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22. LEGAL PROFESSION

Khelvin **XU**[1]
LLB (Hons) (National University of Singapore);
Advocate and Solicitor (Singapore);
Partner, Rajah & Tann Singapore LLP.

I. Introduction

22.1 In 2022, disciplinary matters continued to be reported at a breakneck speed, with no signs of the pace slowing down. Indeed, as the Chief Justice observed at the Opening of the Legal Year 2023, "[t]here has been a noticeable rise in breaches of ethics and professional standards over the last few years". It is the author's hope that each and every practitioner can – within their respective spheres of influence – reflect on what they can do to contribute towards this disheartening trend being arrested.

II. Ethical duties applicable to Legal Service Officers

22.2 *The Law Society of Singapore v Tan Yanying*[2] arose out of the prosecution of Parti Liyani ("PL"), an Indonesian domestic worker. PL made a complaint against Tan Yanying ("TYY") and Tan Wee Hao ("TWH"), both of whom were Legal Service Officers ("LSOs") in the Attorney-General's Chambers ("AGC").

22.3 PL was a domestic worker in the Liew household. On 28 October 2016, her employment was terminated as she was suspected of stealing items from the household, including a DVD player. PL was arrested, and charges were brought for the theft of, *inter alia*, the device. TYY and TWH were assigned to prosecute PL.

22.4 PL's defence was that the DVD player was broken and to be thrown away, and she was told that she could take it back to Indonesia to have it repaired if she wanted to. However, at trial, some members of the Liew family testified that the DVD player was not spoilt and had never been given away. At this time, both the Prosecution and Defence assumed

1 The author wishes to thank Rochelle Lim, Brendan Tan and Elliot Ong for their assistance. All errors and omissions remain the author's own. Due to the number of cases in 2022, this review will not address the cases which this author considers to be more run-of-the-mill.
2 [2022] SGDT 6.

that the DVD player was either (a) working; or (b) not working at all, and did not consider whether the DVD player could be partially functioning.

22.5 When PL was cross-examined on 26 September 2018, the Prosecution played images using the DVD player to show that it was functioning. However, the DVD player had two modes – DVD mode, and hard disk drive ("HDD") mode. TYY and TWH did not inform those present that the DVD player was operating in HDD mode (and not DVD mode).

22.6 On 27 September 2018, after having inspected the DVD player, PL's counsel attempted to inform the District Judge that, contrary to what TYY and TWH had shown, the DVD player was not fully functioning. On 4 December 2018, PL's counsel conducted a live demonstration of the DVD player during the re-examination of PL, but TYY objected.

22.7 The District Judge eventually found PL guilty of all charges and sentenced her to 26 months' imprisonment.[3] On appeal, Chan Seng Onn J overturned the conviction.[4] As regards the DVD player, Chan J found that PL's failure to inform members of the Liew household that she was taking the DVD player did not mean that no consent was given, and concluded that it was likely that PL's "employers no longer wanted the [DVD player] as it was partially spoilt" and that PL "intended to bring it back to Indonesia to fix it".[5]

22.8 Chan J also observed that:[6]

> If the Prosecution had known of this defect in the [DVD player] during the trial below, it should have fully disclosed it. The trial court could be misled into thinking that the [DVD player] was in a good working condition when questions were (and unfairly) put to [PL] on the basis that the DVD player was still in a good working condition after an incomplete demonstration of its important functionalities during the trial.

22.9 PL then made a complaint against TYY and TWH. PL's amended case was that:

> (a) On 26 September 2018, before the hearing commenced, TYY and TWH had problems playing a DVD on the DVD player. They did not disclose that (i) the DVD player had dual functions; (ii) the images played in court were from the HDD source; and (iii) the DVD player had trouble playing the DVD.

3 *Public Prosecutor v Parti Liyani* [2019] SGDC 57.
4 *Parti Liyani v Public Prosecutor* [2020] SGHC 187.
5 *Parti Liyani v Public Prosecutor* [2020] SGHC 187 at [95].
6 *Parti Liyani v Public Prosecutor* [2020] SGHC 187 at [90].

(b) When cross-examining PL, TYY and TWH gave the impression that the DVD player was fully working by flashing images using the DVD player in HDD mode.

(c) Subsequently, TYY and TWH failed to clarify that the DVD player was not fully working and objected to PL's counsel clarifying the position.

(d) TYY and TWH knew or had reason to believe that the DVD player was not fully functional, and by failing to disclose this to the court, they created a false impression that the DVD player was fully working.

22.10 However, the day before the substantive hearing of the disciplinary tribunal ("DT") was to commence, PL sought to further amend her statement of case ("SOC"). The key amendment was so the SOC would read:[7]

> In the course of this, the DPPs must have been aware *of the possibility* that the Device was not fully working and was spoilt … Accordingly, before the cross-examination of the Complainant, the DPPs were aware *of the possibility* that the Device was not fully working and was spoilt. [emphasis added]

The DT disallowed the proposed further amendments because: (a) they were made very late in the day and would have been prejudicial to TYY and TWH; (b) the facts underpinning the amendments were already known to PL a long time ago and could have been previously included; and (c) they were not supported or consistent with the evidence presented in PL's affidavits.

22.11 TWH argued that the Legal Profession (Professional Conduct) Rules 2015 ("PCR") only covers regulated legal practitioners, and the PCR did not apply to him as LSOs (a) are not advocates and solicitors of the Supreme Court; and (b) do not fall within any of the defined categories listed under Division 1 of Part 3 of the PCR. The DT did not rule on whether the PCR applies to LSOs, as TYY and TWH did not dispute that LSOs owe a common law duty of candour to the court, which sufficed to hold TYY and TWH accountable. However, the DT observed that public policy would dictate that LSOs be held to the same standard as other regulated legal practitioners, and it would be "totally anomalous and unacceptable" if LSOs were subject to a lower standard.[8]

22.12 Turning to TYY's and TWH's main defence, they argued that the relevant issue at trial, based on how they had conducted the case, was

7 *The Law Society of Singapore v Tan Yanying* [2022] SGDT 6 at [37].
8 *The Law Society of Singapore v Tan Yanying* [2022] SGDT 6 at [62].

whether the DVD player worked or not, and not whether the DVD player was fully working. TYY further argued that the DVD player's inability to play the DVD was immaterial to the Prosecution's case because all she needed to rebut PL's defence was to show that the DVD player was, in fact, working.

22.13 The DT first considered events leading up to 26 September 2018, the day on which TYY and TWH demonstrated that the DVD player was working:

> (a) Prior to 26 September 2018, neither the Prosecution nor the Defence thought it necessary to examine the DVD player.
>
> (b) The factual contest at trial was who the court should believe in relation to the question of consent. On 26 September 2018, TYY and TWH decided to check the DVD player – if it was not working, that would support PL's case, but if it was still working, that would support the Prosecution's case.
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> (c) TYY and TWH were both unfamiliar with the DVD player. TYY tried but was unable to play a DVD from the DVD player. Some error messages were displayed. TYY then randomly pressed some buttons, which led to images appearing. Based on this, TYY and TWH believed that the DVD player was working, and that the DVD could not be played because of the DVD itself and not the DVD player.

