IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 105

Originating Summons No 593 of 2014

Between

Deepak Sharma

… Plaintiff

And

Law Society of Singapore

… Defendant

JUDGMENT

[Administrative Law] — [Judicial review]
[Legal Profession] — [Disciplinary proceedings]

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v
Law Society of Singapore

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Woo Bih Li J
23, 24 July; 31 August 2015; 24 March 2016

26 May 2016 Judgment reserved.

Woo Bih Li J:

1 Originating Summons No 593 of 2014 ("OS 593") is an application by Mr Deepak Sharma ("Mr Sharma") under O 53 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) for judicial review against the decision of a review committee ("the RC") constituted under s 85(6) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"). Mr Sharma seeks leave to apply for and the grant of the following primary reliefs:

> (a) A quashing order against the decision of the RC which dismissed Mr Sharma's complaints against Mr Yeo Khirn Hai Alvin SC ("Mr Yeo SC") and partially dismissed Mr Sharma's complaints against Ms Melanie Ho Pei Shien ("Ms Ho") made by way of Mr Sharma's letter of complaint to the Law Society of Singapore ("Law Society") dated 23 January 2014; and

(b) A mandatory order that Mr Sharma's complaint against Mr Yeo SC and Ms Ho dated 23 January 2014 be reviewed by a freshly appointed and constituted Review Committee.

2 In support of his application, Mr Sharma relied on the following three grounds:

(a) The RC erred in law and/or misdirected itself as to the law, in concluding that professional misconduct through gross overcharging could not be established by objective evidence that the fees claimed were grossly excessive in the "absence of other impropriety";

(b) The RC erred in law and/or misdirected itself as to the law in its conclusion that the pursuit of the fees claimed could not constitute professional misconduct on the basis that they reflected the work of all the solicitors involved; and

(c) The RC's reasons for concluding that the complaint against Mr Yeo SC were lacking in substance, were legally inadequate and unsustainable in law, being incapable of sustaining the RC's conclusion, and having no reasonable or proper evidential basis, and were not open to the RC acting reasonably and lawfully.

Background

3 The facts in this present application are not in dispute. In 2010, Mr Sharma's wife, Dr Susan Lim ("Dr Lim"), commenced court proceedings against the Singapore Medical Council ("SMC") in connection with earlier disciplinary proceedings brought by the SMC against Dr Lim. The court proceedings commenced by Dr Lim were Originating Summons No 1131 of

2010 ("OS 1131") and Originating Summons No 1252 of 2010 ("OS 1252"). Dr Lim withdrew OS 1131 and the High Court dismissed OS 1252. Dr Lim then appealed against the dismissal of OS 1252 in Civil Appeal No 80 of 2011 ("CA 80"). The Court of Appeal dismissed her appeal. Dr Lim was liable to pay costs on the standard basis to the SMC for OS 1131, OS 1252 and CA 80.

4 Subsequently, the SMC's solicitors WongPartnership LLP ("WP") sent a Without Prejudice letter dated 12 March 2012 to Dr Lim's solicitors, Rajah & Tann Singapore LLP ("R&T"), proposing a total sum of $865,000 (excluding Goods and Services Tax ("GST") and disbursements) for the costs of the court proceedings mentioned above in [3] ("WP's Letter of Proposal"). On 8 June 2012, R&T replied on a Without Prejudice basis to WP objecting to the sum proposed by WP and counter-proposing a total sum of $214,000 for the same three proceedings and one summons (including GST but excluding disbursements). This counter-proposal was rejected by WP orally and then by way of a letter dated 20 November 2012.

5 WP then proceeded to draw up three bills of costs ("the Bills of Costs"), this time claiming a total sum of $1,007,009.37 (excluding GST and disbursements). They were Bill of Costs No 65 of 2013 ("BC 65"), Bill of Costs No 66 of 2013 ("BC 66") and Bill of Costs No 71 of 2013 ("BC 71"). This sum was again disputed by R&T and the matter went on to taxation before an Assistant Registrar ("the AR") on 25 June 2013. The AR taxed down the costs claimed by the SMC in the Bills of Costs to $340,000.

6 Dissatisfied with the outcome, WP applied for a review of the AR's decision. For the hearing of that review, WP reduced the total sum claimed through the Bills of Costs to $720,000 (excluding GST and disbursements), *ie*,

a reduction of $287,009.37. At the review hearing on 12 August 2013 before me, WP explained the reduction on the basis that they "gave a discount of 20% on the time used because of the overlap between lawyers. Then [they] excluded re-getting up for new lawyers who joined the team".[1] After hearing the parties, I increased the amount allowed on one of the bills of costs by $30,000 and maintained the amounts for the other two, bringing the total sum allowed on the Bills of Costs to $370,000.

7 On 23 January 2014, Mr Sharma sent a letter of complaint to the Law Society against Mr Yeo SC and Ms Ho, who were the solicitors from WP representing the SMC ("the Complaint"). The nub of Mr Sharma's complaint was that the costs Mr Yeo SC and Ms Ho sought to recover from Dr Lim were clearly exorbitant and their actions amounted to grossly improper conduct and/or conduct unbecoming as members of an honourable profession. To support his complaint, Mr Sharma also attached an opinion by Mr Ian Winter QC, who was of the view that "a prima facie case of grossly improper conduct and/or conduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession on the basis of gross overcharging" had arisen.[2]

8 The RC was subsequently constituted under s 85(6) of the LPA. Before I continue, I would mention that the LPA is the main legislation governing the conduct of advocates and solicitors practising Singapore law in Singapore. I have referred to such advocates and solicitors as "solicitors" for convenience and will continue to do so. Pursuant to s 85(8) of the LPA, the RC was to

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1 Plaintiff Bundle of Documents Vol 1 ("PBD1") at p 778.

2 PBD1, p 521at para 47.

review the complaint and direct the Council of the Law Society ("the Council") to dismiss the matter if it was unanimously of the opinion that the complaint was "frivolous, vexatious, misconceived or lacking in substance", or in any other case, refer the matter back to the Chairman of the Inquiry Panel ("the Chairman"). The RC reviewed Mr Sharma's complaint and directed the Council to dismiss it in whole as against Mr Yeo SC and in part as against Ms Ho. The reasons for the RC's decision were conveyed to Mr Sharma by way of a letter dated 10 April 2014 from the Law Society ("the Decision Letter"),[3] and it bears setting out in some detail. Before I do so, I would mention that eventually the full report of the RC was provided to the court before the completion of the hearing before me. However, as arguments had been made by reference to the Decision Letter and there was no suggestion that that letter had inaccurately stated the reasons of the RC, I will continue to refer to that letter. Where necessary, I will also refer to the report.

The Decision Letter

9 The RC distilled Mr Sharma's complaint into two main limbs. The first was that "the sums claimed by [Mr Yeo SC and Ms Ho] were exorbitant and demonstrative of a persistent conduct of gross overcharging by [Mr Yeo SC and Ms Ho] as well as improper and/or fraudulent conduct that was opportunistic, arbitrary, unconscionable and unjustified" ("Limb 1"). The second was that "the sums claimed [by Mr Yeo SC and Ms Ho] were probably in excess of what was billed to, or could have been billed under arrangements with [Mr Yeo SC's and Ms Ho's] client, *ie*, the [SMC] to which [Mr Sharma] assert[s] that the claim for party and party costs were in excess of the actual

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[3] PBD1 at pp 21–26.

sums billed, or that could be billed under arrangements agreed with the SMC and amounted to misconduct" ("Limb 2"). Mr Sharma did not argue that this was an incorrect or unfair characterisation of his complaint.

10 At the outset, the RC observed that while Mr Sharma was neither a client nor a party to the proceedings against Dr Lim, he was funding the legal expenses and the information furnished by him was legitimately the subject matter of a complaint. Hence, the review by the RC related to the substance of Mr Sharma's complaint and not his standing in the matter.

11 The RC also noted that "in so far as what constitutes professional misconduct, liability is dependent on an actual act or omission on the part of a solicitor which clearly arises from his/her personal conduct" and that the Complaint thus lacked details on the following matters:

(a) The respective roles of Mr Yeo SC and Ms Ho in the matter;[4] and

(b) The terms of engagement between the SMC and WP, the amounts billed and the amounts that would have been due under the terms of engagement.[5] This was in the context of Limb 2 of the Complaint.

12 The RC then sought clarification from WP to which WP replied as follows:[6]

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4 PBD1, p 22 at para 8.

5 PBD1, p 23 at para 11.

6 PBD1, p 23 para 12.

(a) Mr Yeo SC although the counsel in the proceedings against Dr Lim was not involved in drawing up the Bills of Costs or the taxation proceedings;

(b) The engagement by the SMC was on WP's standard fee arrangement based on actual time spent by the solicitors on the files; and

(c) Each of WP's bills were approved by the SMC and paid in full.

Written confirmation was also provided by the SMC that the total amount billed by WP to the SMC was higher than the quantum claimed in the Bills of Costs and that the SMC had paid the bills in relation to the matters in full. Copies of the bills rendered by WP to the SMC were also provided to the RC. However, WP took the position that the contents of significant parts of its response to the RC were only made available to the RC to address its queries, and that no reference should be made to these parts in the written grounds of the RC's decision. The RC was of the view that the material was covered by privilege which had been expressly reserved. It was therefore bound by the conditions imposed by WP. However, it was also of the view that it would be neither fair nor appropriate to consider such material in reaching a determination without setting out the import of the material. As it was precluded from setting out the import of the material, it decided not to consider it.

13 The RC then made the following findings and directions in relation to Limb 1 of the Complaint:

(a) There was no specific allegation in the complaint that Mr Yeo SC was involved in the preparation of the Bills of Costs and the proceedings related thereto;

(b) Further to the confirmation by WP that Mr Yeo SC was not involved in the matters complained of, the RC noted that the Notes of Evidence produced by Mr Sharma did not show Mr Yeo as being present at the taxation hearings;

(c) In relation to the Bills of Costs being excessive, "the fact that the [b]ills were eventually taxed down significantly does not in itself give rise to an inquiry of professional misconduct, in the absence of other impropriety." In this regard, the RC noted that Mr Sharma had alleged that the effective hourly rate would be excessive but "the RC accept[ed] the amounts in the Bills of Costs reflect[ed] the work of all the solicitors involved"; and

(d) Thus, Limb 1 against both Mr Yeo SC and Ms Ho was lacking in substance, and the RC directed the Council to dismiss this header of the complaint.

14 In relation to Limb 2 of the Complaint, the RC found and directed as follows:

(a) Mr Yeo SC was not involved with the preparation of the Bills of Costs and the proceedings related thereto. Therefore, there was no misconduct on his part and the RC directed the Council to dismiss Limb 2 in respect of Mr Yeo; and

(b) Insofar as Limb 2 pertained to Ms Ho, the complaint was not frivolous, vexatious, misconceived or lacking in substance and the matter was referred back to the Chairman to constitute an Inquiry Committee ("IC") to inquire into Limb 2 against Ms Ho.

15 Mr Sharma then filed OS 593 on 26 June 2014. On the same day, Originating Summons No 595 of 2014 was filed for *ad hoc* admission of Mr Michael Fordham QC under the LPA to represent Mr Sharma in OS 593. The application for *ad hoc* admission was dismissed by Steven Chong J on 5 November 2014 and no appeal was filed against that dismissal. The judgment of Chong J is found in *Re Fordham, Michael QC* [2015] 1 SLR 272 ("*Re Fordham, Michael QC*").

16 Mr Sharma also filed an application (Summons No 3271 of 2014) on 30 June 2014 to have the IC proceedings against Ms Ho stayed until OS 593 had been determined. This application came before me on 22 July 2014 and I stayed the IC proceedings until further order.

17 Finally, in a hearing before me on 4 May 2015, I directed that the leave application and the substantive merits of OS 593 be heard together and on an *inter partes* basis.

Issues

18 The issues that arise in the application for leave are as follows:

(a) Whether the decision of the RC is susceptible to judicial review; and

(b) Whether Mr Sharma has sufficient *locus standi* to bring the present judicial review application.

