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22. LEGAL PROFESSION

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I. Introduction

22.1 As is the situation every year, space does not permit the discussion of every reported case involving the legal profession. The author has therefore chosen to take a slightly different tack this year, by focusing only on cases where there was a final determination by the Court of Three Judges or a Disciplinary Tribunal ("DT"). In cases where the DT held that there was a breach of sufficient gravity for the respondent to show cause before the Court of Three Judges, the author expects such cases to be covered in next year's edition of this chapter (if they are worthy of further consideration).

II. Responsibility for client's conduct and assisting with suppressing evidence

22.2 In *Law Society of Singapore v de Souza Christopher James*,[2] the Court of Three Judges dismissed an application by the Law Society of Singapore ("LSS") for the respondent ("CDS"), a legal practitioner at Messrs Lee & Lee ("L&L"), to be sanctioned under s 83(1) of the Legal Profession Act 1966[3] ("LPA") for breaching r 10(3)(*a*) of the Legal Profession (Professional Conduct) Rules 2015 ("PCR"). The Court of Three Judges reversed a DT's finding of guilt against CDS and held that he had not assisted his client in suppressing evidence relating to the client's breach of an order.

22.3 CDS acted for Amber Compounding Pharmacy Pte Ltd and Amber Laboratories Pte Ltd (collectively, "Amber"). Amber was previously represented by other solicitors, and had obtained search

1 The author wishes to thank, in no particular order, Rebecca Soh, Sara Ng, Tay Jing En, James Tan, Ezra Wong, Darryl Lau and Isabelle Guan for their assistance. All errors and omissions remain the author's own.
2 [2024] 3 SLR 1570.
3 2020 Rev Ed.

orders (the "Search Orders") against two defendants ("D1" and "D2"). As part of its application, Amber expressly undertook not to:[4]

> … 'use any information or documents obtained as a result of the carrying out of [the] Order except for the purposes of these proceedings or to inform anyone else of these proceedings until the trial or further order' ('Search Order Undertaking').

22.4 After the Search Orders were carried out and documents seized, Amber purportedly formed the view that some of the seized documents showed that certain offences had been committed by D1 and/or D2 (the "Documents"). Amber used ten of the Documents to make reports (the "Reports") to government bodies, in breach of the Search Order Undertaking.

22.5 Sometime later, Amber instructed L&L to prepare and lodge reports with law enforcement and regulatory agencies, and also to represent Amber in the ongoing court proceedings. After reviewing the documents, L&L eventually formed the view that Amber had used some of the seized documents in making the Reports and had breached the Search Order Undertaking.

22.6 Amber then filed an *ex parte* summons[5] ("SUM 484"), applying for, *inter alia*, orders that would entitle Amber to use the documents from the Search Orders to make reports to law enforcement agencies. It was CDS's involvement in the preparation of the affidavit in support of SUM 484 (the "Supporting Affidavit") that led to the charge. L&L discharged itself as Amber's solicitors prior to the ruling in SUM 484.

22.7 The outcome of SUM 484 was that the judge allowed the retrospective and prospective disclosure of only one class of documents, and no leave was granted for the disclosure of other documents. Upon appeal by Amber, the Court of Appeal denied Amber retrospective and prospective leave to disclose *any* of the Documents to the relevant authorities.

22.8 After the Court of Appeal's decision, the deputy registrar ("DR") of the Supreme Court wrote to the LSS on behalf of the Court of Appeal, noting that:

> (a) the Court of Appeal had highlighted that CDS had not mentioned Amber's extraneous use of the documents at a prior pre-trial conference ("PTC") and in certain correspondence; and

4 *Law Society of Singapore v de Souza Christopher James* [2024] 3 SLR 1570 at [13].

5 SUM 484 was eventually heard *inter partes*.

(cont'd on the next page)

(b) when CDS had previously sought an extension of time to comply with the court's directions, it was not clear whether the extension of time was sought for the purpose of complying with the court's directions, or for reviewing D1 and D2's documents in connection with the Reports.

22.9 Subsequently, an Inquiry Committee ("IC") was constituted. The IC found that:

(a) CDS's failure to inform the court of Amber's breach of the Search Order Undertaking was not borne out of a desire to mislead the court, and CDS believed that he needed Amber's permission to disclose the breach but had yet to obtain such permission at that time;

(b) there was no evidence that CDS had knowingly misled or attempted to mislead D1 and D2's lawyer by proceeding with SUM 484 *ex parte*, and by failing to inform D1 and D2's lawyer of Amber's breach of the Search Order Undertaking while seeking D1 and D2's consent to an extension of time for Amber's compliance with the court's orders;

(c) there was no provision of law which required CDS to inform the court or opposing counsel of Amber's breach of the Search Order Undertaking, and the breach was disclosed when SUM 484 was filed;

(d) CDS's failure to attach the Reports to the Supporting Affidavit did not amount to suppression of evidence, on the basis that the judge, D1 and D2 did not ask for copies of the Reports when SUM 484 was heard; but

(e) CDS had failed to place his duty to the court above his duty to his clients because he should have informed the court, at a prior hearing, that he had "advised [Amber] that an urgent leave application in relation to the seized documents was necessary".[6] However, he did not do so. The IC found CDS guilty of misconduct under s 83(2)(*h*) of the LPA and suggested a fine of $2,000.

However, the LSS disagreed with the IC's findings, and sought the appointment of a DT.

22.10 The DT found CDS guilty of only one of the five charges brought against him, for being a party to and assisting in the suppression of

6 *Law Society of Singapore v de Souza Christopher James* [2024] 3 SLR 1570 at [52].

evidence in the Supporting Affidavit in breach of r 10(3)(*a*) of the PCR (the "Fourth Charge"). Amber had suppressed evidence in the Supporting Affidavit, in which it failed to make full and frank disclosure of Amber's breach of the Search Order Undertaking. The DT found that by filing the Supporting Affidavit, CDS had breached r 103(3)(*a*) of the PCR, which was a breach of sufficient gravity for CDS to show cause before the Court of Three Judges. Notably, the DT thought the subjective state of mind of a legal practitioner was irrelevant when considering whether material facts had been suppressed.

22.11 The Court of Three Judges eventually held that the Fourth Charge (which was the only charge it was concerned with) was not made out against CDS.

22.12 First, the Court of Three Judges (across the majority and concurring judgments) held that intention was a necessary ingredient of the Fourth Charge, and that the DT had erred on this point.

22.13 Second, a majority[7] of the Court of Three Judges held that there was no evidence that CDS's omissions (in failing to annex the Reports and supporting documents to the Supporting Affidavit) were "borne of an intent" to assist Amber in suppressing, from the court, its breach of the Search Order Undertaking.

> (a) The majority considered the drafting history of the Supporting Affidavit and accompanying e-mail correspondence (both internal within the L&L team, as well as between L&L and Amber's representative), and concluded that CDS's intent when drafting the Supporting Affidavit was to disclose Amber's breach.
>
> (b) Although the Court of Appeal had commented on how Amber had failed to disclose any of the Reports in its various affidavits (including the Supporting Affidavit), and those reports would have revealed what was disclosed to the authorities, these comments were made in the context of its concerns that SUM 484 was a "smokescreen for Amber to buy itself more time to review the documents … for the purpose of making reports to the Authorities".[8] Since the DT had found that SUM 484 was not taken out for an improper purpose, CDS's failure to annex the Reports to the Supporting Affidavit "diminished in significance".[9]
>
> (c) The majority also held that CDS's act of taking out SUM 484 *ex parte* was not dishonest, as he genuinely believed

7 Comprising Belinda Ang JCA and Woo Bih Li JAD.
8 *Law Society of Singapore v de Souza Christopher James* [2024] 3 SLR 1570 at [108].
9 *Law Society of Singapore v de Souza Christopher James* [2024] 3 SLR 1570 at [111].

that filing SUM 484 *ex parte* was important for the preservation of evidence (in light of D1 and D2's propensity to conceal documentary evidence), and it was not to assist Amber's suppression of its breach of the Search Order Undertaking.

(d) Finally, the majority did not consider CDS's non-disclosure of Amber's breaches at a prior PTC to reflect an intent to assist in suppressing evidence, especially since CDS had no duty to disclose Amber's breach of the Search Order Undertaking at that PTC.

22.14 Third, the majority held that, objectively, the Supporting Affidavit did not suppress Amber's breach of the Search Order Undertaking from the court. In particular, the Supporting Affidavit did reveal Amber's use of information from the Search Order Documents, and consequently Amber's breach of the Search Order Undertaking.

22.15 The minority[10] concurred that the Fourth Charge was not made out against CDS, but differed on whether there was "wrongful non-disclosure" by Amber in SUM 484. It held that the Supporting Affidavit should have, but did not, disclose to the court *how* Amber had breached the Search Order Undertaking. However, the minority also held that CDS did not intend to assist Amber with suppressing evidence.