22.14 The DT therefore held that it was:[9]

> … difficult to fault [TYY and TWH] for thinking that the [DVD player] was working as demonstrated even though they could not play the [DVD]. Far less could it be said that [TYY and TWH] knew that the DVD function of the [DVD player] was faulty and deliberately chose to suppress that fact.

22.15 Further, during the trial, PL's position was that the DVD player was not working at all, and the Prosecution was trying to show that this position was not correct. On this basis, TYY and TWH were only trying to establish that the DVD player was working, albeit partially. If the trial had turned on the specific question of whether the *DVD function* of the DVD player was working, then TYY and TWH should have disclosed their problems playing the DVD. But this was not the case.

22.16 As such, the DT held that neither TYY nor TWH could be faulted for a lack of candour, and there was no cause of sufficient gravity

9 *The Law Society of Singapore v Tan Yanying* [2022] SGDT 6 at [68].

for disciplinary action under s 82A of the Legal Profession Act 1966[10] ("LPA"). The charges were dismissed, but with no order as to costs.

22.17 It might surprise readers to hear that it is not settled law as to whether the PCR applies to LSOs. That being said, the author has his doubts as to whether any tribunal or court would, in future, hold LSOs to a lower standard than that of advocates and solicitors, bearing in mind that LSOs are also officers of the court.

III. Council's power to refer further question to inquiry committee

22.18 *Law Society of Singapore v Lee Wei Ling*[11] concerned the extent of the power of the Council of the Law Society ("the Council") under s 87 of the LPA when considering the investigation of complaints against solicitors. This appeal arose out of complaints made on 5 September 2019 by the executors ("Executors") of Lee Kuan Yew's ("the Testator's") will against Kwa Kim Li ("KKL"), who acted for the Testator and prepared six of the seven wills that he made. One such complaint, which was the subject of this appeal, was whether KKL had failed to adhere to the Testator's instructions to physically destroy each of the six earlier wills as and when they were superseded by a subsequent will ("Complaint").

22.19 The Law Society ("LSS") had convened an inquiry committee ("IC"), which initially recommended in its first report ("First IC Report") dated 8 May 2020 that the Complaint be referred to a DT for a formal investigation. In particular, the IC found (based on KKL's own notes) that there was a *prima facie* case that KKL had breached the Testator's specific instructions to destroy the first will. On 3 July 2020, after considering the First IC Report, the Council, pursuant to s 87(1)(*d*) of the LPA, referred the matter back to the IC for reconsideration in light of certain questions raised by the Council.

22.20 On 22 July 2020, the IC heard KKL's responses to certain matters. In particular, KKL explained that the Testator never expressly instructed her to physically destroy his superseded wills, and she had used the words "destroy" and "tore up" loosely to refer to her practice of striking through the wills to invalidate them. Having heard her evidence, the IC then changed its view in its second report ("Second IC Report") and recommended that the Complaint be dismissed as the documentary evidence did not demonstrate that the Testator intended for his prior

10 2020 Rev Ed.
11 [2022] 2 SLR 58.

wills to be physically destroyed or torn apart by KKL. On 7 September 2020, the LSS informed the Executors that the Council had accepted the IC's findings and its recommendation that a formal investigation by a DT was not necessary.

22.21 Dissatisfied, the Executors applied to the High Court for an order that the Council be directed to refer the Complaint to the DT. The crux of the Executors' complaint was that the Council had no power to pose further queries to the IC or to invite the IC to reconsider the matter once the IC had made a determination that the matter should proceed to the DT.

22.22 In *Lee Wei Ling v Law Society of Singapore*,[12] the judge held that the Council did not have the power to refer further questions to the IC once the IC had made a determination that the matter should proceed to the DT. The LSS appealed, and the matter went before the Court of Appeal.

22.23 The Court of Appeal's starting point was s 87(1)(*d*) of the LPA, which provides that the Council may refer a matter back to the IC for reconsideration or a further report. It held that s 87(1)(*d*) is not confined to the situation provided for in ss 87(1)(*a*) and 87(1)(*b*) of the LPA. In other words, the Council's right to refer the matter back to the IC is not limited to the situation where the IC recommends that the matter need not proceed to a DT. If Parliament had intended to limit the Council's power to refer the matter back to the IC, one would have expected this to be reflected in s 87(1)(*d*) itself.

22.24 The Court of Appeal also came to the same conclusion on s 87(2) of the LPA. While s 87(2)(*a*) states in mandatory terms that the Council must determine accordingly if the IC recommends that there should be a formal investigation, this only applies after considering the IC's original report together with any subsequent report or response. Therefore, s 87(2) does not circumscribe how the Council may act under s 87(1)(*d*).

22.25 The Court of Appeal observed that, as a matter of common sense, if the Council considered that there might be factual errors, or additional matters that the IC had not fully investigated and considered, it would be entirely sensible for the Council to pose further queries to clarify the IC's recommendations before deciding on the appropriate course of action. Further, the legislative purpose behind s 87 of the LPA, which was to streamline the timelines and processes of the investigation while also giving effect to the need for due process, also supported this conclusion.

12 [2021] SGHC 87.

The Court of Appeal therefore allowed the Law Society's appeal and, on the facts of the case, affirmed the Council's determination to dismiss the Complaint.

22.26 In light of this decision, complainants who are disgruntled with the Council's decision to pose further queries to an IC, or to invite an IC to reconsider matters, would do well to consider whether an application to overturn the Council's decision is likely to succeed.

IV. Qualifications of a supervising solicitor

22.27 *The Law Society of Singapore v Clarence Lun Yaodong*[13] and *Law Society of Singapore v Lun Yaodong Clarence*[14] both arose out of the respondent ("CLY") acting as a supervising solicitor for two practice trainees ("LTJ" and "TAS") when he was not qualified to do so under r 18(1) of the Legal Profession (Admission) Rules 2011 ("LPAR").

22.28 Rule 18(1) of the LPAR requires a supervising solicitor to be in active practice in a Singapore law practice and have in force a practising certificate for at least five out of the seven years immediately preceding the date of commencement of supervision. When LTJ and TAS commenced their training contracts with Foxwood LLC ("Foxwood"), CLY had only held a practising certificate for around two years and ten months in the preceding seven years.

22.29 The LSS referred CLY to an IC who found no cause of sufficient gravity for a formal investigation. According to the IC, while CLY had demonstrated a "patent lack of care taken in relation to his responsibilities in taking on trainees", he had "made a mistake" and the IC "did not detect any intention on his part to take unfair advantage of any trainee, nor was he fraudulent or deceitful".[15]

22.30 The Council disagreed with the IC's recommendations and a DT was appointed. The LSS brought five charges against CLY:

> (a) The first three charges involved, broadly, CLY acting as a supervising solicitor of LTJ and TAS without having a practising certificate for the required period.
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> (b) The fourth charge concerned CLY's alleged breach of r 8(3)(*a*) of the PCR for taking unfair advantage of TAS, by

13 [2022] SGDT 9.
14 [2022] SGHC 269.
15 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [21].

demanding that she pay Foxwood the sum of $2,000 when this sum was not recoverable by due process of law.

(c) The fifth charge concerned CLY's alleged breach of r 8(3)(*b*) of the PCR for acting in a deceitful manner – by representing to LTJ that he would meet the requirements to be LTJ's supervising solicitor by May 2020, when he knew this to be false.