19 If leave were to be granted, the following issues arise in relation to the substantive merits of the application:

(a) Whether the RC erred in law in concluding that an inquiry of professional misconduct does not arise even if the Bills of Costs were taxed down significantly unless there is other impropriety shown;

(b) Whether the RC erred in law in concluding that the pursuit of the fees claimed could not constitute professional misconduct on the basis that they reflected the work of all the solicitors involved; and

(c) Whether the RC erred in law, was irrational or unfair in finding that Mr Yeo SC was not involved in the matters complained of based on WP's clarification that he was "not involved in drawing up the Bills of Costs or the taxation proceedings".

20 I will set out the parties' submissions in relation to each of these issues in detail as I deal with them respectively. Before I continue, I would mention that in the taxation of the Bills of Costs and review of taxation, Dr Lim was represented by R&T. In the present proceedings, Mr Sharma is represented by Providence Law Asia LLC.

The leave application

21 The test for granting leave to bring judicial review proceedings is well settled. The court must be satisfied that (see *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [5]):

(a) The matter complained of is susceptible to judicial review;

(b) The plaintiff has a sufficient interest or standing in the matter; and

(c) The material before the court discloses an arguable case or *prima facie* case of reasonable suspicion in favour of granting the public law remedies sought by the plaintiff.

Susceptibility of the RC's decision to judicial review

22 Mr Sharma argued that judicial review of the RC's decision is in principle available because the source of the power and function exercised by the RC is statutory, and this statutory power and function has a public element to it. He further submitted that there is no express Parliamentary intention to exclude judicial review of the RC's findings and decisions.[7] In this regard, the Attorney-General confirmed during the oral hearing that he is in agreement with Mr Sharma. The Attorney-General took the view that where the decision-maker's power comes from statute and has a public element to it, the default position is for judicial review to be available where the statute is silent on the matter and it is in the public interest for decisions of a body like the RC to be susceptible to judicial review.

23 The Law Society did not dispute that the source of the RC's power is statutory. It also did not appear to dispute that the nature of the RC's power has a public element to it. Nonetheless, the Law Society, relying on the authority of *Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] 2 SLR 844 ("*Manjit Singh (CA)*"), argued that the presence of

[7] Plaintiff's Written Submissions ("PWS") at paras 16 and 18.

"compelling reasons" renders the RC's findings and decisions unamenable to judicial review. These "compelling reasons" are that the disciplinary framework envisioned within the LPA, specifically ss 91A, 96, 97, 98 and 106, strongly suggests that Parliament intended for the RC's findings and decisions to not be susceptible to judicial review.

24 In *Manjit Singh (CA)*, the Court of Appeal ("CA") considered the question of whether, in some circumstances, a power conferred by statute may not be amenable to judicial review. The CA held at [28] and [32] as follows:

> 28 In our view, just as the courts have accepted that non-statutory powers may in some circumstances be amenable to judicial review, the mere fact that a power stems from statute should not *necessarily* mean that it is amenable to judicial review. Nonetheless, the fact that a particular power stems from statute should *ordinarily* mean that it is amenable to judicial review in the absence of compelling reasons to the contrary. …
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> …
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> 32 In *Regina (Beer (trading as Hammer Trout Farm)) v Hampshire Farmers' Markets Ltd* [2004] 1 WLR 233, one of the issues before the English Court of Appeal was whether a decision of a private company limited by guarantee to reject an application by a trout producer to participate in a farmers' market programme was amenable to judicial review. The English Court of Appeal held that it was. Dyson LJ made the following broad observations (at [16]) with which we agree:
>
> > 16 It seems to me that the law has now been developed to the point where, unless the source of power clearly provides the answer, the question whether the decision of a body is amenable to judicial review requires a careful consideration of the nature of the power and function that has been exercised to see whether the decision has a *sufficient public element, flavour or character to bring it within the purview of public law*. It may be said with some justification that this criterion for amenability is very broad, not to say question-begging. But it provides the framework for the investigation that has to be conducted. …

> Where there is a compelling reason which indicates the absence of such a public element in what is nonetheless a statutory power or duty, there would be no good reason to subject the exercise of such a power or duty, which may already be governed by private law obligations and remedies, to public law remedies in judicial review proceedings.
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> [emphasis in original]

25 It is apparent that the "compelling reason" the CA was referring to in *Manjit Singh (CA)* are those reasons which "indicate the absence of … a public element" in the statutory power that is being sought to be judicially reviewed. Since the Law Society did not dispute that the source of the RC's power is statutory and its nature has a public element to it, the RC's exercise of that power in coming to a decision should in principle be judicially reviewable. The "compelling reasons" that the Law Society had relied on, *viz*, that the legislative framework of the LPA indicates that Parliament had intended to preclude review committee decisions from judicial review, are of a different nature from the "compelling reasons" enunciated in *Manjit Singh (CA)*. What the Law Society was really arguing was that Parliament intended to oust the jurisdiction of the court *vis-à-vis* decisions by a review committee. This in turn requires an analysis of the disciplinary framework envisioned by the LPA.

26 The starting point is that the LPA is silent as to whether the decisions of a review committee are susceptible to judicial review. According to the learned authors of Lord Woolf *et al*, *De Smith's Judicial Review* (Sweet & Maxwell, 7th Ed, 2013) ("*De Smith's Judicial Review*") at para 4-015:

> … It is a function of the judiciary to determine the lawfulness of the acts and decisions and orders of public bodies exercising public functions, and to afford protection to the rights of the citizens. *Legislation that deprives them of these powers is inimical to the principle of the rule of law. The courts*

> *have, accordingly, long been zealous to resist restrictions on their jurisdiction imposed by legislation.* … [emphasis added]

Hence, words in a statute that purport to oust the jurisdiction of the court to review decisions of an inferior tribunal or a public body exercising public functions must be construed strictly (*Stansfield Business International Pte Ltd v Minister for Manpower (formerly known as Minister of Labour)* [1999] 2 SLR(R) 866 at [21] citing *South East Asia Fire Bricks Sdn Bhd v Non-Metallic Minieral Products Manufacturing Employees Union and Others* [1981] AC 363 with approval). It stands to reason that if a statute is silent as to whether the jurisdiction of the court to review such decisions is ousted, Parliament's intention to that effect must be abundantly clear before the court will find that its jurisdiction has been ousted.

27 The Law Society argued that Parliament intended for a complainant to have no recourse to court over a review committee's decision for the following reasons:[8]

> (a) There is a clear escalation process structured within the disciplinary framework of the LPA. A complaint goes through a series of bodies constituted under the LPA, each of which has its duties and functions specifically delineated in the LPA. Further, there are various recourses available to a solicitor or complainant built into the various stages of the disciplinary framework under the LPA (for example, s 96 of the LPA sets out the procedure for a complainant dissatisfied with the Council's determination under s 87(1)(*a*) and (*b*) of the LPA).

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8 Defendant's Written Submissions ("DWS") at paras 22–28.

(b) Section 91A of the LPA evidences that Parliament contemplated judicial review as a form of recourse within the LPA when amending the LPA in 2008. Parliament expressly provided for a judicial review mechanism for decisions made by a Disciplinary Tribunal ("DT") but did not do so for those made by a review committee.

(c) Section 106 of the LPA supports an interpretation that a review committee's decision is final, non-appealable and non-reviewable. This is consistent with Parliament's intention for the review committee to act as a preliminary sifting mechanism for complaints.

(d) The decisions made within the disciplinary framework of the LPA are of a *sui generis* nature. To support this proposition, the Law Society relies on statements made by the CA in *Law Society of Singapore v Top Ten Entertainment Pte Ltd* [2011] 2 SLR 1279 ("*Top Ten Entertainment*") that "Pt VII [of the LPA] provides a self-contained disciplinary framework outside the civil proceedings framework" (at [44]) and *Re Naplon Zero Geraldo Mario* [2013] 3 SLR 258 ("*Re Naplon Zero*") that the "disciplinary jurisdiction is a unique jurisdiction entirely distinct from civil or criminal jurisdiction of the court" (at [69]).

(e) Taken together, the omission of any mention of judicial review over a review committee's decisions in the LPA should be interpreted as an intention by Parliament to preclude such judicial review.

28 Before dealing with the Law Society's arguments, I set out the disciplinary framework under the LPA in gist. A complaint made against a

solicitor to the Law Society will first be referred to the Chairman (see s 85(1A)). The Chairman will then constitute a review committee which will review the complaint. If that committee finds the complaint frivolous, vexatious, misconceived or lacking in substance, it is to direct the Council to dismiss the matter and give the reasons for the dismissal. In any other case, it is to refer the complaint back to the Chairman (see ss 85(6) and 85(8)). If the complaint is to be dismissed, the Council is to give effect to the review committee's decision and inform the complainant and the solicitor of the dismissal and furnish the complainant with the reasons for its dismissal. The LPA does not expressly provide the complainant with any recourse thereafter.

29 If the complaint is referred back to the Chairman, the Chairman will then constitute an IC to inquire into the complaint (see s 85(10)). The IC will then render a report to the Council with its recommendation. Upon considering the report, the Council may determine that (a) a formal investigation is not necessary; (b) no cause of sufficient gravity exists for a formal investigation but that the solicitor should be given a warning, reprimanded or ordered to pay a penalty; (c) there should be a formal investigation by a DT; or (d) the matter be referred back to the IC for reconsideration or for a further report (see s 87(1)).

30 If the Council determines that a formal investigation is not necessary (*ie*, (a) or (b) in [29] above), the complainant may apply to a judge of the High Court to review the matter (see s 96(1)). At the hearing of the application, the judge may affirm the determination of the Council or direct the Law Society to apply to the Chief Justice ("CJ") to appoint a DT (see s 96(4)).

31 If the Council decides that a formal investigation is necessary (*ie*, (c) in [29] above), it shall then apply to the CJ to appoint a DT to hear and investigate the matter (see s 89(1)). The DT will determine one of the following: (a) no cause of sufficient gravity for disciplinary action exists; (b) while no cause of sufficient gravity for disciplinary action exists, the solicitor should be reprimanded or ordered to pay a penalty; or (c) cause of sufficient gravity for disciplinary action exists (see s 93(1)).

32 If the DT determines that no cause of sufficient gravity for disciplinary action exists (*ie*, (a) or (b) in [31] above), the complainant, the solicitor or the Council may apply to a judge of the High Court to review that determination or order (see s 97(1)). If the DT determines that cause of sufficient gravity for disciplinary action exists, the Law Society shall then apply for the matter to be heard by a court of three judges (see s 94(1) read with s 98(7)). A decision of the court of three judges is final and non-appealable (see s 98(7)) and the matter would end there.

33 It is thus clear that there is an elaborate stepped process by which a complaint to the Law Society is dealt with. The LPA not only provides for how the complaint is to be dealt with at each stage of the process, it provides for various recourses available to dissatisfied parties at some of these stages. This, however, does not in and of itself indicate that Parliament intended for the disciplinary process to be self-contained to the effect that any recourse outside of the LPA is excluded. The courts have consistently found that judicial review is available at various stages of the disciplinary process even though the LPA is silent on the issue, for example, see *Whitehouse Holdings Pte Ltd v Law Society of Singapore* [1994] 2 SLR(R) 485 ("*Whitehouse Holdings*") where the CA held at [37] that judicial review was available over a

determination of the Council made under s 87(1) of the LPA; see also *Carolyn Tan Beng Hui v The Law Society of Singapore* [1999] SGHC 23 ("*Carolyn Tan*") where the court held at [11] that the IC's decision was subject to judicial review. The inclusion of the review committee into the stepped disciplinary process does not *per se* preclude its decisions from judicial review. Furthermore, it is important to remember that while various recourses are available to a complainant at other stages, the LPA is silent as to the recourse available to a complainant when the review committee directs the Council to dismiss the complaint.

