

# JAIL FOR RUBBER STAMPING

## Duties of Accredited Checkers and Qualified Persons under the Building Control Act

[2021] SAL Prac 1

The Building Control Act (Cap 29, 1999 Rev Ed) imposes a number of statutory duties on construction professionals, such as qualified persons and accredited checkers. This article examines the recent case of *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 and the non-delegable nature of such duties.

Jennifer **FONG**

*LLB (Hons) (National University of Singapore);  
Advocate and Solicitor (Singapore), Attorney (New York);  
Partner, Eldan Law LLP.*

### I. Introduction

1 The collapse of Hotel New World in 1989, the 1999 partial collapse of the roof of Compassvale Primary School and the 2004 partial collapse of Nicoll Highway have paved the road for increasingly stringent legislative protections imposed on qualified persons under the Building Control Act<sup>1</sup> (the “Act”).

2 After the collapse of Hotel New World in 1989, Parliament introduced the role of an accredited checker, a person who was to perform an independent check and calculation of all structural plans in the project.

3 *Leong Sow Hon v Public Prosecutor*<sup>2</sup> (“*Leong v PP*”) serves as a salient reminder to all qualified persons and construction

---

1 Cap 29, 1999 Rev Ed.

2 [2020] SGHC 228.

professionals of the serious consequences of a breach of their duties under the Act.

## II. Statutory duties of accredited checkers

4 The statutory duties of accredited checkers are set out in ss 13 to 18 of the Act, as well as the Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations<sup>3</sup> (“Regulations”).

5 Section 18 of the Act provides that:

18.–(1) An accredited checker... shall check the detailed structural plans and design calculations of the building works in accordance with the building regulations and shall carry out such other duties as may be prescribed by those regulations.

6 Specialist accredited checkers appointed in respect of any geotechnical building works “shall check the geotechnical aspects of those building works in accordance with the building regulations and shall carry out such other duties as may be prescribed by those regulations”.<sup>4</sup>

7 If the accredited checker or the specialist accredited checker does not perform his duties under ss 18(1) and 18(2) of the Act, respectively, he shall be guilty of an offence and shall be liable to a fine not exceeding \$100,000 or to imprisonment not exceeding two years or both.<sup>5</sup>

8 The Regulations set out the duties of the accredited checker in further detail.

9 Section 7 of the Regulations provides that:

7.— (1) It shall be the duty of an accredited checker to —  
(a) evaluate, analyse and review the structural design in the plans of any building works and perform such original calculations with a view to determining the

---

3 Cap 29, Rg 2, 2002 Rev Ed.

4 Building Control Act (Cap 29, 1999 Rev Ed) s 18(2).

5 Building Control Act (Cap 29, 1999 Rev Ed) s 18(3).

adequacy of the key structural elements of the building to be erected or affected by building works carried out in accordance with those plans.

...

10 The Regulations further provide that the accredited checker shall in relation to any plans of building works carry out a long list of specific tasks set out in the Second Schedule of the Regulations.<sup>6</sup>

11 These tasks include:

- (a) determining and using the Code of Practice used in the design;<sup>7</sup>
- (b) checking the design loadings and wind loadings;<sup>8</sup>
- (c) ascertaining the “design assumptions and limitations of the computer program used in the analysis of the structural design”;<sup>9</sup>
- (d) checking the standards and specifications of materials used;<sup>10</sup>
- (e) analysing all key structural elements,<sup>11</sup> with a detailed specification of the matters to be considered in such analysis for common key structural elements;<sup>12</sup>

---

6 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) s 7(2).

7 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) Second Schedule, para (a).

8 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) Second Schedule, para (b).

9 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) Second Schedule para (c).

10 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) Second Schedule, para (e).

11 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) Second Schedule, paras (h)–(n).

12 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) Second Schedule, paras (f)–(n).

(f) checking the structural detailing in drawings and ensuring that these are consistent with the design calculations;<sup>13</sup> and

(g) determining the stability and robustness of the structural system<sup>14</sup> and other aspects of the design which are peculiar to the building erected and essential to the structural integrity of the building.<sup>15</sup>

12 The accredited checker is obliged to notify the Commissioner of Building Control of any contravention or non-compliance with the provisions of the Act in connection with the structural design of any plans of building works.<sup>16</sup> As the court found in *Leong v PP*, Parliament had intended for all structural plans to be subject to a series of independent checks.<sup>17</sup>

13 By providing the very detailed list set out in the Regulations tied to a criminal offence for non-compliance, Parliament had also intended for the accredited checker to face criminal liability for not performing any of his duties set out in the Act and Regulations. *Leong v PP* is precisely the case in point.