22.31 The DT found that there was cause of sufficient gravity for disciplinary action in respect of the first to third charges, while the fourth and fifth charges were not made out. In the interest of brevity, this review will focus on only the first three charges.

22.32 CLY admitted to acting as LTJ's and TAS's supervising solicitor, and that for the relevant seven-year period, he held a practising certificate for only two years and ten months. There was no question that CLY had breached the relevant rules; the only question was whether his conduct warranted disciplinary action within the meaning of s 83(2)(*j*) of the LPA.

22.33 CLY's position was that his conduct did not warrant disciplinary action because of mitigating circumstances. He argued that:

(a) By admitting that he was LTJ's and TAS's supervising solicitor, he was "stepping up to shoulder the blame", when he could have argued that LTJ and TAS had no supervising solicitor.[16] The DT dismissed this argument: CLY was arguing that he should be credited for having told the truth, but telling the truth is not mitigatory and is the absolute minimum expected of any advocate and solicitor.

(b) He had shared, with one Goh Keng How ("GKH"), the responsibility for proper supervision of practice trainees, and it would be unfair to pin the blame solely on him. CLY claimed to believe that GKH would "take care of regulatory and compliance issues".[17] The DT dismissed this argument. First, GKH's conduct was not the subject of these proceedings, and GKH falling below the expected standard would not mitigate CLY's culpability. Second, CLY bore a personal responsibility to ensure that the applicable rules were strictly adhered to in all areas of his practice, and the DT found that "the evidence before us suggests that [CLY] simply did not care whether there were any rules and, if so, what they were".[18]

16 *The Law Society of Singapore v Clarence Lun Yaodong* [2022] SGDT 9 at [12].
17 *The Law Society of Singapore v Clarence Lun Yaodong* [2022] SGDT 9 at [22].
18 *The Law Society of Singapore v Clarence Lun Yaodong* [2022] SGDT 9 at [21].

(c) He did "all he could to rectify the mistake and alleviate the situation for [LTJ]".[19] The DT found that while CLY did take some steps to try to help LTJ, these steps did not have much mitigatory value because LTJ eventually secured a training contract with another firm through his own endeavours.

22.34 The DT also disagreed with CLY's portrayal of the case as one concerning "simple negligence".[20] It would have been a mistake or oversight if, for example, CLY had incorrectly calculated the number of years he had been in practice and thereby wrongly concluded that he was sufficiently qualified. Instead, the evidence showed that CLY did not know what the qualifying requirements were and did not bother to check.

22.35 In particular, the DT found that r 18(1) of the LPAR (which concerned the second charge) was "an important pillar in the framework for ensuring the quality of advocates and solicitors called to the Bar [which] in turn helps ensure that the broader public interest of ensuring the quality of legal advice available to clients is met".[21] CLY's "complete disregard for and disinterest in the rules governing his suitability to act as a supervising solicitor … imperiled the careful framework put in place to ensure the quality of advocates and solicitors admitted to the Bar".[22] As such, s 83(2)(*h*) of the LPA was made out because reasonable people, on hearing what CLY had done, would have said without hesitation that he, as a solicitor, should not have done it.

22.36 The matter then went before the Court of Three Judges. The LSS argued that due cause was shown in respect of the first three charges, did not challenge the DT's dismissal of the fourth and fifth charges, and argued for a suspension from practice for a period of not more than one year. This was on the basis of (a) a need to send a "strong message" to the profession; and (b) the presence of aggravating factors and lack of mitigating factors.[23]

22.37 On the other hand, CLY argued, *inter alia*, that his "inadvertence, coupled with the limited damage caused and the overall mitigating circumstances, [meant that this] was a case of simple negligence" and that due cause was thus not shown.[24] If, however, due cause was shown, then he submitted that a fine, rather than a suspension, should be imposed. CLY argued that the severity of his breaches was on the lower end of the

19 *The Law Society of Singapore v Clarence Lun Yaodong* [2022] SGDT 9 at [23].
20 *The Law Society of Singapore v Clarence Lun Yaodong* [2022] SGDT 9 at [50].
21 *The Law Society of Singapore v Clarence Lun Yaodong* [2022] SGDT 9 at [61].
22 *The Law Society of Singapore v Clarence Lun Yaodong* [2022] SGDT 9 at [62].
23 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [36].
24 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [39].

spectrum as there was no dishonesty or any serious misjudgment on his part, and that failing to familiarise himself with r 18(1) of the LPAR did not bring discredit to him and the legal profession.

22.38 There were two issues before the Court of Three Judges: (a) whether due cause was shown in respect of the first three charges; and, if so, (b) the appropriate sanction.

22.39 The Court of Three Judges held that the breach of r 18(1)(*b*) of the LPAR was a breach of the LPA for the purposes of s 83(2)(*j*) of the LPA, and this "plainly warranted disciplinary action"[25] because the principal purposes of disciplinary proceedings – protection of the public and upholding confidence in the integrity of the legal profession – were engaged:

> (a) Due to CLY's ineligibility to act as a supervising solicitor, LTJ performed work for CLY's clients for more than six weeks without due supervision. The Court of Three Judges rejected CLY's argument that his clients' interests were not harmed because he would review LTJ's work and take responsibility for it: CLY was not entitled to employ either LTJ or TAS as trainees to begin with, and the work should not have been done by LTJ and TAS (and could not legally be done by them). CLY's review of the work could not transform such work into work that met CLY's clients' interests.
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> (b) CLY's conduct also affected the public by compromising the training of lawyers. CLY could not have provided "supervised training in relation to the practice of Singapore law" pursuant to s 2(1) of the LPA, and once CLY knew that he was not qualified, it was "improper and mischievous" of him to insist that LTJ continue working for him.[26] CLY's clients were denied the benefit of the rules that safeguard the quality of (i) trainees' supervision; and (ii) legal services dispensed to clients.
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> (c) CLY's misconduct undermined confidence in the legal profession: it suggested that the rules relating to a supervising solicitor's qualifications were not viewed and applied with adequate rigour and commitment, and eroded trust in the work of freshly qualified lawyers because it called into question the quality of their training. Such undermining of confidence in the profession is egregious because public confidence is an indispensable element in the fabric of the justice system.

25 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [44].
26 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [47].

22.40 Further, the Court of Three Judges found CLY's attitude "appalling" – his oral testimony evidenced a "gross degree of negligence"[27] and he "demonstrated a blatant disregard for the interests of his clients and trainee"[28] – and rejected CLY's attempts to downplay his negligence:

> (a) CLY denied that his misconduct posed a real risk to the public because other stakeholders, such as the Singapore Institute of Legal Education ("SILE"), would help to detect trainees who had not received adequate supervision. The Court of Three Judges found that it was irrelevant that there might be other such stakeholders, and that the existence of these stakeholders did not absolve CLY of his own failures.[29]
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> (b) CLY argued that GKH bore primary responsibility for the supervision of trainees and that he only bore secondary responsibility. The Court of Three Judges found this attempt to shift blame "reprehensible"[30] and that CLY's "frivolous attempts to deflect blame and responsibility undermine the existence of remorse".[31]

22.41 As such, the Court of Three Judges found that due cause was proved under s 83(2)(*j*) of the LPA and held that CLY was guilty of the second charge. The first and third charges were dismissed as they added nothing to the second charge, which CLY had already admitted to.

