

21. LEGAL PROFESSION

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Introduction

21.1 This review covers 21 cases, comprising one case on *ad hoc* admission of foreign counsel, one decision by the Court of Appeal, two decisions by the High Court, five decisions by the Court of Three Judges and 12 decisions by the Disciplinary Tribunal (“tribunal”). Of the disciplinary cases, three resulted in advocates and solicitors being struck off the roles and three were suspended from practice. The disciplinary cases reviewed touched on a range of conduct, spanning from failure to conduct proper know-your-client checks, false declaration of income tax, to failure to protect clients’ confidential information.

21.2 Notably, 2017 saw three cases involving allegations that advocates and solicitors had wrongfully certified and/or procured certification that the authorised person had personally witnessed signatures to documents such as affidavits, powers of attorney and lasting powers of attorney. The allegations were found to be unfounded in one case and made out in two others.

***Ad Hoc* admission**

21.3 *Re Harish Salve*¹ involved the first application by a senior advocate from the Indian Bar for *ad hoc* admission. Mr Harish Salve, a senior advocate of India, sought to be admitted to represent 20 plaintiffs in two sets of proceedings for the setting aside of a final arbitral award. Mr Salve sought admission to address the Singapore court only on foreign law issues, specifically the disputed issues on Indian law. The issues relating to Singapore would be addressed by Singapore counsel.

21.4 The High Court found that the case was not an appropriate one for the admission of the applicant. In so far as there were issues of Indian law, Indian law had to be proved as a fact and that court has always handled this evidential inquiry by way of foreign law experts

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1 [2018] 3 SLR 285.

rather than submissions by foreign counsel. The court observed that while it was not saying that foreign counsel should never be admitted to argue disputed questions of foreign law, it would set an undesirable precedent to allow foreign counsel to be admitted to argue cases when foreign law is to be proved.²

21.5 On appeal, the Court of Appeal, on 28 January 2018, allowed the appeal and admitted Mr Salve.³

Disciplinary proceedings

Cases involving striking off the rolls

Deceiving or misleading the court, failure to avoid unnecessary adjournments, subversion of course of justice, etc

21.6 In *Law Society of Singapore v Udeh Kumar s/o Sethuraju*,⁴ the Court of Three Judges struck off a senior solicitor of about 29 years standing for various breaches of his professional obligations.

21.7 The court considered a total of 11 charges against the respondent, which the court divided into three broad categories:⁵

(a) [Group 1 Charges. This set of charges] concerned the alleged breach of r 55(b) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) (“PCR”) for failing to use his best endeavours to avoid unnecessary adjournments, expense and waste of the court’s time ...

(b) [Group 2 Charges. This set of charges concerned] the alleged breach of r 56 of the PCR in deceiving or misleading the court by making false and inaccurate statements ...

(c) [Group 3 Charges. This set of charges related] to events that culminated in the Respondent advising his client to obtain a medical certificate under false pretences in a seeming attempt to excuse the client’s absence from court in circumstances that would amount to a subversion of the course of justice ...

21.8 With regard to the Group 1 Charges, the respondent claimed *inter alia* that the reason for his conduct generally lay in his commitment to matters involving his other clients.⁶ The court held that

2 *Re Harish Salve* [2018] 3 SLR 285 at [59].

3 *Re Harish Salve* [2018] 1 SLR 345.

4 [2017] 4 SLR 1369.

5 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [6].

6 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [23].

this could not be relied on by the respondent to justify or excuse his being late for or absent from court hearings. The respondent should “either have declined to accept multiple court engagements on the same day or requested adjournments long before the hearings”, and had either of these not been possible, “he should have arranged for other counsel to deal substantively with the matters in question”⁷ It was even less acceptable for the respondent to justify his requests for adjournments on the basis of his lack of preparedness.⁸ The respondent’s pattern of behaviour revealed “an utter disregard for the legitimate expectations and interests of all the other stakeholders in the justice system over a sustained period of time”, and this amounted to improper conduct under s 83(2)(b) of the Legal Profession Act⁹ (“LPA”), and was sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA.¹⁰

21.9 With regard to the Group 2 Charges, the court first clarified that deceiving or misleading the court includes the “passive concealment of material facts, the presentation of half-truths, and the active articulation of untruths and/or misrepresentation of facts”,¹¹ and the *mens rea* required is whether the false representation was made (a) knowingly, (b) without belief in its truth, or (c) recklessly, without caring whether it is true or false.¹² After examining the relevant facts, the court was satisfied that the respondent, in making each of the statements complained of, had been “fraudulent in his dealings with the court”¹³ The misconduct outlined in the Group 2 Charges constituted improper conduct under s 83(2)(b) of the LPA and due cause was made out for this set of charges.¹⁴

21.10 With regard to the Group 3 Charges, the events were essentially as follows: the respondent had failed to inform a client of a court mention in which the client was due to plead guilty, and the client’s absence from court led to a warrant of arrest being issued against the client. The respondent then failed to advise the client to surrender himself once the warrant of arrest had been issued against the client. The respondent subsequently advised the client to obtain a medical certificate under false pretences to excuse the client from the hearing

7 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [25].

8 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [26].
9 Cap 161, 2009 Rev Ed.

10 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [29]–[30].

11 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [33].

12 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [34].

13 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [55].

14 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [55].

which the client missed.¹⁵ The court found that the respondent's conduct was grossly improper under s 83(2)(b) of the LPA and was also satisfied that due cause was found in relation to the Group 3 Charges.¹⁶

21.11 On the issue of sentencing, the court found no material mitigating factors,¹⁷ and noted the following aggravating factors highlighted by The Law Society of Singapore ("Law Society"):

- (a) the respondent's seniority;¹⁸ and
- (b) the respondent's past conduct, that is, a string of previous disciplinary offences which the respondent had previously been convicted of, including several similar disciplinary offences of being late for or absent from court hearings and causing unnecessary adjournments.¹⁹

21.12 The court held that *any* form of dishonesty would "almost invariably lead to an order for striking off".²⁰ From the court's review of the case law, there are at least three categories of cases in which dishonest conduct has resulted in the striking off of an advocate and solicitor:

- (a) The first is when the advocate and solicitor has been convicted of a criminal offence which implies a "defect of character" rendering him unfit for the profession.²¹
- (b) The second is where the advocate and solicitor fails to deal appropriately with his client's money or the firm's accounts.²²
- (c) The third (and most pertinently for the present case) category in which a striking off order will be made is where the advocate and solicitor is fraudulent in his dealings with the court.²³

21.13 The court held that the charges in this case revealed "a gross failure by the Respondent to apprehend even the most fundamental

15 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [57]–[59].

16 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [83].

17 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [97].

18 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [88].

19 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [89]–[91].

20 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [104].

21 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [105].

22 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [106].

23 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [107].

duties of an advocate and solicitor to the court” and ordered that the respondent be struck off the roll of advocates and solicitors.²⁴

21.14 As a result of the order for the striking off of the respondent in this case, the Law Society did not proceed with the other pending disciplinary proceedings against the same respondent before the tribunal.²⁵

False declarations of income tax

21.15 *The Law Society of Singapore v Ong Cheong Wei*²⁶ and *Law Society of Singapore v Ong Cheong Wei*²⁷ are respectively the tribunal and Court of Three Judges decisions in respect of the same complaint. The respondent in this case, a solicitor of about 22 years’ standing,²⁸ made false declarations of his income for the years of assessment 2006, 2007, 2008 and 2009 with intent to evade tax, and pleaded guilty to and was convicted of two offences under s 96(1)(b) of the Income Tax Act²⁹ (“ITA”).³⁰

21.16 Before the tribunal, the respondent admitted to the amended charge against him, namely that the two criminal convictions against the respondent for his offences under the ITA implied a defect of character making the respondent unfit for his profession within the meaning of s 83(2)(a) of the LPA. The tribunal endorsed the position in the past cases that not every violation of criminal law implied a defect of character thereby making the solicitor an unfit person for the profession, and it is the nature of the offence and the circumstances under which it was committed, and in turn the punishment imposed, which are likely to be determinative.³¹ The tribunal found that the offence for which the respondent was convicted deals with a situation where a person *wilfully with intent to evade tax* makes a false statement or entry in an income tax return, which is an act of *dishonesty*, and the conviction of the respondent for the offence implied a defect of character which made him unfit for his profession.³²

24 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [111]–[112].