### III. The court's decision in *Leong Sow Hon v Public Prosecutor*

#### A. Facts of the case

14 The accredited checker in this case was sentenced to six months' imprisonment under s 18(3) of the Building Control Act for failing to evaluate, analyse and review the structural design in respect of, and perform independent calculations for a number of key structural elements for, a viaduct from

---

13 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) Second Schedule, para (o).

14 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) Second Schedule, para (g).

15 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) Second Schedule, para (p).

16 Building Control (Accredited Checkers and Accredited Checking Organisations) Regulations (Cap 29, Rg 2, 2002 Rev Ed) s 7(3).

17 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [27].

the Tampines Expressway to the Pan Island Express Way (the “TPE–PIE Viaduct”).

15 The accredited checker’s failure to conduct any independent calculations had been uncovered by the Building Control Authority following an incident on 14 July 2017 where crossheads at two piers of the TPE–PIE Viaduct had given way, causing a fatal accident.

16 The accident had led the calculations of the entire structure to be checked and eight out of ten permanent corbels, which were essential for the support and overall structural stability of the viaduct, were found to be inadequately designed. Five of these permanent corbels would have collapsed during the casting of the slab at the construction stage, and the remaining three would have shown “significant structural cracks upon the viaduct being opened to a full traffic load, leading to sudden brittle failure and in turn leading to collapse”.<sup>18</sup>

17 This disastrous consequence did not in fact materialise because the accredited checker’s failure was discovered before any actual harm was caused.<sup>19</sup>

18 Nevertheless, charges were brought against the accredited checker for his failure to perform independent calculations and review. The court below had sentenced the accredited checker to six months’ imprisonment and the accredited checker appealed, arguing that the appropriate sentence ought to be a fine.<sup>20</sup>

19 The High Court affirmed the imprisonment term of six months. The court found that the potential harm caused by the accredited checker’s failure to perform original calculations was high because it could have led not only to potential death or injury to persons, but also to potential damage to public infrastructure (with the attendant cost of rectification), inconvenience, economic

---

18 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [8].

19 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [9].

20 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [10].

harm to road users and the undermining of public confidence in the structural integrity of Singapore's infrastructure.<sup>21</sup>

**B. *Accredited checker's duties are non-delegable and cannot be left entirely to assistants***

20 In affirming the District Court's decision, the High Court made important pronouncements on the non-delegable nature of the duty of the accredited checker under the Building Control Act.

21 In seeking the lower sentence of a fine instead of imprisonment, the accredited checker argued on appeal that he was entitled to rely on other professionals in his accredited checking organisation. This was rejected by the High Court.

22 The court emphasised that the accredited checker's duty under s 18 of the Act was a personal, non-delegable duty to check the detailed structural plans and design calculations of the building works according to the building regulations, and that this was the legislative intent.<sup>22</sup>

23 The court also referred to s 7 of the Regulations which expressly provided that it was the duty of the accredited checker to evaluate, analyse and review the structural plans of any building works and perform such original calculations with a view to determining the adequacy of the key structural elements to be erected or affected by the building works. Pursuant to the First Schedule of the Regulations, the accredited checker had to sign a certificate certifying that he had indeed carried out such an evaluation and append his design calculations.

24 The court held that it was clear that the duty of the accredited checker was not only to review the design but to perform original calculations to determine the adequacy of the key structural elements.

---

21 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [57].

22 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [32].

25 The accredited checker had argued that the project involved the evaluation, analysis and review of 284 components of structural elements and their relevant design calculations, and that he could not have undertaken the work alone given the scale of the project.

26 Aedit Abudullah J found that although the accredited checker did have a system in place to identify and check the key structural elements, the accredited checker only played a managerial and high-level supervisory role in the system. He had his subordinates do most of the labour. It was uncontested that in the design calculations submitted to the Building and Construction Authority, there were no independent calculations for the permanent corbels prepared or submitted by the appellant.<sup>23</sup> He had failed to independently check on his subordinates' work and he took the risk in assuming they had executed their duties in strict compliance with the provisions of the Building Control Act.<sup>24</sup>

27 The court held that the accredited checker cannot delegate his responsibility to his assistants. This was even though amendments had been made to the Building Control Act to provide that the accredited checker was required to operate within an accredited checking organisation so that the accredited checker would have more specialised technical support staff and assistants. The staff could only assist the work of the accredited checker, but this did not shift the accredited checker's personal and primary responsibility.