22.16 The Court of Three Judges also clarified that although the Fourth Charge deviated from the substance of the concern in the DR's letter, the Fourth Charge was not defective for this reason. The DR's letter did not serve to "conclusively circumscribe" the nature of the charges that the LSS could bring against CDS; rather, it was the starting point for the LSS to investigate CDS's conduct.

22.17 Although the Court of Three Judges did not find that the Fourth Charge had been made out, the majority nevertheless observed that the Supporting Affidavit was "no model of clear drafting"[11] and "could have been better drafted",[12] and the minority went as far as to say that the Supporting Affidavit was "lacking in a material respect and conveyed an incomplete picture to the court".[13]

22.18 In practice, it is not uncommon to have disagreements with clients as to the contents of affidavits. But where there is a possibility of the client's preferred version of an affidavit misleading the court, practitioners: (a) are

10 Comprising Kannan Ramesh JAD.
11 *Law Society of Singapore v de Souza Christopher James* [2024] 3 SLR 1570 at [132].
12 *Law Society of Singapore v de Souza Christopher James* [2024] 3 SLR 1570 at [139].
13 *Law Society of Singapore v de Souza Christopher James* [2024] 3 SLR 1570 at [207].

expected to push back against clients where necessary, and scrupulously ensure the accuracy and completeness of the contents of affidavits, instead of merely serving as clients' mouthpieces; and (b) should, where possible, document their internal thought process and the intention to place all necessary matters before the court – in this case, CDS was assisted by the internal e-mails within L&L, and practitioners who practice solo may wish to consider creating contemporaneous internal notes to fulfil the same function.

III. Familiarity with evidence being placed before the court

22.19 In *The Law Society of Singapore v Isaac Riko Chua*,[14] the charges against the First Respondent ("IRC") and the Second Respondent ("JW") arose in respect of psychiatric evidence that was placed before the court in *Wong Tian Jun De Beers v Public Prosecutor*,[15] a Magistrate's Appeal.

22.20 IRC was an associate director, and JW the managing director, of the same law firm. IRC was lead counsel for the appellant-accused (the "Appellant"), and JW appeared alongside IRC for the Appellant during a further hearing at which the court gave its oral judgment.

22.21 The Appellant had pleaded guilty to the charges against him before the State Courts. As part of their preparation for the mitigation plea, IRC and JW submitted a psychiatric report (the "Psychiatric Report") authored by Dr Ken Ung Eng Khean. IRC and JW subsequently wrote to Dr Ung, requesting his opinion on five specific issues which IRC was told would be of relevance to the sentencing court (the "26 March 2021 Letter"). Dr Ung then issued a clarificatory report (the "Clarificatory Report"), which was relied upon for mitigation.

22.22 The Appellant was sentenced. He then appealed against his sentence to the High Court and relied on both the Psychiatric Report and the Clarificatory Report in the appeal. At the appeal hearing, the court highlighted that the Clarificatory Report appeared to comprise answers to questions posed by the Appellant's solicitors, but those questions were not in the Clarificatory Report or the Record of Appeal.

22.23 IRC responded by asserting privilege over the document containing the questions that had been posed to Dr Ung for the creation of the Clarificatory Report. The court pointed out, and IRC accepted, that since the Clarificatory Report answered questions that the court did

14 [2023] SGDT 14.
15 [2022] 4 SLR 805.

not have sight of, and no context had been provided for said report, the Appellant could not rely on it.

22.24 JW was informed by IRC about what had transpired at the hearing and did not take issue with IRC's choice to exclude the Clarificatory Report as evidence in the appeal.

22.25 The appeal was dismissed, and the Appellant's sentence enhanced. In its written grounds of decision, the court found it "surprising" that an officer of the court could have "thought it defensible to put forward, by way of evidence for the court's consideration, an expert report that consisted of a set of answers without also setting out the questions that were asked".[16] This demonstrated "a willingness to take something out of its proper context",[17] which was troubling because: (a) it suggested "a cynical attitude to the use (or abuse) of psychiatric evidence";[18] and (b) an officer of the court should never contemplate putting forward evidence that he knows is being taken out of context, but this was what counsel did. The court was also disturbed by the fact that when it raised the matter, counsel's response was not to furnish the context to the Clarificatory Report, but to assert privilege over it, even if this meant that the evidence would therefore be disregarded. This suggested that the context would have embarrassed the Appellant, which, if correct, would make counsel's conduct even more troubling.

22.26 After the court pronounced its oral judgment, the deputy registrar of the Supreme Court wrote to the LSS to highlight IRC and JW's conduct. The LSS initially proffered one charge each against IRC and JW, for submitting a misleading clarificatory report to the High Court, which constituted a breach of r 9(2)(*a*) of the PCR.

22.27 However, as it turned out, the Clarificatory Report *did* contain the questions posed to Dr Ung, but IRC had, at the appeal hearing, mistakenly thought that the questions were not in the Clarificatory Report. IRC therefore failed to assist the court by pointing out where the questions could be found in the report.

22.28 The charges were therefore amended, and IRC and JW each faced one amended charge of having failed to assist in the administration of justice or act honourably in the interests of justice as they were duty bound to do, for not being fully familiar with the Clarificatory Report.[19]

16 *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 at [29].
17 *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 at [29].
18 *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 at [29].
19 *The Law Society of Singapore v Isaac Riko Chua* [2023] SGDT 14 at [21].

The charge against IRC also provided that IRC had "failed to assist the Court by pointing out to where the questions could have been found – which were in the Clarificatory Report itself",[20] even when asked by the court, and instead "elected to assert privilege over the questions posed to Dr Ung in the creation of the Clarificatory Report, and then chose not to rely on the Clarificatory Report for the Appeal".[21]

22.29 IRC and JW admitted to the amended charges and did not contest the facts in the amended Statement of Case.

22.30 The DT agreed with the LSS, and JW and IRC, that there was no cause of sufficient gravity for disciplinary action under s 83 of the LPA. Nevertheless, IRC and JW were reprimanded pursuant to s 93(1)(*b*)(ii) of the LPA.

(a) In respect of IRC, the allegation was "essentially one of negligence or want of skill",[22] which led to a failure to assist in the administration of justice or act honourably in the interests of justice.

(i) IRC's unfamiliarity with the Clarificatory Report, and his consequent failure (when asked by the court) to flag the relevant section where the questions to Dr Ung were contained, was simple negligence or want of skill and did not meet the "high threshold of *inexcusable* conduct that would be regarded as *deplorable* by the fellows in the profession" [emphasis in original],[23] and there was therefore no cause of sufficient gravity for disciplinary action under s 83 of the LPA.

(ii) However, IRC's negligent decision to assert privilege over the questions posed to Dr Ung was "comparatively more serious".[24] The impact of this decision was that the Clarificatory Report was excluded from the evidence, and since the report was meant to be evidence favourable to the Appellant, it could have damaged the Appellant's case in the appeal. The DT therefore concluded that IRC should be sanctioned under s 93(1)(*b*) of the LPA. However, since it was clear from the court's written grounds that the court would not have given the Clarificatory Report any weight

20 *The Law Society of Singapore v Isaac Riko Chua* [2023] SGDT 14 at [21].
21 *The Law Society of Singapore v Isaac Riko Chua* [2023] SGDT 14 at [21].
22 *The Law Society of Singapore v Isaac Riko Chua* [2023] SGDT 14 at [58].
23 *The Law Society of Singapore v Isaac Riko Chua* [2023] SGDT 14 at [60].
24 *The Law Society of Singapore v Isaac Riko Chua* [2023] SGDT 14 at [62].

even if it were admissible evidence, the DT found that a reprimand pursuant to s 93(1)(*b*)(ii) of the LPA would suffice.

(b) In respect of JW, the DT held that he should "also bear responsibility for the negligent decision to assert privilege over the questions posed by Dr Ung".[25]

(i) Although JW was more senior than IRC and his name appeared first in the order of counsel in the skeletal arguments and further submissions submitted for the appeal, he had not been present at the hearing on 24 September 2021 (when the oral exchange between IRC and the court on the Clarificatory Report took place).

(ii) Nevertheless, JW was aware of what happened at the 24 September 2021 hearing and did not take issue with IRC's choice to exclude the Clarificatory Report as evidence in the appeal. Because JW was unfamiliar with the Clarificatory Report, he could not flag out to IRC that the questions were indeed in the report itself, and that the report should not be excluded from evidence in the appeal. The position could have been clarified prior to the court deciding on the appeal on 1 December 2021.