34 The Law Society's reliance on the cases of *Top Ten Entertainment* and *Re Naplon Zero* is incorrect. Those cases stand for the proposition that decisions made by a judge or the CJ under Part VII of the LPA are exercises of the *court's* unique disciplinary jurisdiction distinct from its civil or criminal jurisdiction and it is in this sense that proceedings under the LPA are part of a "self-contained disciplinary framework" and appeals against such decisions are not available. They have no bearing on whether judicial review is available over decisions made under the disciplinary framework of the LPA (which may include decisions made by bodies other than the court). To the extent that the Law Society is arguing that such decisions are so unique that judicial review should not apply to them, I reiterate the oft-quoted statement of the CA in *Chng Suan Tze v Minister of Home Affairs* [1998] 2 SLR(R) 525 at [86] that all power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power. It is precisely the exercise of such *sui generis* statutory powers that judicial review is meant to police.

35 The introduction of s 91A of the LPA does not change the analysis. Section 91A(1) of the LPA provides:

> **Restriction of judicial review**
>
> **91A.**—(1) Except as provided in sections 82A, 97 and 98, there shall be no judicial review in any court of any act done or decision made by the Disciplinary Tribunal.

As can be seen, judicial review of an act or a decision of a DT is not entirely precluded. It is subject to s 82A, 97 and 98 of the LPA. I will elaborate later on ss 97 and 98, and need only note here that s 98 also applies to certain findings of the DT under s 87A. More importantly, a plain reading of s 91A shows that it applies only to acts done and decisions made by a DT and does not extend to those of a review committee. This is supported by the CA's decision in *Manjit Singh (CA)* where the CA considered whether s 91A applied to the CJ's decision to appoint members of the DT under s 90(1) of the LPA. The CA held that it did not since the CJ's decision was neither "an act" nor "a decision" of the DT. Furthermore, during the Second Reading of the Legal Profession (Amendment) Bill (No 16 of 2008) ("Second Reading of the Legal Profession (Amendment) Bill 2008") which introduced s 91A into the LPA, the Minister for Law stated that s 91A was intended by Parliament to exclude judicial review of "the Disciplinary Tribunal's decision" (*Singapore Parliamentary Debates*, *Official Report* (26 August 2008) vol 84 col 3187). The CA concluded that there was "no indication that s 91A … was intended by Parliament to exclude judicial review of decisions by *persons other than the DT*" [emphasis added] (*Manjit Singh (CA)* at [58]). This reasoning similarly applies to decisions made by a review committee.

36 Second, the fact that s 91A expressly reserves some avenues of judicial review over acts done or decisions made by a DT and not those of a review

committee cuts both ways. On the Law Society's reading, this means that Parliament intended to completely preclude review committee decisions from judicial review, especially when considered against the elaborate stepped disciplinary process identified above at [33]. On the other hand, the legislative silence in relation to review committee decisions may just as easily be interpreted as an intention by Parliament to *restrict* judicial review over decisions made by a DT only but *not* those made by a review committee. Therefore, decisions by a review committee continue to be subject to judicial review. I am of the view that the latter interpretation is the correct one.

37 As I have mentioned earlier, judicial review should in principle be available over decisions made by a review committee (at [25] above). The fact that the LPA is silent on the availability of judicial review over a review committee's decisions, even in the light of s 91A, is insufficient to change this. The CA in *Manjit Singh (CA)* held that judicial review was available over the CJ's decision under s 90(1) despite the presence of s 91A and even though there was no express provision for such review in the LPA. Also, the CJ was not exercising his power under s 90(1) in a judicial capacity. The CA also said at [61]:

> 61 We also noted that although Parliament had expressed its intention in 2008 to reduce delays in disciplinary proceedings, it had chosen to give effect to this intention by, *inter alia*, replacing the Disciplinary Committee with a Disciplinary Tribunal (see [57] above) and by enacting s 91A of the LPA in those terms. *The scope of s 91A of the LPA is very precise. That was the extent of Parliament's intention. Parliament did not, for example, go on to prescribe that there shall be no judicial review of the disciplinary process once a request is made by the Council of the Law Society to the CJ to appoint a DT pursuant to s 89(1) of the LPA.* [emphasis added]

38 I am reinforced in my view by the rationale for introducing s 91A of the LPA in 2008. Prior to the amendments in 2008, it was well-established that the findings and determination of a DT (then known as a Disciplinary Committee ("DC")) could be subject to judicial review notwithstanding that the complainant or the solicitor had a right to apply to a single judge under the then s 97 of the LPA or that the solicitor might have to show cause before a court of three judges. This resulted in a situation where judicial review challenges were made to the courts even before the DT had made a determination, causing the disciplinary process to be delayed significantly. In order to resolve this delay, Parliament amended ss 97 and 98 of the LPA along with the introduction of s 91A. The amendment to s 97 provides a single judge with the power of judicial review over the determinations of a DT where the DT has determined that there is no need for show cause proceedings before the court of three judges. The amendment to s 98 provides the court of three judges the power to determine "any question as to the correctness, legality or propriety of the determination of the [DT], or as to the regularity of any proceedings of the [DT]" (see s 98(8)(*a*) of the LPA). In other words, the court of three judges now decides both the merits and any judicial review challenges (see *Mohd Sadique bin Ibrahim Marican and another v Law Society of Singapore* [2010] 3 SLR 1097 at [10]). The purpose of s 91A is thus to *restrict* judicial review over determinations of a DT by *consolidating* the judicial review process with the hearing on the merits into one process, instead of maintaining them as two distinctly separate processes. Judicial review remains available, but only through the single judge process under s 97 (in the event there are no show cause proceedings) or the court of three judges under s 98 (in the event there are show cause proceedings). This is confirmed by the Minister of Law's statement in the Second Reading of the Legal Profession (Amendment) Bill 2008 (at col 3251) which is as follows:

> Mr Sin Boon Ann asked why do we have clause 36 [which introduced s 91A of the LPA] which restricts judicial review. In fact, he said "ousted" judicial review. "It is an important constitutional safeguard. Why are we doing this?" *I would clarify that judicial review is not "ousted". What we are doing is deferring it*, because what has happened in the past is that even before the tribunal proceedings and disciplinary proceedings are over, there were repeated applications for judicial review, which then dragged on and delayed the entire proceedings, vastly contributing to delays. *So, the approach has been to finish with the process, then you go for judiciary review*. Anyway, when you go before the Court of Three Judges, you can raise all the arguments that you could have raised during the judicial review. So the lawyer is, to that extent, not in any worse-off position but what he cannot do now is to try and interrupt or delay the ongoing proceedings.
>
> [emphasis added]

39 Viewed against this background, s 91A is more accurately characterised as *restricting* or *consolidating* the then existing judicial review process over DT decisions to the extent provided under ss 82A, 97 and 98 of the LPA. This is in contrast to the characterisation of the provision by the Law Society as "[providing] judicial review as a form of recourse … for DT proceedings".[9] Section 91A's purpose is to speed up the disciplinary process *at the DT stage*. It would be a stretch, on a purposive statutory interpretation, to say that by restricting or consolidating the judicial review process over DT decisions, Parliament intended to completely exclude judicial review over decisions of a review committee which is an entirely different stage of the disciplinary process.

40 Further, the overall scheme of the disciplinary process under the LPA points towards judicial review being available over decisions of a review committee. At other stages of the disciplinary process, recourse to the court is

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[9] DWS at para 27(2).

provided to the complainant if his or her complaint does not progress on to the next stage of the disciplinary process. If the Council determines that there is no need for a formal investigation after considering the IC's report, the complainant may apply to a judge of the High Court under s 96(1) of the LPA. If a DT determines that there is no need for show cause proceedings before the court of three judges, the complainant may similarly apply to a judge of the High Court for a review of that determination under s 97(1) of the LPA. Given that the review by a review committee represents the most preliminary inquiry into the matter, it would be odd for Parliament to have intended for there to be no recourse to a complainant if his or her complaint is dismissed by the review committee. Furthermore, if a review committee directs the Council to dismiss the complaint in breach of the statutory obligations of the review committee, the complainant is left without any remedy.

41 The Second Reading of the Legal Profession (Amendment) Bill (No 39 of 2001) where the mechanism of the review committee was first introduced shows that the review committee was set up as a "sifting mechanism" to weed out frivolous complaints and was aimed at reducing the caseload of the IC and to speed up the disciplinary process (*Singapore Parliamentary Debates*, *Official Report* (5 October 2001) vol 73 col 2196). The Law Society argued that it would be inconsistent with this purpose to allow judicial review over decisions by a review committee. In my view, allowing a complainant to apply for judicial review will not interfere with the review committee's function as a sifting mechanism although it may appear that the availability of judicial review may result in delay to the disciplinary process.

42 In the first place, if judicial review is available, it may arguably be restricted to complainants only. This is because if a complaint is not

dismissed, the solicitor will still have his chance to address the IC. On the other hand, a complainant has no recourse if his complaint is dismissed and judicial review is not available. Even with judicial review, the court considers the process by which the review committee reached its decision and not the merits of the decision. With respect to the apparent delay in the disciplinary process, I quote again a relevant observation by the CA in *Manjit Singh (CA)* at [60]:

> 60 While we agreed with the Respondent that the Appellants' application for leave to apply for a quashing order had the effect of delaying the disciplinary proceedings against them arising out of Ms Rankine's complaint, this could not per se constitute a sufficient basis to hold that the CJ's power under s 90(1) of the LPA was not amenable to judicial review. *Although persons who lodge complaints against their lawyers or former lawyers will understandably wish for a speedy resolution of their complaints, there is also a public interest in ensuring that statutory powers are exercised lawfully. This is the very object of judicial review.*
>
> [emphasis added]

43 Finally, the Law Society relied on s 106 of the LPA to argue that the right to judicial review over decisions of a review committee is precluded unless bad faith or malice is proved to the court, or there are other express provisions to the contrary in the LPA.[10] Section 106 provides:

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[10] DWS at para 49.

> **No action in absence of bad faith**
>
> **106.** No action or proceeding shall lie against the Attorney-General, the Society, the Council, a Review Committee or any member thereof, an Inquiry Committee or any member thereof, or a Disciplinary Tribunal or any member or the secretary thereof for any act or thing done under this Act unless it is proved to the court that the act or thing was done in bad faith or with malice.

Mr Sharma argued that s 106 does not have the effect of ousting judicial review over decisions made by a review committee. Section 106 is concerned with shielding the parties named therein from being sued (for example, in tort) for actions taken in the discharge of their duties under the LPA. The Attorney-General was in agreement with Mr Sharma's argument.

44 I am of the view that the Law Society's reliance on s 106 is incorrect. To begin with, there is a well-established body of jurisprudence that has held that judicial review is available over the parties named in s 106 despite the presence of s 106 or its predecessor. I have already referred to the cases of *Whitehouse Holdings* and *Carolyn Tan* at [33] above. Another example is *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 ("*Re Shankar Alan*") where Sundaresh Menon JC held that judicial review was available over determinations made by the DT (then known as the DC) notwithstanding that show cause proceedings were available to the solicitor before the court of three judges (though this has been legislatively amended *via* s 91A of the LPA). As pointed out by Mr Sharma, there was always some version of s 106 within the LPA (there is minimal difference between the versions) when these cases were decided. It may be the case that there was no argument on the provision but in my view, the more likely scenario is that counsel for the Law Society in those cases did not consider that provision to oust judicial review.

45 The Law Society responded by arguing that in all of these cases, there was an equivalent of ss 96 and 97 of the LPA such that the court's exercise of judicial review may very well have been a review under those provisions. Therefore, the cases do not indicate whether s 106 is an ouster provision. I am unable to accept the Law Society's argument. In *Re Shankar Alan*, s 97 was not referred to at all given that the DT (then known as the DC) had found that the solicitor was guilty of the allegations against him. This was rightly so because s 97, which provides for review by a judge of the High Court only if the DT determines that no cause of sufficient gravity for disciplinary action exists, would not have applied. The same can be observed in *Carolyn Tan* where Choo Han Teck JC held that the IC was subject to judicial review. Sections 96 and 97 were not referred to at all as they were not applicable to decisions made by the IC.