25 *The Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] SGDT 5; *The Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] SGDT 3.

26 [2017] SGDT 4.

27 [2018] 3 SLR 937.

28 *The Law Society of Singapore v Ong Cheong Wei* [2017] SGDT 4 at [2].

29 Cap 134, 2004 Rev Ed; Income Tax Act (Cap 134, 2008 Rev Ed).

30 *The Law Society of Singapore v Ong Cheong Wei* [2017] SGDT 4 at [4]; *Law Society of Singapore v Ong Cheong Wei* [2018] 3 SLR 937 at [1].

31 *The Law Society of Singapore v Ong Cheong Wei* [2017] SGDT 4 at [30].

32 *The Law Society of Singapore v Ong Cheong Wei* [2017] SGDT 4 at [40]–[41].

21.17 The following are findings of the tribunal in respect of the points put forward by the respondent in mitigation:

(a) As regards the respondent's claim that he filed the false returns in his personal capacity and not in his professional capacity, the tribunal found that the capacity in which the offence was committed was irrelevant.³³

(b) As regards the respondent's claim that the complainant was his ex-wife who took revenge on him because of unfavourable ancillary decisions in the acrimonious divorce proceedings between them from June 2008 to March 2016, the tribunal found that three out of the four ITA charges against the respondent were for returns done before the start of the divorce proceedings.³⁴

(c) As regards the respondent's claim that he was coerced by his wife to file the false returns, the tribunal found that the respondent's conduct in allowing that to happen was inexcusable, and either the respondent condoned the dishonesty initiated by his wife or worse still continued with it. In any case, the allegations against his ex-wife were not tested or proven before the tribunal and were irrelevant anyway.³⁵

21.18 The tribunal decided that cause of sufficient gravity existed under s 83(2)(a) of the LPA.³⁶ The Court of Three Judges held that the offences for which the respondent was convicted demonstrated dishonesty, and that striking off of the respondent was necessary, for two reasons:³⁷

[Firstly], it is the settled jurisprudence of the Singapore courts that a solicitor who has been dishonest will almost invariably be struck off ... [An] offence of willful tax evasion is akin to an offence of cheating or defrauding the Inland Revenue Authority of Singapore [, and] a lawyer who is convicted of such an offence cannot be allowed to practice.

...

Secondly, looking beyond local jurisprudence, a similar position is adopted in other comparable jurisdictions ...

33 *The Law Society of Singapore v Ong Cheong Wei* [2017] SGGT 4 at [53].

34 *The Law Society of Singapore v Ong Cheong Wei* [2017] SGGT 4 at [54]–[60].

35 *The Law Society of Singapore v Ong Cheong Wei* [2017] SGGT 4 at [61].

36 *The Law Society of Singapore v Ong Cheong Wei* [2017] SGGT 4 at [62].

37 *The Law Society of Singapore v Ong Cheong Wei* [2018] 3 SLR 937 at [7] and [9].

21.19 Accordingly, the court struck off the respondent from the roll of advocates and solicitors and ordered that he pay the Law Society costs of \$7,000 all-in.

Inappropriate conduct against female subordinate

21.20 *Law Society of Singapore v Ismail bin Atan*³⁸ is a decision of the Court of Three Judges in disciplinary proceedings against the respondent concerning inappropriate conduct by the respondent against his female subordinate. The tribunal's decision had found the respondent guilty of grossly improper conduct in the discharge of his professional duty under s 83(2)(b) of the LPA, taking unfair advantage of the complainant under r 53A of the Legal Profession (Professional Conduct) Rules³⁹ ("PCR"); and conduct unbecoming of an advocate and solicitor under s 83(2)(h) of the LPA. Before the Court of Three Judges, the respondent contended that the complainant was disappointed in her job aspirations and took it out on him.⁴⁰

21.21 The Court of Three Judges held that it was satisfied on the evidence that the tribunal was correct to convict the respondent of the charges brought and struck the respondent off the roll of advocates and solicitors.⁴¹ The Court of Three Judges held that dishonesty is not a threshold or prerequisite that must be satisfied before a solicitor is liable to be struck off. Even in cases that do not involve dishonesty, where a solicitor conducts himself in a way that falls below the required standards of integrity, probity and trustworthiness, and brings grave dishonour to the profession, he will be liable to be struck off.⁴²

21.22 In the present case, the court noted that the respondent exhibited no remorse whatsoever before either the tribunal or this court, choosing to maintain his innocence despite the strong objective evidence to the contrary. The court was also disturbed that the respondent had cast various aspersions on the victim and sought to portray her as a jealous and destructive colleague bent on perpetrating a major fraud in her unfounded quest for vindication. The court held that while the respondent's conduct perhaps did not involve dishonesty, it belied a defect of character that is so serious that it rendered the respondent unfit to be a member of the profession.⁴³

38 [2017] 5 SLR 746.

39 Cap 161, R 1, 2010 Rev Ed.

40 *Law Society of Singapore v Ismail bin Atan* [2017] 5 SLR 746 at [5].

41 *Law Society of Singapore v Ismail bin Atan* [2017] 5 SLR 746 at [17] and [23].

42 *Law Society of Singapore v Ismail bin Atan* [2017] 5 SLR 746 at [21].

43 *Law Society of Singapore v Ismail bin Atan* [2017] 5 SLR 746 at [18].

Cases involving suspensions

Failure to conduct proper know-your-client checks

21.23 In *The Law Society of Singapore v Chan Chun Hwee Allan*,⁴⁴ the respondent faced four charges (framed in the alternative) for breaching r 11D(1) read with r 11D(3), and r 11F(2) read with r 11F(1)(e) of the PCR, for, *inter alia*:

- (a) failing to take reasonable measures to ascertain the identities of the natural persons having a controlling interest in or exercising effective control over two foreign entities (“entities”) before accepting instructions from the entities; and
- (b) acting for the entities in transfers of substantial sums of money, which were matters unusual in the ordinary course of business, and failing to obtain satisfactory evidence as to the nature and purpose of the business relationship with the entities in the matters, and the business relationship between the entities and any other parties to the matters, when accepting instructions in relation to the matters.⁴⁵

21.24 The respondent pleaded guilty to all four of the main charges.⁴⁶ The facts are essentially as follows: The respondent, a sole proprietor of a law practice,⁴⁷ was introduced to a person who went by the name of Sir Robert Cowley (“Cowley”) by a mutual acquaintance in or around late 2005.⁴⁸ The respondent claimed that he subsequently met Cowley at several dinners and developed a relationship with Cowley, and that at these dinners, Cowley carried himself well and was referred to by the title “Sir” by those around him.⁴⁹ A tennis star, Pat Cash, attended one of those dinners.⁵⁰ In June 2006, Cowley represented to the respondent that two companies of which Cowley was a chairman (that is, the entities) needed some advice on Singapore law and investment opportunities as well as escrow agent services.⁵¹ As an escrow agent, the respondent was to receive funds into his client account/accounts and then carry out such onward transmission of funds as directed by Cowley or his entities.⁵² The respondent was also authorised to deduct a percentage of the

44 [2017] SGDT 2.

45 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [4].

46 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [23].

47 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [7].

48 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [8].

49 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [8]–[9].

50 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [9].

51 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [10].

52 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [11].

outgoing transfers of funds as payment of his services, which was 5% in June 2008.⁵³

21.25 Given Cowley's apparent social standing, the respondent was satisfied as to the identity of his client and did not think it necessary to do any further background checks.⁵⁴ The respondent admitted that he had not carried out any verifications of Cowley's identity beyond meeting with Cowley on a few occasions.⁵⁵ The respondent also did not carry out background checks on the entities.⁵⁶

21.26 The tribunal observed that rr 11D(1), 11D(3) and 11F(2) of the PCR required a lawyer to be proactive in ascertaining the identity of their client. Rule 11D(1) required a solicitor or law practice to take reasonable measures to ascertain the identity of a client *before accepting instructions* to act in a matter, and r 11F(2) required a solicitor or law practice to obtain evidence of the nature of the client's business relationship *when accepting instructions*.⁵⁷ In this case, the respondent expressed a lack of interest in knowing about his client/clients or the work which he was being asked to do.⁵⁸ The absence of concerns being raised by banks does not lessen the lawyer's duties, whilst concerns raised by a bank may heighten such duties.⁵⁹ The aggregate value of the transactions was large. For example, one cash inflow alone was US\$1.5m.⁶⁰ The tribunal noted that the respondent also stood to gain from fees for which no or very little legal work was provided.⁶¹

21.27 After taking into account the matters raised by the Law Society and the matters raised by the respondent in his mitigation plea, the tribunal determined that cause of sufficient gravity for disciplinary action existed under s 83 of the LPA. In addition, the tribunal ordered costs of \$5,000 against the respondent.⁶²

21.28 On 29 September 2017, the Court of Three Judges suspended the respondent from practice for two years and fined him a total of \$100,000.⁶³

53 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [15].