(iii) JW's negligence meant that the Clarificatory Report was excluded from evidence, which could have prejudiced the Appellant's rights in the appeal. Therefore, he was sanctioned under s 93(1)(*b*) of the LPA. However, since the court would not have given weight to the Clarificatory Report even if it had been admissible, and JW had only been assisting counsel, JW was only reprimanded pursuant to s 93(1)(*b*)(ii) of the LPA.

The DT also ordered IRC and JW to pay costs.

22.31 Most practitioners would be aware of their obligation to have absolute familiarity and mastery over documents placed before the court. This case demonstrates a potential consequence of failing to do so, regardless of whether: (a) the client makes any complaint; and/or (b) the evidence would have made a difference to the outcome. This case also serves as a reminder of the practitioners' *continuing* obligation to assist the court – if a practitioner realises, after submissions have been made, that the court may have been misled or misinformed, they should

25 *The Law Society of Singapore v Isaac Riko Chua* [2023] SGDT 14 at [70].

take active corrective steps instead of assuming that there is nothing further to do since submissions have already been made or the hearing is already over.

IV. Making baseless allegations against Attorney-General, officers of Attorney-General's Chambers and Law Society

22.32 In *Law Society of Singapore v Ravi s/o Madasamy*[26], the respondent ("MR") represented an accused person in respect of alleged offences under the Misuse of Drugs Act 1973[27] ("*Gobi's Case*"). After the accused person's conviction on a capital charge was set aside, MR gave an interview and published Facebook posts in which he made various allegations against the Public Prosecutor ("PP"), the Attorney-General ("AG"), other legal practitioners and the LSS, relating to the conduct of *Gobi's Case*. He also wrote to the Attorney-General's Chambers ("AGC") threatening to commence legal proceedings against the AG, the Deputy AG ("DAG") and members of the Prosecution.

22.33 Following a complaint by the DAG, the LSS brought the following charges against MR:

> (a) First charge: that he had made the following statements which were false and/or misleading allegations intended to convey to listeners or readers that the PP and/or the AG had acted in bad faith, maliciously and/or improperly, so as to discredit the AGC and/or its legal officers in the eyes of the public, thereby committing an act amounting to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession under s 83(2)(*h*) of the LPA:[28]
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> > … the Public Prosecutor has been overzealous in his prosecution and that has led to the death sentence …
> >
> > And one of the things which is troubling in this decision today, is that the Court noted that the Attorney General, or the Public Prosecutor ran a different case in the High Court and the Court of Appeal. Then that begs the questions and calls into the fairness of the administration of justice in Gobi's case by the Prosecution …
> >
> > … because the Prosecution as the Court observed, ran a different case in the High Court and the Court of Appeal. So therefore, the

26 [2023] 4 SLR 1760.
27 2020 Rev Ed.
28 *Law Society of Singapore v Ravi s/o Madasamy* [2023] 4 SLR 1760 at [26].

> Prosecution, essentially the fairness of the Prosecution, is called into question by the Court itself.

(b) Second charge (and alternative second charge): that he had made the following statements which contained a baseless accusation of misconduct and/or a threat to commence legal proceedings against fellow legal practitioners, thereby being guilty of: (i) improper conduct under s 83(2)(*b*)(i) of the LPA read together with r 7(2) of the PCR; or (ii) misconduct under s 83(2)(*h*) of the LPA:[29]

> … when these government lawyers who handled the Gobi's case are the wrongdoers.
>
> I have already taken instructions from Gobi and his family to commence proceedings against [the AG], [the DAG], Mr Faizal SC in court. I will file the writ of summons in the next few days for both personally against all 3 of the above Government lawyers and also against their offices in which they hold public appointment. They have to be accountable to Gobi and his family in court and be subject to rigorous cross-examination and public scrutiny of their conduct of Gobi's case …

(c) Third charge (and alternative third charge): that he had made the following statement which contained a threat to commence legal proceedings against the LSS and/or a baseless insinuation that the LSS misuses its statutory powers, thereby being guilty of: (i) improper conduct under s 83(2)(*b*)(i) of the LPA read together with r 8(3)(*b*) of the PCR; or (ii) misconduct under s 83(2)(*h*) of the LPA:[30]

> I will also commence proceedings against law society if it does not do its part to protect lawyers and their independence of the profession if it entertains any further complaints or partcipates [*sic*] in any harassment by [the AG] to harass me in doing my job.

(d) Fourth charge (and alternative fourth charge): that by writing to the AGC threatening to commence legal proceedings against the AG, the DAG and members of the Prosecution, he was guilty of: (i) improper conduct under s 83(2)(*b*)(i) of the LPA read together with r 7(2) of the PCR; or (ii) misconduct under s 83(2)(*h*) of the LPA.

22.34 The DT held that:

29 *Law Society of Singapore v Ravi s/o Madasamy* [2023] 4 SLR 1760 at [27].
30 *Law Society of Singapore v Ravi s/o Madasamy* [2023] 4 SLR 1760 at [28].

(a) In respect of the first charge, the key issue was whether MR's statements constituted fair criticism. MR had a rational basis for making the statements and the charge was not made out.[31]

(b) In respect of the second and fourth charges, MR failed to treat the AG with courtesy and fairness, and it was not appropriate for him to make allegations of misconduct without referring the matter to the appropriate body.

(c) In respect of the third charge, MR's statement was a threat against the LSS and an accusation that it was complicit in alleged "harassment" by the AG, and the severity of his misconduct was compounded by the statement being made in a public forum.

22.35 However, in the round, there was no cause of sufficient gravity disclosed by MR's misconduct, as the misconduct in question did not "involve dishonesty … trustworthiness or moral turpitude, or a conviction for a criminal offence".[32]

22.36 The LSS did not agree with the DR that no cause of sufficient gravity for disciplinary action existed under s 83 of the LPA, and applied to the Court of Three Judges for MR to be sanctioned under s 83(1) of the LPA.

22.37 There was no dispute that the second, third and fourth charges had been made out, or that MR's conduct constituted improper conduct within s 83(2)(*b*)(i) of the LPA for breaching rr 7(2) and 8(3)(*b*) of the PCR. The question, however, was whether on the "totality of the facts and circumstances of the case", MR's misconduct was "sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA".[33] In other words, what was the gravamen of MR's misconduct?

22.38 The Court of Three Judges first considered the first charge – even though it was, strictly speaking, not in issue before the court – because it provided perspective on how the DT viewed MR's misconduct as a whole in determining that no cause of sufficient gravity arose. It disagreed with the DT's interpretation of the offending statements, and observed that:

(a) The DT had considered whether MR had a rational basis to state that the Prosecution had run a different case at trial and on appeal. However, at the time when MR made his statements,

31 The Attorney-General subsequently applied to review the Disciplinary Tribunal's finding on the first charge, but its application was dismissed by the High Court in *Attorney-General v Ravi s/o Madasamy* [2023] 4 SLR 737.

32 *Law Society of Singapore v Ravi s/o Madasamy* [2023] 4 SLR 1760 at [35].

33 *Law Society of Singapore v Ravi s/o Madasamy* [2023] 4 SLR 1760 at [50].

the Court of Appeal had, in its brief grounds, clarified that the Prosecution had acted *in accordance with the state of the law at that time*.

(b) Based on this understanding of the Prosecution's conduct in *Gobi's Case*, there was no rational basis for MR to have made the statements he did. MR's reference to the PP as "overzealous" connoted an improper exercise of prosecutorial power that had led to death, and he had alleged that the Prosecution had been unfair to the accused. It was not accurate for MR to say that the Court of Appeal had questioned the fairness of the Prosecution, or to raise questions as to the Prosecution's administration of justice based on the state of the law at that time.

(c) The DT and the High Court judge therefore erred in finding that the first charge had not been made out. Although this charge was not in issue and the Court of Three Judges did not base their findings on due cause on this, the gravity of MR's misconduct had to be assessed in this context.

22.39 The Court of Three Judges then considered the gravamen of MR's misconduct in relation to the second, third and fourth charges. In respect of the second charge, there was due cause for sanction.

(a) The key inquiry was whether MR's failure to treat his fellow legal practitioners with courtesy and fairness was of such a degree of seriousness as to amount to due cause.

(b) The DT should not have focused on whether MR, when referring to the prosecutors as "wrongdoers", had intended to imply a civil wrong, as opposed to a criminal wrong.

(c) Rather, in the context of the interview he had just given the day before, the "wrongdoing" referred to the alleged breach of the Prosecution's duty of fairness as ministers of justice and the administration of justice. MR was alleging that the Prosecution had chosen to conduct the proceedings in a "dishonest", "deplorable" and dishonourable manner that took "unfair advantage"[34] of the accused and misled the court, leading to the death sentence being imposed on the accused.