46 Section 106 of the LPA should also be compared with s 33B(4) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). In *Cheong Chun Yin v Attorney-General* [2014] 3 SLR 1141 ("*Cheong Chun Yin*"), the court had to consider the effect of s 33B(4) of the MDA on the court's jurisdiction to review the Public Prosecutor's decision as to whether any person had substantively assisted the Central Narcotics Bureau ("CNB") in disrupting drug trafficking activities within or outside Singapore. Section 33B(4) provides:

> (4) The determination of whether or not any person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities shall be at the *sole discretion* of the Public Prosecutor and no action or proceeding shall lie against the Public Prosecutor in relation to any such determination unless it is proved to the court that the determination was done in bad faith or with malice.
>
> [emphasis added]

Tay Yong Kwang J held that the effect of s 33B(4) was that the Public Prosecutor has the "sole discretion" whether to certify that a person has substantively assisted the CNB and his "exercise of discretion can only be challenged [by judicial review] on the grounds of bad faith and malice". Tay J further found that unconstitutionality, though not expressly mentioned in s 33B(4), is another ground for challenge. This reading was supported by the statement of the Minister of Law during the Second Reading of the Misuse of Drugs (Amendment) Bill (No 27 of 2012) that the Public Prosecutor's discretion is subject to judicial review, either on bad faith, malice or unconstitutionality.

47 In the present case, the term "sole discretion" is conspicuously missing from s 106 of the LPA. Further, there is no such clear statement by Parliament of an intention to restrict judicial review over decisions made by the parties named in s 106. As I have mentioned earlier at [26], clear and explicit words indicating Parliament's intention must be present before the court will relinquish its supervisory jurisdiction over inferior tribunals or public bodies performing public functions. Section 106, whether taken on its own or when read against the disciplinary framework of the LPA, does not have such clear and explicit words.

48 In addition, reading s 106 to exclude judicial review over decisions made by the parties named therein would sit somewhat uncomfortably with s 91A of the LPA. If s 106 had the effect of restricting judicial review over a DT's decisions to bad faith and malice, it would have been unnecessary for Parliament to further introduce s 91A to exclude judicial review except as provided in ss 82A, 97 and 98.

49 In conclusion, I am of the view that the RC's findings and decisions are susceptible to judicial review.

Whether Mr Sharma has sufficient standing

50 I come to the issue of whether Mr Sharma has sufficient standing to bring the present judicial review proceedings. This issue was broken down into two sub-issues by the parties:

(a) Whether Mr Sharma had sufficient standing to make the Complaint to the Law Society; and

(b) If so, whether Mr Sharma has sufficient standing to bring the present judicial review proceedings.

Mr Sharma's standing to make the Complaint to the Law Society

51 At the core of this sub-issue lies the question of whether a complainant is required to establish standing when making a complaint against a solicitor to the Law Society. This question was first raised during the hearing of the application for the *ad hoc* admission of Michael Fordham QC before Chong J (see [15] above). As Chong J highlighted, this question has hitherto not been considered in our courts. However, as it was unnecessary for Chong J to come to a definitive conclusion on the issue for the purposes of the *ad hoc* admission, he declined to answer it and left the issue to be fully explored and determined during the present application. Nonetheless, Chong J did express some preliminary observations on the matter which I will address shortly.

52 Mr Sharma's position on this issue was that a person who wishes to make a complaint against a solicitor does not need to establish standing before

he or she may do so. He also asserted that even if standing must be established by a complainant, he would satisfy the requirement given that the costs ordered for OS 1131 and OS 1252 "fell to be paid by [Dr Lim and him] jointly"[11] even though he is not legally liable to pay the costs of the SMC in those proceedings. He did not provide further information to establish that he was indeed a co-funder when Dr Lim herself is apparently a person of substantial means. I add that Dr Lim has filed an affidavit stating that she is in support of Mr Sharma's filing of the Complaint and this application. Arguably, this may address the first sub-issue although the Attorney-General submitted that it was not good enough for the right person to support the Complaint if indeed Mr Sharma has no *locus standi* to make the Complaint. In any event, I shall continue with my analysis.

53 The Law Society was in agreement with Mr Sharma that a person need not establish standing to make a complaint to the Law Society. Even if standing needed to be established, the RC had decided that Mr Sharma had standing to make his complaint and that should be the end of the matter.

54 The Attorney-General argued that Mr Sharma must show he has standing to make a complaint. He argued that whether a person has standing must be considered in the light of who the allegedly violated principles of professional conduct were meant to protect and the nature and subject matter of the complaint. Considering that Mr Sharma's complaint pertained to WP's conduct in the taxation proceedings and that he was a "stranger" to those proceedings, he did not have standing to make his complaint. In other words, the Attorney-General's submission was that only parties to litigation

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[11] Mr Sharma's O 53 Statement at para 7.

proceedings may make a complaint to the Law Society about a matter arising from such proceedings.

55 As I mentioned at [10] above, the RC had proceeded on the premise that Mr Sharma has standing to make the Complaint. I am aware that the court's role in judicial review proceedings is not to interfere with the merits of the RC's decision. However, if standing is indeed a requirement to make a complaint, and the RC had erroneously decided that Mr Sharma's standing was not in issue, then the RC would be acting outside its jurisdiction. Therefore, the RC's view on Mr Sharma's standing to make the Complaint does not preclude the court from enquiring into this issue.

56 The starting point of the analysis would be the LPA and the rules made thereunder. Section 85 of the LPA provides, *inter alia*:

> **Complaints against advocates and solicitors**
>
> **85.**—(1) *Any complaint* of the conduct of an advocate and solicitor —
>
> (a) shall be made to the Society in writing;
>
> (b) shall include a statement by the complainant —
>
> (i) as to whether, to his knowledge, any other complaint has been made to the Society against the advocate and solicitor, by him or by any other person, which arises from the same facts as his complaint; and
>
> (ii) if so, setting out such particulars of each such complaint as the Council may require and he is able to provide; and
>
> (c) shall be supported by such statutory declaration as the Council may require, except that no statutory declaration shall be required if the complaint is made by any public officer or any officer of the Institute.

> (1A) Subject to subsection (4A), the Council shall refer every complaint which satisfies the requirements of subsection (1) to the Chairman of the Inquiry Panel.
>
> (2) The Council may on its own motion refer any information touching upon the conduct of an advocate and solicitor to the Chairman of the Inquiry Panel.
>
> (3) Any Judge of the Supreme Court, Judicial Commissioner of the Supreme Court, Senior Judge of the Supreme Court or International Judge of the Supreme Court, the Attorney-General or the Institute may at any time refer to the Society any information touching upon the conduct of an advocate and solicitor and the Council shall —
>
> > (a) refer the matter to the Chairman of the Inquiry Panel; or
> >
> > (b) where the Judge, Judicial Commissioner, Senior Judge or International Judge, the Attorney-General or the Institute apply to the Chief Justice to appoint a Disciplinary Tribunal. …
>
> [emphasis added]

Section 2(1) of the Legal Profession (Disciplinary Tribunal) Rules (Cap 161, R 2, 2010 Rev Ed) ("LP(DT)R") provides:

> "complainant" means —
>
> > (a) a person —
> >
> > > (i) who has made a complaint to the Society under section 85(1); or
> > >
> > > (ii) who has made an application under section 82A(5) for leave for an investigation to be made into a complaint against a Legal Service Officer or a non-practising solicitor; or
> >
> > (b) in a case where any Judge of the Supreme Court or the Attorney-General has referred to the Society any information touching upon the conduct of a solicitor under section 85(3), the Attorney-General;

Section 85(1) uses the words "*any complaint* of the conduct of an advocate and solicitor". On its face, s 85(1) provides that the *subject matter* of a complaint may be varied. It also provides the *manner* in which a complaint is

to be made, *ie*, in writing, accompanied by a statement as to whether there are other complaints arising from the same facts against the same solicitor, and supported by a statutory declaration. Section 85(1), however, does not address *who* may make a complaint. Similarly, s 2(1) of the LP(DT)R only provides that a complainant is the person who has made a complaint but does not address whether there is any limit on who that person might be.

57 The legislative history of s 85 provides some insight to the correct analysis. Prior to 1993, s 85 of the LPA (Cap 161, 1990 Rev Ed) provided, *inter alia*:

> **85.**—(1) *An application by any person* that an advocate and solicitor be dealt with under this Part and *any complaint* of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to the Society and the Council shall refer the application or complaint to the Chairman of the Inquiry Panel.
>
> (2) The Council may on its own motion refer any information touching upon the conduct of an advocate and solicitor in his professional capacity to the Chairman of the Inquiry Panel.
>
> (3) The Supreme Court or any judge thereof or the Attorney-General may at any time refer to the Society any information touching upon the conduct of an advocate and solicitor in his professional capacity and the Council shall —
>
> (a) refer the matter to the Chairman of the Inquiry Panel; or
>
> (b) where the Supreme Court or a judge thereof or the Attorney-General requests that the matter be referred to a Disciplinary Committee, apply to the Chief Justice to appoint a Disciplinary Committee.
>
> [emphasis added]

The old s 85(1) appears to contain two limbs: (a) an application that a solicitor be dealt with under Part VII; and (b) a complaint touching on the conduct of a solicitor in his professional capacity. The latter limb caused some degree of

confusion previously as to whether there was a distinction between the two limbs. The CA in *Law Society of Singapore v Ang Boon Kong Lawrence* [1992] 3 SLR(R) 825 ("*Lawrence Ang*") clarified the matter and held that there was no material difference between the two, and that a complaint can be properly considered as an application under the old s 85(1) (see [17]–[18]). Shortly after the decision in *Lawrence Ang*, Parliament amended the LPA *via* the Legal Profession (Amendment) Act 1993 (Act 41 of 1993). One of the amendments was the removal of the first limb of the old s 85(1) and the words "in his professional capacity", such that s 85(1) then read:

> (1) Any complaint of the conduct of an advocate and solicitor shall in the first place be made to the Society and the Council shall refer the complaint to the Chairman of the Inquiry Panel.

58 During the Second Reading of the Legal Profession (Amendment) Bill (No 34 of 1993), the Minister for Law specifically referred to cl 15 of the Bill, which is the clause that introduced the amendments to the old s 85(1) referred to in the previous paragraph. However, no reference was made to the removal of the first limb of s 85(1) and the effect it was intended to have. The Minister instead focused on the reasons for removing the words "in his professional capacity" and for introducing the predecessor of the current s 85(4)(*a*) of the LPA. I reproduce this part of the Minister's speech in full (*Singapore Parliamentary Debates*, *Official Report* (12 November 1993) vol 61 at col 1164):

> Next, clauses 15 to 26 and 29. These clauses deal with disciplinary proceedings against practising lawyers to further improve the procedures and also to increase the powers of the Law Society. *For example, clause 15 amends section 85 to enable the Law Society Council, with the leave of the court, to inquire first into complaints against practising lawyers which are more serious in nature and defer the inquiry into other complaints.* The complainant will be notified of the outcome at the conclusion of the proceedings. *The restriction in subsection 85(1) and 85(2) is that complaints must be "in his professional*

> *capacity". The words "in his professional capacity" have been removed because it is clear from section 83 that the Act also envisages complaints about other serious misconduct on the part of the advocate and solicitor which brings into disrepute the profession.* The removal of these words does not mean that frivolous complaints should be entertained. The provision must be read in the context of the instances of misconduct enumerated in section 83(2) or it must be "misconduct unbefitting the advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession".
>
> [emphasis added]

59 From the legislative history of s 85(1), it appears that the statutory position before the Legal Profession (Amendment) Act 1993 was that *any person* may make an application or a complaint against a solicitor to the Law Society. Although the words "any person" were removed in 1993, Parliament made no statement to the effect that this removal was meant to restrict the type of persons who may make complaints. In fact, when considered in the light of the CA's decision in *Lawrence Ang*, it is likely that Parliament's intention was simply to remove the first limb of the old s 85(1) because it had become otiose (especially after removing the words "in his professional capacity") and not to introduce a new standing requirement for the making of complaints.

