21. LEGAL PROFESSION

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Introduction

21.1 This review covers 19 cases, comprising four Court of Three Judges decisions, three High Court decisions and 12 disciplinary tribunal ("DT") decisions. The disciplinary cases involved preferring one client's interests over another's, failing to pay moneys due under a solicitor's undertaking, failing to keep proper accounts, overdrawing on client accounts and grossly improper conduct.

Conviction of an offence involving fraud or dishonesty

21.2 In *Law Society of Singapore v Kangatharan s/o Ramoo Kandavellu*,[1] the respondent was struck off the rolls by the Court of Three Judges for devising a scheme to defraud the Government by abusing the Productivity and Innovation Credit ("PIC") scheme. The case offered an opportunity for the court to clarify whether an "*offence involving fraud or dishonesty*" under s 94A(1) of the Legal Profession Act[2] ("LPA") is limited to a situation where fraud or dishonesty is a constituent element of the underlying offence.

21.3 The respondent in this case had pleaded guilty to an offence under s 37J(2) of the Income Tax Act[3] ("ITA"). Section 37J(2) of the ITA makes it an offence for a person to give the Comptroller of Income Tax any false information under s 37I(2) (which relates to the PIC scheme) "*without reasonable excuse or through negligence*". Together with a PIC promoter and the promoter's wife, the respondent was involved in a scam to defraud the Government through an abuse of the PIC scheme. Among other things, the respondent made various false declarations in a PIC cash payout application form, while being aware that he was not eligible for the PIC scheme. Even after his PIC claim was rejected by the

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1 [2019] 3 SLR 595.
2 Cap 161, 2009 Rev Ed.
3 Cap 68, 2012 Rev Ed.

Inland Revenue Authority of Singapore ("IRAS"), the respondent pursued his claim and assisted in the drafting of an appeal letter.

21.4 The Law Society made an application under s 94A(1) of the LPA, under which the Law Society "shall, without further direction", make an application to the Court of Three Judges under s 98 of the LPA where "a regulated legal practitioner has been convicted of an offence involving fraud or dishonesty". The critical question in the present case was whether the s 94A(1) procedure was available, given that fraud or dishonesty is not a constituent element of the offence under which the respondent was convicted. The court answered this question in the affirmative and held that s 94A(1) of the LPA can be engaged as long as the facts surrounding or underlying the commission of the offence disclose fraud or dishonesty, subject to the following qualifications:

> (a) the facts in question must have been finally proved or admitted at the time of the conviction, so that the Court of Three Judges would not have to undertake a separate factual inquiry; and
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> (b) these facts must be closely connected to the charge and the conviction and not be wholly extraneous to it.[4]

21.5 In the present case, the respondent had admitted to the relevant dishonest conduct without qualification in the statement of facts, and those facts were closely connected with the offence that he was charged with. In the circumstances, s 94(1) of the LPA was properly engaged and the court had jurisdiction to hear the matter.[5]

21.6 On sentencing, the court held that striking off under s 83(1)(*a*) of the LPA was the appropriate sanction as the case fell within at least one of the "typical" situations where a striking off order would ordinarily be warranted, namely, that the dishonesty is integral to the circumstances surrounding the commission of the offence of which the solicitor has been convicted. In addition, the respondent's egregious conduct demonstrated a fundamental disregard for the law and a severe lack of integrity. Accordingly, the court struck off the respondent from the roll and fixed costs at S$7,000 to be paid by the respondent.

4 *Law Society of Singapore v Kangatharan s/o Ramoo Kandavellu* [2019] 3 SLR 595 at [22].

5 *Law Society of Singapore v Kangatharan s/o Ramoo Kandavellu* [2019] 3 SLR 595 at [22].

Taxation of solicitor's bill

Whether a retainer using hourly rate constitutes contentious business agreement

21.7 In *Ho Seow Wan v Morgan Lewis Stamford LLC*,[6] which concerned an application by the plaintiff against his former solicitors ("MLS") for MLS to refer various bills of costs for work done in relation to two suits for taxation, the High Court had to consider the issue of whether an engagement letter entered into between a solicitor and a client in which the client agreed to pay for legal services based on the solicitor's charge-out rate (as opposed to a lump-sum fee) could constitute a "contentious business agreement" ("CBA") within the meaning of s 111 of the LPA, such that bills of costs issued pursuant to the engagement letter were precluded under s 112(4) from being sent for taxation.

21.8 In this case, the relevant engagement letters between the plaintiff and MLS provided for the solicitors' charge-out rates and did not set out any lump-sum fee arrangement. The plaintiff argued that (a) an agreement as to charge-out rates of the solicitors could never be considered sufficiently specific to constitute a CBA ("Broad Objection"); and (b) in the alternative, the agreements as to the charge-out rates provided for in the engagement letters in the present case were on the facts not sufficiently specific to constitute CBAs ("Narrow Objection").

21.9 The court rejected the plaintiff's arguments and held that the CBAs were CBAs within the meaning of s 111 of the LPA. The court considered the following arguments:

> (a) **Plaintiff's broad objection**: Having carefully considered the applicable legal provisions, the terms of the engagement letters, and the relevant foreign and local case precedents, the court took the view that agreements as to the charge-out rates of the solicitors in charge of a matter (as opposed to lump-sum fee agreements) could, as a matter of principle, be considered agreements that are sufficiently specific to constitute CBAs.[7]
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> (b) **Plaintiff's narrow objection**: The court held that whether an agreement as to charge-out rates was sufficiently specific to constitute a CBA depends on whether the agreement was specified in sufficiently clear terms so that the client would

6 [2018] SGHC 31.

7 *Ho Seow Wan v Morgan Lewis Stamford LLC* [2018] SGHC 31 at [55].

be in a position to make a reasoned calculation based on the agreement as to what his legal fees would eventually be upon completion of the contentious legal matter. What was to be regarded as sufficiently clear for such purposes would naturally be an intensely fact-specific inquiry.[8] On the facts of this case, the terms of the engagement letters were sufficiently specific to constitute CBAs. It was sufficient that the engagement letters had specified:

> (i) the specific scope of the matters that were covered under the fee agreement;
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> (ii) the solicitors that were assigned to take charge of the conduct of the suits;
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> (iii) the specific charge-out rates of each of the solicitors in charge of the matter; and
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> (iv) the fact that the charge-out rates were to be applied to the actual number of hours utilised by the respective solicitors concerned.[9]

The court also found that there were sufficient safeguards against overcharging for agreements as to charge-out rates to be applied on the actual number of hours utilised by the solicitor on the scope of work as agreed.[10]

21.10 In the circumstances, the court found that MLS's engagement letters were CBAs within the meaning of s 111 of the LPA and dismissed the plaintiff's taxation application with costs.

Expiry of 12 months from delivery of bill payment and payment of bill by client

21.11 In *H&C S Holdings Pte Ltd v Gabriel Law Corp*,[11] the applicant sought a declaration that six invoices issued to it by the respondent law firm ("GLC") between 15 January 2014 and 28 September 2015 were not proper bills within s 122 of the LPA, and that it was thus under no liability to pay them. Alternatively, the applicant sought an order that the six invoices issued by GLC be referred to the Registrar for taxation. The High Court granted leave to the applicant to have two of the six invoices taxed.[12]

8 *Ho Seow Wan v Morgan Lewis Stamford LLC* [2018] SGHC 31 at [66].
9 *Ho Seow Wan v Morgan Lewis Stamford LLC* [2018] SGHC 31 at [67].
10 *Ho Seow Wan v Morgan Lewis Stamford LLC* [2018] SGHC 31 at [80]–[87].
11 [2018] SGHC 168.
12 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [180].