(d) This was a serious allegation against the prosecutors which cut right to the heart of the AG's role and suggested serious impropriety and the dereliction of his duty in the fair administration of justice.

34 *Law Society of Singapore v Ravi s/o Madasamy* [2023] 4 SLR 1760 at [80].

(e) At the time when MR had made the statements, the Court of Appeal had issued its brief grounds of decision, in which the Court of Appeal had expressly clarified that no party to the proceedings could have appreciated the distinction in the Prosecution's cases at trial and on appeal because of the prevailing legal position at the time. The Court of Appeal did not conclude that the Prosecution had changed its case deliberately. Since MR was present when the brief grounds were delivered, he ought to have known of the seriousness of his statements and that there was no basis to suggest impropriety on the Prosecution's part.

(f) In summary, MR had recklessly levied a grave yet baseless accusation that the Prosecution had chosen to conduct the proceedings in a dishonest and deplorable manner that took unfair advantage of the accused and misled the court, causing the death sentence to be wrongly imposed on the accused.

(g) MR's misconduct constituted a serious breach of s 7(2) of the PCR. The damage to the reputation and standing of the legal profession was particularly severe because his discourtesy and unfairness involved a fundamental attack on the discharge of the AG's constitutional role, and undermined the integrity of the legal system as a whole. MR had gone beyond the realm of impoliteness. The unfairness and discourtesy shown by MR was also amplified considering the public reach of the Facebook posts containing his statements.

(h) While *Gobi's Case* was a matter of public interest, this did not give MR a license to publicly levy baseless allegations of wrongdoing against prosecutors.

22.40 In respect of the third charge, there was due cause for sanction:

(a) MR's statement constituted a baseless accusation against the LSS. The substance of MR's statement was that the LSS was participating in harassing MR, which suggested that the LSS chose to act on the DAG's complaint – but this was not the case, as the LSS did not have the discretion *not* to act on the DAG's complaint against MR. Further, MR knew that the LSS had no choice but to act on the DAG's complaint, but nevertheless chose to impute impropriety to the LSS.

(b) MR's statement also intimated that if the LSS acted upon the DAG's complaint, then the LSS would be deliberately acting improperly and contrary to its own purposes, even to the extent of abdicating its own duties to the legal profession. MR's attack on the statutory body charged with the regulation of the profession was dishonourable.

22.41 In respect of the fourth charge, there was due cause for sanction. It was not seriously contended that MR's act of writing to the AGC, threatening to commence legal proceedings against the AG, the DAG and members of the prosecution, disclosed due cause.

22.42 Having established due cause on the second, third and fourth charges, the Court of Three Judges then considered the appropriate sanction to be imposed.

(a) MR's misconduct was seriously injurious to public confidence in the integrity of the legal profession, and warranted a sanction that appropriately reflected this.

(b) There was also a need for specific deterrence, given MR's history of similar disciplinary defaults.

(c) Although the matter did not involve dishonesty, a solicitor remains liable to be struck off (as opposed to merely being suspended) where they conduct themselves in a way that either falls below the required standards of integrity, probity and trustworthiness, or brings grave dishonour to the profession. When considering whether striking off is appropriate where there is no dishonesty, the test is as follows:

(i) Does the misconduct attest to any character defects rendering the solicitor unfit to be a member of the legal profession?

(ii) Has the solicitor, through their misconduct, caused grave dishonour to the standing of the legal profession?

(iii) Striking off is the presumptive penalty if the answer to either question is yes. This presumption is only rebutted in exceptional cases.

(iv) If the answer to both questions is no, then the court will consider whether there are circumstances that nonetheless render a striking off order appropriate.

(d) Applying the test:

(i) MR's misconduct disclosed an ingrained disregard for the AG and the LSS, which pointed to a defect in character rather than a mere lapse in judgment.

(ii) By attacking the integrity of the AG and the LSS and casting doubt on the fairness and integrity of the criminal justice system as a whole, there was basis for holding that MR had shown himself not to be worthy of confidence from other solicitors, from the courts and

from the public as a representative of the legal profession entrusted with upholding its honour and dignity.

(iii) As to whether there were circumstances pointing away from striking off, there were in fact various aggravating factors: MR was a senior practitioner of close to 20 years' standing, he had similar disciplinary antecedents, and he remained wholly unremorseful even up to and at the hearing of the matter. In his defence, some of those who read MR's statements may not have appreciated the full extent of his attack on the legal system. However, there were no applicable mitigating factors.

(iv) After considering the precedents, the Court of Three Judges held that it was not necessary to strike MR off the roll of advocates and solicitors. However, imposing anything short of the maximum term of suspension would not be adequate to address the continuing danger that MR, by his baseless and ill-conceived attacks, posed to public confidence in the administration of justice in Singapore.

22.43 The Court of Three Judges therefore imposed a five-year suspension on MR, and ordered him to pay costs. It also observed that this was a "close case", and that a striking off order would likely have been imposed if MR was also being sanctioned for the first charge (which the Court of Three Judges disregarded for sentencing purposes).

22.44 Subsequently, in *Law Society of Singapore v Ravi s/o Madasamy*,[35] MR wrote to the court to seek clarification on whether he had been effectively suspended for six years, as opposed to five years, allegedly because he had been previously prohibited from applying for a practising certificate. However, as it turned out, MR had previously given a voluntary undertaking not to apply for a practising certificate for the practice year 2022/2023. This voluntary cessation from practice was not a suspension, and the Court of Three Judges therefore had the power to impose a five-year suspension on MR. Further, the voluntary undertaking did not carry any mitigating weight, because it did not arise out of genuine contrition and was irrelevant to the sentence imposed.

22.45 There is a certain amount of irony in MR's situation. The series of events that led to his suspension began with him having represented the accused in an application which led to the setting aside of the accused's conviction on a capital charge (in favour of 15 years' imprisonment and

35 [2023] 4 SLR 1269.

ten strokes of the cane). That should have been one of MR's finest hours (putting aside, for a moment, that it was the Court of Appeal, and not MR, which had first raised the change in the Prosecution's case; this was decisive to the outcome, and limited the extent of MR's personal contribution to the outcome in *Gobi's Case*).

22.46 But MR chose to respond to the outcome by making serious and baseless accusations against the Prosecution and the LSS (which was not even involved in *Gobi's Case*), and which eventually led to his suspension. As practitioners should know, our words have consequences, and those who choose to make unwise statements recklessly or otherwise may well have to be prepared to pay a price.

V. Breach of undertaking to supervise fellow practitioner

22.47 In *Law Society of Singapore v Cheng Kim Kuan*,[36] yet another set of disciplinary proceedings arose out of MR's conduct. Another practitioner ("CKK") had given a robust and lengthy written undertaking to the Council of the LSS and the Supreme Court, in which CKK undertook to be MR's supervising solicitor (the "Undertaking"). This arose out of MR being imposed with a set of conditions ("Conditions") on his practising certificate, including the need for a supervising solicitor.

22.48 In particular, CKK undertook as follows:[37]

> 2 I now give this professional undertaking pursuant to rules 8(3) and 13(4) of the Legal Profession (Professional Conduct) Rules 2015 (Cap 161, Section 71), to the Supreme Court of Singapore and to the Council of the Law Society of Singapore, that I shall:
>
> a. Personally supervise [MR]'s practise as an advocate and solicitor in [KKCL].
>
> b. Provide to the [LSS] and [AGC] a monthly report within the first working day of every calendar month … attesting to whether [MR] has complied with all applicable professional conduct rules and that no complaint in relation to [MR]'s professional conduct has been received …

22.49 However, after the Undertaking was given, MR became embroiled in various incidents. The AGC then wrote to CKK, posing various questions, which CKK eventually responded to. It transpired that by CKK's own admission:

36 [2023] SGHC 350.

37 *Law Society of Singapore v Cheng Kim Kuan* [2023] SGHC 350 at [11].

(a) MR had sole conduct of all legal matters and court proceedings subject to instructions from his clients, and CKK was not involved in any of MR's matters.

(b) CKK did not approve nor oversee the legal matters taken on by MR.

(c) CKK did not review the documents (such as letters, legal submissions, affidavits and correspondence) prepared, filed or sent out by MR.

(d) Prior to receiving letters from the AGC, CKK was not aware of MR's conduct.

(e) CKK's firm ("KKCL") did not rent the offices that MR operated out of (the "High Street Office"), and the High Street Office was not registered as a branch office of KKCL.

(f) KKCL did not hire nor employ any of the staff or interns working for MR, and MR was at liberty to hire and dismiss any staff or intern working from the High Street Office.

(g) The moneys paid to MR by his clients were deposited into KKCL's office account with MR's clients' approval. Before CKK disbursed money to MR, MR would have to furnish the relevant Warrant to Act ("WTA") or Letter of Engagement, the accompanying receipts or invoices issued to the client(s), and a list of the moneys paid to MR by his client(s).