28 Further, the accredited checker in *Leong v PP* had initially claimed that he had performed original calculations but later admitted to being untruthful when he was asked to produce evidence of such original calculations.<sup>25</sup> The court found such dishonesty to be an aggravating factor.

---

23 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [7].

24 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [55].

25 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [8].

29 The court highlighted three considerations particularly applicable to accredited checkers:<sup>26</sup>

- (a) Abandonment or abnegation of the duties imposed, such as by leaving matters wholly to others;
- (b) Gross negligence, such as failing to catch errors which would be obvious and detectable with a modicum of care; and
- (c) Deliberate omission to check because of corruption or being given other incentives....

30 The court in *Leong v PP* held that culpability of an accused person could be increased depending on the nature of the unsafe act, the number of unsafe acts committed, the level of deviation from established procedure and other relevant factors such as whether the unsafe acts were motivated by the offender's desire to save costs.<sup>27</sup>

31 The court also emphasised that negligence in the context of the Act may not be an excuse. While the fact that a person was merely negligent but did not intentionally commit the act could warrant a lighter sentence for other criminal offences, this may not be the case for offences under the Act. This was because the entire objective of the legislative framework was to ensure an independent system of checks to maintain building safety. The very purpose of the accredited checker was to check the work of others. Therefore, the accredited checker could not simply say that he ought not to be punished severely because he was merely negligent in making inaccurate calculations, as opposed to intentionally violating the Act.<sup>28</sup>

32 As a result, the accredited checker's imprisonment term was affirmed by the High Court despite his arguments that it was his subordinates' error, and he was entitled to rely on his subordinates.

---

26 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [50].

27 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [51].

28 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [38].



**C. No reliance on duties of other construction professionals or possible future detection**

33 The accredited checker in *Leong v PP* also argued that any risk of potential harm eventuating from the construction of the viaduct would have been re-assessed by him on a continual basis prior to the completion of other works and would have been detected either by himself or one of the other professionals during the building process.

34 The accredited checker argued that the defects in the plans approved by him would have been detected prior to any ultimate failure which would have caused the collapse of the viaduct. Specifically, the corbels would have cracked prior to failure, and the supervision team on site could have been reasonably expected to detect such cracking.

35 The court held that the fact that there were others who were also responsible for preventing or remedying errors was not relevant to the accredited checker's breach of duty.<sup>29</sup>

36 The court referred to the 2004 Nicoll Highway collapse, which was a result of two critical design errors and the warning signs of those errors were not heeded by multiple construction professionals, namely the builder, site supervisor, qualified person and accredited checkers. Each error could have been remediable by itself.<sup>30</sup> The risk of relying on the vigilance of others was that it could lead to a "perfect storm of errors", the case in point being the Nicoll Highway collapse.<sup>31</sup>

37 The court referred to the Parliamentary speeches of the Act, in which the relevant Minister had stated that architects, engineers and contractors must perform their professional and contractual duties with care and diligence and prime regard for safety.<sup>32</sup>

---

29 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [32].

30 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [33].

31 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [33] and [59].

32 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [33].

**IV. Ramifications of the court's decision in *Leong Sow Hon v Public Prosecutor***

38 The Act imposes duties not only on accredited checkers but also on other construction professionals.

39 Duties are also imposed on builders, specialist builders, developers, and geotechnical qualified persons.<sup>33</sup>

(a) For example, s 9 of the Act also imposes duties on qualified persons to use reasonable care and diligence in their execution of their various duties. These duties include ensuring that the building works are designed in accordance with the Act and building regulations, and supervising such building works or geotechnical building works to ensure they are being carried out in accordance with approved plans, the Act and Regulations and any conditions imposed by the Commissioner of Building Control. The failure of the qualified persons in question to take all reasonable steps and exercise due diligence is an offence which could also lead to a fine or imprisonment terms.<sup>34</sup>

(b) Builders have a corresponding duty to ensure the building works are carried out according to approved plans, the Act and Regulations and any conditions imposed by the Commissioner of Building Control, the violation of which is an offence.<sup>35</sup>

(c) It is also an offence for a builder<sup>36</sup> or developer<sup>37</sup> to fail to notify the Commissioner of Building Control of any contravention of the Act and Regulations which the builder or developer knows or ought to reasonably know of.