21.12 In this decision, the court considered the application of two "disqualifying events" under s 122 of the LPA for sending bills for taxation, namely (a) the expiration of 12 months from the delivery of a bill of costs ("the time limit disqualification"); and (b) the payment of a bill of costs ("the payment disqualification").[13] Under s 122 of the LPA, if either or both of these disqualifying events have occurred, the court must be satisfied that there are special circumstances justifying an order for taxation before the court can make an order for the bill of costs to be taxed. There is no strict rule as to what constitutes "special circumstances" and it is for the court to decide on the facts of every case whether there are special circumstances which justify referring the solicitor's bill for taxation.[14] The court observed, *inter alia*, that:

> (a) Not all disputes between a client and his solicitor regarding deposits and moneys in the client's account are amenable to be "solved" by means of taxation of a bill of costs. Where a client alleges that the solicitor has wrongly retained moneys belonging to a client and the solicitor raises a defence that he is owed costs for fees and disbursements, the existence of a right to deduct or set-off the solicitor's claim against the client's moneys is not a matter that can be properly addressed by taxation *per se* before the Registrar. In such a situation the proper course of action is to (i) establish the existence of a right of deduction or set-off; and (ii) apply for taxation of the bill of costs to establish what are the appropriate fees which the lawyer can claim.[15]
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> (b) Whilst it is rightly said that taxation provides the best way of determining what the solicitor is entitled to claim as fees, overcharging is a matter that is best raised and addressed prior to payment and/or expiration of the 12-month period under s 122. Once a disqualification event has set in, it cannot be assumed that the law should lean in favour of granting leave where overcharging is raised.[16] Care must be taken where a client seeks to dispute the reasonableness of the bill after one of the disqualifying events has set in. Merely making a general assertion that the bill of costs is unreasonable or unfair will not ordinarily be sufficient.[17]
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> (c) There is a sharp distinction between the procedure for resolving a complaint of professional misconduct and the procedure for resolving a fee dispute. For example, just because

13 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [41].
14 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [48].
15 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [59]–[60].
16 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [62].
17 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [63].

the lawyer was guilty of some professional misconduct (such as misapplication of client's deposit against fees) does not mean that the fees were excessive or unreasonable. A client who accepts the fee is reasonable but is objecting to the misapplication of the client deposit is unlikely to establish special circumstances.[18] This should not be taken to mean that rules of professional conduct may *never* be relevant to the consideration of special circumstances under s 122 of the LPA.[19]

(d) As regards deposits, r 7(1)(*a*)(iv) of the Legal Profession (Solicitors' Accounts) Rules[20] ("LP(SA)R") requires that the client be notified of how the money he deposits with his solicitor is being put to use by his solicitor *before* the solicitor actually puts that money to use.[21] This point concerns the payment disqualification under s 122 of the LPA, that is, when a bill of costs can be said to be paid by the client where it is the solicitor who, in order to satisfy his costs, draws down on the initial deposit that the client pays to account. The court held that a client can be said to have paid a bill of costs where a solicitor draws down on the client's money in accordance with the procedure envisaged under r 7(1)(*a*)(iv) of the LP(SA)R – that is, having obtained the client's consent.[22] Conversely, if the solicitor does not follow the procedure envisaged under r 7(1)(*a*)(iv) of the LP(SA)R, unless the solicitor can show through some other means that the client is aware and has consented to the payment of that particular bill of costs from the moneys held by the solicitor on account, it is unlikely that the client can be said to have *paid* that particular bill.[23]

Alleged overcharging

21.13 In *The Law Society of Singapore v Tan Siew Bin, Ronnie and Masagoes Abdul Karim*,[24] the complainant alleged overcharging by the respondents. The complainant had engaged the respondents to apply for an *ex parte* freezing order and summary judgment against the defendants in a suit. The complainant was of the view that he had reached a fixed fee agreement with the firm and that the firm's invoiced sums for resisting an application to set aside the freezing order ("Setting

18 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [64].
19 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [66].
20 Cap 161, R 8, 1999 Rev Ed.
21 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [67].
22 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [69].
23 *H&C S Holdings Pte Ltd v Gabriel Law Corp* [2018] SGHC 168 at [70].
24 [2018] SGDT 11.

Aside Application") and the summary judgment application ("Summary Judgment Application") ought to have been included in a package fee quote in an engagement letter dated 12 May 2014 ("12 May Engagement Letter").[25] The respondent's position was that the 12 May Engagement Letter merely contained a fee estimate and was not a fixed fee agreement. In any event, the Setting Aside Application and Summary Judgment Application were outside the fee quote in the 12 May Engagement Letter.[26]

21.14 The Law Society charged both of the respondents for breaching s 112(3) of the LPA, such conduct being misconduct unbefitting an advocate and solicitor pursuant to s 83(2)(*h*) of the LPA.[27] The respondents argued that the charges were defective as it did not set out any *mens rea*. The respondents further submitted that there was no case to answer.

21.15 The DT found that the charges were bad as *mens rea* was an essential ingredient of each charge but was not set out.[28] *Mens rea* is an essential requirement for all s 83(2)(*h*) charges, unless the underlying rule alleged to have been breached is one which imposes strict liability on the advocate and solicitor.[29] A claim by advocate and solicitor for fees which goes beyond the terms of a fee agreement under s 11 of the LPA is not in itself misconduct unbefitting an advocate and solicitor.[30]

21.16 The DT agreed that there was no *prima facie* case to answer. The DT found that the 12 May Engagement Letter, objectively construed, did not amount to a fee agreement within the meaning of s 111(1) of the LPA.[31] In any event, the Setting Aside Application was outside the scope of the S$30,000 quoted for the Freezing Order in the 12 May Engagement Letter. The first respondent had also sent the complainant an e-mail dated 11 March 2014 to put on record that the firm would charge separate costs for acting in any Setting Aside

25 *The Law Society of Singapore v Tan Siew Bin, Ronnie and Masagoes Abdul Karim* [2018] SGDT 11 at [2]–[5].
26 *The Law Society of Singapore v Tan Siew Bin, Ronnie and Masagoes Abdul Karim* [2018] SGDT 11 at [6].
27 *The Law Society of Singapore v Tan Siew Bin, Ronnie and Masagoes Abdul Karim* [2018] SGDT 11 at [9].
28 *The Law Society of Singapore v Tan Siew Bin, Ronnie and Masagoes Abdul Karim* [2018] SGDT 11 at [111].
29 *The Law Society of Singapore v Tan Siew Bin, Ronnie and Masagoes Abdul Karim* [2018] SGDT 11 at [107].
30 *The Law Society of Singapore v Tan Siew Bin, Ronnie and Masagoes Abdul Karim* [2018] SGDT 11 at [111].
31 *The Law Society of Singapore v Tan Siew Bin, Ronnie and Masagoes Abdul Karim* [2018] SGDT 11 at [73].

Application.[32] Although the work done for the Setting Aside Application could possibly be within the S$20,000 quoted for interlocutory applications, it was validly varied by subsequent agreement. The firm subsequently quoted an additional S$30,000 for work on the Summary Judgment Application and the complainant had instructed the firm to proceed without objecting to the additional quote.[33]

Conflict of interests

Acting against a former prospective client

21.17 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani*[34] involved an application by the plaintiff for an injunction to restrain the law firm representing the defendant ("the Firm") from continuing to act for the defendant in a pending action brought by the plaintiff, a former prospective client of the Firm. In dismissing the application, the High Court set out some important legal principles relating to the circumstances in which the court would restrain a law firm or a lawyer from acting against a former prospective client.

21.18 The facts are briefly as follows. In August 2016, the plaintiff contacted the Firm with the intention of appointing the Firm to act for her against the defendant (who was the plaintiff's sister) in relation to the defendant's alleged unauthorised withdrawals from bank accounts which were in the plaintiff's and the defendant's joint names. Two lawyers (A and B) from the Firm met with the plaintiff, her daughter and her friend on 20 October 2016, and what was communicated at this meeting was a matter of dispute in the present case. After the meeting, B from the Firm sent the plaintiff an e-mail inviting her to sign an appointment letter and a warrant to act, and asking for payment of an initial amount of S$10,000 so that he and A could start work, as well as information and documents relevant to the plaintiff's potential claims. The plaintiff did not respond to this e-mail and eventually did not appoint the Firm to act for her, but appointed another firm in November 2016 instead. The defendant eventually appointed the Firm to act for her. After the parties failed to resolve the issue by letter, the plaintiff

32 *The Law Society of Singapore v Tan Siew Bin, Ronnie and Masagoes Abdul Karim* [2018] SGDT 11 at [78].