22.42 Turning to sentencing (for which the Court of Three Judges only took the second charge into account), the four sentencing considerations which were relevant in disciplinary proceedings were:[32]

> (a) the protection of members of the public who are dependent on solicitors in the administration of justice;
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> (b) the upholding of public confidence in the integrity of the legal profession;
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> (c) deterring future similar defaults by the same solicitor and other solicitors; and
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> (d) the punishment of the solicitor who is guilty of misconduct.

27 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [55].
28 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [56].
29 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [70].
30 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [72].
31 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [71].
32 *Law Society of Singapore v Lun Yaodong Clarence* [2022] SGHC 269 at [88].

22.43 Applying the principles in *Law Society of Singapore v Seow Theng Beng Samuel*,[33] striking off was not warranted – CLY's misconduct did not attest to a character defect or suggest a fundamental lack of respect for the law; this was CLY's first disciplinary proceeding; he was being sentenced for a single offence; and while CLY had caused dishonour to the legal profession, it was not to a degree that warranted striking off.

22.44 However, a suspension was appropriate because of the following aggravating factors: (a) CLY's culpability was moderately high due to his abject failure to check the supervising solicitor requirements; (b) he insisted that LTJ continue working even after discovering that there was no eligible supervising solicitor in Foxwood, which indicated a blatant disregard for the interests of his clients and of LTJ; (c) CLY had caused real harm to his clients and to LTJ; and (d) CLY had shown no remorse. The Court of Three Judges ordered a suspension of 18 months.

22.45 Apart from the obvious takeaway – that practitioners should check and not assume that they are qualified to take on practice trainees – this case also serves as a reminder that practitioners who find that they have fallen afoul of any rules should quickly take steps to ensure that their clients' and affected parties' interests are properly protected. This case also clarifies that a breach of subsidiary legislation and regulations constitutes a breach of the LPA for the purposes of s 83(2)(*j*).

V. Conduct of legal professionals towards colleagues

22.46 *Law Society of Singapore v Seow Theng Beng Samuel*[34] and *Law Society of Singapore v CNH*[35] both arose out of the respondent lawyers' improper conduct towards their colleagues and outline the appropriate sanctions for such misconduct.

22.47 In *Law Society of Singapore v Seow Theng Beng Samuel*, the respondent ("STBS") was the managing director of Samuel Seow Law Corp ("SSLC") and also an owner and manager of a talent management company, Beam Artistes Pte Ltd ("Beam").

22.48 Between 16 March 2018 and 17 April 2018, STBS:

(a) threw files, boxes and a metal stapler on the floor in the general direction of an employee of Beam;

33 [2022] 4 SLR 467, discussed at para 22.47 below.
34 See para 22.43 above.
35 [2022] 4 SLR 482.

(b) screamed and shouted at an employee of Beam, and advanced towards the employee in an aggressive and/or threatening manner;

(c) repeatedly threw his wallet at an employee of Beam and threatened to kill her;

(d) jabbed the forehead of an employee of Beam and pushed files that she was holding against her chest;

(e) grabbed the arms of an associate at SSLC, pushed her against a table, repeatedly slapped her, jabbed his finger at her forehead and pushed her with his shoulder such that she fell backwards, and aggressively berated and screamed at her; and

(f) pushed an employee of SSLC such that she fell to the floor and aggressively berated and screamed at her.

22.49 The LSS's principal charge under s 83(2)(*b*)(i) of the LPA was for a breach of r 8(3)(*b*) of the PCR: a legal practitioner must not act towards any person in a way which is fraudulent, deceitful or otherwise contrary to the legal practitioner's position as a member of an honourable profession. The LSS also brought an alternative charge under s 83(2)(*h*) of the LPA: STBS's misconduct was unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession. The DT held that there was cause of sufficient gravity for disciplinary action pursuant to s 93(1)(*c*) of the LPA.

22.50 Before the Court of Three Judges, there were two key issues to be determined:

(a) whether there was due cause for disciplinary action under ss 83(2)(*b*)(i) and 83(2)(*h*) of the LPA; and

(b) the appropriate sanction to be imposed under s 83(1) of the LPA.

22.51 On the first issue, the Court of Three Judges held that STBS's conduct was sufficiently serious to provide due cause for disciplinary action. There were aggravating factors:

(a) STBS was placed in a position of authority over his employees, where he would have been expected to exhibit a greater degree of decorum and professionalism.

(b) STBS demonstrated a pattern of intemperate and boorish behaviour, which was supported by witnesses who testified to

regular occurrences of shouting and screaming as well as STBS's temperament and propensity to bouts of extreme emotion.

(c) STBS was not genuinely remorseful.

22.52 The Court of Three Judges also concluded that there were no mitigating factors:

(a) Little weight was attributed to STBS's supposed remorse. His initial response was to downplay his misconduct, and make misstatements to the IC and to the media. He only took a different position after video footage of the incidents was revealed. It was therefore difficult to treat his subsequent apologies and efforts at attending counselling as evidence of remorse.

(b) It was irrelevant that the victims suffered minimal harm or that the integrity of the profession was not undermined. STBS's misconduct would have the effect of diminishing public confidence in the legal profession.

(c) There was little evidence that STBS suffered from adjustment disorder (as suggested in adduced medical reports) or that the disorder contributed to his actions. The medical reports were dated more than a year after the incidents occurred, and the specifics of the disorder (including how a conclusion was reached that STBS had the disorder at the time of the incidents) were unclear. In fact, another medical report indicated that STBS likely developed the disorder *after* the incidents.

22.53 Turning to the appropriate sanction, the Court of Three Judges set out the following framework for deciding whether to strike out for misconduct *not* involving dishonesty or conflicts of interest:

(a) whether the misconduct in question attests to any character defects rendering the solicitor unfit to be a member of the legal profession, which may include a fundamental lack of respect for the law, volatility or lack of self-control detracting from the ability to discharge one's professional functions and other predatory instincts. The court should consider if the misconduct arose due to a lapse of judgment as opposed to a character defect;

(b) whether the solicitor has caused grave dishonour to the standing of the legal profession by virtue of the misconduct committed;

(c) striking off will be the presumptive penalty if any of the above listed misconduct is answered in the affirmative. However, the presumption may be rebutted in exceptional

cases by mitigating factors. Nonetheless, personal mitigating circumstances that diminish the culpability of the solicitor are not accorded as much weight in disciplinary proceedings as opposed to criminal proceedings; and

(d) even if a lawyer's misconduct does not fall foul of the above, the court should still assess whether there are circumstances that would warrant a striking-off order with reference to precedent cases.

22.54 Applying the framework, the presumptive penalty was to strike off STBS, and there were no mitigating factors to rebut the presumption. STBS's conduct demonstrated a character defect rendering him unfit to be a member of the legal profession. He exhibited volatile behaviour and a lack of self-control, which he could have perpetuated upon a client. The number of instances of misconduct within a short period of over a month also showed that STBS's conduct was not due to a lapse of judgment: there was a pattern of offensive conduct.

22.55 *Law Society of Singapore v CNH* also involved misconduct towards colleagues, but of a very different kind: the respondent insulted the modesty of a fellow colleague.