(h) The terms of the supervisory arrangement between CKK and MR were not evidenced in writing.

(i) Until the expiry of MR's practising certificate, CKK was unable to personally supervise MR's conduct of his legal matters or his general conduct.

(j) CKK had visited MR on three occasions at the High Street Office but it was not to observe or to assess MR in the course of MR's legal practice.

(k) MR did not hold any position in KKCL and MR ran his legal practice as a "chamber" under KKCL. Further, MR devised and issued the letterhead, invoice form and receipt for his legal practice at the High Street Office and CKK was not involved.

(l) Although KKCL had a client account, MR's client moneys were not deposited into that account. Moneys from MR's clients were paid out to MR from KKCL's office accounts.

22.50 While various charges were brought against CKK, the DT eventually held that the first and third charges were made out and that cause of sufficient gravity existed for disciplinary action against CKK.

(a) The gravamen of the first charge was premised on para 2(a) of the Undertaking, under which CKK was to "personally supervise [MR's] practise [*sic*] as an advocate and solicitor in [KKCL]". CKK breached the Undertaking by allowing MR to have sole conduct of his own legal matters without any supervision from CKK: (i) CKK made no attempts to supervise MR; (ii) CKK knew nothing about MR's practice and had no idea what MR was working on during the material period; (iii) MR did not operate out of the same premises as KKCL; and (iv) MR was given free reign over all aspects of his legal practice, including the freedom to hire his own employees. CKK's complete failure to supervise MR, contrary to his obligations under the Undertaking, constituted grossly improper conduct.

(b) The third charge concerned CKK's breach of para 2(b) of the Undertaking which required CKK to provide a monthly report within the first working day of every calendar month attesting: (i) to MR's compliance with all applicable professional conduct rules; and (ii) that no complaints against MR had been received. CKK did not deny that he had failed to submit the monthly report detailing his supervision of MR for the month of November 2021 (the "November 2021 Report") by the deadline of 1 December 2021, but argued that since the AGC had written to various parties on 17 November 2021 in respect of MR's professional conduct, it was no longer necessary to file the November 2021 report. The DT found that CKK's failure to submit the November 2021 Report, despite the clear, unambiguous and unqualified obligation pursuant to the Undertaking, was a breach of the Undertaking, and that he deliberately chose not to submit the November 2021 Report.

22.51 Before the Court of Three Judges, CKK pleaded guilty to the first and third charges. The Court of Three Judges agreed with the DT that due cause was established.

(a) In respect of the first charge, CKK's conduct fell woefully short of what was expected of him under para 2(a) of the Undertaking – besides the payment of MR's clients' moneys into the KKCL office account, there was no attempt by CKK to supervise MR's legal practice in any way. He therefore breached the Undertaking, which would invariably amount to grossly improper conduct under s 83(2)(*b*) of the LPA.

(b) As for the third charge, CKK's obligation under para 2(b) of the Undertaking was a strict one, and he breached the Undertaking by failing to provide the November 2021 report.

22.52 The Court of Three Judges then went on to consider the appropriate sanction. In the first place, the Undertaking was necessary because MR had a psychiatric condition, and the preventive and protective measures in the Conditions were to ensure that MR would practice in a controlled environment. Although CKK's obligation of personal supervision did not entail vetting every court document or legal correspondence in MR's practice, monitoring every telephone call made by MR, or accompanying MR to every court hearing and client meeting (as that would be unduly onerous), CKK should have at least apprised himself as to what legal work MR had taken on and whether he was coping well. However, CKK was unaware of whether MR had been appearing in court and whether there were any events of concern. It was insufficient for CKK to leave MR to do as he pleased and only intervene when he heard of trouble: personal supervision entailed proactive steps to ensure that MR was practising in a controlled environment.

22.53 Further, where it was not possible for the supervisor and supervisee to be located in the same office, it was all the more important that an arrangement be put in place so that the supervisor would be able to check in on the supervisee at regular intervals. But CKK did not think to implement such measures.

22.54 Ultimately, although CKK had good intentions and gained no financial benefit in volunteering to be the supervising solicitor, he had given a solemn undertaking as an advocate and solicitor to the Supreme Court and to the LSS after declaring his awareness of the tasks entailed by the Undertaking. He could not then proceed with his supervisory role with an indifferent or nonchalant attitude.

22.55 As such, a fine would not underscore the seriousness of breaching such an Undertaking. CKK was suspended for six months and ordered to pay costs.

22.56 A solicitor's word is his bond, and they are expected to "mean and honour what [they] say: [they] should not resile from the clear meaning of [their] words".[38] Undertakings should be given only with great care and consideration, and only after strict measures have been

38 Sundaresh Menon, Chief Justice, Supreme Court of Singapore, "Mass Call Address 2022: The Legal Profession as an Honourable Profession", *The Supreme Court of Singapore* (23 August 2022) <https://www.judiciary.gov.sg/

put in place to ensure the solicitor's ability and willingness to comply with the undertaking. It is simply not worth it for a solicitor to face sanctions for breaching an undertaking that is nonchalantly, carelessly or thoughtlessly given.

VI. Keeping records of advice given to clients

22.57 In *Law Society of Singapore v Hanam, Andrew John*,[39] the respondent ("AJH") faced six charges arising out of a complaint made by the sole shareholder and director ("KP") of a former client ("P&P"), relating to AJH's conduct of three separate suits on behalf of P&P and KP.

22.58 On 25 November 2016, P&P appointed AJH to act in a fairly straightforward dispute with Kori Construction (S) Pte Ltd ("Kori") over unpaid invoices arising from two subcontracts: for the provision of manpower (the "Manpower Subcontract"), and for the supply of steel fabrication works (the "Steel Fabrication Subcontract"). At the time, a number of invoices issued by P&P to Kori (collectively, the "First Set of Invoices") had fallen due, whereas others (collectively, the "Second Set of Invoices") had yet to fall due.

22.59 On AJH's advice, P&P brought three separate suits (collectively, the "Suits") against Kori.

(a) HC/S 1255/2016 ("2016 HC Suit") was brought against Kori on 25 November 2016 for recovery of the total sum of $1,269,618.59 due under the First Set of Invoices. On the day that the trial commenced, P&P and Kori entered into a settlement agreement covering some, but not all, of the claims (the "Settlement").

(b) HC/S 1167/2017 ("2017 HC Suit") was brought against Kori on 11 December 2017 for $342,821.05 (later revised to $371,720.14) due under the Second Set of Invoices.

(c) DC/DC 1043/2018 ("2018 DC Suit") was brought against Kori on 9 April 2018 to enforce the Settlement. However, the terms of the Settlement did not expressly provide when Kori was to pay the settlement sum to P&P, and Kori took the position that the sum was only payable at the conclusion of the 2016 HC Suit.

docs/default-source/news-docs/mass-call-address-2022.pdf?sfvrsn=7008500f_2> (accessed 28 June 2024).

39 [2023] 4 SLR 1280.

22.60 Apart from the Suits, AJH acted unsuccessfully for P&P in a number of interlocutory applications.

(a) HC/SUM 431/2017 ("Disclosure Application") was Kori's successful application against P&P for disclosure of documents. On AJH's advice, P&P resisted the Disclosure Application, but was unsuccessful at first instance and on appeal, and was ordered to pay costs.

(b) HC/SUM 5237/2017 ("Third-Party Disclosure Application") was P&P's application against a third party ("Taisei") for the production of documents. Upon reviewing Taisei's affidavit setting out the costs involved in making copies of the requested documents, AJH advised P&P to withdraw the application and pay costs to both Taisei and Kori. Taisei took out a garnishee application against P&P, in the course of which AJH agreed on P&P's behalf to pay additional costs to Taisei in relation to the garnishee order.

(c) HC/SUM 5616/2017 ("Added Witnesses Application") was P&P's application for permission to call four additional witnesses, which was dismissed with costs.

(d) HC/SUM 1394/2018 was P&P's application for judgment based on the Settlement, which was dismissed with costs.

(e) HC/SUM 170/2018 was P&P's unsuccessful application for summary judgment in the 2017 HC Suit.

22.61 Eventually, the Suits concluded as follows:

(a) On 31 December 2018, the High Court found largely in P&P's favour in respect of the 2016 HC Suit (in respect of the claims which fell outside of the Settlement).

(b) On 11 January 2019, Kori made payment of the principal sum payable under the Settlement to P&P, leaving only the issue of interest and costs to be determined in the 2018 DC Suit. AJH advised P&P to make an offer for Kori to pay interest in full to P&P, but for parties to bear their own costs. P&P instructed AJH to proceed to trial. On 16 August 2019, the District Court found against P&P and ordered P&P to pay costs to Kori. The costs payable also included indemnity costs as P&P had not accepted Kori's offer to settle the 2018 DC Suit by paying half of the interest claimed.