54 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [12].

55 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [31].

56 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [33].

57 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [30].

58 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [32].

59 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [38].

60 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [39].

61 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [40].

62 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 2 at [47].

63 See Selina Lum, "Lawyer Given 2-Year Suspension, Fine for Transferring \$2.7 Million without Proper Checks" *The Straits Times* (29 September 2017),

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Procuring false attestation of lasting power of attorney and wrongful certification

21.29 In *Law Society of Singapore v Sum Chong Mun*,⁶⁴ the first respondent, Sum, signed as certificate issuer and as a witness to the signature of a donor under a form which created a lasting power of attorney without personally witnessing the signature of the donor or carrying out his duties as a certificate issuer, relying instead on the representations of the second respondent's ("Kay") that she had witnessed the donor executing the form.

21.30 Sum faced two charges and two alternative charges under s 83(2)(b) and s 83(2)(h) of the LPA for his false attestation and failure to carry out the duties of a certificate issuer. Kay faced one charge and one alternative charge under s 83(2)(b) and s 83(2)(h) of the LPA for procuring Sum to sign the form as certificate issuer and witness when she had known that Sum would not be witnessing the execution of the form or carrying out his duties as a certificate issuer.

On false attestation and wrongful certification

21.31 An advocate and solicitor who falsely attests to witnessing the signature of a person on a document commits a disciplinary offence even if he is certain that the document was signed by that person.⁶⁵ Further, the advocate and solicitor cannot exculpate himself by relying on a third party to discharge the duties attendant on his position with regard to the execution of the document.⁶⁶ In attending to the execution of a power of attorney, the advocate and solicitor must also take reasonable care to advise and ensure that his clients understand the implications of their actions. This applies *a fortiori* to a lasting power of attorney, as that enables the donee to make decisions that may affect the life of the donor himself.⁶⁷ There was an overriding public interest that had been affected where the solicitor had certified and witnessed the execution of a form creating a lasting power of attorney under the Mental Capacity Act despite not personally witnessing the signature of the donor or carrying out his duties as certificate issuer.⁶⁸

available at <http://www.straitstimes.com/singapore/courts-crime/lawyer-given-2-year-suspension-fine-for-transferring-27-million-without> (accessed 18 May 2018).

64 [2017] 4 SLR 707.

65 *Law Society of Singapore v Sum Chong Mun* [2017] 4 SLR 707 at [42].

66 *Law Society of Singapore v Sum Chong Mun* [2017] 4 SLR 707 at [43].

67 *Law Society of Singapore v Sum Chong Mun* [2017] 4 SLR 707 at [44].

68 *Law Society of Singapore v Sum Chong Mun* [2017] 4 SLR 707 at [51].

21.32 It was undisputed that the Sum had falsely attested to the donor's signature and had certified the form wrongly.⁶⁹ He could not rely on Kay's representations to exculpate himself.⁷⁰ Thus, the two charges against him were made out. As to the appropriate sanction, the court noted that Sum had an unblemished record during a relatively long period of practice (over 30 years) and was generally remorseful. However, he had undermined the integrity of the process for creating a lasting power of attorney where certificate issuers are intended to act as independent safeguards against possible abuse.⁷¹ In the circumstances, Sum was suspended for one year.

On procuring false attestation and wrongful certification

21.33 The court rejected Kay's account that she had no knowledge of the form's contents and had believed that what she passed Sum was a previous form which she had witnessed the signing of.⁷² The court also rejected Kay's account that she had assumed that Sum would obtain the necessary verification.⁷³ Instead, the court found that she had persuaded Sum to certify the form even though she knew that Sum would not be able to discharge his duties related thereto.

21.34 The Court of Three Judges found that the charge against Kay was made out. The Court of Three Judges imposed a substantial suspension of 30 months on Kay. They found that Kay was unremorseful, had sought to pin all the blame on Sum and mounted a root-and-branch attack against the charges made against her. Her actions also undermined the integrity of the process of creating lasting powers of attorney.

Contingency fee

21.35 In *Law Society of Singapore v Lau See Jin Jeffrey*,⁷⁴ the Court of Three Judges upheld the tribunal's finding that the respondent had entered into a contingency fee agreement with the complainant in breach of ss 107(1)(b) and s 107(3) of the LPA. The tribunal further determined that there was cause of sufficient gravity for disciplinary action pursuant to s 83(2)(b) of the LPA. The Court of Three Judges suspended the respondent from practice for a period of 12 months.⁷⁵

69 *Law Society of Singapore v Sum Chong Mun* [2017] 4 SLR 707 at [47].

70 *Law Society of Singapore v Sum Chong Mun* [2017] 4 SLR 707 at [48].

71 *Law Society of Singapore v Sum Chong Mun* [2017] 4 SLR 707 at [52].

72 *Law Society of Singapore v Sum Chong Mun* [2017] 4 SLR 707 at [57]–[58] and [64]–[67].

73 *Law Society of Singapore v Sum Chong Mun* [2017] 4 SLR 707 at [62].

74 [2017] 4 SLR 148.

75 *Law Society of Singapore v Lau See Jin Jeffrey* [2017] 4 SLR 148 at [33].

21.36 The complainant had approached the respondent for legal advice and representation in connection with an intended medical negligence claim and entered into a fee agreement under which the respondent was to be paid 20% of the damages awarded to the complainant, which could further increase to 25% in the event the complainant obtained more than \$5m in damages. The respondent denied the existence of the contingency fee agreement and claimed that he told the complainant that he would “try to cap the fees” at 20% of the claim amount (or 25% if the claim amount was higher).

21.37 The Court of Three Judges found that the complainant’s evidence was clear, consistent and corroborated by her subsequent actions and there was no reason for her to fabricate a story to the effect that they had agreed on a contingency arrangement.⁷⁶ The respondent’s account was wholly unbelievable given that 20% of the claim could amount to a sum as high as \$1m and the complainant had clear concerns as to the cost of litigation.⁷⁷

21.38 The Court of Three Judges observed that the respondent’s conduct was notable also for the absence of attendance notes in general and of anything dealing with the question of fees in particular. Although the Court of Three Judges did not think it necessary to rely on any adverse inference in that case, the court cautioned that where a solicitor fails to take contemporaneous attendance notes and his account of any discussion is at odds with that of a client, the court may disbelieve the solicitor’s account in favour of the client’s or draw an adverse inference against that solicitor.⁷⁸

Cases involving cause of sufficient gravity for disciplinary action

Making inappropriate comments to witness during cross-examination

21.39 *The Law Society of Singapore v Wong Sin Yee*⁷⁹ concerned a complaint against the respondent referred by the Attorney-General to the Law Society regarding the respondent’s conduct as counsel for the accused during the course of criminal proceedings for the offence of outrage of modesty. The respondent had asked the victim a series of insulting questions, made an improper request of the victim to stand up, stared inappropriately at the victim’s breasts and used scandalous and

76 *Law Society of Singapore v Lau See Jin Jeffrey* [2017] 4 SLR 148 at [14] and [15].

77 *Law Society of Singapore v Lau See Jin Jeffrey* [2017] 4 SLR 148 at [17] and [19].

78 *Law Society of Singapore v Lau See Jin Jeffrey* [2017] 4 SLR 148 at [21].