33 *The Law Society of Singapore v Tan Siew Bin, Ronnie and Masagoes Abdul Karim* [2018] SGDT 11 at [83]–[91].

34 [2018] 5 SLR 894.

applied to the court to restrain the Firm from acting for the defendant in the underlying action.[35]

21.19 Although the plaintiff's case was based on a direct application of r 21 of the Legal Profession (Professional Conduct) Rules 2015[36] ("PCR"), the court held that the PCR do not govern an application for an injunction to protect confidential information, and that the applicable principles are instead to be drawn from the common law.[37] The court then examined two broad questions: (a) whether the Firm should be restrained from acting against the plaintiff under the law on breach of confidence; and (b) whether the Firm should be restrained from acting against the plaintiff on the basis of the court's supervisory jurisdiction.

Law on breach of confidence

21.20 After reviewing the relevant Singapore and Commonwealth case law, the court set out the following test which must be satisfied by a *former prospective client* who seeks to restrain a law firm from acting on the ground of protecting confidential information belonging to him. The former prospective client must show that:

> (a) the law firm is in possession of information which is confidential to him and to the disclosure of which he has not consented;
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> (b) the information is or may be relevant to the new matter in which the interest of the other client is or may be adverse to his own; and
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> (c) there is a risk that the information will come into the possession of those now acting for the new client.[38]

21.21 The distinction between the tests applicable to a former prospective client and a former client lies in the burden of proving the risk of disclosure, *after* the applicant has shown that the firm is in possession of relevant confidential information:

> (a) In a case concerning a former prospective client, the burden is on the *applicant* to demonstrate a risk of disclosure,

35 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [3]–[9].
36 S 706/2015.
37 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [17], [24] and [25].
38 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [47].

that is, that the firm has taken ineffective measures to ensure that no disclosure will occur.

(b) On the other hand, in a case concerning a former client, the burden falls on *the firm* to prove the absence of a risk of disclosure, that is, the firm needs to show clear and convincing evidence that effective measures have been taken to ensure that no disclosure will occur.[39]

21.22 In addition, the fact that a former prospective client is able to satisfy this test does not mean that he would be automatically entitled to an injunction that restrains the law firm from acting. In those cases, the courts have preferred to grant an injunction whose effect is to restrain only the use of the confidential information in question, as opposed to restraining the law firm from acting for the defendant entirely.[40]

21.23 On the facts, the court found that the plaintiff failed to establish that the Firm, through A and B, was in possession of information belonging to the plaintiff that was either confidential to the plaintiff or relevant in the requisite sense to her pending action. This was sufficient ground for declining to restrain the Firm from acting under the law on breach of confidence.[41]

Court's supervisory jurisdiction

21.24 The court held that it does have a supervisory jurisdiction to regulate the conduct of its officers which is distinct from its jurisdiction arising from the law on breach of confidence.[42] The test is whether there is an actual or reasonably perceived risk that the proper administration of justice would be prejudiced unless the lawyer in question is removed. Whether the alleged risk is reasonably perceived must be assessed objectively through the eyes of the fair-minded observer. The types of risk that would prejudice the proper administration of justice constitute a narrow and exceptional category.[43] While the question whether a given rule in the PCR has been breached or is at risk of being breached may serve as an analytical tool for determining whether the supervisory jurisdiction ought to be invoked, it is imperative for the court not to

39 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [47] and [67].

40 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [48].

41 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [66].

42 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [73].

43 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [81].

express any final opinion whether any particular rule has been breached, as the proper forum for such a determination is the Law Society.[44] The court also cautioned that great care must be taken not to adopt an expansive view of this supervisory jurisdiction.[45]

21.25 On the facts of the case, the court held that there was no reason why the Firm should be restrained from acting under the court's supervisory jurisdiction. It was not suggested that the proper administration of justice would be prejudiced unless the defendant's current lawyers from the Firm or the Firm itself were restrained from acting. In any event, in the light of the court's rejection of the allegation that the Firm was in possession of confidential information belonging to the plaintiff which could be used to her prejudice in the pending action, there was no basis for any actual or reasonably perceived risk that the proper administration of justice would be prejudiced unless the Firm were removed.[46]

21.26 For completeness, the Firm undertook that they would maintain the information barrier (or "Chinese Wall") which the Firm had put in place since around November 2017. The court noted that the continued maintenance of the Firm's information barrier, although not strictly necessary (in the light of the court's finding that the Firm was not in possession of relevant confidential information belonging to the plaintiff), would contribute positively to meeting the plaintiff's residual concerns about the Firm's continuing to act for the defendant, removing any semblance of impropriety from the Firm's representation of the defendant and ensuring more broadly that justice in the pending action not only be done but is seen to be done.[47]

Failure to advance client's interests unaffected by interests of any other person

21.27 In *The Law Society of Singapore v Ezekiel Peter Latimer*,[48] the Law Society had preferred three charges against the respondent for breaching ss 83(2)(*b*) and 83(2)(*h*) of the LPA as well as rr 25(*a*), 25(*b*), 30(1) and 56 of the PCR for, *inter alia*:[49]

44 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [83].
45 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [82].
46 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [84].
47 *Harsha Rajkumar Mirpuri v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894 at [72].
48 [2018] SGDT 1.
49 *The Law Society of Singapore v Ezekiel Peter Latimer* [2018] SGDT 1 at [4].

(a) "improper conduct and practice as an advocate and solicitor" in that, while he had acted for an accused person facing a criminal charge ("Sunil"), he had:

> … failed to advance [Sunil's] interests unaffected by [his] own interest and the interest of any other person, by acting in or preferring [his] own interest and/or the interest of Dipti [that is, Sunil's former employer][;]

(b) "grossly improper conduct in the discharge of [his] professional duty as an advocate and solicitor" or "misconduct unbefitting of an advocate and solicitor" in that:

> … whilst [he] acted for Sunil in respect of the criminal charge that he was facing, and knowing the instruction given by Sunil was opposed to Dipti's, [he] failed to decline to advise Dipti and failed to advise Dipti to obtain independent legal advice[;]

and

(c) "improper conduct and practice as an advocate and solicitor" by:

> … includ[ing] an explanation as to how the offence was committed in [a letter] … to the [Attorney-General's Chambers ("AGC")] that did not reflect the actual instruction received from Sunil

and thus having "knowingly deceived or [misled] the [AGC]".

21.28 Peter Ezekiel had acted for both an employer and an employee who were charged with falsely declaring to the Ministry of Manpower that the latter's salary was S$1,800, when it was in fact S$1,200.

21.29 Sunil and his employer, Dipti, had been charged with falsely declaring his monthly salary when applying for a work permit. In October 2015 Sunil had engaged the respondent to represent him in the criminal proceedings. A month later in November 2015, Dipti also engaged the respondent to represent her. The respondent only discharged himself from representing Sunil in March 2016.

21.30 The DT convicted the respondent on the first and third charges.

21.31 With regard to the first charge, the DT noted that Sunil had "on several occasions" told the respondent that Dipti had cheated him, but the respondent had "done nothing about it".[50] Although it was "the respondent's duty as Sunil's lawyer" to consider the alleged deceit, the

50 *The Law Society of Singapore v Ezekiel Peter Latimer* [2018] SGDT 1 at [50].

respondent ignored Sunil's statements "in view of the fact that he was already acting for Dipti at the time and that this would affect her case".[51] Since the respondent, "an experienced lawyer", would have realised that "a conflict or at the least, a potential conflict situation" would arise if Dipti had deceived Sunil,[52] the respondent should not have simply disregarded Sunil's allegation of deceit. His doing so showed that he had preferred Dipti's interests to Sunil's, so the first charge was made out.