(c) On 21 January 2019, the High Court decided the 2017 HC Suit largely in P&P's favour, awarding P&P damages, costs, disbursements and interest.

22.62 On 11 March 2020, KP lodged a complaint against AJH with the LSS, alleging that AJH had breached an agreement to charge a fixed fee of $170,000, overcharged for work done in the Suits, and acted in matters without KP's knowledge or agreement. A DT was eventually constituted, and the LSS preferred six charges against AJH (each with an alternative charge):

> (a) first charge: that by charging excessive and disproportionate professional fees of $423,880.96, AJH had breached r 17(7) of the PCR;
>
> (b) second charge: that, in failing to properly and periodically: (i) advise KP of anticipated legal fees in the Suits; (ii) conduct cost-benefit analyses with KP of steps in the Suits; and (iii) evaluate with KP the use of alternative dispute resolution processes throughout the course of the Suits, AJH had breached r 17(2)(*e*) of the PCR;
>
> (c) third charge: that, in failing to properly and periodically advise KP of the relevant legal issues in the Suits such that KP was able to make informed decisions on how to act in the Suits at the relevant times, AJH had breached r 17(2)(*f*) of the PCR;
>
> (d) fourth and fifth charges: that, in failing to inform KP in writing of his right to apply for taxation when KP raised disputes about his invoices on two separate occasions, AJH had breached r 17(5) of the PCR;
>
> (e) sixth charge: due to the conduct specified in the second and third charges, AJH had breached r 5(2)(*c*) of the PCR;
>
> and was therefore guilty of improper conduct within the meaning of s 83(2)(*b*) of the LPA, or misconduct unbefitting of an advocate and solicitor or as a member of an honourable profession under s 83(2)(*h*) of the LPA.

22.63 The DT found AJH guilty of the second and third charges. AJH had, in total, committed 14 violations of rr 17(2)(*e*) and/or 17(2)(*f*) of the PCR, ranging from failing to advise KP on the avenue of adjudication under the Building and Construction Industry Security of Payments Act 2004[40] ("SOPA Adjudication"), to failing to evaluate or advise KP on the merits of commencing the 2018 DC Suit, to issuing an offer to settle the 2017 HC Suit on P&P's behalf without KP's knowledge or consent. The sixth charge was deemed withdrawn as it had been preferred in the alternative to the second and third charges, and the fourth and fifth

40 2020 Rev Ed.

charges were dismissed. The first charge was stayed pending taxation of AJH's bills.

22.64 Following the DT's determination, the LSS applied to the Court of Three Judges for AJH to be sanctioned under s 83(1) of the LPA.

22.65 Of the 14 instances identified by the DT as violations of rr 17(2)(*e*) and/or 17(2)(*f*) of the PCR, the Court of Three Judges upheld the DT's findings in respect of eight violations, categorised as follows:

(a) acting without authority ("Category 1 violations") by:

(i) agreeing on P&P's behalf to pay Taisei costs in respect of the garnishee order; and

(ii) making a proposal on P&P's behalf for party-and-party costs in the 2016 HC Suit;

(b) failing to discuss alternative dispute resolution options ("Category 2 violations") by:

(i) failing to discuss the use of SOPA Adjudication in the 2016 HC Suit; and

(ii) failing to discuss the use of alternative dispute resolution options in the 2017 HC Suit;

(c) failing to advise ("Category 3 violations") by:

(i) failing to evaluate and advise on whether the Third-Party Disclosure Application and the Added Witnesses Application should have been filed; and

(ii) failing to advise on an offer to settle made by Kori in the 2018 DC Suit; and

(d) failing to render proper advice ("Category 4 violations") by:

(i) failing to properly advise P&P on the Discovery Application; and

(ii) failing to properly advise P&P on whether the 2018 DC Suit should only have been commenced upon resolution of the 2016 HC Suit.

22.66 The Court of Three Judges also agreed with the DT's decision to place less weight on AJH's evidence because he could not substantiate his evidence to countermand KP's evidence. AJH had failed to keep attendance notes or contemporaneous records of his meetings with KP despite allegedly having had over 100 meetings with him, and there

were no contemporaneous records to support AJH's defence that he had rendered reasonable and appropriate legal advice orally to P&P.

22.67 In light of AJH's multiple violations, the Court of Three Judges held that there was due cause for disciplinary action.

> (a) In respect of the Category 1 violations, AJH's conduct amounted to improper conduct or practice as an advocate and solicitor. His behaviour was based on an ill-conceived and troubling view that there was no need to obtain KP's consent or instructions because KP would not have been in the position to consent or give instructions.
>
> (b) In respect of the other violations, his failure to advise or give proper advice fell below the standard of care expected of a reasonable solicitor. AJH's cumulative failures were sustained and prolonged for close to three years, and were symptomatic of his cavalier disregard for the rules of professional conduct. For what was essentially a single dispute over unpaid invoices, AJH's misconduct likely contributed to the matter involving almost three years of litigation, and during which there were numerous applications resulting in costs orders against P&P.

22.68 The Court of Three Judges imposed a nine-month suspension on AJH, which took into account:

> (a) that there were multiple instances of misconduct;
>
> (b) aggravating factors:
>
> (i) AJH's offending was prolonged and evinced a pattern of unprofessionalism, and he had a cavalier disregard for the rules of professional conduct;
>
> (ii) AJH's abject lack of remorse, as reflected in him contesting the findings, making several unnecessary and serious allegations against KP, and attempting to fault KP for AJH's own breaches of duties;
>
> (iii) AJH's seniority, as a practitioner of 18 years' standing; and
>
> (iv) the prejudice suffered by P&P as a result of AJH's conduct; and
>
> (c) the lack of mitigating factors.

AJH was also ordered to pay costs.

22.69 This is hardly the first reminder from the courts of the critical importance of taking contemporaneous notes of meetings with clients. Apart from recording instructions from the client, practitioners should also record the advice given, to protect themselves against subsequent allegations that no proper advice was given. The author fully appreciates that resources are required for such note-taking, but suggests that solo practitioners can consider:

(a) habitually preparing aide memoires before meetings with clients, using the aide memoires to conduct the meeting (and with contemporaneous amendments, if necessary, to reflect the actual discussions), and then filing the (amended) aide memoires as contemporaneous records; and

(b) leveraging technology – there are a number of recording and transcription tools available on the market, some of which can be relatively affordable.

VII. Exchanging settlement offers without informing or advising client

22.70 The proceedings in *The Law Society of Singapore v Krishnamoorthi S/o Kolanthaveloo*[41] arose out of a complaint made by a taxi driver who had sustained personal injuries in a motor accident. After the accident, the complainant appointed the respondent's firm to represent him in his personal injury claim. However, the complainant was dissatisfied with the respondent's handling of the matter.

22.71 After the respondent had received from the complainant a copy of his specialist medical report, the respondent did not seek the complainant's instructions on the medical report or advise the complainant of the claimable quantum of damages. Instead, the respondent proceeded to exchange correspondence with the insurer ("NTUC"). Throughout the process:

(a) the respondent had quantified the complainant's claim and exchanged offers to settle with NTUC, but without consulting with the complainant or keeping him informed;

(b) the respondent did not personally speak with the complainant and all dealings were between the complainant and the respondent's paralegal ("Veknesh") or other staff;

(c) none of the e-mails between the firm and NTUC were furnished to the complainant;

41 [2023] SGDT 2.

(d) there was no e-mail communication between the firm and the complainant; and

(e) no reasonable advice was given to the complainant regarding his personal injury claim, party-and-party costs and solicitor-and-client costs.

The claim was eventually concluded with the complainant's consent.

22.72 The LSS eventually proceeded on one amended charge for breaches of rr 5(2)(*b*), 5(2)(*e*), 5(2)(*h*) and 17(2)(*c*) of the PCR, in respect of the respondent's negotiations with NTUC without the complainant's instructions, failure to keep the complainant informed of the initial negotiation, failure to supply any correspondence to the complainant and failure to give any reasonable advice to the complainant. The respondent pleaded guilty on the first day of the hearing.

22.73 The DT determined that the respondent should be ordered to pay a penalty of $3,500 and costs.

(a) This was not a case where only a reprimand or censure was appropriate. It is the core of a practitioner's duty to give proper guidance and advice to a client, especially where the client may lack sophistication and general understanding of the law (as in this case). It was therefore incumbent on the respondent to give a full breakdown of what the complainant would be getting in NTUC's various offers and a proper explanation on the various types of costs he should pay.