79 [2017] SGGT 12.

highly inappropriate language.⁸⁰ The Law Society preferred three alternative charges against the respondent:

(a) “grossly improper conduct in the discharge of ... professional duty within the meaning of Section 83(2)(b) of the [LPA] in that [the respondent] conducted cross-examination in a dishonourable manner”;⁸¹

(b) “misconduct unbefitting of an advocate and solicitor ... of the Supreme Court of Singapore [under] Section 83(2)(h) of the LPA”;⁸² and

(c) “improper conduct or practice as an advocate and solicitor within the meaning of Section 83(2)(b) of the LPA in that [he] made statements and asked questions which were unnecessarily offensive, made with the intent to insult, annoy, traumatise and/or humiliate the witness ... contrary to Rule 61(a) of the [PCR]”.⁸³

21.40 The respondent’s counsel chose not to cross-examine the Law Society’s sole witness, Deputy Public Prosecutor Kong, and submitted that there was no case to answer. The tribunal found that the Law Society had shown at least a *prima facie* case that the charges against the respondent were made out and asked the respondent’s counsel to enter his defence. The respondent elected not to give evidence and closed his case.

21.41 The tribunal found that the respondent’s conduct during the cross-examination of the victim was indeed objectionable and went beyond what was permissible.⁸⁴ In the absence of an explanation by the respondent on his line of questioning, the tribunal drew an “irresistible inference” that the respondent embarked on the line of question specifically to humiliate the victim⁸⁵ “by indicating through a public display of control that her physical appearance was under examination and that she had to subject herself to his scrutiny”.⁸⁶

21.42 The tribunal found that all three charges of grossly improper conduct, misconduct unbefitting of an advocate and solicitor of the Supreme Court of Singapore and breaching r 61(a) of the PCR were

80 *The Law Society of Singapore v Wong Sin Yee* [2017] SGDT 12 at [3].

81 *The Law Society of Singapore v Wong Sin Yee* [2017] SGDT 12 at [3].

82 *The Law Society of Singapore v Wong Sin Yee* [2017] SGDT 12 at [3].

83 *The Law Society of Singapore v Wong Sin Yee* [2017] SGDT 12 at [3].

84 *The Law Society of Singapore v Wong Sin Yee* [2017] SGDT 12 at [3].

85 *The Law Society of Singapore v Wong Sin Yee* [2017] SGDT 12 at [33].

86 *The Law Society of Singapore v Wong Sin Yee* [2017] SGDT 12 at [38].

proven beyond a reasonable doubt.⁸⁷ The Law Society of Singapore further demined that cause of sufficient gravity for disciplinary action existed against the respondent under s 83 of the LPA.⁸⁸

Notary public notarising signature without witnessing signature

21.43 In *The Law Society of Singapore v Chia Choon Yang*,⁸⁹ the respondent had, in his professional capacity as a notary public, issued a certificate claiming that he had witnessed one Mr Loy signing on a Power of Attorney when he had not but had instead relied on the false representations of another that Mr Loy had signed the said document. The Law Society brought charges against the respondent for grossly improper conduct in the discharge of his professional duty within the meaning of s 83(2)(b) of the LPA, alternatively, that he was guilty of misconduct unbefitting of an advocate and solicitor of the Supreme Court under s 83(2)(h) of the LPA.

21.44 The respondent pleaded guilty to both charges, did not file any defence or affidavit to dispute the allegations against him and readily admitted to the Statement of Facts prepared by the Law Society.⁹⁰ The respondent expressed deep regret for his actions and decided to cease his practice. The tribunal took the view that whilst the respondent was “genuinely remorseful” and his conduct after the complaint was “entirely honourable”, the lapse was a serious one and the failure to discharge the important role of a notary public with sufficient diligence could give rise to serious consequences including the perpetration of fraudulent acts. There was a public interest that had been adversely affected and the respondent’s conduct disclosed cause of sufficient gravity for disciplinary action.⁹¹

Cases involving no cause of sufficient gravity for disciplinary action

Alleged commissioning of affidavit without witnessing signature

21.45 In *The Law Society of Singapore v Liew Tuck Yin David*,⁹² the Law Society contended that the first respondent procured his client to sign an affidavit in the absence of a Commissioner for Oaths and procured the second respondent, a Commissioner for Oaths, to sign the affidavit of his client without personally witnessing his client’s signature.

87 *The Law Society of Singapore v Wong Sin Yee* [2017] SGDT 12 at [49].

88 *The Law Society of Singapore v Wong Sin Yee* [2017] SGDT 12 at [50].

89 [2017] SGDT 10.

90 *The Law Society of Singapore v Chia Choon Yang* [2017] SGDT 10 at [19].

91 *The Law Society of Singapore v Chia Choon Yang* [2017] SGDT 10 at [24]–[25].

92 [2017] SGDT 11.

The tribunal dismissed the charges against both respondents as the complainant's evidence was confused and rebutted by the evidence and they were satisfied on a balance of probabilities that the second respondent was in attendance when the complainant affixed her signature to the affidavit.⁹³

Breach of client confidentiality

21.46 In *The Law Society of Singapore v Ryan Lin Longcai*,⁹⁴ the respondent solicitor disclosed certain confidential information, which he had acquired as a result of the retainer between the law firm in which he was practising at the material time and the client, to the first complainant. The first complainant was in a personal relationship with the respondent at the material time.⁹⁵

21.47 The respondent pleaded guilty to the 14 amended charges preferred against him by the Law Society.⁹⁶ The Law Society proposed a substantial fine.⁹⁷ In deciding the appropriate penalty, the tribunal took into account the following matters:

(a) The respondent's references to his client's and other details relating thereto were made in the context of the respondent sharing his day with the first complainant or to justify to the first complainant why he could not see her, something which "a solicitor would do without batting an eyelid when informing his wife".⁹⁸ This would otherwise be covered by spousal privilege in s 124 of the Evidence Act,⁹⁹ but the first complainant was not the respondent's wife.¹⁰⁰

(b) There was no evidence that any of the clients whose confidential information was disclosed to the first complainant had suffered loss or damage.¹⁰¹

(c) The disclosures were restricted to personal communications between the respondent and the first complainant, and the likelihood of loss or damage occurring to any of the clients mentioned was negligible.¹⁰²

93 *The Law Society of Singapore v Liew Tuck Yin David and Chew Siang Tong* [2017] SGDT 11 at [39].

94 [2017] SGDT 6.

95 *The Law Society of Singapore v Ryan Lin Longcai* [2017] SGDT 6 at [3]–[4].

96 *The Law Society of Singapore v Ryan Lin Longcai* [2017] SGDT 6 at [13].

97 *The Law Society of Singapore v Ryan Lin Longcai* [2017] SGDT 6 at [15].

98 *The Law Society of Singapore v Ryan Lin Longcai* [2017] SGDT 6 at [17].

99 Cap 97, 1997 Rev Ed.

100 *The Law Society of Singapore v Ryan Lin Longcai* [2017] SGDT 6 at [17].

101 *The Law Society of Singapore v Ryan Lin Longcai* [2017] SGDT 6 at [18].

102 *The Law Society of Singapore v Ryan Lin Longcai* [2017] SGDT 6 at [18].

(d) There was no dishonest or fraudulent conduct on the part of the respondent. The respondent was a “foolish *young* man who has in the pursuit of a woman, forgotten his duty to keep matters of his professional engagements confidential” [emphasis in original], although all this does not excuse the respondent from what he has done.¹⁰³

21.48 The tribunal determined that under s 93(1)(b) of the LPA, while no cause of sufficient gravity for disciplinary action existed under s 83 of the LPA, the respondent should pay a penalty in the range of \$15,000-\$20,000 for all charges, the precise penalty of which is left to the Council of the Law Society (“Council”) to decide under s 94(3) of the LPA. The respondent was ordered to pay costs of \$7,000 to the Law Society.¹⁰⁴

Overcharging

21.49 In *The Law Society of Singapore v Chan Chun Hwee Allan*,¹⁰⁵ two charges (including an alternative second charge) were brought against the respondent for overcharging. The complaint was brought by the respondent’s former client, who had engaged the respondent for advice in divorce proceedings.