60 In *Re Fordham*, *Michael QC*, Chong J observed that ss 85(2) and (3) of the LPA, which empower specific public institutions and office-holders to refer information touching upon the conduct of a solicitor to the Law Society, may sit uncomfortably with s 85(1) if any person could file a complaint under s 85(1). Chong J observed at [33]:

> … if Mr Vergis is right that any person could file a complaint under s 85(1), why then is there any need for sub-ss 85(2) and (3), which empower specific public institutions and office-holders to refer information touching upon the conduct of an advocate and solicitor to the Law Society? Such public institutions and office-holders have an inherent interest in making such referrals when the occasion arises. Seen in this

> light, it would appear odd if s 85(1) is then regarded as conferring carte blanche on any person to make a complaint even though he may have no direct interest in doing so. In other words, the juxtaposition of s 85(1) with sub-ss (2) and (3) tends towards the conclusion that it was unlikely that s 85(1) was intended to be of such an unqualified nature. Mr Vergis explained that sub-ss 85(2) and (3) speak of "any information" to the Law Society while s 85(1) refers to "[a]ny complaint". It is not entirely clear to me whether the difference lies in form rather than substance since both would oblige the Law Society to look into them.

With respect, I do not think that interpreting s 85(1) to mean that any person can make a complaint would be odd when juxtaposed against ss 85(2) and (3). Sections 85(2) and (3) have been in existence pre-1993 (see, for example, the Legal Profession Act (Cap 161, 1985 Rev Ed)). This means that these provisions co-existed with the old s 85(1) which, as I have noted earlier at [57], allowed *any person* to make an application or a complaint about the conduct of a solicitor. Furthermore, there is no indication that Parliament removed the words "any person" from the old s 85(1) in order for it to be read harmoniously with ss 85(2) and (3) when the words "Any complaint" still remain in the provision. From at least a historical standpoint, allowing any person to make a complaint under s 85(1) would not be at odds with ss 85(2) and (3). Further, there may well be a distinction between making a complaint and referring information. The former suggests a specific grievance. The latter may but does not necessarily amount to a complaint and can be the communication of some unease over conduct which merits further inquiry. That is why the latter is restricted to the persons named in ss 85(2) and (3).

61 I am reinforced in my view that Parliament had no intention to restrict the kind of persons who may make a complaint by the rationale underlying why solicitors are disciplined for professional misconduct. The rules of professional conduct that govern solicitors in Singapore and the disciplinary

process by which they are enforced are established with the aim of maintaining the high standards and good reputation of the legal profession.

62 While disciplinary proceedings may have in certain situations the corollary effect of righting the wrongs that the solicitor's conduct may have inflicted upon individuals, the disciplining of a solicitor for professional misconduct goes beyond the interests of the complainant. This is why disciplinary proceedings against a solicitor do not come to an automatic end when the complainant withdraws the complaint, no matter how voluntarily or unreservedly (*Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] 2 SLR 1108 ("*Manjit Singh (HC)*") at [100]). In *Manjit Singh (HC)*, Vinodh Coomaraswamy JC held at [101]:

> … The Law Society prefers charges against an advocate and solicitor not to vindicate the complainant's private rights or to protect the complainant's private interests. The Law Society prefers charges against an advocate and solicitor because it is in the public interest and in the profession's interest for a DT to receive evidence and determine whether or not the advocate and solicitor is guilty of professional misconduct on those charges. When a complainant withdraws her complaint, no matter how voluntarily or unreservedly she does so, it does not follow that it ceases by that fact alone to be in the public interest and in the profession's interest for the DT to make that determination.

63 As the primary reason for disciplining solicitors is to maintain the high standards and good reputation of the profession, it follows that it should not matter who brings the complaint to the Law Society. If the conduct of the solicitor complained of is so egregious that it brings the profession into disrepute, and if the complaint has substance and is backed up by evidence, there is a public interest in having such conduct investigated and the solicitor disciplined *regardless* of who makes the complaint.

64 No doubt, the public interest in upholding the integrity and standing of the legal profession must be balanced against the impact disciplinary proceedings have on the solicitor's reputation and livelihood, and the strain it places on the solicitor and the Law Society's limited resources. In *Re Fordham, Michael QC,* Chong J noted at [31] that if any person may make a complaint to the Law Society, the Law Society may become inundated "with frivolous complaints by persons with no interest other than being busybodies." He also noted that this may be undesirable since it causes the limited resources of the Law Society to be unduly stretched which, in turn may delay the prosecution of more meritorious complaints. I appreciate the concern about busybodies. Nonetheless, I am of the view that the scales fall in favour of the public interest in maintaining the profession's integrity.

65 First, there are safeguards in place to prevent both the Law Society and the solicitor from being flooded with frivolous complaints.

(a) Every complaint must be accompanied by a statutory declaration (see s 85(1)(*c*)). This requirement was specifically introduced to emphasise the seriousness of complaints against solicitors and that complainants should take steps to ensure the accuracy of their complaints.

(b) The IC is empowered to order the complainant to deposit a sum not exceeding $1,000 (see s 85(18)).

(c) The IC can order the complainant to pay costs if the complaint is found to be frivolous or vexatious (see s 85(19)(*a*)).

(d) A party making a knowingly false complaint shall be guilty of an offence and be liable to a fine not exceeding $5,000 (see s 85(21)).

(e) The review committee itself functions as a filter. The review committee acts as the floodgate not by dismissing a complaint because the complainant has no standing, but by dismissing the complaint because it is frivolous, vexatious, misconceived or lacking in substance.

66 Secondly, in relation to the concern over the limited resources of the Law Society, the Law Society itself has taken the position that any person may make a complaint. It is willing and prepared to, at the minimum, have a review committee review any complaint from any person as long as the complaint complies with the statutory requirements of s 85(1) of the LPA (see s 85(1A) read with s 85(6)). The mechanism of the review committee has been around for the past 14 years and there is no evidence that allowing any person to make a complaint has inundated the Law Society.

67 Interestingly, the Law Society has itself represented to the general public that any person may make a complaint. On its website, the Law Society publishes a guidance note on "complaints against a lawyer".[12] Under the header of "A Complaint of Professional Misconduct Under Section 85(1) Legal Profession Act", the question of "[w]ho can make the complaint" is asked. In response, the Law Society states that "[a] complaint may be made by a client against his own lawyer or *any person* against a lawyer who has not been appointed to act for him" [emphasis added].

68 Thirdly, a requirement of standing like the one suggested by the Attorney-General (see [54] above) will be too restrictive although easy to

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12 Plaintiff Bundle of Documents Vol 2 ("PBD2"), Tab 16 at p 1062.

implement. For example, if a non-party is aware that a defendant's solicitor had deliberately misled the court in litigation proceedings, that non-party should be entitled to complain to the Law Society about it. I do not think it suffices to say that it should be left to the plaintiff to complain. The plaintiff may not know of the misconduct. Also, a plaintiff who has received full payment from a defendant may not wish to trouble himself any further to make a complaint. It must be in the public's interest and the profession's interest for the non-party to be entitled to make the complaint.

69 In *Re Fordham, Michael QC*, Chong J considered at [31] a demarcation which is arguably different, *ie*, that only those persons who are able to demonstrate sufficient interest may make a complaint, though he did not decide the point. This appears to be a wider demarcation than that contended for by the Attorney-General.

70 However, it seems to me that this demarcation may still be unduly restrictive or would be difficult to implement as seen in the illustration discussed above. Would the non-party be able to demonstrate "sufficient interest"?

71 In the present context, if Mr Sharma was indeed the co-funder as he alleges, would he have sufficient interest to make the Complaint? If only the person liable to pay the costs has sufficient interest, would that be unduly restrictive? For example, if a child of a client who is old in age wishes to complain about the fees charged by the solicitor to his parent, should the child not be entitled to do so? What if there was some other alleged misconduct? For example, if it were alleged that a solicitor was abusive to his aged client,

would the client's immediate family members be entitled to complain or not? What about extended family members like cousins or friends?

72 A different illustration may throw further light on the argument. What if a stranger were to complain that a solicitor is taking advantage of his illiterate clients by overcharging them? The stranger produces copies of invoices rendered by the solicitor to his clients which, on the face of them, do have alarming information indicative of gross overcharging. Should the complaint be dismissed because he has no *locus standi*? I am of the view that such a complaint should not be dismissed for lack of *locus standi*. However, if the stranger were to complain about overcharging of illiterate clients but is unable to produce copies of the invoices or the copies do not on the face of them suggest overcharging, then such a complaint could be considered as having been made without substance and it would be open to a review committee to direct the Council to dismiss it.

73 I am mindful that most complaints are made by clients against their own solicitors and some are made by opponents of solicitors. However, that does not mean that a stranger may never complain about a solicitor. The question is where the line should be drawn. In my view, it should be drawn *not* by imposing some sort of *locus standi* requirement, but by considering whether there is substance in the complaint. This is not to say that a complainant's interest in the subject matter of the complaint is totally irrelevant. It may be taken into account as a factor in the overall assessment of the complaint.

74 The Attorney-General also submitted that all the cases relied on by Mr Sharma and the Law Society only show that a complaint against a solicitor

need not *necessarily* be lodged by the client. They do not show that *anyone* is entitled to lodge a complaint.[13] The Attorney-General contended that these cases are therefore consistent with his position, *ie*, who can lodge a complaint depends on the nature and subject matter of the complaint.[14] He cited a DT's decision in *The Law Society of Singapore v Koh Lee Kheng Florence* [2005] SGDSC 7 ("*Florence Koh*") as authority for its position.

75 First, I have already mentioned that the Attorney-General's proposed test is too restrictive (above at [68]). Secondly, *Florence Koh* only stands for the proposition that in order for a solicitor to breach r 25(a) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("LP(PC)R"), it must be shown that his client's interests were affected by the solicitor's own interests. If the client's interests were unaffected, then there would be no breach of r 25(a) even if the partners in the solicitor's firm were of a contrary view. *Florence Koh* does not address the issue of standing to make a complaint.

76 In conclusion, I find that Mr Sharma does not need to establish standing before he may make a complaint to the Law Society under s 85(1) of the LPA.

Standing to bring judicial review proceedings

77 It seems apparent to me that once it has been established that the RC's decision is susceptible to judicial review, and that Mr Sharma has the right to make a complaint to the Law Society, Mr Sharma would also have sufficient

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13 Attorney-General's Submissions ("AGS") at para 85.

14 AGS at paras 73–76.

standing to bring the present judicial review proceedings against the RC. However, the Attorney-General took a contrary position. He argued that even if Mr Sharma may make a complaint, the law in Singapore on *locus standi* to bring judicial review proceedings requires an applicant like Mr Sharma to demonstrate that (1) the tribunal or other public authority had breached a public duty; and (2) the applicant's private right or public right was interfered with, and in the case of the latter, that the applicant had suffered special damage peculiar to himself as a result of the breach of public duty (see *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [64]). He contended that in the present case, Mr Sharma had failed to show that any of his private rights have been interfered with as he had not proven that he did indeed fund Dr Lim's payment of SMC's costs presented for taxation by WP, and in any event, he had no legal obligation to do so. If Mr Sharma was arguing that his public right to ensure that delinquent solicitors were prosecuted, he had not demonstrated that he had suffered special damage peculiar to himself.

78 The Law Society took the position that Mr Sharma had sufficient standing to bring the present judicial review proceedings. The Law Society, however, also proposed an alternative position. It proposed that perhaps a distinction should be made between a complainant who was the "victim" of the solicitor's conduct and a complainant who was not (though both having sufficient standing to make the complaint), and that only the former should have sufficient standing to bring judicial review proceedings. In other words, Dr Lim, being the true "victim" of the Complaint, was the proper person to bring the present judicial review proceedings if she had made the Complaint.