(b) Practitioners also have a duty to keep clients informed of the progress of their matter and to provide clients with copies of correspondence sent by the practitioner on the client's behalf. This is so that the client will be aware of what is happening in the matter and have an opportunity to raise any queries or objections. But the respondent did not do so.

(c) In mitigation, due consideration was placed on the respondent's plea of guilt on the first day of the hearing, and on the respondent returning to the complainant solicitor-and-client costs of $700 (and the gravamen of the complaint was that the complainant felt aggrieved that he had to pay $700 out of the damages for his personal injury claim to the firm despite the manner in which the respondent had handled his matter). The complainant's dissatisfaction would have been mitigated or even avoided had the respondent kept him informed of the various offers exchanged between NTUC and the firm, and if copies of the correspondence between the firm and NTUC were supplied to him. The complainant would then have at least had the

opportunity to raise queries or objections regarding the various offers, and would have been aware of the party-and-party costs claimed by the firm instead of only finding out belatedly.

22.74 When handling low-quantum matters, in order to keep legal costs proportionate to the size of the dispute, practitioners may find it easier not to keep clients updated with a blow-by-blow account of ongoing negotiations, especially where the final settlement sum will still be subject to the client's approval. However, even for such matters, practitioners still owe a duty to keep clients informed of the progress of the matter and provide copies of correspondence, and fail to do so at their own peril.

VIII. Failure to obtain instructions at commencement of retainer

22.75 In *Law Society of Singapore v Shanmugam Manohar*,[42] the 12 charges against the respondent ("SM") arose out of a complaint made by the AG to the LSS, which brought charges and alternative charges against SM concerning:

(a) referral payments of $600 to $800 allegedly made by SM to one Ng Kin Kok ("NKK") for referring claims arising from five motor accidents to SM;

(b) failing to communicate directly with clients referred to him by NKK to obtain or confirm instructions to act at the commencement of the retainer where a signed WTA was obtained from the clients through NKK, without the presence of SM or any employee of his firm (the "Communication Charges"); and

(c) failing to communicate directly with clients who had been referred to him by NKK, to obtain or confirm instructions in the process of providing advice and at all appropriate stages of each matter.

22.76 The matter had a circuitous procedural history. A DT originally found that various charges against SM had been made out,[43] and the matter went before the Court of Three Judges. However, the Court of Three Judges set aside the DT's findings because the DT should not have admitted "Contested Statements".[44] These Contested Statements were recorded by the Commercial Affairs Department ("CAD") from SM, NKK and a partner in SM's firm after NKK had been convicted of

42 [2023] SGDT 9.
43 *The Law Society of Singapore v Shanmugam Manohar* [2020] SGDT 9.
44 *The Law Society of Singapore v Shanmugam Manohar* [2022] 3 SLR 731.

abetment by cheating, and while the CAD was investigating an alleged motor insurance fraud scheme which NKK was party to. NKK had disclosed that he would refer potential motor accident claimants to law firms and be paid a commission by the law firm for successful claims.

22.77 The Court of Three Judges directed, pursuant to s 98(8)(*b*)(ii) of the LPA, for the LSS to apply for another DT to be appointed to hear and investigate the complaints against SM. At the DT hearing, the LSS adduced evidence from the alleged referral clients referred to in the various charges: (a) through the affidavits of evidence-in-chief ("AEIC") of two clients; and (b) by subpoenaing three clients. The LSS intended to call, as witnesses, NKK and a partner of the firm at the material time, but was not able to personally serve them with the orders to attend court ("OACs").

22.78 The LSS applied to the High Court for orders for substituted service of the OACs. However, the application was dismissed on the basis that this was a question to be decided by the DT and not by the Court. The LSS did not appeal. The LSS then applied to the DT to obtain orders for substituted service. However, the DT dismissed the application on the basis that it did not have the power to grant such orders.

22.79 Having failed to serve the OACs, the LSS then applied to the DT under s 32(1)(*j*)(ii) of the Evidence Act 1893[45] for permission to call a senior investigation officer as a witness, and to admit his AEIC which enclosed NKK's statements that CAD had recorded on 6 April 2015 and 14 September 2017. However, NKK's 14 September 2017 statement was one of the Contested Statements which the Court of Three Judges held should not have been admitted. Submissions were made, and the LSS eventually applied to withdraw the application (and SM did not object). The LSS then closed its case.

22.80 SM then submitted that LSS did not adduce any evidence of the alleged payments, and that there was therefore no case to answer in respect of the charges in relation to referral payments. The LSS accepted that it had not adduced any evidence of the alleged payments and did not offer any further submissions. The DT accepted SM's submissions and held that SM had no case to answer in relation to these charges.

22.81 In the course of the DT proceedings, parties also discussed the other charges, which led to an agreement between SM and the LSS (subject to the DT's agreement) that:

45 2020 Rev Ed.

(a) some (but not all) of the Communication Charges would be amended, and SM would plead guilty to these charges (the "Amended Communication Charges"); and

(b) the other charges would be withdrawn.

22.82 The DT proceeded to find SM guilty of the Amended Communication Charges, and imposed a fine on SM. As for the charges to be withdrawn, the DT held that it was for the LSS to decide whether to withdraw charges before a DT. It allowed the withdrawal and acquitted SM of the withdrawn charges.

22.83 A few observations, for future disciplinary proceedings and for practitioners to take note of. First, the author hopes that the difficulties faced by the LSS in this case will trigger some clarity in the law as to whether it is the court or a DT that has the power to grant orders for substituted service of OACs. Second, the rules of evidence are no less important when it comes to the conduct of DT hearings, and counsel would do well to consider the evidential foundations of the case they intend to bring. Third, practitioners would do well to personally handle the commencement of a retainer and take contemporaneous notes of the advice given at that stage, even if they expect to be in further contact with clients shortly thereafter.

IX. Communications with testators of wills prepared by practitioners

22.84 *The Law Society of Singapore v Kwa Kim Li*[46] concerned complaints made by Lee Hsien Yang ("LHY") and Lee Wei Ling ("LWL") against Kwa Kim Li ("KKL"), in respect of the will of the late Lee Kuan Yew ("LKY") and his estate (the "Estate"). LHY and LWL were the executors and trustees of LKY's last will.

22.85 KKL had acted as LKY's solicitor for many years – in particular, in relation to the preparation of six wills for LKY from 20 August 2011 to 2 November 2012. On 17 December 2013, and with the involvement of LHY and his wife, Lee Suet Fern ("LSF"), a seventh will was executed. LKY passed away on 23 March 2015.

22.86 LHY and LWL's complaint comprised several heads, but after various procedural developments (including High Court and Court of Appeal hearings), only two complaints fell to the DT for determination:

46 [2023] SGDT 8.

(a) That KKL had breached privilege and her duties of confidentiality when she sent e-mails with records of communications with LKY to Lee Hsien Loong ("LHL"), who was not an executor of the Estate (the "Second Complaint"). Two charges were framed against KKL, each with an alternative charge (the "LSS Charges", comprising the "First Charge" and the "Second Charge").

(b) That KKL had given false and misleading information to the executors in her e-mails of 4 and 22 June 2015 (the "Fourth Complaint"). One charge was brought in respect of this complaint ("LHY's Charge").

22.87 Eventually, the LSS indicated that it would tender an agreed statement of facts in relation to one amended charge, which stated that by sending out the letter dated 4 June 2015 to LHL, KKL had knowingly disclosed to LHL (without LHY and LWL's consent or authority) five of LKY's previous wills, e-mail correspondence between LKY and KKL from 11 December 2011 to 2 November 2012, and explanations as to why LKY changed his previous wills – all of which were documents and/or information confidential to LKY and acquired by KKL in the course of engagement as LKY's solicitor. This amounted to conduct unbefitting of an advocate and solicitor under s 83(2)(*h*) of the LPA (the "Amended First Alternative Charge"). KKL accepted that this Amended First Alternative Charge was made out in law and on the facts.

22.88 LHY then raised two preliminary issues.

(a) The first was his application to give evidence via video-link, which the DT eventually allowed.

(b) The second was whether the DT should continue to consider both the First and Second Charges and their alternatives (as set out in the LSS's Statement of Case) even though the LSS had chosen to proceed on only one charge (*ie,* the Amended First Alternative Charge). The DT acknowledged that the LSS has a "discretion to consider representations and to weigh the merits of possible defences and consider facts raised by a respondent solicitor"[47] before determining whether charges should be amended or whether no evidence is to be offered on any charge. The DT came to the conclusion that it was not open to them to consider the charges which were not proceeded with, and in respect of which no evidence was offered. However, given the possibility of LHY seeking judicial review of this decision, the DT

47 *The Law Society of Singapore v Kwa Kim Li* [2023] SGDT 8 at [32].

nevertheless proceeded to consider the merits of the charges not proceeded with.