21.50 The respondent had issued two invoices for \$2,100 and \$2,600 respectively to the complainant in September 2013, and issued a third invoice for \$32,786.20 (“third invoice”) to the complainant in September 2014.¹⁰⁶ When the respondent handed the third invoice to the complainant, they reached an agreement under which the complainant was to pay \$18,000 in satisfaction of all three invoices referred to above, in monthly instalments of \$300, and the respondent was discharged from acting for the complainant.¹⁰⁷ The complainant alleged that he was pressured into entering the agreement, whereas the respondent claimed that it was the complainant who offered to pay the sum of \$18,000.¹⁰⁸

21.51 When the complainant failed to make payment, the respondent first commenced proceedings against the complainant, but subsequently withdrew the action and proceeded to tax his costs instead.¹⁰⁹ In the

103 *The Law Society of Singapore v Ryan Lin Longcai* [2017] SGDT 6 at [18].

104 *The Law Society of Singapore v Ryan Lin Longcai* [2017] SGDT 6 at [26].

105 [2017] SGDT 8.

106 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [7]–[8].

107 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [9] and [12].

108 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [10]–[11].

109 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [13].

taxation proceedings, the respondent filed a Bill of Costs claiming a total sum of \$72,063.80, including *inter alia* \$65,450 as Section 1 costs (that is, for work done other than for taxation). The taxing registrar who taxed the Bill of Costs allowed an amount of \$18,563.80, comprising \$18,000 for Section 1 and \$563.90 for Section 3 (disbursements).¹¹⁰ No amount was allowed for Section 2 (work done for taxation) even though the respondent claimed a sum of \$6,050.¹¹¹

21.52 The first charge relates to the respondent's issuance of the third invoice, being far in excess of and disproportionate to what the respondent was reasonably entitled to charge for the services rendered to the complainant.¹¹² The tribunal found that there was a *prima facie* breach of r 38 of the PCR, considering the percentages and absolute amounts involved in past cases of lawyers found guilty of overcharging.¹¹³

21.53 The second charge relates to the respondent's presentation of the Bill of Costs, being far in excess of and disproportionate to what the respondent was reasonably entitled to charge for the services rendered to the complainant.¹¹⁴ In addition, under the alternative second charge, the respondent was charged for including in the Bill of Costs items for which the respondent was not legally entitled to claim fees.¹¹⁵ For example, the respondent included items for court attendances when the respondent was stated to be on medical leave or that the opposing counsel mentioned on his behalf.¹¹⁶ The tribunal found that even if those inclusions were purely the result of clerical errors as the respondent claimed, the respondent could not evade responsibility entirely as he had a duty under Rule 8 of the PCR to exercise proper supervision over his staff.¹¹⁷

21.54 The tribunal found that the respondent had breached r 38 of the PCR, but his breaches did not amount to "grossly improper conduct" as framed in the first and second charges, so the first and second charges

110 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [14] and [16].

111 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [14] and [16].

112 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [24].

113 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [30].

114 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [42].

115 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [60].

116 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [66].

117 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [68].

were not made out.¹¹⁸ The tribunal took into account *inter alia* the following facts:

(a) Although the respondent issued the third invoice for \$32,768.20, the respondent had agreed to reduce his total fees to \$18,000 in the course of his meeting with the complainant during which he handed the third invoice to the complainant.¹¹⁹

(b) At the same meeting, the respondent further agreed to an instalment plan, which would take the respondent some five years to obtain full payment of the discounted sum of \$18,000.¹²⁰

(c) The respondent had no expectation of recovering the amount claimed in the Bill of Costs, but was expecting to recover only a much lesser figure (close to that which had actually been invoiced).¹²¹

(d) The nature of the errors relating to the wrongful inclusion of items in the Bill of Costs points to an oversight rather than deceit.¹²²

21.55 Nevertheless, the respondent's conduct was still considered improper in the circumstances, and the tribunal found that the alternative second charge was made out.¹²³ The tribunal determined that while no cause of sufficient gravity for disciplinary action existed, the respondent should be ordered to pay a penalty of \$5,000 plus costs.¹²⁴

Failure to update client, taking unfair advantage of a person, etc

21.56 In *The Law Society of Singapore v Yeo Kan Kiang Roy*,¹²⁵ the Law Society brought 12 charges against the respondent, a solicitor of about 23 years' standing, as a result of a complaint made by the daughter of a former client of the respondent. The tribunal found that nine of the 12 charges had not been made out. As for the remaining three charges, the tribunal determined that while the facts gave rise to no cause of sufficient gravity for disciplinary action to be taken, the respondent

118 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [70] and [92].

119 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [71].

120 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [75].

121 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [84].

122 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [85].

123 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [91] and [93].

124 *The Law Society of Singapore v Chan Chun Hwee Allan* [2017] SGDT 8 at [94]–[95].

125 [2017] SGDT 7.

should be reprimanded pursuant to s 93(1)(b) of the LPA for the improper conduct or practice forming the subject matter of those three charges.¹²⁶

21.57 As a background, the complainant and his father (“Wong”) met the respondent on 14 October 2010, at which meeting Wong engaged the respondent to represent Wong in High Court Suit No 778 of 2010 (“Suit 778”). However, from around October 2012, Wong became uncontactable to the respondent.¹²⁷ The respondent subsequently applied to discharge his firm as Wong’s solicitors in February 2013, which was granted by the court.¹²⁸

21.58 The 12 charges against the respondent relate to alleged breaches of the following rules in the PCR:¹²⁹

- a. Rule 17[, which obliges a solicitor to] ‘... keep the client reasonably informed of the progress of the client’s matter.’ – 1st... 2nd ... 3rd ... 7th ... and 10th [Charges];
- b. Rule 42(2)(a)[, which obliges a solicitor to] ‘... take reasonable care to avoid foreseeable harm to the client, including giving due notice to the client.’ [where he withdraws from representing a client] – 4th ... 8th ... and 11th [Charges];
- c. Rule 42(2)(b)[, which obliges a solicitor to] ‘... take reasonable care to avoid foreseeable harm to the client, including allowing reasonable time for substitution of a new advocate and solicitor.’ [where he withdraws from representing a client] – 5th Charge;
- d. Rule 53A[,] which provides that: ‘[a solicitor] shall not take unfair advantage of any person or act towards anyone in a way which is fraudulent, deceitful or otherwise contrary to his position as an advocate and solicitor or officer of the Court.’ – 9th ... and 12th [Charges]; and
- e. Rule 56[,] which provides that: ‘[a solicitor] shall not knowingly deceive or mislead the Court, any other advocate and solicitor, witness, Court officer, or other person or body involved in or associated with Court proceedings.’ – 6th Charge.

126 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [163]–[169].

127 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [40].

128 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [25] and [28].

129 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [6].

21.59 The tribunal's findings were (*inter alia*) as follows:

- (a) As regards the charges under r 17 of the PCR:
- (i) *1st Charge*. After 9 November 2012, the respondent no longer had communications with Wong.¹³⁰ The respondent had ceased to communicate with Wong by e-mail as he had determined by then that sending an e-mail to Wong was not an effective way to get in touch with him. The respondent did not call Wong on his Singapore phone number as “his Singapore number was off”, and the respondent did not have Wong’s Thai phone number.¹³¹ The tribunal found that the respondent had made “no attempt” to inform Wong of the directions made by the court at a pre-trial conference (“PTC”) on 25 January 2013 regarding *inter alia* timelines for the exchange of affidavits of evidence-in-chief (“AEIC”). Accordingly, the 1st Charge, relating to the respondent’s failure to make any attempt to inform Wong of the directions made at the 25 January 2013 PTC, was made out.¹³²
- (ii) *2nd Charge*. Similarly, the 2nd Charge, relating to the respondent’s failure to make any attempt to inform Wong of the directions made at the next PTC on 8 February 2013, was made out.¹³³
- (iii) *3rd Charge*. The 3rd Charge, relating to the respondent’s alleged failure to make any attempt to inform Wong about his application to discharge his firm as Wong’s solicitors (“Discharge Application”) and the court’s order discharging his firm (“Discharge Order”), was not made out.¹³⁴ The Law Society did not rebut the respondent’s evidence that he had served the Discharge Application and the Discharge Order on Wong by leaving the documents at Wong’s last known address in Singapore.¹³⁵
- (iv) *7th Charge*. The 7th Charge, relating to the respondent’s alleged failure to make any attempt to inform Wong about the directions given or interlocutory judgment entered at a PTC held on

130 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [71].

