of general application in proceedings for judicial review against the Government. In any event, both provisos do not prohibit the grant of declaratory relief or damages.

The basic principle underlying s. 27 is clear and clearly applicable to proceedings for judicial review—the court must be able to give all appropriate relief in any action. Parenthetically, this principle would also seem to underlie the recent amendments to O. 53.

C. *Section 34*

The second specific provision is s. 34, which provides that:

> *Discovery.*
> 34.—(1) Subject to and in accordance with Rules of Court —
> (a) in any civil proceedings in the High Court or a subordinate court to which the Government is a party, the Government may be required by the court to make discovery of documents and produce documents for inspection; and
> (b) in any such proceedings as aforesaid, the Government may be required by the court to answer interrogatories:
> Provided that this section shall be without prejudice to any other written law, or to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.
> (2) Any order of the court made under the powers conferred by subsection (1) (b) shall direct by what officer of the Government the interrogatories are to be answered.

Read together with s. 2(2), s. 34 provides that the court may, in proceedings for judicial review to which the Government is a party, order the Government to make discovery of documents, to produce documents for inspection, and to answer interrogatories, subject to a public interest privilege.

From a policy point of view, *some* degree of discovery must be possible in proceedings for judicial review against the Government (or any other public body, for that matter). Otherwise, in the absence of publicly available reasons, which is more often than not the case, the process by which a decision is made would be effectively and substantially unreviewable. Of course, the legitimate interests of public administration require some degree of protection from discovery, which can potentially be abused. This protection is given by the public interest privilege recognised in

s. 34,[70] and more generally discovery can be resisted on the basis that the application is simply a fishing expedition. And, from the point of view of consistency, it would be strange if the Government can be ordered to give discovery for something as malign as fraud or battery or false imprisonment in an action under private law, but be immune from discovery simply because the proceedings are for judicial review.

D. *Section 18*

The greatest effect of the expanded definition is in s. 18, which provides that:

> *Application of written law relating to procedure.*
>
> 18. Subject to the provisions of this Act, the provisions of the written law relating to procedure shall apply to civil proceedings by or against the Government in the same way as to suits between private persons.

Read together with s. 2(2), s. 18 provides that the provisions of the written law relating to procedure shall apply to proceedings for judicial review against the Government in the same way as to suits between private persons, subject to the provisions of the *GPA*. In other words, the procedure in proceedings for judicial review against the Government shall be assimilated to the procedure between private persons, subject to the provisions of the *GPA*.[71] It is pertinent to note that the U.K. Act did not contain a section similar to s. 18—that was first enacted in the Malaysian Act. Even so, Professor Williams commented that the overall effect of the U.K. Act was to "assimilate procedure in civil proceedings by and against the Crown to the procedure applicable to subjects", and that "the subject is given what in most respects is an ordinary action against the Crown".[72]

As a corollary of the expanded scope of s. 18, O. 53 would no longer apply to proceedings for judicial review against the Government, since it prescribes, contrary to the Act, a separate procedure for obtaining the prerogative orders. The Order would be restricted in its operation to proceedings for judicial review against other public bodies.

From a policy point of view, the assimilation of the procedure in proceedings for judicial review with that in ordinary actions is a broad proposition and may be quite startling, but it is in fact a possibility which was favourably considered, though ultimately rejected, by the U.K. Law Commission:[73]

> 2. Should the procedure in prerogative order proceedings be assimilated to that of ordinary actions?
>
> 35. One possible change, which would help to solve some but by no means all of the difficulties of the present system of remedies, had considerable support in our

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[70] It is an interesting question whether the public interest privilege in s. 34 is the same as the "affairs of State" privilege under s. 125 of the *Evidence Act* (Cap. 97, 1997 Rev. Ed. Sing.). However, it is sufficient for present purposes to say that the law affords a defence against disclosure, on the basis of public interest considerations.

[71] The exceptions mainly concern the mode of service on the Government, the unavailability of summary judgment or judgment in default of appearance against the Government, and the unavailability of execution facilities. They are not significant for present purposes.

[72] Williams, *supra* note 60 at 113, 114.

[73] U.K. Law Commission, "Report on Remedies", *supra* note 15 at 17.