21.32 For the third charge, since the respondent had not only ignored Sunil's allegations but had also "carefully" drafted a letter to AGC to "give the impression that Sunil had believed what he was told by Dipti", this "material" omission would have given the AGC "the wrong impression of the facts".[53] Therefore, he had deceived or misled the AGC, and the third charge was made out.

21.33 On sentencing, the DT held that the breaches were serious enough to warrant a penalty and not a reprimand,[54] and so fined the respondent S$3,000 plus disbursements.[55] The Court of Three Judges subsequently disagreed with the DT and found that the respondent's conduct was grossly improper and imposed a three-year suspension on the respondent.[56]

Not advising a client to make third-party claim against a person who introduced the client to the firm

21.34 In *The Law Society of Singapore v Mahtani Bhagwandas*,[57] the complainant complained that the respondent failed to advise him to commence a third-party claim in High Court Suit No 1026 of 2013 ("Suit 1026") against one Samuel Chai Kang Wai and/or Southstar Asset Management Limited as the respondent wished to avoid offending Samuel Chai (who had referred the dispute to the respondent).

21.35 In Suit 1026, the plaintiff, Assus Shipping Ventures SA, sued the complainant (the first defendant) and Sanya International Investments (the second defendant) for breach of an agreement in which Assus appointed the complainant and Sanya to receive US$7.1m, which represented part of the sale proceeds of a vessel. The respondent had pleaded on behalf of the complainant the defences that (a) the

51 *The Law Society of Singapore v Ezekiel Peter Latimer* [2018] SGDT 1 at [53].
52 *The Law Society of Singapore v Ezekiel Peter Latimer* [2018] SGDT 1 at [54]–[55].
53 *The Law Society of Singapore v Ezekiel Peter Latimer* [2018] SGDT 1 at [57].
54 *The Law Society of Singapore v Ezekiel Peter Latimer* [2018] SGDT 1 at [77].
55 *The Law Society of Singapore v Ezekiel Peter Latimer* [2018] SGDT 1 at [78].
56 *Law Society of Singapore v Ezekiel Peter Latimer* [2019] SGHC 92 at [81].
57 [2018] SGDT 10.

complainant never assumed personal liability as he always dealt for and on behalf of Sanya; and (b) in any event, the plaintiff had instructed Sanya to transfer the proceeds to Southstar and this was done.

21.36 The respondent was charged with:

> (a) contravening r 25(*a*) and/or 25(*b*) of the Legal Profession (Professional Conduct) Rules 2010[58] ("PCR 2010") (requiring the advancement of the client's interests unaffected by the interest of himself and/or his law corporation), such breach amounting to improper conduct within the meaning of s 83(2)(*b*) of the LPA or alternatively, misconduct unbefitting of an advocate and solicitor within the meaning of s 83(2)(*h*) of the LPA; and
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> (b) contravening rr 11A(2)(*c*) and/or 11A(2)(*d*) of the PCR 2010 (requiring that referrals not affect the advice given to client and advising the client impartially and independently), such breach amounting to improper conduct within the meaning of s 83(2)(*b*) of the LPA or alternatively, misconduct unbefitting of an advocate and solicitor within the meaning of s 83(2)(*h*) of the LPA.

21.37 The DT held that given the strength of the defence, there was no necessity for third-party proceedings to have been commenced and the respondent did not fail in his duty to the complainant by not advising him to commence third party proceedings.[59]

Failure to conduct proper know-your-client checks

21.38 In *Law Society of Singapore v Chan Chun Hwee Allan*,[60] the Court of Three Judges sentenced the respondent to a two-year suspension and a fine of S$100,000 for receiving and transferring moneys without verifying clients' identities or obtaining satisfactory evidence as to the nature and purpose of the transactions.

21.39 The respondent was introduced to a person who went by the name of Sir Robert Cowley ("Cowley") by a mutual acquaintance in or around 2005. After the respondent and Cowley developed a relationship, in June 2006, Cowley represented to the respondent that two companies ("IBMFS" and "ISSA"), of which Cowley was the chairman, were in need of certain legal services, namely (a) to give advice on Singapore law and investment opportunities; and (b) to act as an escrow agent. As an

58 Cap 161, R 1, 2010 Rev Ed.
59 *The Law Society of Singapore v Mahtani Bhagwandas* [2018] SGDT 10 at [34].
60 [2018] 4 SLR 859.

escrow agent, the respondent was to receive funds into the respondent's client accounts and then carry out onward transmissions of funds as directed by Cowley or the two companies. Given Cowley's apparent social standing, the respondent was satisfied as to his identity and did not think it necessary to carry out any further background checks. Instructions for the transfer of moneys in and out of the respondent's client accounts came from someone he knew as James Serry, who claimed to be the treasurer of IBMFS, and another person he knew as Paul Scribner, who claimed to be the chief executive officer of ISSA.[61]

21.40 Between May and August 2008, IBMFS instructed the respondent to receive money which it would remit to him and to transfer the said money on IBMFS's directions. Before accepting instructions from IBMFS, the respondent did not take any measures to ascertain the identities of the natural persons who had a controlling interest in or who exercised effective control over the corporate entity. The respondent proceeded to act for IBMFS as instructed in the transfers of substantial sums of money, which were unusual in the ordinary course of business. When accepting the said instructions, the respondent also failed to obtain satisfactory evidence as to the nature and purpose of the business relationship with IBMFS in the matter and the business relationship between IBMFS and any other party to the matter.[62] A similar series of events occurred in relation to ISSA between October and November 2011.[63] In all, sums totalling A$55,000, €30,000 and nearly US$2m were transferred by the respondent in 2008 and 2011.[64] For his services, the respondent was authorised to deduct a fixed amount from the outgoing transfers of funds as his legal fees. From the transactions in 2011 alone, the respondent earned about US$90,000.[65]

21.41 One of the preliminary issues before the court pertained to the lapse of time between the date of the conduct complained of and the date on which the complaint was first made to the Law Society. Under ss 85(4A)(*a*) and 85(4C) of the LPA, should a complaint of a solicitor's conduct be made after six years from the date of the conduct in question, the Council of the Law Society ("the Council") may only refer the complaint to the chairman of the Inquiry Panel with the leave of the court.[66] In the present case, out of the 16 transactions complained of, half of them were effected in 2008, which was more than six years before the occurrence of the conduct complained of. Since leave of the court

61 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [6]–[7].
62 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [9].
63 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [10].
64 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [11].
65 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [12].
66 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [27].

was not obtained pursuant to s 85(4C) of the LPA in respect of the conduct complained of in 2008, the court could only consider the transactions that were carried out in 2011 and the charges arising from the same.[67] In this regard, the court observed that it might well have been within the court's disciplinary jurisdiction to *retrospectively* grant leave to the Council to refer the complaint to the Inquiry Panel and to ratify the disciplinary proceedings that were already on foot.[68] It also noted that had an application for the court's leave been made pursuant to s 85(4C) of the LPA at the hearing before the court, this might well have been one such case where the court would have granted such leave retrospectively.[69]

21.42 The respondent had pleaded guilty to all four of the main charges against him and admitted to the statement of facts before the DT.[70] On the facts, the court had no hesitation in finding that due cause for the imposition of sanctions under s 83(1) of the LPA was shown. The respondent had failed to perform even the most basic background checks into his clients' identities before accepting instructions and to obtain evidence as to his clients' business relationship in matters unusual in the ordinary course of business. He was also unable to adequately explain the purposes of the individual transactions.[71] In light of the vulnerability of the legal profession to being made use of by money launderers and the added imperative on lawyers to be particularly vigilant as to the provenance and the objective of remittances made through their firms, the respondent's conduct was not merely a technical breach but a substantial breach by a solicitor who allowed his client to abuse the position of the solicitor and take advantage of the cloak of respectability that was afforded by having the solicitor effect those transfers.[72]