131 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [72].

132 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [75].

133 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [81].

134 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [94].

135 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [87]–[93].

28 February 2013, was not made out. The respondent's firm was discharged from acting for Wong by order of court on 27 February 2013,¹³⁶ and the respondent was excused from the PTC on 28 February 2013.¹³⁷ The respondent would not be aware of any updates in Suit 778 after having been discharged from the same.¹³⁸

(v) *10th Charge.* The 10th Charge, relating to the respondent's alleged failure to make any attempt to inform Wong about his firm's discharge when the complainant called him in May 2013, was not made out. The complainant was not the respondent's client, and the Law Society had failed to prove that the respondent's duty extended to contacting Wong to inform him of the said discharge even though it was the complainant who had called the respondent.¹³⁹

(b) As regards the charges under rr 42(a) and 42(b) of the PCR:

(i) *4th Charge and 5th Charge.* The 4th and 5th Charges, related to the respondent's alleged failure to give Wong due notice of his discharge and/or to allow Wong reasonable time to appoint a replacement solicitor, and not making any attempt to inform Wong of the Discharge Application and the Discharge Order. The charges were not made out. Similar to the tribunal's finding in respect of the 3rd Charge, the tribunal found that the respondent had made an attempt to inform Wong of the Discharge Application and Discharge Order when he served a copy of each on Wong at Wong's address.¹⁴⁰

(ii) *8th Charge.* The 8th Charge, relating to the respondent's alleged failure to make any attempt to inform Wong about the directions given or interlocutory judgment entered at a PTC on 28 February 2013, was not made out, for the same reason as regards the 7th Charge.¹⁴¹

136 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [28].

137 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [29].

138 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [97].

139 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [103].

140 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [109] and [114].

141 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [120].

- (iii) *11th Charge*. The 11th Charge, relating to the respondent's alleged failure to make any attempt to inform Wong about his firm's discharge when the complainant called him in May 2013, was not made out, for the same reason as regards the 10th Charge.¹⁴²
- (c) As regards the charges under r 56 of the PCR:
- (i) *6th Charge*. The 6th Charge, concerning the respondent's alleged misleading of the court at the hearing of the Discharge Application by stating that Wong was "estranged from his children" and that the respondent was "unable to find others to contact", was not made out. In the light of the respondent's evidence, the Law Society of Singapore was inclined to take the position that the respondent had probably made the aforesaid statement with an honest belief that it was true.¹⁴³ As such, there was no proof of the requisite *mens rea*, namely, that the false representation must have been made (a) knowingly, (b) without belief in its truth, or (c) recklessly, without caring whether it is true or false.¹⁴⁴
- (d) As regards the charges under r 53A of the PCR:
- (i) *9th Charge*. The 9th Charge, concerning the respondent allegedly misleading the complainant into believing that he was still acting for Wong on 4 March 2013 when he had already obtained a discharge on 27 February 2013, was made out. The evidence showed that the complainant had a WhatsApp exchange with the respondent on 4 March 2013, in which the complainant asked for an update on Suit 778, whether the case had been adjourned and whether there was any PTC. The respondent told the complainant *inter alia* that he had informed the court that Wong was stuck in Thailand and could not get out.¹⁴⁵ The respondent claimed that since the complainant was not his client, he could not disclose his firm's discharge absent clear instruction from Wong by reason of his confidentiality obligations.¹⁴⁶ The tribunal held that although the complainant was not the respondent's client, since the

142 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [126].

143 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [135].

144 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [132].

145 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [142].

146 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGDT 7 at [145].

respondent had chosen to communicate with her and respond to her queries, the respondent had an obligation as an advocate and solicitor to conduct himself “beyond reproach in terms of his integrity, honesty and fairness”, and his response should be such as not to give the complainant the wrong impression that he was still acting for Wong.¹⁴⁷

(ii) *12th Charge.* The 12th Charge, concerning the respondent allegedly misleading the complainant into believing that he was still acting for Wong on 28 May 2013 and 2 May 2013, was not made out. The complainant was already aware of the respondent’s discharge on 27 May 2013 before she had the WhatsApp exchanges with the respondent on 28 and 29 May 2013.¹⁴⁸

21.60 In conclusion, only the 1st Charge, 2nd Charge and 9th Charge were made out. As regards the 9th Charge, the tribunal accepted that the respondent did not have an intention to mislead the complainant.¹⁴⁹ The tribunal determined that the respondent should be reprimanded and pay costs fixed at \$2,500.¹⁵⁰

Legal Profession (Solicitors’ Accounts) Rules

21.61 In *The Law Society of Singapore v Kangatharan Kandavellu*,¹⁵¹ the respondent faced various charges for contravention of rr 7 and 11 of the Legal Profession (Solicitors’ Accounts) Rules (“SA Rules”):

(a) *1st and 2nd Charges.* Overdrawing the firm’s clients account on two separate occasions in breach of r 7(2) of the SA Rules;

(b) *3rd Charge.* Failing “to keep proper accounting records for the accounting period of 1 January 2014 to 31 December 2014 [in breach of] Rule 11(1) of the [SA Rules]”;

(c) *4th Charge.* Failing “to keep a record of all bills of costs (distinguishing between profit costs and disbursements) and of all writing intimations under Rules 7(1)(a)(iv) and 9(2)(c)(i) of the [SA Rules] for the accounting period of 1 January 2014 to 31 December 2014”; and

147 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGGT 7 at [147].

148 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGGT 7 at [157].

149 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGGT 7 at [167].

150 *The Law Society of Singapore v Yeo Kan Kiang Roy* [2017] SGGT 7 at [170].

151 [2017] SGGT 9.

(d) 5th Charge. Failing “to conduct monthly reconciliation of the balance of ... clients’ cash books with ... clients’ bank statements and to keep a statement showing the reconciliation for the months of June 2014 and December 2014 [in breach of] Rule 11(4) of the [SA Rules]”¹⁵²

21.62 The respondent admitted to the alternative charges of misconduct unbefitting of an advocate and solicitor within the meaning of section 83(2)(h) of the LPA, but not to the five primary charges of grossly improper conduct in the discharge of his professional duty within the meaning of section 83(2)(b) of the LPA. The Law Society was content to proceed just on the five alternative charges and the tribunal found the five alternative charges to be made out.¹⁵³

21.63 The tribunal concluded that there was no cause of sufficient gravity to refer the respondent to the Court of Three Judges, and recommended that the Council impose a monetary penalty of \$15,000. The tribunal observed that:

(a) “[Breaches] of Rules 7 and 11 of the SA Rules, could be said to be at the less culpable end of the continuum as compared to Rule 3 of the SA Rules”¹⁵⁴

(b) “[The] breaches were closer to being an ‘inadvertent failure’ rather than a ‘persistent default’”¹⁵⁵

(c) The respondent was neither fraudulent nor dishonest and the breaches did not lead to any losses by his client.¹⁵⁶

(d) “[The] Respondent had been cooperative during the disciplinary proceedings ... quickly admitted to [the breaches] and pleaded guilty under ... the alternative charges”¹⁵⁷

Issuing a cheque which was dishonoured upon presentation

21.64 In *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh*,¹⁵⁸ the respondent was charged with issuing a cheque for the sum

152 *The Law Society of Singapore v Kangatharan Kandavellu* [2017] SGDT 9 at [14].

153 *The Law Society of Singapore v Kangatharan Kandavellu* [2017] SGDT 9 at [15]–[17].

154 *The Law Society of Singapore v Kangatharan Kandavellu* [2017] SGDT 9 at [21] and [23].

155 *The Law Society of Singapore v Kangatharan Kandavellu* [2017] SGDT 9 at [26] and [28].

156 *The Law Society of Singapore v Kangatharan Kandavellu* [2017] SGDT 9 at [25].

157 *The Law Society of Singapore v Kangatharan Kandavellu* [2017] SGDT 9 at [27]–[28].

158 [2017] SGDT 1.

of \$13,000 (“Cheque”) from his firm’s overdraft account to the complainant which was dishonoured when the complainant presented the Cheque for payment.