22.56 The respondent ("CNH") committed offences on two occasions in April 2017 and October 2017. In or around April 2017, CNH approached the victim as she sat facing her computer, at night and at a time when he knew she was alone. He approached the victim from the back and leaned over her on the pretext of reading her computer screen. CNH rested his body on the back rest of the victim's chair and positioned himself in a manner allowing him to look at the victim's brassiere. CNH photographed the victim's chest and brassiere to view them again at a later time, and subsequently also photographed her panties.

22.57 On 11 October 2017, CNH entered the victim's office and sat on the floor to her right while she sat at her desk. The victim wore a dress that was slightly above knee level and CNH took upskirt photographs. The victim noticed CNH holding his handphone towards her and turned her chair away from him. However, CNH continued to converse with the victim to get her to turn towards him so that he could take additional photographs. CNH also rested his buttocks on the victim's desk and pressed his thigh against her upper arm.

22.58 Prior to the DT hearing, CNH was uncontactable and service attempts were unsuccessful. The DT, nevertheless, found that the documents were properly served on CNH and the hearing could proceed

even in his absence. Unsurprisingly, the DT found that there was cause of sufficient gravity for disciplinary action under s 83 of the LPA:

(a) CNH's overall conduct fell below the required standards of integrity and brought grave dishonour to the profession.

(b) The victim faced intense emotional effects in the aftermath of the offences.

(c) CNH had pleaded guilty to and was convicted of two charges in the State Courts.

(d) CNH's psychiatric condition submitted in the State Courts criminal proceedings was disregarded given that he did not even appear before the DT, tender any evidence of his psychiatric condition, or raise this or any other mitigating personal circumstances.

22.59 When the matter came before the Court of Three Judges, CNH was again absent. The Court of Three Judges held that the proceedings could continue without further notice to CNH, given the public interest for the matter to be heard, and since CNH seemed to be intentionally evading service. The Court of Three Judges considered two key issues:

(a) Had due cause for disciplinary action under s 83(2)(*h*) of the LPA been established?

(b) What was the appropriate sanction to be imposed?

22.60 On the first issue, the Court of Three Judges held that the charges against CNH were made out and that cause of sufficient gravity existed. The DT was entitled to accept documents tendered in CNH's criminal proceedings as evidence of the facts underlying the charges preferred by the LSS.

22.61 As for the appropriate sanction, the LSS sought a suspension for three and a half years, in line with sentences for solicitors who had committed sexual misconduct. However, the Court of Three Judges went further and held that CNH's misconduct was evident of the character defects rendering him unfit to be a member of the legal profession:

(a) CNH's conduct was premeditated and persistent over the course of the two days where the incidents took place.

(b) CNH did not demonstrate that he was genuinely remorseful and conducted "emotional blackmail" on the victim in a bid to pressure her into dropping the case against him.

(c) CNH committed the offences against a close friend in the workplace, taking advantage of the fact that the victim expected to be safe and had let her guard down.

(d) CNH pleaded guilty around three years after the commission of the offences, and around eight months after a two-day ancillary hearing in November 2019. Given the length of time he took to plead guilty, CNH was not genuinely remorseful. Further, CNH should have been aware that his prolonged delay created emotional stress and anxiety to the victim as she needed to recount the incident in preparation for the trial.

(e) CNH was completely absent from the proceedings before the DT, demonstrating his lack of remorse and unwillingness to accept responsibility for his actions.

22.62 CNH's misconduct also caused grave dishonour to the standing of the legal profession:

(a) Sexual offences severely violate the dignity and bodily integrity of the victim, and the reputation of the legal profession would be tarnished if CNH remained on the roll.

(b) CNH's misconduct was carried out in the workplace against a colleague when there would have been an expectation of mutual respect and trust, and even more so in a law firm which should have embodied the values of the legal profession.

22.63 There were also no mitigating factors:

(a) CNH pleaded guilty to the criminal charges in the State Courts but not to the charges before the DT.

(b) CNH was absent from the DT proceedings and failed to raise any mitigating factors. In any case, his personal mitigating circumstances (raised in his criminal proceedings) were accorded less weight in the disciplinary proceedings.

(c) CNH's voluntary suspension of practice by not filing an application for a practising certificate was to his credit. He continued working as an in-house counsel overseas and left the legal profession in Singapore because he felt pressured from the negative publicity surrounding his misconduct, and not out of contrition.

22.64 In 2020, 21 law firms signed the LSS's Law Firm Pledge on Preventing Bullying and Harassment in Singapore's Legal Profession, which seeks to ensure that law firm staff and colleagues are treated with

courtesy, respect, dignity and fairness.[36] This is a commendable effort, in so far that it reflects the profession's desire to care for the well-being of our practitioners. However, it may not be enough to simply encourage law firms to do right by their staff and colleagues. The harsh reality is that it is only right for practitioners who abuse their colleagues to face the appropriate sanctions.

VI. Cheating incidents in the Singapore Bar examinations 2020

22.65 *Re CTA*,[37] *Re Tay Quan Li Leon*[38] and *Re Wong Wai Loong Sean*[39] were prominent cases arising out of the 11 cheating incidents that took place during the Singapore Bar examinations ("Part B Exams").

22.66 *Re CTA* concerned six applicants for admission to the Bar. Five communicated with each other in the course of their Part B Exams and shared their answers for six papers. The remaining applicant colluded with another candidate and cheated in three papers.

22.67 The court observed that there were no provisions for disciplinary action to govern a qualified person who had yet to be admitted to the Bar, save that the court could decide not to admit the applicant. The Attorney-General, SILE and LSS all agreed that the first five applicants and remaining applicant should adjourn their applications for six months and one year respectively to reflect on their misconduct.

22.68 The court agreed and granted the adjournments sought. However, the court cautioned that future cases might be adjourned *sine die* because all lawyers and law students are subject to standards of honesty. While the applicants' names were initially redacted, the redaction and sealing orders were subsequently rescinded in *Re Monisha Devaraj*,[40] no doubt due to the "tremendous public interest" in their identities.[41]

22.69 Next, in *Re Tay Quan Li Leon*,[42] the applicant ("TQLL") sought to withdraw his application for admission ("Withdrawal Application") and to have his court papers sealed ("Sealing Order Application"). The

36 The Law Society of Singapore, "Law Society's Pledge Signing Ceremony Unites Law Firms to Take a Firm Stance against Workplace Bullying and Harassment", press release (9 October 2020).
37 [2022] 5 SLR 598.
38 [2022] 5 SLR 896.
39 [2022] SGHC 237.
40 [2022] 5 SLR 638.
41 *Re Monisha Devaraj* [2022] 5 SLR 638 at [1].
42 See para 22.65 above.

Attorney-General objected to both the Withdrawal Application and the Sealing Order Application in light of TQLL's conduct both during and after the conclusion of the Part B Exams:

> (a) TQLL colluded with another applicant, Kuek, and cheated during the Part B Exams.
>
> (b) Subsequently, TQLL attended a meeting with the dean of the SILE in relation to the Part B Exams. TQLL maintained that the similarities in the answer scripts, as between him and another candidate, was due to their study sessions together and their shared efforts to prepare study notes together for use during the Part B Exams.
>
> (c) On the day of the meeting, TQLL submitted to the SILE purported study notes that were dated 15 February 2021. However, the SILE noted that the files were created on that very day, and was sceptical as to whether the study notes submitted were the same copy TQLL relied on during his Part B Exams.