---

33 See ss 8, 9, 10 and 11 of the Building Control Act (Cap 29, 1999 Rev Ed).

34 Building Control Act (Cap 29, 1999 Rev Ed) s 9.

35 Building Control Act (Cap 29, 1999 Rev Ed) ss 11(1), 11(6) and 11(7).

36 Building Control Act (Cap 29, 1999 Rev Ed) s 11(2)(b).

37 Building Control Act (Cap 29, 1999 Rev Ed) s 8(5).

(d) As another example, the court in *Resource Piling Pte Ltd v Geospecs Pte Ltd*<sup>38</sup> (“*Resource Piling*”) had noted that there was a duty on qualified persons under s 31 of the Building Control Regulations 2003<sup>39</sup> to carry out proper and adequate site investigations<sup>40</sup> and the same regulations had made it mandatory for a professional engineer to sign off on any site investigations report. This followed the 2002 infamous tilting of Samsung Hub relating to soil investigation and piling construction shortcomings.

(e) The court had also noted in *Resource Piling* that the requirement for geotechnical professional engineers to supervise specific types of works in the Building Control (Amendment) Act 2007<sup>41</sup> followed the 2004 Nicoll Highway collapse,<sup>42</sup> and that the overarching purpose of the amendments to the Act and Regulations in 2007 was to strengthen the building control regulatory framework<sup>43</sup> to uplift standards of safety and quality in the construction industry.

40 The pronouncements by the court in *Leong v PP*, particularly on the limits of delegation, failure to catch gross errors and non-reliance on other construction professional are therefore significant not only to accredited checkers but to all construction professionals covered by the Act.

41 Qualified persons and accredited checkers alike should therefore take care to avoid the particular situations identified by the court in *Leong v PP* as examples of violations of their non-delegable statutory duties, such as complete abandonment of duties to subordinates, failing to check their subordinates’ work,<sup>44</sup> or engaging in unsafe acts in order to save costs.<sup>45</sup>

---

38 [2014] 1 SLR 485.

39 S 666/2003.

40 *Resource Piling Pte Ltd v Geospecs Pte Ltd* [2014] 1 SLR 485 at [29].

41 Act 47 of 2007.

42 *Resource Piling Pte Ltd v Geospecs Pte Ltd* [2014] 1 SLR 485 at [30].

43 *Resource Piling Pte Ltd v Geospecs Pte Ltd* [2014] 1 SLR 485 at [32].

44 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [28].

45 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [49].

Detailed regulations on how the various statutory duties are to be carried out should also be complied with.

42 However, construction professionals can take some comfort in the fact that in coming to its decision in *Leong v PP*, the court stated that it was mindful that while deterrence is an important factor because an offence under s 18 of the Act affects public safety, it was not Parliament’s intent to pitch the deterrent element so high that suitably qualified individuals decline to offer themselves up as accredited checkers for fear that any breach, however small, “would sound in a criminal offence and imprisonment”. The court will strike an appropriate balance bearing in mind the rationale underpinning the offence in the first place.<sup>46</sup>

43 Further, while construction professionals (such as those individuals acting as qualified persons) cannot escape from their personal exposure to criminal liability, they are still free to manage their civil liability through the allocation of risk in contracts.

44 In *Resource Piling*, the plaintiff, Resource Piling Pte Ltd (“Resource Piling”), had argued that the soil investigation specialist defendant, Geospecs Pte Ltd (“Geospecs”), had owed it a duty of care because, according to the plaintiff, Geospecs should have expected that Resource Piling – as a potential bidder for the piling contract – would rely on soil investigation logs prepared by Geospecs to price its tender, particularly due to the short window of time of two weeks in which tenders for the piling contract had to be submitted.

45 The court in *Resource Piling* held that the statutory regime in the Act was intended to promote a common safety standard but did not purport to regulate the rights and commercial interests of private parties as between each other, and therefore there was nothing in the Act or regulations to indicate that a construction professional who had failed to discharge his statutory liability will be liable to another construction professional through a

---

46 *Leong Sow Hon v Public Prosecutor* [2020] SGHC 228 at [44]–[45].

co-extensive remedy in tort.<sup>47</sup> It was for the parties to allocate risk through their contract.<sup>48</sup>

46 *Leong v PP* is a significant decision that could have an impact on the cost of compliance with the Building Control Act. It is intended to put a stop to any construction practices that rely excessively on other professionals or delegations to non-qualified persons. Although the Act and Regulations provide for overlapping statutory duties and multiple checks, the clear message sent by *Leong v PP* is that all parties must exercise their own responsibility.

---

47 *Resource Piling Pte Ltd v Geospecs Pte Ltd* [2014] 1 SLR 485 at [82].

48 *Resource Piling Pte Ltd v Geospecs Pte Ltd* [2014] 1 SLR 485 at [90].