21.65 As a background, the complainant entered into certain investment agreements with the respondent’s long-time client, one Mohammad Nawas (“Nawas”).¹⁵⁹ When the complainant did not receive the returns promised in the said agreements, he sought out Nawas and/or the respondent for the payment of the returns and the original investment.¹⁶⁰ Sometime in May 2015 on a date before 8 May 2015, Nawas and the complainant visited the respondent’s office, and the respondent issued the Cheque to the complainant. The complainant was told that the Cheque was for the return of his original investment under the first investment agreement and for compensation for the delay in making the payment.¹⁶¹ The Cheque was dishonoured when the complainant presented the Cheque subsequently.

21.66 The respondent admitted to the Law Society’s amended Statement of Case and pleaded guilty to the amended charge against him.¹⁶² It was not disputed that the respondent issued the Cheque even though he knew or ought to have known that Nawas would not be able to put him or his firm in funds to enable the Cheque to be honoured when presented for payment, and/or without proper regard as to whether the Cheque would be honoured when presented for payment, and in circumstances where he knew or ought to have known that the complainant was acting in the belief that by accepting the Cheque, the complainant was receiving part payment of the sums that he believed were due and owing to him.¹⁶³

21.67 In mitigation, the respondent said *inter alia* that he had issued the Cheque at the request of Nawas, who had assured him that he would place funds in his firm’s overdraft account, and that the respondent had assisted Nawas in good faith and had in no way (either his firm or himself) benefitted in any way from the dealings between Nawas and the complainant.¹⁶⁴

21.68 The tribunal accepted the Law Society’s submissions that in determining the sanctions to be imposed, the tribunal should be guided

159 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [10]–[11].

160 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [15].

161 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [31(c)].

162 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [37].

163 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [21].

164 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [40].

by considerations such as the protection of the public, the upholding of public confidence in the integrity of the legal profession, the deterrence of similar defaults by solicitors and the punishment of the solicitor guilty of the misconduct.¹⁶⁵ In this case, the complainant, likely any member of the public, is entitled to have the confidence and expectation that cheques issued by solicitors would be good for payment and not dishonoured because of lack of funds in the bank account,¹⁶⁶ and there was no excuse (and it was unacceptable) for the respondent to have issued the Cheque without ensuring that it would not be dishonoured.¹⁶⁷ Nevertheless, there was no evidence that the respondent had been dishonest, fraudulent, or had the intention to deceive the complainant when issuing the Cheque,¹⁶⁸ and no evidence to suggest that the respondent had benefitted from the complainant's dealings with Nawas.¹⁶⁹ The tribunal therefore ordered the respondent to pay a penalty of \$5,000, and costs of \$3,500 (inclusive of disbursements) to the Law Society, whilst finding that no cause of sufficient gravity for disciplinary action existed under s 83(2)(h) of the LPA.

Cases involving further action by dissatisfied complainants

21.69 2017 saw three cases involving complainants seeking a review of dismissals of their complaints.

21.70 The case of *Loh Der Ming Andrew v Law Society of Singapore*¹⁷⁰ (“*Loh Der Ming Andrew*”) provided a helpful overview of the disciplinary process:

(a) filing of a complaint: “[when] a complaint is filed under s 85(1) of the LPA against a regulated legal professional, it will generally first be referred to the Chairman of the Inquiry Panel (s 85(1A))”;¹⁷¹

(b) role of a review committee:

A [Review Committee] will then be constituted to review the complaint within two weeks of that referral (s 85(6)). In the course of its review, the Review Committee may require the complainant or the regulated legal practitioner concerned to answer any inquiry or furnish any record as the Review Committee considers relevant for its review (s 85(7)). Once

165 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [54].

166 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [56].

167 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [55].

168 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [60].

169 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2017] SGDT 1 at [61].

170 [2018] 3 SLR 837.

171 *Loh Der Ming Andrew v Law Society of Singapore* [2018] 3 SLR 837.

the review is completed, the Review Committee shall direct the Council to dismiss the complaint if the Review Committee's members are unanimously of the view that the complaint is 'frivolous, vexatious, misconceived or lacking in substance', in which case reasons for the dismissal have to be given (s 85(8)(a));]

(c) role of an inquiry committee:

Otherwise, the Review Committee shall refer the complaint back to the Chairman (s 85(8)(b)), in which case the Chairman is obliged to constitute an Inquiry Committee to inquire into the complaint (s 85(10)).

The Inquiry Committee is obliged to commence its inquiry and report its findings to the Council within prescribed timelines (ss 86(1)–86(4)). This report must, among other things, include the Inquiry Committee's recommendation as to the necessity or otherwise of formal investigation of the complaint by a [district tribunal] (s 86(7)). If the Inquiry Committee takes the view that no formal investigation is required, it may order that a penalty be paid, a reprimand or warning be given, or that the complaint be dismissed (s 86(7)(b)); and]

(d) formal investigation by a tribunal or reconsideration by Inquiry Committee: "Under s 87(1), the Council must consider the Inquiry Committee's report and determine an appropriate course of action, which includes referring the case for formal investigation by a DT or back to the Inquiry Committee for reconsideration."

Appeal against dismissal of judicial review – Ethical duties in advancing claims for party and party costs

21.71 The Court of Appeal decision in *Deepak Sharma v Law Society of Singapore*¹⁷² pertained to an appeal against the High Court's dismissal of an application for judicial review by the appellant. The appellant sought a quashing order against the decision of a review committee ("RC") constituted under s 85(6) of the LPA, which dismissed in part a complaint made by the appellant against two lawyers in relation to the lawyers' claims for party and party costs against the appellant's wife.¹⁷³ In this case, the Court of Appeal addressed the novel issue of whether, and to what extent, lawyers owe ethical duties in advancing claims on behalf of their clients for *party and party costs*.¹⁷⁴

172 [2017] 1 SLR 862.

173 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [1].

174 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [1].

21.72 The facts are briefly as follows. The appellant is the husband of Dr Lim Mey Lee Susan (“Dr sLim”), who was the subject of disciplinary proceedings commenced by the Singapore Medical Council (“SMC”). SMC’s lawyers, WongPartnership LLP (“WP”), filed three Bills of Costs totalling \$1,007,009.37 (excluding GST and disbursements) for taxation of party and party costs in respect of certain unsuccessful applications and appeal brought by Dr Lim against SMC.¹⁷⁵ The taxing registrar taxed down the costs sought by SMC to a total of \$340,000.¹⁷⁶ SMC applied for a review of taxation, and at the hearing before the High Court Judge, WP indicated that it was reducing the total sum claimed to \$720,000, on account of “overlap between lawyers” and exclusion of time for “re-getting up for new lawyers who joined the team.”¹⁷⁷ The judge who heard the review of taxation increased the total amount recoverable by SMC in party and party costs to \$370,000.¹⁷⁸ The appellant subsequently complained to the Law Society against two lawyers from WP for “gross overcharging” of party and party costs in the bills of costs presented by WP.¹⁷⁹

21.73 The Court of Appeal decision canvassed a myriad of interesting and important issues (for example, whether the appellant had *locus standi* to make an application for judicial review in the first place). For present purposes, this chapter will focus on the court’s holdings in respect of a lawyer’s ethical duties in claiming party and party costs, which may be summarised as follows:

(a) “[In] a case involving *party and party* costs, the relationship of trust and confidence between solicitor and client is *not* involved” [emphasis in original].¹⁸⁰ A “claim for costs in this particular situation occurs in what is essentially an *adversarial* context[, and it is] often, if not invariably, the case that a party’s claim for party and party costs will be *reduced* by the court on taxation” [emphasis in original].¹⁸¹

(b) “[Given] the adversarial nature of the proceedings ... an excessive claim for costs (the quantum of which is reduced by the court) would *not, in and of itself, generally* constitute professional misconduct by the lawyer concerned, *absent proof that the lawyer has put forward either [(1) an improper claim or (2) a fraudulent claim]*” [emphasis in original].¹⁸²

175 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [8]–[11].

176 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [12].

177 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [12].

178 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [13].

179 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [14].

180 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [40].

181 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [41].

182 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [47].