79 I accept the Attorney-General's statement of the law in Singapore on *locus standi* to bring judicial review proceedings (at [77] above). However, I do not agree that Mr Sharma did not have any of his private rights interfered with. I have found that Mr Sharma was entitled to make the Complaint to the Law Society under the LPA. The RC, in turn, is statutorily obliged to review the Complaint in a manner that is legal, rational and procedurally proper, regardless of the outcome. This duty is owed not simply to the public in general, but to Mr Sharma personally as the complainant. It follows that Mr Sharma has a private right for his complaint to be reviewed by the RC legally, rationally and with procedural propriety. It is precisely an alleged violation of this right that Mr Sharma is basing his present application. It seems incongruous that Mr Sharma may make a complaint but has no standing to seek judicial review against the dismissal of his complaint (if, as I have decided, the decision of the review committee is susceptible to judicial review). Furthermore, if Mr Sharma may make the complaint, he may, as the complainant, exercise other rights. For example, if an IC were appointed to hear any of his complaints and if the Council were to determine thereafter that a formal investigation is not necessary and therefore no DT has to be appointed, Mr Sharma may apply to a judge of the High Court to direct the Law Society to apply to the CJ to appoint a DT (see [30] above). It seems incongruous that he can do this but he has no standing to seek judicial review if his complaint is dismissed based on the decision of the RC.

80 I therefore find that since Mr Sharma may make the complaint, he may also seek judicial review of the decision of the RC. The latter follows from the former. It is therefore not necessary for me to consider the alternative proposed by the Law Society.

81 Since I have consolidated the leave application with the substantive merits, I do not need to decide whether there is an arguable case or *prima facie* case of reasonable suspicion in favour of granting the public law remedies sought by Mr Sharma. Instead, I proceed to consider the substantive merits.

The substantive merits

82 For the sake of convenience, I set out again the three grounds that Mr Sharma relied on:

(a) The RC erred in law and/or misdirected itself as to the law, in concluding that professional misconduct through gross overcharging could not be established by objective evidence that the fees claimed were grossly excessive in the "absence of other impropriety" ("Ground 1");

(b) The RC erred in law and/or misdirected itself as to the law in its conclusion that the pursuit of the fees claimed could not constitute professional misconduct on the basis that they reflected the work of all the solicitors involved ("Ground 2"); and

(c) The RC's reasons for concluding that the complaint against Mr Yeo SC were lacking in substance, were legally inadequate and unsustainable in law, being incapable of sustaining the RC's conclusion, and having no reasonable or proper evidential basis, and were not open to the RC acting reasonably and lawfully ("Ground 3").

Ground 1

83 The first ground that Mr Sharma relied on was that the RC had made an error of law. It is well-established that illegality is a basis for judicial review. The oft-quoted passage of Lord Diplock on illegality in *Council of Civil Service Unions and others v Minister for the Civil Service* [1985] AC 374 (*"GCHQ*") at 410 is as follows:

> By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

This passage was cited with approval by the CA in *Attorney-General v Venice-Simplon Orient Express Inc Ltd* [1995] 1 SLR(R) 533 at [10]. The ground of illegality includes errors of law made by the tribunal or decision-making body in coming to its decision. As Lord Pearce held in *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 at 195 (cited with approval by F A Chua J in *Leong Kum Fatt v Attorney-General* [1983–1984] SLR(R) 357 at [11]):

> … [I]t is assumed … that the tribunal will make its inquiry and decision according to the law of the land. For that reason the courts will intervene when it is manifest from the record that the tribunal, though keeping within its mandated area of jurisdiction, comes to an erroneous decision through an error of law. In such a case the courts have intervened to correct the error.

84 The parties' arguments on Ground 1 were as follows:

(a) Mr Sharma argued that the correct position in law is that "the claiming of grossly excessive fees can be professional misconduct in the absence of other impropriety".[15] He contended that the RC had

therefore misdirected itself as to the law by reasoning that "professional misconduct through gross overcharging could not be established by objective evidence that the fees claimed were grossly excessive in the 'absence of other impropriety'".[16]

(b) The Law Society argued that the correct position in law is that the "mere fact that a bill of costs is significantly reduced on taxation does not necessarily mean that there has been gross overcharging amounting to professional misconduct".[17] It contended that the RC was merely applying this reasoning in coming to its decision and was therefore not erroneous.

(c) The Attorney-General argued that the correct position in law is that the claiming of grossly excessive costs between a party and another ("P & P") does not constitute professional misconduct in the absence of other impropriety and that this was the reasoning which the RC applied.[18] It contended that the principle which Mr Sharma argued was the correct position in law only applied in the context of solicitor-and-client ("S & C") costs and not to P & P costs.

85 I now consider the position in law that Mr Sharma alleged is the correct one, *viz*, that a solicitor may be guilty of misconduct if he makes a P & P costs claim against his client's opponent for an amount which turns out to be grossly excessive.

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15 PWS at para 32.

16 PWS at para 32.

17 DWS at para 64.

18 AGS at para 47.

86 As mentioned above at [7], Mr Sharma relied on an opinion from Mr Ian Winter QC. Mr Winter QC relied on r 38 of the LP(PC)R. This rule states:

> 38. An advocate and solicitor shall not render a bill (whether the bill is subject to taxation or otherwise) which amounts to such gross overcharging that will affect the integrity of the profession.

Mr Winter QC said in para 9 of his opinion that Andrew Phang Boon Leong JA had "made [it] clear in *Dr Susan Lim v Singapore Medical Council* [2013] HGSC (*sic*) 122" that WP's demand for costs against Dr Lim in the sum of £1,025,009.37 "amounted to the charging of costs for the purpose of Rule 38". I note that the judgment of the CA in that case is reported as *Lim Mey Lee Susan v Singapore Medical Council* [2013] 3 SLR 900 and I also assume that Mr Winter QC was intending to refer to 1,025,009.37 in local and not British currency. Furthermore, the figure of "1,025,009.37" appears to be a typographical error and should have referred to the figure of "1,007,009.37" instead. This is the total sum claimed in the three Bills of Costs. In any event, the short point is that Phang JA was referring to the situation of a solicitor overcharging his client and not to P & P costs. Therefore, he did not say that an over-claim of P & P costs "amounted to the charging of costs for the purpose of Rule 38".

87 Mr Sharma's Statement in support of OS 593 also appeared to rely on r 38.[19] However, in his submissions, he accepted that r 38 applies only to a solicitor and his client.

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[19] See para 17(d) of the Statement

88 Rule 38 is constituted under Part III of the relevant rules. The heading reads "Relationship and Dealings with Clients". The other provisions under Part III also deal with matters between a solicitor and his client. It seems to me that r 38 is referring to a bill rendered by a solicitor to a client and not to an opponent. As noted above, Mr Sharma has accepted this point in his submissions. However, I accept that this does not exclude the existence of a non-statutory ethical rule which precludes a solicitor from deliberately over-claiming costs from the opponent of his client.

89 The cases which Mr Winter QC and Mr Sharma relied on for such an ethical rule are, however, cases in which a solicitor is alleged to be overcharging his *own* client and not a case where a solicitor makes a P & P costs claim against his *client's opponent*. No case was cited in the present proceedings before me to establish the ethical rule which Mr Winter QC and Mr Sharma were advocating.

90 In Mr Winter QC's opinion, there is no difference in terms of professional misconduct whether the gross overcharging was in relation to the solicitor's own client or to his opponent's client (see para 40 of his opinion). Mr Winter QC also said that, "Parties to litigation are entitled to trust their opponents not to seek fees that either have not been agreed between the lawyer and his client or which fees are grossly excessive" (see para 41 of his opinion). What I understood Mr Winter QC to mean was that parties to litigation are entitled to expect a certain standard of conduct from their opponents.

91 It is clear that the words "to trust" do not mean that there is a trust relationship between a party and the solicitor of his opponent. This is in contrast to the relationship of trust and confidence between a client and *his*

own solicitor (see *Lim Mey Lee Susan v Singapore Medical Council* [2013] 3 SLR 900 at [50]). A client looks to his solicitor to protect his interests. Indeed, in *Veghelyi v The Law Society of New South Wales* CA 40257/91 (6 October 1995) (unreported), the court observed that, "[c]lients are, or may frequently be, in a vulnerable position *vis-à-vis* their solicitors". On the other hand, an opponent has his own solicitor to protect his interests. Even if he is not represented by a solicitor, he knows that he cannot look to his opponent's solicitor to protect his interest.

92 The taxation of P & P costs is an adversarial exercise between two sides who have to protect and advance their own respective interests. The assessment of a fair amount of costs in contentious matters is not a science and widely divergent views as to what that amount should be are common. Perhaps that is why no case has been cited to this court in which an opponent has alleged misconduct on the basis of gross overcharging in a P & P bill of costs. I add that perhaps it is more accurate to say that WP was "claiming", and not "charging" costs against Dr Lim. The latter is more appropriate to an S & C relationship.

93 The question is whether the difference between a solicitor and client, on the one hand, and a solicitor and his client's opponent, on the other hand, makes a difference in principle. In other words, can a solicitor be liable for misconduct for grossly over-claiming costs against his client's opponent?

94 The Attorney-General submitted that a solicitor would not be liable for misconduct even if he made a grossly excessive claim for his client, in the absence of other impropriety. Likewise, if a solicitor were to make a completely misconceived non-monetary claim for his client.

95 It is important to bear in mind the following. First, a solicitor owes a duty not only to his client. He also owes a duty to the court to conduct litigation with due propriety (see *Myers v Elman* [1940] AC 282 at 302). Thus, in *Edwards v Edwards* [1958] 2 WLR 956, a solicitor was held liable to pay the costs of his client's opponent in certain litigation because he had breached that duty. It is immaterial that a solicitor ordinarily owes no duty to his client's opponent in litigation.

96 Secondly, r 69 of the LP(PC)R states that "An advocate and solicitor shall not, in his letter of demand, demand anything other than that recoverable by due process of law". I am of the view that this rule supports a wider proposition, *ie*, that a solicitor must not deliberately present a claim that is unsustainable whether it is a monetary claim or not. If this proposition is correct, then it should follow that a solicitor must also not deliberately present a claim for an amount which is unsustainable.

97 It should then also follow that the last proposition would extend to a claim for costs as well. In principle, there should be no difference between making a claim for a client on a main cause of action and making a claim for a client on costs. If either claim is deliberately made for a grossly excessive amount, then that may constitute misconduct. Furthermore, as Mr Sharma argued, a solicitor has personal knowledge of many of the material facts when he is claiming costs against the opponent of his client. For example, he knows the number of hours he has put in for the litigation and the complexity of the subject matter of the litigation.

98 One may argue that the availability of various sanctions under O 59 r 8(6) and (7) of the Rules of Court make it undesirable or unnecessary to impose any further responsibility on a solicitor. I do not think so. Those

provisions apply only if there is taxation. The gross over-claim may be made even before taxation. Furthermore, the sanctions are not dependent on proof of any misconduct. If there is evidence of misconduct, then further sanctions should be available.

99 While it may be simpler to implement a proposition that a gross over-claim in a P & P situation will never in and of itself constitute misconduct, I am of the view, for the reasons stated above, that this is not the correct proposition. While this may create difficulties in implementation, these difficulties do not outweigh the interest of the public and the profession as a whole. The following guidelines may assist.

100 Although gross over-claiming may constitute misconduct in a P & P situation, the application of that principle is vastly different from a case of overcharging as between a solicitor and his client.

101 Thus, in the context of taxation of costs, I agree with the Law Society's submission that "the mere fact that a bill of costs is significantly reduced on taxation does not necessarily mean that there has been gross overcharging amounting to professional misconduct" (see [84(b)] above). However, Mr Sharma is also correct that "the claiming of grossly excessive fees can be professional misconduct in the absence of other impropriety" (see [84(a)] above). In other words, I agree that a significant reduction will not necessarily mean that there is gross over-claiming which amounts to misconduct. Indeed, I accept that ordinarily it will not, bearing in mind the adversarial nature of taxation especially as between parties. However, this does not mean that a significant reduction will never, in and of itself, be sufficient to constitute misconduct.

102 I stress that I am not holding that every time a complaint discloses a significant reduction in the bills of costs after a P & P taxation, a review committee *must* refer the matter back to the Chairman and that an inquiry of misconduct *must* be conducted. The review committee is entitled to come to the conclusion that no inquiry is necessary despite the fact that a bill of costs has been taxed down significantly if it is satisfied that this is the appropriate direction to make on the particular facts before it.