21.43 As regards sentencing, the court held that a substantial period of suspension was warranted because (a) the respondent undertook no due diligence of any sort; (b) he carried out the transactions without asking any question as to why he was being asked to effect these transfers when this question cried out to be answered; (c) he was paid on a percentage basis, which meant that he was earning fees that bore no relationship whatsoever to the effort he was putting to effect the transfers; and (d) the sums involved were substantial. The respondent's past convictions were a material aggravating factor, whereas the sole

67 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [28].
68 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [30].
69 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [32].
70 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [35].
71 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [36].
72 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [37]–[38].

mitigating factor was that the respondent had pleaded guilty and did not contest the charges in any real sense. The court considered that a two-year suspension was appropriate in the circumstances.[73]

21.44 The court also imposed the maximum fine of S$100,000 under ss 83(1)(*c*) read with 83(1)(*e*) of the LPA on the respondent so as to make the respondent disgorge as much of the profits he earned on those transactions as it was possible to do, and to serve as a general deterrent against similar breaches in the future.[74] The respondent was also ordered to pay costs.[75]

Conduct of court proceedings

Affidavits

21.45 In *The Law Society of Singapore v Sham Chee Kiat*,[76] the respondent was charged with, *inter alia*, breaching r 5(2)(*c*) of the PCR (failing to act with reasonable diligence and competence in his provision of services to his client) in that he included, or caused to be included in an affidavit deposed by his client, a statement of fact which he ought to have known was inaccurate and false.

21.46 The facts in brief were:

(a) The assistant registrar's notes of evidence at a pretrial conference had recorded the respondent as saying: "On the issue of bifurcation, I agree with my learned friend that the matter should be bifurcated. I will make the necessary application within two weeks."[77]

(b) There was evidence that the respondent's client later changed her mind about bifurcation.[78]

(c) The defendant in the suit applied for bifurcation and filed a supporting affidavit stating that the respondent had informed the court at the PTC "that their client was agreeable to bifurcation and that they would make the application for bifurcation by 16 March 2016".[79]

73 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [44]–[46] and [51].
74 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [52]–[53].
75 *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [55].
76 [2018] SGDT 5.
77 *The Law Society of Singapore v Sham Chee Kiat* [2018] SGDT 5 at [4].
78 *The Law Society of Singapore v Sham Chee Kiat* [2018] SGDT 5 at [7].
79 *The Law Society of Singapore v Sham Chee Kiat* [2018] SGDT 5 at [11].

(d) In response to the defendant's affidavit, the respondent's client filed an affidavit which stated:

> My solicitor did not inform the court that they would make an application for bifurcation by 16 March 2016. The Defendant had misquoted and twisted the words of my solicitor in paragraph 13 of the affidavit dated 23rd May 2016 in stating that my solicitor informed the court that the make the application for bifurcation by 16 March 2016 which statement is false. ['the Statement']

21.47 The DT found that the respondent had, in failing to remove the Statement from the draft affidavit, failed to act with reasonable diligence and competence in providing services to his client. However, the respondent was not dishonest in causing or allowing the Statement to appear in the affidavit.[80] The DT therefore found the respondent guilty of conduct unbefitting an advocate and solicitor within the meaning of s 83(2)(*h*) of the LPA in that he failed to act with reasonable diligence and competence in his provision of services to the client but not the more serious s 83(2)(*b*) of the LPA relating to grossly improper conduct in the discharge of his professional duty.[81] The respondent was ordered to pay a penalty of S$5,000[82] and costs of S$7,000 plus disbursements to the Law Society.[83]

Creation of fictitious documents and false representations

21.48 In *The Law Society of Singapore v G B Vasudeven*,[84] the respondent had drafted an investment agreement under which one Dr Shanmuganathan had a claim against the complainant. When the complainant failed to pay Dr Shanmuganathan sums due under the investment agreement, the respondent represented Dr Shanmuganathan in obtaining judgment in default of appearance against the complainant. Thereafter, Dr Shanmuganathan instructed the respondent to commence bankruptcy proceedings against the complainant. However, the respondent did not do so. The complainant alleged that the respondent had falsely represented to him that bankruptcy proceedings had been instituted and would be held in abeyance if certain payments were made to the respondent. In the course of doing so, the respondent prepared fictitious affidavits and court documents.

80 *The Law Society of Singapore v Sham Chee Kiat* [2018] SGDT 5 at [76].
81 *The Law Society of Singapore v Sham Chee Kiat* [2018] SGDT 5 at [77]–[78].
82 *The Law Society of Singapore v Sham Chee Kiat* [2018] SGDT 5 at [84].
83 *The Law Society of Singapore v Sham Chee Kiat* [2018] SGDT 5 at [85].
84 [2018] SGDT 12.

21.49 Five charges were preferred against the respondent for grossly improper conduct within the meaning of s 83(2)(*b*) of the LPA or, in the alternative, misconduct unbefitting an advocate and solicitor within the meaning of s 83(2)(*h*) of the LPA:

> (a) The respondent procured the complainant to pay him four payments totalling S$15,290 by falsely representing that the payments would enable him to keep in abeyance Dr Shanmuganathan's bankruptcy proceedings against the complainant when no such proceedings had been commenced (the first charge).
>
> (b) The respondent had prepared a fictitious document purported to be an affidavit and procured the complainant to depose to the same before a Commissioner for Oaths on the false representation that the document was being filed in court to keep in abeyance Dr Shanmuganathan's bankruptcy proceedings against the complainant when no such proceedings had been commenced (the second charge).
>
> (c) The respondent prepared a fictitious document entitled "Requisition to Registrar for Payment into Court pursuant to Directions of Court" and in doing so forged the electronic seal of the Supreme Court by electronically extracting the seal from another court document and affixing the same to the document in question (the third charge).
>
> (d) The respondent prepared a fictitious document purporting to be an affidavit dated 9 September 2016, and in doing so, forged the signature of the complainant, and signatures and stamps of the Commissioner for Oaths (the fourth charge).
>
> (e) The respondent falsely represented to his client, Dr Shanmuganathan, that bankruptcy proceedings had been commenced against the complainant knowing that the said representation was false (the fifth charge).

21.50 The respondent pleaded guilty to the third and fifth charges. The DT found that the fourth charge was made out.[85] However, the first and second charges were not made out beyond a reasonable doubt.[86] The DT found that there was a "distinct possibility that the complaint was brought by the [complainant] with the motive of putting pressure on the Respondent to assume the debt".[87]

85 *The Law Society of Singapore v G B Vasudeven* [2018] SGDT 12 at [62].
86 *The Law Society of Singapore v G B Vasudeven* [2018] SGDT 12 at [48].
87 *The Law Society of Singapore v G B Vasudeven* [2018] SGDT 12 at [55].

21.51 As regards the third, fourth and fifth charges, the DT found that cause of sufficient gravity for disciplinary action existed under s 83 of the LPA.[88]

Witness preparation

21.52 In *The Law Society of Singapore v Harpreet Singh*,[89] charges were brought against three respondents in relation to their conduct in the preparation of the trial in High Court Suit No 178/2012, the decision of which is set out in *Compagnia de Navegacion Palomar, SA v Ernest Ferdinand Perez De La Sala*.[90] The respondents acted for the defendant, Ernest, in an action by the plaintiff company for recovery of shares, assets or funds that Ernest had transferred to himself. In support of his case, Ernest called several family members, including one Tony, as witnesses. During the trial of the suit, it came to light that Tony was relying on a document to assist him in giving evidence during cross-examination, which was marked as "Exhibit D-3", and that the respondents had conducted "training sessions" before trial during which Ernest and his supporting witnesses, "practised" their evidence in the presence of each other.