- (i) The situation in (1) is an obvious one.¹⁸³
- (ii) The situation in (2) is more general and would cover a myriad of situations, including one where.¹⁸⁴

[The] *very quantum of the claim itself is so astronomical as to be so disproportionate and unjustifiable that the making of that claim would itself constitute professional misconduct*, given that no reasonable lawyer would even countenance making such a claim on behalf of his client (even in the context of party and party costs) in the first place ... [emphasis in original]

This, however, is likely to be “extremely rare” and is likely to be “more theoretical than real”.¹⁸⁵ The “more likely situation” would be where “an excessive claim for party and party costs is *coupled with* some other conduct on the part of the lawyer which, taken together, constitutes a breach of the duty to the court and hence constitutes professional misconduct” [emphasis in original].¹⁸⁶

21.74 The court found that the RC applied the correct legal test.¹⁸⁷ The RC was also entitled to arrive at the conclusion that the quantum claimed in the present case was not so astronomical,¹⁸⁸ and there was no allegation of fraud by the appellant.¹⁸⁹ The appeal in respect of this issue (that is, that the RC applied the wrong legal test) was dismissed.

Review of Review Committee’s decision – Publications by advocates and solicitors

21.75 In *Nalpon Zero Geraldo Mario v Law Society of Singapore*¹⁹⁰ (“*Nalpon*”), the RC appointed by the Law Society directed the Council to dismiss the complaint. Mr Nalpon then filed an Originating Summons to quash the decision of the RC and for his complaint to be reheard by a freshly constituted RC.

21.76 *Nalpon* concerned a complaint by Mr Nalpon to the Law Society about the conduct of Thio Shen Yi SC, who had given a message in the February 2016 issue of the *Singapore Law Gazette* about police conduct in the investigation of an alleged molestation of a girl by a 14-year-old

183 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [47].

184 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [47].

185 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [42].

186 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [47].

187 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [48].

188 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [49].

189 *Deepak Sharma v Law Society of Singapore* [2017] 1 SLR 862 at [50].

190 [2017] SGHC 206.

schoolboy. The statements in the Law Gazette complained of were (a) “[on] 26th January 2016, five plain-clothes policemen visited his school and spoke to him at the principal’s office” (“first statement”); (b) “[the] police could have considered a less intimidating way of approaching the investigation” (“second statement”). Mr Nalpon complained that Mr Thio had been:¹⁹¹

- (a) acting in a manner unbecoming of an Advocate and Solicitor as an officer of the Supreme Court and President of the Law Society of Singapore by making false statements in the February 2016 Law Gazette on a case which was being investigated by the police, in breach of s 67 of the [PCR] (‘the 1st Complaint’);
- (b) acting in a manner unbecoming of an Advocate and Solicitor as an officer of the Supreme Court and President of the Law Society of Singapore by making false statements to the press or media on a case which was being investigated by the police, in breach of s 67 of the [PCR] (‘the 2nd Complaint’);
- (c) acting in a manner unbecoming of an Advocate and Solicitor as an officer of the Supreme Court and President of the Law Society of Singapore by making comments in the February 2016 Law Gazette that may prejudice matters *sub judice* in breach of paragraph 61 of the 2013 Law Society Practice Directions and Rulings Guide (‘the 3rd Complaint’);
- (d) acting in a manner unbecoming of an Advocate and Solicitor as an officer of the Supreme Court and President of the Law Society of Singapore by making comments to the press or media that may prejudice matters *sub judice* in breach of the PDR 2013, paragraph 61 (‘the 4th Complaint’); and
- (e) acting in a manner unbecoming of an Advocate and Solicitor as an officer of the Supreme Court and President of the Law Society of Singapore by questioning the intelligence of the Law Minister and his command of the English Language by denying the clear meaning of his baseless comments (‘the 5th Complaint’).

21.77 The High Court dismissed Mr Nalpon’s Originating Summons and held as follows:

- (a) As regards the 1st Complaint, the High Court held that the RC erred in requiring more evidence from Mr Nalpon than the Minister for Law’s (“the Minister”) and police’s statement to the contrary. However, this was not an error of law nor a suggestion of bias.¹⁹² In any case, not every case of an allegedly wrong or false statement must be

191 *Nalpon Zero Geraldo Mario v Law Society of Singapore* [2017] SGHC 206 at [14].

192 *Nalpon Zero Geraldo Mario v Law Society of Singapore* [2017] SGHC 206 at [54]–[55].

referred to the Inquiry Committee. The maker's intention, knowledge and whether he had reasonable grounds to believe that his statement was true were relevant factors.¹⁹³ As regards the second statement, the High Court held that Mr Thio was merely expressly his opinion and not deliberately or reckless making a comment without basis.¹⁹⁴

(b) As regards the 3rd Complaint (namely, that Mr Thio's statements may prejudice matters *sub judice*), the High Court held that it was not made out as Mr Thio's second statement was not an attempt at suggesting the cause of death. The High Court held that the RC's finding that neither a Review Committee nor an Inquiry Committee is a proper forum for determining whether statements complained of may prejudice court proceedings, might have constituted an error of law amounting to an illegality. However, the RC's decision to dismiss the 3rd Complaint was supported by other reasons.¹⁹⁵

(c) As regards the 2nd and 4th Complaints, in which Mr Thio was alleged to have made false statements to the press or media, it appeared that the report had merely quoted statements found in the Law Gazette and there was no evidence that Mr Thio made statements to the reporter in question.¹⁹⁶

(d) As regards the 5th Complaint that Mr Thio had questioned the Minister's intelligence and command of the English language when Mr Thio disagreed with the comments of the Minister, the High Court held that this complaint was clearly a non-starter as Mr Thio was entitled to express a different view and it was absurd to suggest that this amounted to improper conduct.¹⁹⁷

Dissatisfaction with Inquiry Committee's decision – Allegedly acting contrary to client instructions and making untrue statements to court

21.78 In *Loh Der Ming Andrew*, the Inquiry Committee recommended that a penalty of \$2,500 be imposed on the respondent for acting against the complainant's instructions, with no need for a formal investigation, and dismissed the other heads of complaint. Dissatisfied with the Council's decision, the applicant filed an application under s 96 of the LPA for the High Court to direct the Law Society to apply to the Chief Justice for the appointment of a tribunal in respect of his complaints.

193 *Nalpon Zero Geraldo Mario v Law Society of Singapore* [2017] SGHC 206 at [59].

194 *Nalpon Zero Geraldo Mario v Law Society of Singapore* [2017] SGHC 206 at [63].

195 *Nalpon Zero Geraldo Mario v Law Society of Singapore* [2017] SGHC 206 at [68].

196 *Nalpon Zero Geraldo Mario v Law Society of Singapore* [2017] SGHC 206 at [47].

197 *Nalpon Zero Geraldo Mario v Law Society of Singapore* [2017] SGHC 206 at [46].

21.79 The complainant filed complaints against the respondent regarding professional services rendered to him by the respondent for:

- (a) acting contrary to the complainant's instructions in agreeing to the consent order;
- (b) making untrue statements to the court during the hearing of the divorce applications; and
- (c) placing himself in a position of conflict by acting for both the complainant husband and the co-defendant (alleged adulterer) in the same proceedings.

21.80 As regards the complaint regarding allegedly acting contrary to a client's instructions, the High Court noted that a lawyer is bound to carry out his client's lawful, proper and reasonable instructions, save where the lawyer believes that the instructions are unreasonable or would cause him to commit or perpetrate an illegal or unethical act.¹⁹⁸

21.81 As regards the complaint regarding allegedly making untrue statements, the High Court noted that a lawyer's duty of honesty relates to both facts and law, and the prohibited misleading conduct may be active, passive or a combination of both and the provision of incomplete information may also in some circumstances amount to an ethical violation.¹⁹⁹

21.82 The High Court granted an order under s96 of the LPA directing the Law Society to apply to the Chief Justice for the appointment of a tribunal to investigate and consider the following heads of complaint:

- (a) acting contrary to the complainant's instructions in agreeing to the consent order; and
- (b) making untrue statements to the Court during the hearing of the divorce applications.

The High Court dismissed the application in relation to the complaint that the respondent had placed himself in a position of conflict *vis-à-vis* the applicant.

198 *Loh Der Ming Andrew v Law Society of Singapore* [2018] 3 SLR 837 at [103].

199 *Loh Der Ming Andrew v Law Society of Singapore* [2018] 3 SLR 837 at [124].