22.89 Turning to the Amended First Alternative Charge, the DT determined that:

(a) The charge was made out. KKL admitted that prior to sending out a letter dated 4 June 2015 to LHL, she did not obtain the consent nor authority of LHY and LWL (who were the executors and trustees of the Testator's final will (the "Final Will")).

(b) However, KKL's "culpability and the harm caused by the breach was not substantial",[48] there were interpersonal and familial relationships between the parties involved, and that there was no evidence that KKL was acting from improper motives.

(c) No cause of sufficient gravity for disciplinary action existed under s 83 of the LPA. However, KKL ought to pay a penalty of $5,000 and costs.

22.90 As for the LSS Charges not proceeded with, the DT found that they would not have been made out if the DT had proceeded to consider them.

22.91 In respect of LHY's Charge:

(a) In respect of the 4 June 2015 e-mail, LHY's Charge was not made out.

(i) When KKL wrote to LHY and LWL on 4 June 2015, she did not give details of her communications with LKY between November 2013 and 13 December 2013 (the "November/December 2013 Communications"). LHY faulted her for not doing so.

(ii) The issue was whether there was any query that had been posed to KKL, such that her failure to refer to the November/December 2013 Communications was misleading.

(iii) However, there was no evidence showing that any query (which would require KKL to respond to with a reference to the November/December 2013 Communications) had been made. As such, the charge was not made out in respect of the 4 June 2015 e-mail.

48 *The Law Society of Singapore v Kwa Kim Li* [2023] SGDT 8 at [36].

(b) However, in respect of the 22 June 2015 e-mail, LHY's Charge was made out.

(i) Again, KKL was being faulted for not referring to the November/December 2013 Communications in her e-mail of 22 June 2015 to LHY and LWL.

(ii) The e-mail of 22 June 2015 itself showed that LHL and LWL had requested a draft will of 19 August 2011, and the background which led to the signing of LKY's final will. The context of the query related to the circumstances leading up to the execution of the Final Will.

(iii) The November/December 2013 Communications dealt expressly with the distribution of shares and issues relating to a property located at Oxley Road, and these were matters addressed and changed in the Final Will. As such, KKL's omission to disclose two e-mails (within the November/December 2013 Communications) was misleading. KKL's response gave the "clear and unequivocal impression"[49] that KKL had no knowledge as to how the Final Will came about.

(iv) Further, KKL had stated that LKY did not instruct KKL to change his will. However, this was untrue. Although LKY's instructions may not have been finalised, KKL had received instructions relating to the changes to the will that were shortly made.

(v) While it was not proven beyond reasonable doubt that KKL knowingly or deliberately misled LHY and LWL, or that she intentionally made a false statement, KKL did not exercise due care and diligence when sending out the 22 June 2015 e-mail.

(c) Although the charge was made out, the harm caused was low, and KKL's culpability was low to medium. Therefore, there was no cause of sufficient gravity for disciplinary action under s 83 of the LPA, but KKL was ordered to pay a penalty of $8,000, plus costs.

22.92 While it is, anecdotally, not uncommon for legal practitioners to assist relatives in the preparation of wills and in estate matters, this case illustrates how things can go wrong, especially where the lines between professional and familial relationships become blurred.

49 *The Law Society of Singapore v Kwa Kim Li* [2023] SGDT 8 at [68].

X. Writing to third parties to pressure clients into paying bills

22.93 In *The Law Society of Singapore v Regina d/o Vallabadoss*,[50] a client (the "Complainant") owed legal fees to his lawyer ("RV"), and RV sent an e-mail to the Complainant's then-employer and/or superiors at work in relation to the legal fees owed by the Complainant.

22.94 RV had represented the Complainant in divorce proceedings. A dispute arose between RV and the Complainant in respect of RV's fees (the "Fees"). The Complainant applied for the Fees to be taxed, and the family justice courts ordered the Complainant to pay $37,920.81 to RV (the "Outstanding Amount").

22.95 RV then wrote an e-mail to the Complainant's taxation lawyers on 21 April 2021 (the "21 April E-mail"), asking for payment of the Outstanding Amount. RV did not get a response.

22.96 RV then sent an e-mail (the "10 May E-mail") to two senior appointment holders at the Ministry of Defence ("Mindef") and/or the Singapore Armed Forces (these individuals having formerly held senior appointments with the Republic of Singapore Air Force ("RSAF")). At that time, the Complainant was employed by the RSAF or Mindef.

22.97 The 10 May E-mail:

(a) enclosed the 21 April E-mail;

(b) sought to procure the assistance of RSAF or Mindef to compel the Complainant to pay the Outstanding Amount;

(c) sought to notify the RSAF or Mindef that RV would commence committal proceedings against the Complainant, possibly resulting in his incarceration and/or bankruptcy proceedings (the "Allegations"); and

(d) contained the following statements:[51]

(a) that it should be forwarded to the Complainant's superiors '*as necessary*';

(b) that the Complainant was '*uncontactable and evasive*';

(c) that the Complainant had an outstanding debt that was '*due and accruing*'; and

50 [2023] SGDT 6.

51 *The Law Society of Singapore v Regina d/o Vallabadoss* [2023] SGDT 6 at [10].

> (d) that the Allegations may have '*severe and deep-seated repercussions for* [the Complainant's] *current as well as prospective employment status*'.
>
> [emphasis in original]

22.98 The Complainant then made a complaint against RV. An IC considered the matter and unanimously recommended that the matter be referred to a DT for formal investigation. The Complainant informed the inquiry committee that the 10 May E-mail led him to resign from the RSAF or Mindef, as it was "troublesome to explain his situation",[52] but that prior to resigning, he had already found a new job which he was happy with.

22.99 A DT was appointed to hear and investigate RV's conduct. The LSS preferred two charges against RV (each with an alternative charge), all in respect of RV's act of sending the 10 May E-mail.

22.100 Less than two weeks after the DT was appointed, RV informed the DT secretariat that, *inter alia*, she would admit to the charges preferred against her and would abide by any sanctions imposed by the DT. RV also provided a plea in mitigation.

22.101 The LSS eventually applied and was granted leave to withdraw the first alternative, second and second alternative charges against RV. The LSS only proceeded on the first charge, which was for sending the 10 May E-mail to the Complainant's employer and/or superiors to "pressure and/or embarrass [the Complainant] into paying [RV's] legal bills when [RV] knew or ought to have known that there was no legal basis for [RV] to do so, and in the circumstances [RV had] acted in a way which [was] contrary to [RV's] position as a member of an honourable profession towards [the Complainant]",[53] and in breach of r 8(3)(*b*) of the PCR.

22.102 At the hearing, RV confirmed that she was not contesting the sole charge against her, relied solely on her mitigation plea, and declined to make any oral submissions on sentencing.

22.103 The DT held that there was no cause of sufficient gravity for disciplinary action under s 83 of the LPA. The DT compared RV's conduct to that of the respondent in *The Law Society of Singapore v Terence Tan Bian Chye*[54] ("*Terence Tan*"), in which no cause of sufficient gravity for

52 *The Law Society of Singapore v Regina d/o Vallabadoss* [2023] SGDT 6 at [11].
53 *The Law Society of Singapore v Regina d/o Vallabadoss* [2023] SGDT 6 at [13].
54 [2007] SGDSC 10.

disciplinary action under s 83 of the LPA was found. RV's conduct was less serious than that of the respondent in *Terence Tan*.

(a) In the present case, only one communication (*ie*, the 10 May E-mail) was complained of, compared to the 18 letters that supported one or more of the charges in *Terence Tan*.

(b) The 10 May E-mail did not contain statements which were offensive, scandalous or intended or calculated only to vilify or annoy the addressees.

22.104 The LSS accepted that this was "not a case demonstrating dishonesty, malice or any other inherent character defect which would warrant firmer sanction",[55] that the wrongful application of pressure on the Complainant via the 10 May E-mail had been "a simple error of judgment"[56] on RV's part, and that RV's early admission of guilt led to costs and time saved for all parties and was a mitigating factor. Nevertheless, the DT concluded that RV ought to be reprimanded pursuant to s 93(1)(*b*)(ii) of the LPA, in light of precedents involving respondents of similar culpability. RV was also ordered to pay costs.

22.105 Practitioners would rightfully be annoyed when clients do not pay their bills, and especially when the fees have already been taxed and orders made. That being said, their desire to have their bills paid does not outweigh their duty to maintain professionalism and restraint in their communications, whether with clients or third parties.

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55 *The Law Society of Singapore v Regina d/o Vallabadoss* [2023] SGDT 6 at [29].
56 *The Law Society of Singapore v Regina d/o Vallabadoss* [2023] SGDT 6 at [30].