21.53 The Law Society brought charges against the respondents for grossly improper conduct within the meaning of s 83(2)(*b*) of the LPA, or breaches of r 54 of the PCR as amounting to improper conduct within the meaning of s 83(2)(*b*) of the LPA, in that, in acting for Ernest, they had organised witness training sessions with the witnesses, which risked or led to evidence contamination, and, by doing so, had conducted the proceedings of the suit in a manner which was against the interests of justice and professional ethics.[91]

21.54 The DT found that:

> (a) the Law Society failed to establish beyond a reasonable doubt that the respondents had, by the manner in which they conducted the witness preparation sessions, created a risk that the evidence would be contaminated; and
>
> (b) Exhibit D-3 was not prepared at the direction or interference of the respondents, but was created by Tony and Elena between themselves.[92] The respondents were not aware of

88 *The Law Society of Singapore v G B Vasudeven* [2018] SGDT 12 at [66].
89 [2018] SGDT 7.
90 [2017] SGHC 14.
91 *The Law Society of Singapore v Harpreet Singh* [2018] SGDT 7 at [3.1].
92 *The Law Society of Singapore v Harpreet Singh* [2018] SGDT 7 at [7.4].

the existence of Exhibit D-3 until it was revealed to the court by Tony.

21.55 The DT therefore dismissed[93] the charges against the respondents and made no order as to costs.[94]

21.56 The Court of Appeal in *Ernest Ferdinand Perez De La Sala v Compahia De Navegacin Palomar, SA*[95] laid down three rules on witness preparation:[96]

(a) The solicitor in preparing (not coaching or training) the witness, must not allow other persons – including the solicitor – to supplant or supplement the witness's own evidence.

(b) The preparation should not be too lengthy or repetitive.

(c) Witness preparation should not be done in groups.

The DT opined that the three rules were "rules of thumb" and were not to be applied mechanistically. Further, it could not be said that the rules were necessarily ethical rules, a breach of which would inevitably entail professional sanctions as the Court of Appeal judgment dealt primarily with the credibility and weight to be accorded to a witness' testimony.[97]

Improper questions during cross-examination

21.57 The Court of Three Judges decision in *Law Society of Singapore v Wong Sin Yee*[98] concerned the conduct of the respondent during his cross-examination of a victim of outrage of modesty. The respondent acted as counsel for the accused person in that matter. In the course of the said cross-examination, the respondent, *inter alia*, pressed the victim on whether she thought she was attractive and suggested that he thought she was, and required the victim to stand up and subjected her to physical scrutiny. When the victim asked if this was necessary and said that she was offended by it, the respondent told her that he would be asking her even more insulting questions. After the trial judge intervened to find out what the point of the respondent's cross-examination was, it emerged that the respondent was trying to mount a case that the victim was *unattractive* such that the respondent's client would not have been motivated to outrage her modesty and any contact

93 *The Law Society of Singapore v Harpreet Singh* [2018] SGDT 7 at [9.1.2].
94 *The Law Society of Singapore v Harpreet Singh* [2018] SGDT 7 at [9.2].
95 [2018] 1 SLR 894.
96 *Ernest Ferdinand Perez De La Sala v Compahia De Navegacin Palomar, SA* [2018] 1 SLR 894 at [138]–[140].
97 *The Law Society of Singapore v Harpreet Singh* [2018] SGDT 7 at [8.12.6].
98 [2018] 5 SLR 1261.

that took place was accidental.[99] The respondent then made certain remarks including:

(a) "I want to see whether how – what's the size of –";

(b) "if she is wearing very low cut";

(c) "with a very voluptuous breast protruding out, half cut";

(d) "her breast size and all these thing"; and

(e) "whether there is this temptation for anybody or the accused to do such a thing".[100]

21.58 The court observed that the ethical duties of counsel conducting cross-examination are clear.[101] They are informed by both the PCR 2010 and the Evidence Act[102] ("EA"). Implicit in the provisions of the EA is the understanding that a balance must be struck between giving the cross-examiner sufficient latitude to challenge and discredit a witness's evidence, and protecting the witness from abuse or personal attack.[103] Where questions are "indecent or scandalous", the criterion for permitting them is *relevance* to the facts in issue.[104] On the other hand, questions "intended to insult or annoy" or which are "needlessly offensive in form" are to be absolutely forbidden even if they may have some bearing on the issues before the court.[105] It is a lawyer's responsibility to exercise his or her own judgment to perform cross-examination in a respectful and honourable manner, and counsel's duty to conduct himself honourably is not lessened by the existence of the court's power to forbid improper or offensive questions.[106]

21.59 In this case, the court found that the respondent's conduct of cross-examination of the victim was both irrelevant and wholly impermissible. Relevance can and should be objectively assessed by the court. In the present case, the court held:

(a) The inquiry into the correlation between the victim's attractiveness and the "temptation" or "motive" to molest was misguided and there was no evidence to support a contention that there was such a correlation.[107]

99 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [6].
100 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [11].
101 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [25].
102 Cap 97, 1997 Rev Ed.
103 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [28].
104 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [31].
105 Evidence Act (Cap 97, 1997 Rev Ed) s 154. *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [32].
106 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [34].
107 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [39].

(b) How pretty the victim thought she was, and how pretty the respondent thought the victim was, were entirely irrelevant.[108]

(c) It was cruel and humiliating to suggest to the victim that she was attractive, and to physically scrutinise her to the point that she felt uncomfortable and offended, only to then suggest that she was so unattractive that her testimony that she was deliberately molested could not be believed.[109]

(d) Although the respondent's exchange with the trial judge in the victim's presence was not directed at the victim and was not uttered during cross-examination, the court found that the respondent's language was inappropriate and needlessly crude, and appeared to blame victims of molestation generally for the assault by dressing provocatively.[110]

21.60 The court held that the reasonable conclusion to be drawn (and which the court did draw) was that the respondent had embarked on this line of cross-examination in order to humiliate the victim. The respondent's conduct was disgraceful and a clear abuse of the privileges of cross-examination that are entrusted to an advocate. The questions were not only asked without reasonable grounds but were also indecent, scandalous and calculated to insult or annoy, and clearly infringed the standards set out in the EA as well as the prohibitions in r 61(*a*) of the PCR. As such, the court was satisfied that all the charges had been made out beyond a reasonable doubt and the respondent's conduct reached the level of egregiousness that amounted to "grossly improper conduct" under s 83(2)(*b*) of the LPA.[111]

21.61 As regards sentencing, in the absence of any mitigating factor and in light of the respondent's long list of antecedents which cast doubt over his ability to act in a manner befitting a member of the legal profession, the court imposed on the respondent the maximum term of a five-year suspension.[112]

Notary public notarising signature without witnessing signature

21.62 In the Court of Three Judges decision of *Law Society of Singapore v Chia Choon Yang*,[113] the respondent, a solicitor and notary

108 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [40].
109 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [41].
110 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [42].
111 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [45].
112 *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [61].
113 [2018] 5 SLR 1068.

public at the material time, falsely attested on a notarial certificate issued by him that he had witnessed one Loy's signing of a Power of Attorney ("POA") when in fact he had not.[114] The respondent admitted that by his conduct, he had falsely represented that he had verified the identity of the signatory (namely, Loy) and that Loy had signed the POA before him.[115] The respondent did not contest the charges against him before the DT,[116] and it was undisputed that the respondent was guilty of grossly improper conduct.[117] The respondent had voluntarily suspended his practice since April 2017, and this self-imposed suspension had lasted more than a year by the time of his show cause proceedings before the court.[118]

21.63 On the issue of the appropriate sanction to be imposed, the court first noted that the respondent's act of false attestation in this case *necessarily* involved dishonesty given that he had asserted a fact or a state of affairs that he knew was untrue. The respondent might not have known whether Loy had in fact signed the POA, but he did know that Loy had done no such thing *in his presence*. He did so knowing that third parties would or might rely on his seal and notarial certificate in treating the POA as genuine and validly executed.[119]

21.64 The court reiterated that misconduct of a solicitor that involves dishonesty is treated with utmost severity, and there are three broad categories of cases where dishonesty will almost invariably lead to an order for striking off:

> (a) where the errant solicitor has been convicted of a criminal offence involving dishonesty that implies a "defect of character" that renders him unfit for the profession;
>
> (b) where the errant solicitor fails to deal appropriately with his client's money or his firm's accounts. This category of cases would also include instances where the solicitor has been dishonest in his dealings with the client such that there is a violation of the relationship of trust and confidence that inheres in the solicitor–client relationship; and
>
> (c) where the errant solicitor is fraudulent in his dealings with the court, or breaches his duty of candour to the court and violates his obligations as an officer of the court. This is rooted

114 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [6]–[9].
115 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [10].
116 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [5].
117 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [12].
118 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [14].
119 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [15].

in the fact that at the core of the solicitor's role is the duty to assist in the administration of justice.[120]

21.65 Other than the three categories above, there is a "small category" of cases that fall outside the three categories of cases in which striking off is the presumptive penalty to be imposed on the solicitor who has been dishonest. In this small category, the court will have to examine the facts of the case closely in order to determine whether striking off is in fact warranted.[121] In particular, the court should ascertain the following non-exhaustive factors:

(a) the real nature of the wrong and the interest that 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 that the errant solicitor ought to have or in fact recognised.[122]

21.66 Once it has been determined that striking off is not warranted, the next step is to determine the appropriate sanction. In this regard, given the gravity of misconduct involving dishonesty, it would be a rare case in which a mere censure or fine would be sufficient.[123]

21.67 Applying the principles to the facts:

(a) The court first held that an order for striking off would be excessive. The respondent's dishonesty did not fall within the categories of cases where the presumptive sanction of striking off would apply. The respondent knew the person (one Li) who assured him that Loy had signed the POA, and sincerely believed Li's assurances. The respondent did not act out of self-interest. The court found that the respondent's misconduct arose from a serious lapse of judgment and did not indicate a

120 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [19].
121 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [25].
122 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [40].
123 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [41].

defect in character. The respondent was also genuinely remorseful for his actions.[124]

(b) The court found that a period of suspension was appropriate in this case. The POA in this case gave the donee (Li) wide powers such that the potential for harm was considerable.[125] Moreover, that Li was both the beneficiary of the POA and the person seeking to have the POA notarised ought to have alerted the respondent to the potential for mischief. This rendered the respondent's failure to ensure that he was attesting truthfully more serious, and was a factor to be taken into account in determining the appropriate sanction.[126]

(c) At the same time, the court took into account the fact that the respondent had voluntarily ceased practice. There is a public interest in encouraging solicitors in such circumstances to voluntarily cease practice, and some credit should be given to the respondent.[127] However, such credit will not be to the full extent of the self-imposed suspension because it is not for an offender to determine his own punishment.[128]

(d) The court suspended the respondent for a term of 15 months and also ordered him to bear the costs and disbursements of the application.[129]

21.68 This case is a timely reminder to all notaries public to properly discharge their duties. As emphasised by the court, a notary public has an important role in assuring the authenticity of documents and the identities of the signatories.[130] In this regard, it is pertinent for all notaries public to take note of the "Checklist of Recommended Steps" set out in the *Notaries Public Manual* published by the Singapore Academy of Law.[131] These recommended steps include (among others):[132]

(a) Ensure the deponent is present and has been identified before the notary takes or attests his affidavit or statutory declaration. The deponent should be asked to identify himself by producing his passport or identity card.

124 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [44].
125 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [50].
126 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [51].
127 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [52].
128 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [53].
129 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [54].
130 *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [12].
131 G0011/CONP.
132 Singapore Academy of Law, *Notaries Public Manual: For Advocates and Solicitors* (G0011/CONP) at pp 10–11.

(b) Ensure that the deponent understands what he is about to swear to; that he knows that he is about to execute the document in the notary's presence; that the exhibits referred to in his affidavit or declaration (if any) referred to in his document are in fact correctly attached.

(c) Ensure that the notary is satisfied that the deponent is apparently competent to depose to the document.

(d) When documents are to be executed by a company under its common seal or by an attorney on its behalf, it is the duty of the notary to satisfy himself:

(i) that the company is not acting *ultra vires*; and

(ii) that it has passed an appropriately worded resolution authorising the use of its common seal; and in the case of an attorney executing on behalf of a company, that such attorney has been properly appointed by the company under its common seal or otherwise in accordance with its memorandum and articles of association.

Contempt of court

21.69 In *The Law Society of Singapore v Eugene Thuraisingam*,[133] the respondent had published on his public Facebook page a poem for which he was found guilty (separately) of contempt of court. The Law Society charged the respondent with conduct unbefitting an advocate and solicitor within the meaning of s 83(2)(*h*) of the LPA. The respondent pleaded guilty to the charge. The main issue before the DT was whether there was cause of sufficient gravity to refer the respondent to the Court of Three Judges.[134]

21.70 The DT determined that the respondent's misconduct did not disclose cause of sufficient gravity for disciplinary action under s 83 of the LPA.[135] The DT determined that the respondent be reprimanded and fined instead.[136]

21.71 The DT noted that the reference to judges in the respondent's poem "[was] more likely to have been an authorial misstep than a

133 [2018] SGDT 8.
134 *The Law Society of Singapore v Eugene Thuraisingam* [2018] SGDT 8 at [4].
135 *The Law Society of Singapore v Eugene Thuraisingam* [2018] SGDT 8 at [68].
136 *The Law Society of Singapore v Eugene Thuraisingam* [2018] SGDT 8 at [68].

deliberate assault upon judicial integrity", as the poem's meaning would not have changed significantly if the reference to judges was removed.

21.72 The most compelling point of mitigation for the respondent was his efforts to remedy and apologise for his contempt. The respondent immediately removed the Facebook post and posted a public apology for his poem.[137] The DT also found that the respondent was genuinely remorseful and unlikely to reoffend.[138]

Failing to pay moneys due under a solicitor's undertaking

21.73 In *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh*[139] the Law Society preferred the following charges against the respondent for breaching rr 7(6), 7(7) and 8(3) of the PCR as well as ss 83(2)(*b*) and 83(2)(*h*) of the LPA for, *inter alia*:[140]

> (a) "fraudulent or grossly improper conduct in the discharge of [his] professional duty" in that he had:
>
> > … without due cause … failed and/or refused to pay the sum of S$22,500.00, which sum was received by [him], as a solicitor, to be paid to the Complainant in satisfaction of an Interim Judgment[;]
>
> and
>
> (b) "improper conduct or practice as an advocate and solicitor" in that he had "breached [his] solicitor's undertaking to pay the Complainant for her air ticket and hotel charges".
>
> The respondent pleaded guilty to both charges.

21.74 For the first charge, the respondent admitted that he had lied to the complainant's solicitors, telling them in September 2016 that S$22,500 had already been paid to his firm's client account, and would be paid to the complainant to satisfy an interim judgment.[141] This could not have been true since, in September 2016, the balance of the respondent's firm's client account was only S$7,397.44.[142] The DT held that this was "clearly fraudulent" conduct.[143]

137 *The Law Society of Singapore v Eugene Thuraisingam* [2018] SGDT 8 at [64].
138 *The Law Society of Singapore v Eugene Thuraisingam* [2018] SGDT 8 at [66].
139 [2018] SGDT 2.
140 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 2 at [7].
141 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 2 at [15].
142 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 2 at [15].
143 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 2 at [16].

21.75 For the second charge, the respondent admitted that in September 2016 he had given a solicitor's undertaking to the complainant's solicitor to pay for the complainant's air ticket and hotel charges.[144] He further admitted that he had failed to do so.[145]

21.76 On sentencing, the respondent argued, as a mitigating factor, that he had been diagnosed as suffering from several medical conditions over the last two years: ameloblastoma, vertigo, sinusitis, and depression.[146] However, the DT noted that the medical reports evidencing the respondent's conditions "do not state that his ailments impacted his mental capacity".[147] In addition, it cited the case of *Law Society of Singapore v Choy Chee Yean*[148] in which the High Court held that where a solicitor has been found guilty of dishonesty, "no matter how strong the mitigating factors", the court would "almost invariably" strike him off the roll. Therefore, the DT ordered the respondent to pay the Law Society costs of S$3,000 plus disbursements of S$667.77.