103 For example, a review committee is entitled to take into account factors such as, but not limited to, the following:

(a) the reduction in absolute dollar terms;

(b) the reduction as a percentage of the entire sum claimed;

(c) the stage when the action was concluded and the number of days of hearing, if applicable;

(d) the value and/or importance of the subject matter and the complexity of the dispute;

(e) the fact that different solicitors may genuinely have vastly different views as to what a fair amount may be claimed (because the assessment of an appropriate quantum of costs is not an exact science);

(f) the allegations and submissions made during taxation and whether any sanction was imposed; and

(g) the interest of the complainant in the subject matter of the complaint.

104 However, in my view, it is not correct to say that in all cases some other impropriety must be shown apart from a grossly excessive P & P bill as a pre-requisite before a review committee proceeds to decide whether to refer the matter to the IC. As an illustration, imagine a scenario where a bill of costs on a P & P basis was rendered by a plaintiff's solicitor against a defendant for $200,000 in relation to a claim for the repayment of a $500,000 outstanding loan even though the defendant had capitulated after the service of a ten page statement of claim on it. The taxing registrar then allows only $10,000 to the successful plaintiff. Might that not in itself be sufficient to suggest that there was gross over-claiming such as to constitute misconduct on the part of the plaintiff's solicitor? While one may say that in such an illustration, the claim for $200,000 must have exceeded the plaintiff's S & C costs, that is not the point. The point is that in such an illustration a suggestion of misconduct may be made, even without alleging that the solicitor had claimed for more than what his own client is liable to him.

105 Having set out the correct position in law *vis-à-vis* the professional sanction which a solicitor who presents a P & P bill of costs that is grossly excessive may attract, I now turn to the decision of the RC and the principles of law which it applied.

106 I set out the relevant paragraphs of the Decision Letter. Under the heading "Proceedings of the RC", it stated at para 9 as follows:

> In terms of the first limb of the complaint, to wit, the amounts claimed in the first bill of costs were excessive, *the RC finds it apposite to note that taxation of bills is in itself, an adjudication process and a reduction by the taxing master* (Registrar or Judge of the Supreme Court) *of the costs claimed even if significant, would not amount to misconduct in the absence of improper or fraudulent claims*. Sanctions remain in place in relation to cost orders that can be made following taxation and

> the SMC in this instance, was given costs of the taxation notwithstanding the significant reduction in the amounts it was entitled to and awarded as such. The RC opines on the face of the first limb of your complaint in relation to claiming obsessive costs per se, no professional misconduct has been disclosed.
>
> [emphasis added]

107 Para 14(a)(iii) of the Decision Letter stated the following in relation to Limb 1 of the Complaint:

> 14. Having considered the aforesaid, the RC makes the following findings in relation to your complaint
>
> a) …
>
> …
>
> iii. *In relation to the Bills of Costs being excessive, the RC takes the view that the fact that the Bills were eventually taxed down significantly does not in itself give rise to an inquiry of professional misconduct, in the absence of other impropriety.* … As such, it finds that this header of your complaint against [Mr Yeo SC and Ms Ho] is lacking in substance and directs the Council to dismiss this header of the complaint.
>
> [emphasis added]

108 I note that the Decision Letter stated at para 9 that a reduction by the taxing master of the costs claimed even if significant "would not" amount to misconduct. This is confirmed when one reads para 14(c) of the report itself. Therefore, the RC did not say that a significant reduction "could not" amount to misconduct as alleged in Mr Sharma's submissions.

109 As noted above, the Decision Letter further stated at para 14(a)(iii) that in relation to the Bills of Costs being excessive, the RC was of the view that the fact that the Bills of Costs were eventually taxed down significantly "does

not in itself give rise to an inquiry of professional misconduct, in the absence of other impropriety".

110 I am of the view that the RC was not saying that a significant reduction would never amount to misconduct but rather that a significant reduction would not ordinarily amount to misconduct unless there was some other impropriety. Seen in this light, there was no error of law made by the RC and I dismiss Ground 1. Furthermore, when the RC at para 14(a)(iii) referred to the "Bills [of Costs]" being "eventually taxed down significantly", it was not referring to simply *any* bills of costs, but to the specific Bills of Costs that were the subject matter of the Complaint. In other words, the RC had concluded that on the particular facts before it, despite the Bills of Costs having been taxed down significantly, no inquiry of misconduct was necessary. This it was entitled to do (see above at [102]).

111 I add that it is useful to bear in mind that in considering the amount claimed by WP in order to determine the reduction made by the court, one should use the amount as amended by WP and not the amount initially claimed in the Bills of Costs. This is because WP had reduced the amount claimed by $287,009.37. The initial amount claimed was $1,007,009.37 and this was reduced to $720,000 (for the review).

112 Mr Winter QC had taken into account the larger sum when he concluded that WP had over-claimed by 300%. I do not think that is a correct approach. Using the amended amount as the basis for comparison and Mr Sharma's table of figures at p 7 of the Complaint, the eventual figures after the review was conducted were:

No	Description	Section 1 Amt (S$)	Section 1 Taxed Amt (S$)	Difference (S$)
1	BC 65 & 66	600,000	300,000	300,000
2	BC 71	120,000	70,000	50,000
	Total	720,000	370,000	350,000

113 The Complaint alleged that the difference for the first two bills (between the amount claimed and the amount allowed) was 200%, and that the difference for the third was 171.4%.

114 While $600,000 is double that of $300,000, the difference of $300,000 is 100% more than the $300,000 allowed. Likewise, for the third bill, the difference of $50,000 is actually 71.43% more than the $70,000 allowed.

115 On the other hand, looking at it from another angle, the reduction of $300,000 for the first two bills is 50% of the $600,000 claimed. Likewise, the reduction of $50,000 for the third bill is 41.67% of the $120,000 claimed.

116 Whichever way one looks at it, and bearing in mind the factors stated above at [103], the difference is not so significant or stark in itself as to constitute misconduct.

117 For example, during taxation, R&T accepted that Dr Lim was liable in principle to pay the costs of taxation and suggested some amounts for the court's consideration instead of suggesting one of the sanctions in O 59 r 8(7) of the Rules of Court. While this did not necessarily preclude a complaint

from being made, as I will elaborate later, it militated against any suggestion of gross over-claiming.

Ground 2

118 The second ground Mr Sharma relied on was also an alleged error of law made by the RC. Under this ground, Mr Sharma alleged that the RC had reasoned that "the fees claimed in the bill of costs were entitled to reflect the work of all the solicitors involved". He argued that this reasoning is an error of law because there is a legal prohibition against claiming the costs of getting up the case and for attendance in court of more than two solicitors unless certified to do so by the court (see O 59 r 19 of the Rules of Court).[20]

119 The Law Society contended that the RC was simply making a finding of fact that the hourly rate charged by Mr Yeo SC and Ms Ho was not excessive as one must take into account the work done by all the solicitors involved.[21] The Attorney-General argued that the bill for taxation can set out the work done by the legal team as a whole even if no certificate for costs of more than two solicitors had been obtained.[22]

120 It is not in dispute that WP had not applied for a certificate to claim the cost of more than two solicitors.

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20 PWS at para 39.

21 DWS at para 72.

22 AGS at para 54.

121 I begin by identifying the reasoning applied by the RC. Then I will determine whether that reasoning reveals an error of law. The relevant portion of the Decision Letter is found in para 14(a)(iii), which I reproduce:

> iii. … *In this regard, the RC records that it has noted that you alleged that the effective hourly rate would be excessive but the RC accepts the amounts in the Bills of Costs reflect the work of all the solicitors involved.* As such, it finds that this header of your complaint against [Mr Yeo SC and Ms Ho] is lacking in substance and directs the Council to dismiss this header of the complaint.
>
> [emphasis added]

122 In order to understand what the RC meant, it is necessary to understand first Mr Sharma's allegation in relation to Mr Yeo SC's and Ms Ho's effective hourly rate being excessive. In the Complaint, Mr Sharma made the argument that Mr Yeo SC and Ms Ho were effectively charging hourly rates of more than $2,000 per hour.[23] Apparently, he obtained this figure from the Notes of Evidence of the taxation hearing before the AR (referred to above at [5]) where the AR noted that "Mr Yeo SC and [Ms Ho] charged more than $2,000 an hour". It appears that the AR in turn derived the figure from the Notice of Dispute filed by R&T for Dr Lim in relation to BC 65. That notice had alleged that Mr Yeo SC's and Ms Ho's billing rate under BC 65 was $2,121.04 per hour and $2,258.28 per hour respectively.[24] R&T also applied a similar approach in the Notice of Dispute for BC 66 but not for BC 71 as BC 71 did not attribute the overall amount claimed to any particular solicitor. It is therefore important to see how R&T arrived at its figures in the Notice of Dispute for BC 65.

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[23] PBD1 at p 32.

[24] PBD1 at p 134.

123 In Section 1 of BC 65, a total of 1,034.3 hours was claimed under the header "Time spent", which was sub-divided between seven solicitors as follows:[25]

> **Approximately 1,034.3 hours**
>
> Mr Alvin Yeo, SC: approximately 176 hours
> Ms Melanie Ho: approximately 107.6 hours
> Mr Sean La'Brooy: approximately 1.6 hours
> Ms Lim Wei Lee: approximately 292.8 hours
> Ms Sugene Ang: approximately 216.4 hours
> Ms Sim Mei Ling: approximately 33.7 hours
> Ms Jolyn De Roze: approximately 206.2 hours

However, the Bill of Costs later identified only two counsel by name, Mr Yeo SC and Ms Ho, for which amounts of costs were claimed, presumably because there was no certificate for more than two solicitors. For Mr Yeo SC, the amount stated below his name was $373,831.78 and for Ms Ho, the amount stated below her name was $242,990.66.[26] R&T had arrived at their figures of Mr Yeo SC's and Ms Ho's hourly billing rate by simply dividing the amounts claimed below their names by the actual number of hours each of them had spent, *ie*, 176 hours and 107.6 hours respectively. However, in so doing, R&T had not taken into account the number of hours spent by other solicitors in WP. Likewise for BC 66.

124 Therefore, what the RC meant when it stated that it "accepts the amounts in the Bills of Costs reflect the work of all the solicitors involved" was that it accepted that the amounts of $373,831.78 claimed below the name of Mr Yeo SC and $242,990.66 claimed below the name of Ms Ho *included*

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25 PBD2 at p 840.

26 PBD2 at p 842.

the hours spent by the other solicitors identified in BC 65 (see [123] above). The same applies for BC 66.

125 Having identified what the RC's reasoning was, I now address whether it was an error of law. Order 59 r 19 of the Rules of Court prohibits the successful litigant from claiming the costs for getting up the case by and for attendance in court of more than two solicitors unless certified to do so by the court ("the Two Solicitors Rule"). In my view, the Two Solicitors Rule does not literally mean that only two solicitors can do the work. Neither does it mean that the successful litigant can only claim for the actual work done by two solicitors. The Two Solicitors Rule is based upon a notional team of two solicitors. In other words, absent a certificate, the court can only award costs for the work that would reasonably have been done by a notional two-man team assuming they did all the work, though that work can in fact be done by more than two solicitors. A bill of costs can therefore contain the number of hours spent by each solicitor that worked on the matter even though there are more than two solicitors, but care must be taken to ascertain overlapping work and the extent of the overlap (see *Singapore Medical Council v Lim Mey Lee Susan* [2015] SGHC 129 at [35]).

126 In my view, what WP did for BC 65 was to include the hours spent by other solicitors in addition to the hours spent by Mr Yeo SC and Ms Ho when WP claimed the aggregate amount. Otherwise, there would be no purpose in WP setting out the names of various solicitors and the hours they had spent. WP was entitled to do this provided there was no overlap in compliance with O 59 r 19.

127 In setting out the names of two specific solicitors for the eventual amounts claimed leading to the aggregate amount, WP was not foregoing the hours spent by the other solicitors. It had simply thought that because of the Two Solicitors Rule, it was supposed to identify two specific solicitors by name, but that is not correct. What WP should have done was to simply claim the aggregate amount for two solicitors generally rather than to try and apportion the amount between two specific solicitors who did not do all the work for which the claim is being made.