> consultation. The reform would involve the assimilation of the procedure applicable to the prerogative orders to that of ordinary civil procedure begun by writ or originating summons. The *ex parte* hearing for leave to apply for a prerogative order would disappear; it would be for the defendant to take the initiative if the action was one which ought to be struck out. The ordinary interlocutory processes, including discovery, would apply, and it would be possible to join in the action for a prerogative order a claim for an injunction, a declaration or damages.
>
> 36. We recognise the attractions of the change which have been summarised in the preceding paragraph. In so far as it would put proceedings in the public law field on the same footing as actions in the private law field it would seem to achieve a simplification. But the truth is that the procedure applicable to private law actions has its own difficulties and, in particular, opportunities for delay and that the present procedure for obtaining a prerogative order is relatively simple, inexpensive and speedy. There are admittedly deficiencies in that procedure, but, if these drawbacks can be satisfactorily remedied, we think that there is much to be said in favour of the prerogative order procedure.

The U.K. Law Commission's concerns about assimilation do not seem to obtain in the Singapore context. Our courts pride themselves on efficient case management and the expeditious disposal of cases—in 2010, the latest year for which statistics are available, the average waiting time between the setting down of a writ for trial and the trial itself was 2.9 weeks, while *inter partes* originating summonses were on average heard 4.4 weeks after the date of filing.[74] It also does not seem to be the case that having a specialised procedure would be less costly. Further, the *ROC* afford adequate procedures by which unmeritorious cases can be flushed out. In the case of an action begun by writ, the defendant can, as pointed out by the U.K. Law Commission, apply to strike out the statement of claim pursuant to O. 18 r. 19. This may be possible even before the defendant files its defence, and at any rate can be done early in the proceedings, before the interlocutory procedures come into play. The defendant (or the court on its own motion) may also obtain (or make), pursuant to O. 14 r. 12, a summary determination of a question of law which will fully determine the entire cause or matter or any claim or issue therein. In the case of actions begun by originating summons, these are as a practical matter heard much faster than writs, and moreover the court retains entire control over the interlocutory process. In the case of discovery applications, the public interest privilege and the general rule against fishing afford sufficient protection against mischievous applications. Finally, and perhaps most importantly, it should not be forgotten that the basic procedure laid down in the *GPA* has received the sanction of the Legislature, and there is therefore no reason to think that following the procedure laid down in it might prejudice the legitimate interests of public administration.

So, all in all, the assimilation of the procedure for proceedings for judicial review against the Government with the procedure for actions between private persons is far from being an unpalatable proposition. Certainly, and as the U.K. Law Commission acknowledged, it would simplify procedure considerably.

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[74] *Supreme Court Annual Report 2010*, online: Supreme Court Singapore <http://app.supremecourt.gov.sg/data/doc/ManagePage/44/AnnualRpt2010/index.html> (last accessed 15 October 2011). The times reported do not include court vacations.

V. Conclusion

What is the cumulative effect of the foregoing analysis? It is submitted that there are now two procedures applicable to proceedings for judicial review in Singapore. The first is that prescribed by the *GPA* in respect of proceedings for judicial review by or against the Government. The second is that prescribed by O. 53 and the *ROC* in respect of other proceedings for judicial review. The two procedures are not identical by any means, but, understood in the way argued for in this article, they have certain important similarities, principally the availability of all possible remedies in a single action and the existence of effective interlocutory and evidentiary facilities, which are essential components of an adequate procedure for judicial review. Admittedly, the existence of two procedures is conceptually untidy and somewhat confusing—it may well be thought that having a single procedure would be neater. In this regard, it may be more orthodox to restore the *GPA* to its original scope—private law proceedings involving the Government—and to leave judicial review to O. 53, albeit reconceived as argued in this article.

The analysis in this article is admittedly novel—no court, in Singapore or elsewhere, has truly examined the basis for treating O. 53 as a separate and exclusive procedure, and the expanded definition of "civil proceedings" in the *GPA* has gone completely unnoticed in the years since it was enacted. But hopefully the analysis has shown that the law may be clarified in a way that provides an effective and balanced procedure for judicial review. Even if the analysis does not convince, the two key ingredients of an effective and balanced procedure have been identified—(1) the availability of all possible remedies in a single action, and (2) the availability of effective interlocutory and evidentiary facilities, subject to safeguards against abuse. This may be food for thought for further reform of the law to provide an adequate procedure for judicial review, the branch of the law which gives effect to the constitutional principle that "[a]ll power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power".[75]

[75] *Chng Suan Tze v. Minister for Home Affairs* [1988] 2 S.L.R.(R.) 525 at para. 86 (C.A.).