Breaches of Solicitor's Accounts Rules

Failure to keep proper accounts and overdrawing on client account

21.77 In *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh*[149] the Law Society preferred the following charges against the respondent for breaching rr 7(2), 8(4), 11(1), 11(2) and 11(4) of the LP(SA)R for, *inter alia*:

(a) having overdrawn on his firm's client account;

(b) having failed to keep proper accounting records and books;

(c) having failed to reconcile his clients' cash books and their bank statements; and

(d) having twice withdrawn from his firm's client account without first obtaining leave from the High Court.

The respondent pleaded guilty to all four charges.

144 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 2 at [17].
145 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 2 at [17].
146 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 2 at [19].
147 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 2 at [19].
148 [2010] 3 SLR 560 at [44].
149 [2018] SGDT 3.

21.78 For the first charge, the DT noted that in *Law Society of Singapore v Tan Chwee Wan Allan*[150] the Court of Three Judges had stated that the SAR and rules made pursuant to the LPA must be "meticulously and strictly complied with in their entirety", and that "[a]ny breach of the SAR" would warrant disciplinary action.[151] Therefore, since the respondent had overdrawn on his firm's client account 69 times in 2016, the first charge was made out.

21.79 For the second charge, the DT noted that in *Law Society of Singapore v Lim Yee Kai*[152] the High Court had stated that rr 11(1) and 11(2) of the SAR required solicitors to maintain their firm's "client and general ledges, journals, cash books, bank statements and reconciliation statements", failing which they would be guilty of "grossly improper conduct".[153] Therefore, since the respondent had failed to keep such proper accounting records and books for 2016,[154] the second charge was made out.

21.80 The DT found that cause of sufficient gravity existed for disciplinary action against the respondent under s 83 of the LPA in respect of the fourth charge.[155] The DT also held that the respondent was liable to pay the Law Society costs of S$2,000 plus disbursements of S$11,074.17[156].

Payment to office account instead of client account

21.81 In *The Law Society of Singapore v Ooi Oon Tat*,[157] the DT found that the respondent breached r 3 of the SAR in that he caused the sum of S$138,148.11, being client's money (received from the client's previous solicitors), to be deposited into the law practice's office account instead of its client account. None of the exceptions in r 9(2) of the SAR applied. The DT further found that there were no circumstances at the material time that explained an innocent departure from the obligation. The DT therefore determined that the respondent was guilty of grossly improper conduct under s 83(2)(*b*) of the LPA and that there was cause of sufficient gravity for disciplinary action under s 83 of the LPA.[158]

150 [2007] 4 SLR(R) 699.
151 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 3 at [14].
152 [2001] 1 SLR(R) 30.
153 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 3 at [20].
154 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 3 at [19].
155 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 3 at [34].
156 *The Law Society of Singapore v Gurdaib Singh s/o Pala Singh* [2018] SGDT 3 at [35].
157 [2018] SGDT 9.
158 *The Law Society of Singapore v Ooi Oon Tat* [2018] SGDT 9 at [31].

21.82 In *The Law Society of Singapore v Troy Yeo Siew Chye*,[159] the respondent was charged with:

> (a) failing to exercise proper supervision over one Sim in breach of r 8(1) of the PCR;
>
> (b) failing to ensure that conveyancing moneys for the payment of stamp duties were not paid into the firm's office account in breach of r 3(1A) of the SAR or r 5(1) of the Conveyancing and Law of Property (Conveyancing) Rules 2011;[160] and
>
> (c) failing to keep proper accounting records in breach of r 11(1) of the SAR.[161]

The respondent admitted liability for the second and third charges but disputed liability for the first charge, namely, failure to properly supervise Sim.[162]

21.83 Sim had been brought in by the respondent to set up a conveyancing department in the firm. Sim was not an advocate or solicitor but brought in the majority of the firm's conveyancing clients and interacted extensively with them. Sim turned out to be a conman and serial cheat who, *inter alia*, forged stamp duty certificates, passed himself off as a lawyer, and cheated and misappropriated money belonging to the firm's clients. Sim was subsequently charged, convicted and sentenced for numerous offences.[163]

21.84 The DT found that the first charge was made out as:

> (a) Sim was, despite the absence of a formal employment contract with the firm, a person liable to supervision for the purposes of r 8(1) of the PCR.[164]
>
> (b) The respondent had essentially given Sim a free rein to deal with the firm's clients, with little to no supervision over his activities and with no adequate system of periodic checks to monitor his dealings with the firm's clients and their conveyancing moneys to prevent abuse.[165]
>
> (c) There were a series of red flags which should have alerted the respondent to exercise a closer degree of supervision

159 [2018] SGDT 4.
160 GN No S 391/2011.
161 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [2].
162 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [5].
163 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [6].
164 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [85].
165 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [86].

over Sim (for example, Sim's offer to set up the firm's conveyancing department without expectation of payment or a formal contract;[166] Sim's practice of pre-paying stamp duties on behalf of clients and obtaining reimbursements from the firm's office account;[167] his unauthorised signing of a letter on the firm's letter head;[168] and IRAS's[169] and CAD's[170] investigation of Sim for forging stamp duty certificates). If the respondent had supervised Sim more closely, Sim's fraud would likely have been uncovered at an earlier stage and further crimes on the firm's clients prevented.[171]

21.85 The DT further found that although there was no evidence of dishonesty on the part of the respondent, there were multiple breaches of the SAR over several months, which the respondent was aware of but did little to prevent. The DT accordingly found that cause of sufficient gravity was made out for the first charge and the respondent was guilty of grossly improper conduct within the meaning of s 83(2)(*b*) of the LPA.[172]

21.86 As regards the second and third charges, the DT held that it was not the case that every breach of the SAR would give rise to cause of sufficient gravity. However, there was cause of sufficient gravity on the facts.[173] This was a case of wilful and persistent default involving large amounts of moneys wrongfully deposited into the office account (S$448,000), paid out to Sim without proper verification (S$336,000) and involving a large number of clients (22).[174]

Failure to produce accounting records pertaining to legal practice and unauthorised practice

21.87 In *The Law Society of Singapore v Looi Wan Hui*,[175] two charges were preferred against the respondent under rr 7(1) and 7(2) of the PCR (according another legal practitioner due respect as a member of a noble and honourable profession, and to treat the latter with courtesy and fairness) in that he:

166 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [90]–[93].
167 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [94].
168 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [95].
169 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [96].
170 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [100].
171 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [108].
172 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [121]–[122].
173 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [136]–[137].
174 *The Law Society of Singapore v Troy Yeo Siew Chye* [2018] SGDT 4 at [156].
175 [2018] SGDT 6.

(a) failed to do what was reasonably necessary to finalise and complete his exit from M/s JLim Law Corporation; and

(b) continued to practice under the name and style of M/s JLim Law Corporation without the necessary permission to do so after 30 September 2016.

21.88 The DT found that the respondent had breached r 7(2) of the PCR and was guilty of improper conduct as an advocate and solicitor within the meaning of s 83(2)(*b*) of the LPA.[176] The DT found that no cause of sufficient gravity for disciplinary action existed under s 83 of the LPA,[177] but imposed a penalty of S$4,000 per charge[178] and ordered the respondent to pay the Law Society costs fixed at S$2,000.[179]

176 *The Law Society of Singapore v Looi Wan Hui* [2018] SGDT 6 at [21] and [25].
177 *The Law Society of Singapore v Looi Wan Hui* [2018] SGDT 6 at [30].
178 *The Law Society of Singapore v Looi Wan Hui* [2018] SGDT 6 at [36].
179 *The Law Society of Singapore v Looi Wan Hui* [2018] SGDT 6 at [37].