22.70 Since there was reason to believe that TQLL had cheated and/or facilitated the cheating of another student in the Part B Exams, TQLL was subsequently reported to the student disciplinary committee ("SDC"). The SDC concluded that TQLL had cheated in three subjects, and therefore had also acted fraudulently or dishonestly in his dealings with the SILE. The SDC found that the errors in TQLL's and Kuek's answer scripts could not have been prepared beforehand, since they included mistakes on (a) the summary of facts; and (b) the application of the law to the factual matrix in the examination questions.

22.71 The first issue the court had to consider was whether to grant the Sealing Order Application, such that TQLL's case file would be sealed and his name redacted from the cause papers. TQLL submitted that:

> (a) since he wanted to withdraw his admission application, it was not in the public interest for his name, the circumstances of his admission application and the withdrawal to be disclosed; and
>
> (b) a medical memo suggested he would suffer grave harm if the Sealing Order Application were to be denied.

22.72 The question then was whether the principle of open justice was overridden by any credible evidence that TQLL would face imminent risk if his name was published. It was not:

> (a) Open justice was not inapplicable or easily derogated from given that TQLL sought to invoke the justice system and consequently withdraw from it.

(b) There was a great deal of public interest involved – the Withdrawal Application was contested and touched on character traits necessary for admission to the Bar.

(c) The forensic psychiatric memo relied on was sparse, based on TQLL's self-reported symptoms, failed to include any reasoning or analysis, and did not indicate that publishing the applicant's name would exacerbate his underlying mental condition.

22.73 The court also refused to grant a partial sealing order redacting information pertaining to TQLL's mental health issues as TQLL's application was based on the same deficient forensic psychiatric memo.

22.74 Finally, the Withdrawal Application itself was granted with the following conditions:

(a) TQLL undertook not to bring a fresh application to be admitted as an advocate and solicitor in Singapore or elsewhere for at least five years. This was analogous to the maximum period of suspension applicable to punish advocates and solicitors not struck off the roll.

(b) If and when TQLL brought a fresh application for admission, he would undertake to satisfy any prevailing statutory or other reasonable requirements as could be imposed by the Attorney-General, the LSS, SILE and/or the court as to his fitness and suitability for admission, including with respect to his medical or any other issues.

22.75 The court's orders were intended to rehabilitate TQLL and give him leeway to work on the character traits preventing his admission to the Bar, and were not based on condemnation or punitive justice.

22.76 Finally, in *Re Wong Wai Loong Sean*,[43] the court granted four withdrawal applications, subject to the condition that if and when the applicants did bring a fresh application to be admitted, they would also undertake to satisfy any prevailing statutory or other reasonable requirements as could be imposed by the Attorney-General, LSS and SILE or the court as to their fitness and suitability for admission.

22.77 The first applicant ("SWWL") undertook not to bring a fresh application to be admitted as an advocate and solicitor in Singapore or elsewhere for at least two years:

43 See para 22.65 above.

(a) SWWL compared his examination answers to those of another candidate, after they had confirmed that their answers had been submitted. SWWL realised that he had missed out an entire question. In a moment of panic, and without asking for permission, he copied his friend's answer wholesale and re-uploaded his script before the examination ended.

(b) When applying for admission, SWWL did not disclose the incident. He only did so after being directed to do so, but did not explain his initial failure to disclose. Eventually, he claimed that his initial non-disclosure was because he genuinely believed, among other things, that the SILE had forgiven him and it was unnecessary to disclose the incident.

(c) SWWL's non-disclosure was not entirely truthful nor was his belief reasonable, given the guidance that could be found on the LSS's website, and on the cover page of the Part B Exams' question papers. His explanation reflected his wishful thinking as opposed to a grounded reasonable belief. However, his conduct was not dishonest and he demonstrated candour even in his initial interview with the SILE regarding the cheating incident.

(d) The length of time that SWWL was prohibited from bringing a fresh application took into account (i) the seriousness of SWWL's act of cheating notwithstanding that he acted in a state of panic – in fact, the facts showed that SWWL was willing and had the capacity to cheat when placed under pressure, and was willing to appropriate someone else's work as his own without seeking permission; (ii) SWWL's failure to disclose the incident earlier, although his candour with the SILE during its investigations was acknowledged; and (iii) that SWWL's supervising solicitor vouched for him and offered to continue supervising him.

22.78 The second, third, and fourth applicants ("OJYJ", "LYZ" and "AAJE" respectively) undertook not to bring fresh admission applications for three years, one year and nine months respectively.

22.79 All three applicants were involved in common cheating incidents over the course of different Part B Exams. OJYJ had difficulty completing her mediation and ethics examinations. OJYJ asked LYZ for his answer to a question in the mediation examination, and asked both LYZ and AAJE for their answers to questions in the ethics examination. Both parties obliged, and OJYJ copied their answers into her own examination script.

22.80 The time periods that these applicants undertook not to bring a fresh application were decided based on the following considerations:

(a) In respect of OJYJ, similar to SWWL, the court did not downplay the seriousness of her repeated acts of cheating notwithstanding that she acted in a state of panic. OJYJ also lacked candour when being interviewed by the SILE, which was dishonest and revealed a character defect.

(b) In respect of LYZ and AAJE, they did not suffer from character flaws that were as severe as OJYJ. They were forthright in their dealings with the SILE – in particular, LYZ had, on his own accord, informed the SILE of what had happened for the mediation examination – and did not benefit from their misconduct. Nevertheless, they should have understood that integrity and honesty extend beyond personal gain, and encompassed a broader respect for systems, institutions and the standards of the profession as a whole.

22.81 This was an ugly episode that will hopefully never be repeated. The author wishes the applicants well as they continue on their individual journeys of reflection and rehabilitation.

VII. Duties owed to clients

22.82 *Loh Der Ming Andrew v Koh Tien Hua*[44] was the latest, and hopefully final, development in a long-running saga involving a matrimonial lawyer and his disgruntled ex-client. The facts and procedural history, in summary, are as follows:

(a) the respondent solicitor ("KTH") was engaged by the appellant/complainant ("AL") to represent him in divorce proceedings. AL was the plaintiff in the divorce proceedings, the defendant was his wife, and the co-defendant was accused of being in an adulterous relationship with AL's wife.

(b) The co-defendant applied to strike out certain parts of AL's statement of particulars ("SOP"). At the hearing, KTH consented to various parts of the SOP being struck out. It was disputed whether KTH had been authorised to give such consent in exercise of his professional judgment.

(c) When AL learnt that the particulars had been struck out, he insisted that an appeal be filed. KTH did not, at that stage, inform AL that the particulars had been struck out by consent or that a consent order cannot ordinarily be appealed.

44 [2022] 3 SLR 1417.

KTH eventually filed the appeal with much reluctance, after considerable delay, and purely because of AL's insistence.

(d) AL subsequently discovered what had transpired at the hearing. AL then lodged a complaint against KTH to the LSS;

(e) An IC was constituted. It found that one of the heads of complaint was made out, but that no formal investigation by a DT was needed, and that KTH should be ordered to pay a penalty of $2,500. The LSS accepted the IC's findings and recommendations.

(f) AL was dissatisfied and applied to court for an order directing the LSS to apply to the Chief Justice for the appointment of a DT. The court granted AL's application and directed the LSS to apply to the Chief Justice for the appointment of a DT to investigate two heads of complaint.

(g) A DT was constituted. The DT found KTH guilty of two charges but acquitted him of other charges. For the two charges that KTH was found guilty of, the DT found that KTH's misconduct did not constitute cause of sufficient gravity for disciplinary action, did not recommend that the matter be advanced to the Court of Three Judges, and recommended a penalty of $10,000 or such sum to be determined.

(h) AL then applied to the High Court for a review of the DT's determination. The High Court judge found that KTH was guilty of two additional charges. The judge held that there was no need to remit the matter to the DT because her conclusions were based on matters that had been dealt with during the DT hearing and that the misconduct was not sufficiently grave to warrant referral to the Court of Three Judges. The High Court judge increased the recommended penalty to be paid by KTH.

(i) AL then filed an appeal. KTH applied to strike out the Notice of Appeal on the basis that the Court of Appeal did not have jurisdiction to hear an appeal from a High Court judge's review of a DT's determination. KTH's striking-out application was dismissed. AL's substantive appeal was then heard, which concerned the High Court judge's decision (a) to increase the recommended penalty; and (b) not to advance the matter to the Court of Three Judges.

(j) The Court of Appeal allowed AL's appeal on various grounds and ordered AL to apply for the matter to be advanced to the Court of Three Judges. There was cause of sufficient gravity for disciplinary action to be taken against KTH.

22.83 The present case before the Court of Three Judges concerned four charges that KTH faced, and whether KTH's conduct was "unbefitting an advocate and solicitor":

(a) The fourth charge related to KTH's misrepresentation to an assistant registrar that he had sought but was unable to obtain AL's instructions on resolving issues regarding the particulars of the SOP on a consensual basis. KTH made a false statement to the assistant registrar despite knowing it was untrue. Nonetheless, the dishonesty was not reflective of a defective character rendering KTH unfit to be in the profession and did not undermine the administration of justice. KTH's statement was made in an attempt to play down his failure to comply with the court's directions and had no bearing on the substantive merits of the case. It demonstrated KTH's unwillingness to accept responsibility for or criticism on account of his own failings but was not to the extent of rendering him unfit to be in the profession.

(b) The sixth charge related to KTH's misrepresentation to the assistant registrar that AL was unwilling to agree to any particulars in the SOP being struck out. KTH made the statement recklessly without any regard to its truth, and he was dishonest. However, his dishonesty did not reveal a character defect which rendered him unfit to remain a member of the profession or undermine the administration of justice. KTH did go on to consent to various orders, and no consequences arose from his misstatement.

(c) The eighth charge related to KTH entering into consent orders contrary to AL's instructions. It was improper for KTH to unilaterally act against his client's express instructions, even if the instructions could not reasonably be pursued.

(d) The ninth charge related to whether KTH had intentionally concealed the fact of the consent orders from AL. KTH denied this charge, but the Court of Three Judges held that there were facts indicating that KTH's concealment was intentional, and that he had acted fraudulently in doing so. However, KTH's dishonesty did not reveal a character defect which rendered him unfit to be a member of the profession or undermine the administration of justice. While KTH should not have deviated from AL's instructions, his legal judgment was not unsound and he did not undermine the administration of justice. AL was not consequently prejudiced by KTH's actions because some of the particulars struck out were reinstated on appeal.

22.84 Turning to the appropriate sanction, the overarching principle is that solicitors who conduct themselves dishonestly will, presumptively, be struck off the roll if their dishonest conduct (a) indicates a character defect rendering them unfit to remain in the profession; or (b) undermines the administration of justice. Other non-exhaustive factors to determine if a solicitor should be struck off include:[45]

> … (a) the real nature of the wrong and the interest which has been implicated; (b) the extent and nature of the deception; (c) the motivations and reasons behind the dishonesty and whether it indicates a fundamental lack of integrity on the one hand or a case of misjudgment on the other; (d) whether the errant solicitor benefited from the dishonesty; and (e) whether the dishonesty caused actual harm, or had the potential to cause harm which the errant solicitor ought to have or in fact recognised.

22.85 The Court of Three Judges concluded that the present case was not an appropriate case for striking out, but instead imposed a three-year term of suspension:

> (a) Although KTH acted dishonestly, it did not reveal a character defect rendering him unfit to remain a member of the profession or undermine the administration of justice.
>
> (b) KTH's shortcoming was his failure to provide adequate client-management services, causing detriment to AL's right to receive accurate legal advice. AL's actual legal position was not compromised.
>
> (c) KTH's deceptions ultimately were of no consequence.
>
> (d) KTH did not benefit from his dishonesty.
>
> (e) KTH's dishonest conduct did not cause AL actual harm.

22.86 The author has, in previous chapters, expressed various observations about this long-running matter, and will leave it to readers to peruse them if interested.

VIII. Social media, sub judice, and contempt of court

22.87 *Law Society of Singapore v Nalpon, Zero Geraldo Mario*[46] and *The Law Society of Singapore v Zero Geraldo Mario Nalpon*[47] arose out of social media posts put up by the respondent practitioner. The respondent's client was convicted of offences and appealed to the High Court. However,

45 *Loh Der Ming Andrew v Koh Tien Hua* [2022] 3 SLR 1417 at [110].
46 [2022] 3 SLR 1386.
47 [2022] SGDT 18.

before the appeal was heard, the respondent published material relating to the appeal in a public Facebook group. After the appeal was heard, the respondent republished some of his posts in the Facebook group.

22.88 The LSS preferred two sets of charges against the respondent. The first set was in respect of posts in February 2019, reposts in May 2019, and the respondent's failure to pay costs to the Attorney-General. The matter eventually went before the Court of Three Judges,[48] which considered various defences that the respondent relied on. First, the respondent argued that the disciplinary proceedings were void because the complaints were not filed by the Attorney-General personally. The complaints which were lodged with the LSS were written under the letterhead of the Attorney-General's Chambers ("AGC"), and were signed off by the Chief Prosecutor of the AGC "for and on behalf of the ATTORNEY-GENERAL". The respondent argued that:

> (a) this did not comply with s 85(3)(*b*) of the LPA, which provides that certain office holders, including the Attorney-General, can refer a matter to the LSS and request that it be referred to a DT. The complaints were made by the Chief Prosecutor, not the Attorney-General, and this was impermissible as only the Attorney-General had the statutory power to file the complaints; the Attorney-General did not have the power to delegate the making or signing of the complaints to his staff on his behalf; and
>
> (b) there was no evidence that the Chief Prosecutor was duly appointed to act for the Attorney-General or sign the complaints on the Attorney-General's behalf.

22.89 The Court of Three Judges rejected this argument:

> (a) It was plain that the complaints were made by the Attorney-General himself in accordance with s 85(3)(*b*) of the LPA. A distinction should be drawn between the exercise of a power and the signification of the exercise of that power; in the present case, the Attorney-General had exercised his powers and had not delegated them. The Chief Prosecutor was conveying the Attorney-General's decisions under s 85(3)(*b*) of the LPA to the LSS.
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> (b) That being said, in the present case, there was some inconsistency in the identification of the complainant. There was a letter from the AGC which indicated that it was "the AGC's complaints" that gave rise to proceedings. More care

48 *Law Society of Singapore v Nalpon, Zero Geraldo Mario* [2022] 3 SLR 1386.

could have been taken to avoid referring to the "AG" and "AGC" interchangeably.

(c) The Court of Three Judges left open, for future determination, the question of whether the Attorney-General's power under s 85(3)(*b*) of the LPA can be validly devolved to certain AGC officers, or whether it must be exercised by the Attorney-General personally.

22.90 Second, after the LSS proceeded on the initial set of charges, it applied to prefer additional charges against the respondent. The respondent objected on the basis that the additional charges were unrelated to the Attorney-General's complaints.

22.91 The Court of Three Judges found in favour of the respondent, and held the DT was not empowered to investigate and make determinations in respect of these additional charges. Section 89(4) of the LPA, which conferred a "broad remit" on the DT to prefer additional charges, would only apply if the DT had been appointed following the determination by the Council under s 87 of the LPA that there should be a formal investigation. However, in the present case, since the disciplinary proceedings were commenced pursuant to a complaint made by the Attorney-General, the LSS could not rely on s 89(4) of the LPA, and the DT's findings in respect of this set of charges were set aside.

22.92 Third, the Court of Three Judges considered whether due cause had been shown in relation to the initial set of charges.

22.93 The first charge was that the respondent breached r 13 of the PCR by publishing material concerning proceedings which amounted to a contempt of court and/or was calculated to interfere with a fair trial of a case and/or prejudice the administration of justice. The respondent had made several posts in the Facebook group concerning issues in the appeal proceedings while the appeal was still pending. In one of his posts, the respondent accused a District Judge of plagiarism, and attached a copy of a letter to the Chief Justice which alleged plagiarism, "clear bias" on the District Judge's partnp and that the District Judge had "engaged in very limited analysis" in arriving at his decision.[49]

22.94 The Court of Three Judges found that this post, and the attached letter, were indeed publications which prejudged an issue in pending court proceedings, within the first limb of s 3(1)(*b*)(i) of the Administration of

49 *Law Society of Singapore v Nalpon, Zero Geraldo Mario* [2022] 3 SLR 1386 at [43].

Justice (Protection) Act 2016[50] ("AJPA"). At the time when the post was made, the appeal was well underway, and the issues of the District Judge's alleged plagiarism and bias were squarely before the appellate judge. However, these issues had yet to be adjudicated, and the post prejudged these issues by setting out the respondent's assertions as irrefutable facts. This posed a real risk of prejudice to or interference with the pending appeal proceedings within the second limb of s 3(1)(*b*)(i) of the AJPA, and the post posed a real risk of damaging the integrity and credibility of the appeal.

22.95 Through the deliberate post, the respondent sought to galvanise public sentiment in his client's favour before the appeal was heard. Even though the appellate judge said that he was not affected by the publication, there was a real risk of prejudice or interference arising from the post. The Court of Three Judges, therefore, found the respondent guilty of improper conduct (under r 13(6)(*a*) of the PCR) and grossly improper conduct (under s 83(2)(*b*) of the LPA), and held that there was due cause in respect of this charge.

22.96 The second charge was that the respondent was guilty of misconduct unbefitting of an advocate and solicitor within s 83(2)(*h*) of the LPA because he (a) did not comply with a costs order for him to pay the Attorney-General's costs for related proceedings; (b) published in the Facebook group the false allegation that the AGC had requested payment to be made to a "separate entity" other than the Attorney-General; and (c) published his exchange of correspondence with the AGC.

22.97 The background to this was as follows. In February 2019, leave was granted to the Attorney-General to issue a non-publication direction ("NPD") under s 13(1) of the AJPA against the respondent. The respondent applied to set aside the NPD, but his application was dismissed in April 2019, and the respondent was ordered to pay costs of $2,600 to the Attorney-General.

22.98 In June 2019, the respondent provided a cheque made payable to "The Attorney-General". Some days later, a deputy public prosecutor informed the respondent that the cheque would need to be re-issued and made out to the AGC or, alternatively, he could make payment in cash to an authorised representative of the Attorney-General at the AGC. The respondent did neither.

22.99 At the time when the DT heard the matter in December 2020, the respondent still had not paid the costs. He argued that the costs were

50 Act 19 of 2016.

ordered to be paid to the Attorney-General, whereas the AGC is a separate entity. It was only in December 2021 that the respondent made payment, by way of an uncrossed cheque made in favour of "The Attorney-General" that was eventually encashed into the AGC's bank account.

22.100 The Court of Three Judges held that non-compliance with a costs order cannot, in and of itself, amount to misconduct. However, there can be misconduct where the legal practitioner's wilful non-compliance is accompanied by acts aimed to garner public support for spurious non-compliance, as the respondent had done:

> (a) The respondent had published a number of posts, attaching his correspondence with the AGC and asserting that he had already made payment to the Attorney-General, and that payment to the AGC would be to a separate entity.
>
> (b) This position was misguided and disingenuous, as payments to the Attorney-General should rightly be made into the bank account maintained by the Attorney-General under the name of the AGC, used in the discharge of his official duties. This was clearly explained to the respondent. The respondent's allegation (in a Facebook post) that the AGC had requested for payment to be made to a separate entity was misleading and false, and was an attempt to garner public support for his disobedience of the costs order. Due cause was, therefore, made out in respect of the second charge.

22.101 Turning finally to the appropriate sanction, the Court of Three Judges held that a 15-month suspension would be appropriate for the two charges, considering:

> (a) the respondent demonstrated a wilful disregard for the expected professional standards, and his misconduct was blatant;
>
> (b) the respondent was a senior practitioner of 26 years' standing. The more senior the practitioner, the more the damage done to the integrity of the legal profession;
>
> (c) the respondent had broadly similar disciplinary antecedents; and
>
> (d) the respondent's raising of unmeritorious defences and lack of remorse.

22.102 The respondent was also ordered to pay 85% of the costs for the application to the Court of Three Judges, as well as the costs of the proceedings before the DT.

22.103 That was not the end of matters for the respondent. Later in 2022, a DT released its decision, which arose from the Attorney-General's complaint about another of the respondent's Facebook posts.[51] The respondent had published and commented on the text of an affidavit filed on the Attorney-General's behalf in proceedings that were still pending hearing. While the DT held that there was no cause of sufficient gravity for disciplinary action under s 83 of the LPA, one of the members of the DT considered the respondent's conduct to be "clearly unacceptable conduct, in which an advocate and solicitor and an officer of the Court ought not to engage", and recorded, in her dissent, "strong disapprobation" of the respondent's conduct.[52]

22.104 This is not the first time that a practitioner has faced disciplinary proceedings for social media postings. It will not be the last, especially as practitioners continue to utilise social media for branding, marketing and outreach activities. These cases serve as reminders that while some practitioners may well be tempted into attracting publicity by way of incendiary or controversial social media posts, posting misleading content would cross the line and may well lead to significant sanctions.

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51 *The Law Society of Singapore v Zero Geraldo Mario Nalpon* [2022] SGDT 18.
52 *The Law Society of Singapore v Zero Geraldo Mario Nalpon* [2022] SGDT 18 at [24].