128 It follows that R&T's approach to derive Mr Yeo SC's and Ms Ho's hourly rates, which excluded the hours spent by other solicitors in WP, was not correct, and the AR should not have adopted R&T's approach. Therefore, Mr Sharma's allegation about the hourly rates under Ground 2 which was derived from R&T's approach was also not correct. I add that it is because of R&T's incorrect approach that the hourly rate of Ms Ho appeared to be higher than that of Mr Yeo SC.

129 At para 18(c) of the Statement in support of OS 593, Mr Sharma asserted that WP was precluded from claiming for work done by solicitors other than Mr Yeo SC and Ms Ho because of O 59 r 19 of the Rules of Court, which as identified at [125] above, is the rule which states that costs for getting up the case and for attendance in court of more than two solicitors shall not be allowed unless the court so certifies. There was no qualification by Mr Sharma to this assertion in the Statement.

130 However, in his written submissions, Mr Sharma appeared to accept that the Bills of Costs could include work done by other solicitors but that they cannot include duplication of work done by other solicitors. Thus, divided or

delegated work must not include (a) getting up the case or (b) attendance at court of more than two solicitors unless there is a certificate allowing this.

131 Mr Sharma's point was that the RC had erred when it accepted that "the amounts in the Bills of Costs reflect the work of all the solicitors involved" because it was saying that it was permissible to "reflect the work of all the solicitors involved" without any qualification. That meant that it was permissible to include duplication work of solicitors other than Mr Yeo SC or Ms Ho in the Bills of Costs, which was incorrect.

132 However, the complete sentence at 14(a)(iii) of the Decision Letter has to be taken into account. It reads: "In this regard, the RC records that it has noted that the effective hourly rate would be excessive but the RC accepts the amounts in the Bills of Costs reflect the work of all the solicitors involved". The second part of the sentence which Mr Sharma was relying on must be read in the context of the first part. Doing so, what the RC was saying was that the effective hourly rate (of Mr Yeo SC and Ms Ho) was not excessive, contrary to Mr Sharma's allegation, because the amounts in the Bills of Costs included work of solicitors other than Mr Yeo SC and Ms Ho. The RC was not saying that it was permissible for all work of all solicitors to be included irrespective of duplication.

133 In other words, the RC was saying in a short-handed way what I have elaborated above. This is that the perceived hourly rates of Mr Yeo SC and Ms Ho were not excessive as they were calculated based on the wrong premise that the amounts claimed as costs were confined to the hours spent by Mr Yeo SC and Ms Ho only.

134 There was no error of law by the RC, and therefore, I dismiss Ground 2.

Ground 3

135 Under this ground, Mr Sharma relied on three different bases to impugn the RC's decision, *viz*, illegality, irrationality and procedural unfairness. He contended that the RC adopted the following reasoning:

(a) Mr Yeo SC was not involved in drawing up the Bills of Costs or in appearing in the taxation proceeding;

(b) Therefore, Mr Yeo SC could not be guilty of any professional misconduct in respect of Mr Sharma's complaints.

Mr Sharma made two different arguments in relation to this reasoning. First, he submitted that this reasoning was erroneous in law or irrational because (a) was incapable of sustaining (b). Secondly, he argued that, further or alternatively, coming to conclusion (b) based on WP's "clarification" was erroneous in law or irrational.[27] Mr Sharma also made the further argument that it was procedurally unfair and a breach of natural justice that Mr Sharma was not informed of WP's clarification and provided with an opportunity to respond.

136 The Law Society argued that Ground 3 was really an attempt to appeal on the merits of the RC's decision. It contended that it was clear on the face of the record that the RC had taken into account the applicable law, attempted to obtain any relevant evidence, and came to a conclusion based on the law and

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[27] PWS at para 45.

evidence. Further, it was neither irrational nor unfair for the RC to rely on WP's clarification as it was the only course open to the RC, especially considering the lack of details in the Complaint. Mr Sharma neither had a right to respond to WP's clarification nor a right to be kept "fully informed" of WP's response to his complaint.[28]

137 With respect to Ground 3, the Attorney-General first argued that Limb 2 of the Complaint, *viz*, that Mr Yeo SC and Ms Ho had claimed more from Dr Lim than what they billed the SMC, was frivolous because the SMC had confirmed in writing to the RC that the total amount invoiced to the SMC was higher than the total quantum claimed in the Bills of Costs. Furthermore, Dr Lim was entitled to raise Limb 2 of the Complaint at the taxation proceeding before the AR or the taxation review before me, but she chose not to. Mr Sharma was hence not entitled to raise objections which Dr Lim herself chose not to, and Limb 2 of the Complaint was frivolous. Coupled with the argument that Grounds 1 and 2 were completely without merit, Ground 3 was wholly irrelevant as there was simply no misconduct for Mr Yeo SC to be implicated in.[29]

138 The law in relation to irrationality as a basis for judicial review is famously set out by Lord Diplock in *GCHQ* at p 410:

> By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether

[28] DWS at paras 74, 75 and 79.

[29] AGS at paras 63–69.

> a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v. Bairstow* [1956] A.C. 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.

139 Contemporary formulations of the irrationality basis asks whether the decision falls "within the range of responses which a reasonable decision-maker might have made in the circumstances" (see *Soomatee Gokool and others v Permanent Secretary of the Ministry of Health and Quality of Life and another* [2008] UKPC 54 at [18]; see also *De Smith's Judicial Review* at para 11-006). A decision can be accurately described as "irrational" if the evidence taken as a whole is not reasonably capable of supporting the decision of the decision-maker as to his or her finding (see *Ng Hock Guan v Attorney-General* [2004] 1 SLR(R) 415 at [59] citing *De Souza Lionel Jerome v Attorney-General* [1992] 3 SLR(R) 552 with approval). Further, the court must always be alive to the danger of delving too deep into the merits of the decision. As the learned authors of *De Smith's Judicial Review* stated at para 11-004:

> The question of the appropriate measure of deference, respect, restraint, latitude or discretionary area of judgment (to use some of the terms variously employed) which the courts should grant the primary decision-maker under this head of review is one of the most complex in all of public law and goes to the heart of the principle of the separation of powers. This is because there is often a fine line between assessment of the *merits* of the decision (evaluation of fact and policy) and the assessment of whether the principles of "just administrative action" have been met. The former questions are normally matters for the primary decision-maker, but the latter are within the appropriate capacity of the courts to decide. …

> [emphasis in original]

140 I now come to what the RC decided. Para 8 of the Decision Letter, under the header "Proceedings of the RC", stated:

> *In so far as what constitutes professional misconduct, liability is dependent on an actual act or omission on the part of a solicitor which clearly arises from his/her personal conduct.* In this regard, the respective roles of [Mr Yeo SC and Ms Ho] would therefore have to be considered separately although you did not draw any distinction between the 2 lawyers. *As there were no facts to make such determination of their respective role in the matter, the RC was of the view that clarification from the lawyers was therefore necessary and proceeded to obtain them.*
>
> [emphasis added]

As can be seen, the RC was of the view that a solicitor can only be guilty of professional misconduct based on his or her own personal conduct. As a result, the RC deemed it necessary to obtain clarification from WP as to the respective roles played by Mr Yeo SC and Ms Ho in relation to the matters complained of and it so did.

141 According to the Decision Letter, WP's reply in relation to this issue was as follows:[30]

> [Mr Yeo SC] although the Counsel in the proceedings against [Dr Lim] was *not involved in drawing up the Bills of Costs or the taxation proceedings*"
>
> [emphasis added].

142 The RC then went on to make the following findings in relation to Limb 1 of the Complaint:[31]

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30 PBD1, Tab 1 at p 23, para 12(a).

31 PBD1, Tab 1 at p 24, para 14(a).

> i. The RC notes that there was no specific allegation in the complaint that [Mr Yeo SC] was involved in the preparation of the Bills of Costs and the proceedings related thereto. Even though he may have been involved in the bills issued to the SMC, the gravamen of the complaint is that the Bills of Costs were excessive and exceeded the amounts billed to the SMC or which the SMC would be liable to pay.
>
> ii. Further to the confirmation by WP that [Mr Yeo SC] was *not involved in the matters complained of*, the RC notes that the Notes of Evidence produced by you do not show him being present at the hearings.
>
> [emphasis added]

In relation to Limb 2 of the Complaint, the RC found as follows:[32]

> i. In relation to [Mr Yeo SC's] role and responsibility in so far as your complaint was concerned. The RC notes the observation of the Court of Three Judges in *Re Cashin Howard* [1989] 3 MLJ 129 is apposite:
>
> "The Committee, however, concluded that, because there was 'a personal duty' on every solicitor or 'joint responsibility' in the case of a partnership, to ensure strict compliance with the account rules, each and every partner is responsible and liable for every breach. In arriving at this conclusion, the Disciplinary Committee failed to distinguish between 'joint and several liability', a civil responsibility, on the one hand, and a disciplinary responsibility on the other. The confusion appears to have arisen because of the failure to appreciate the exercise of disciplinary power is essentially punitive and penal and is exercised in appropriate cases only where there is personal complicity by the solicitor charged. It is apposite, in this connection, to quote the words of Lord Atkin in *Myers v Elman* [1940] AC 272 at p 302:
>
> > Misconduct of course may be such as to indicate personal turpitude on the part of the person committing it and to lead to the conclusion that the party committing it, if an officer of the court, is no longer fit to act as such. Over conduct such as that, punitive jurisdiction will be exercised, but *it seems hardly necessary to state that no punishment based on personal misconduct will be inflicted unless the party visited is himself proved to be personally implicated*."

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32 PBD1, Tab 1 at p 25, para 14(b).

> Evidently, [Mr Yeo SC] was therefore ***not involved with the preparation of the Bills of Costs and the proceedings related thereto.*** In the premises, the RC finds ***no misconduct on the part of [Mr Yeo SC]*** and finds that this header of your complaint against him is lacking in substance. The RC accordingly directs the Council to dismiss this header of the complaint.
>
> [emphasis in original in italics; emphasis added in bold italics]

143 It is apparent that the RC had relied on WP's clarification that Mr Yeo SC was "not involved in drawing up the Bills of Costs or the taxation proceedings" to conclude that Mr Yeo SC was "not involved in the matters complained of". I note at this juncture that the phrase "not involved in drawing up the Bills of Costs or the taxation proceedings" may lend itself to different interpretations. It could, as Mr Sharma contended, have the limited meaning that Mr Yeo SC was not physically involved in drawing up the Bills of Costs and did not physically argue the taxation proceedings. On the other hand, it could also mean that Mr Yeo SC did not participate at all in matters relating to the Bills of Costs and the taxation proceedings. This would include WP's Letter of Proposal and WP's decision to reject Mr Sharma's counter-proposal (see para 4 above). In other words, Mr Yeo SC had no involvement in or knowledge of any matter relating to the quantum of costs that the SMC sought to recover from Dr Lim, except possibly to the extent of indicating the number of hours he spent working on the underlying proceedings and the scope of his role in them. It appears to me that the RC had adopted the latter interpretation.

144 It is unnecessary for this court to decide whether the RC adopted the right or wrong interpretation, though it is arguable that the RC adopted a rather generous interpretation of WP's clarification. It may very well be the case that a solicitor as senior as Mr Yeo SC would leave matters relating to P & P costs to the second solicitor in charge of the matter, in this case, Ms Ho (who is not

a junior solicitor herself). On the other hand, it may also be said that it was *prima facie* unlikely that Mr Yeo SC was entirely unaware of the amount of costs claimed from Dr Lim.

145 Nonetheless, I am of the view that it was not for the RC to find that Mr Yeo SC was not involved in the matter complained of and therefore not guilty of any professional misconduct. The only evidence before the RC in relation to Mr Yeo SC's role and involvement in the matter complained of was WP's clarification in this regard. WP's clarification did not appear to be supported by any documentation or objective evidence except insofar as the Notes of Evidence of the taxation proceedings show that Mr Yeo SC was not present at the hearings. The assertion by WP was self-serving in nature and stood in direct contradiction to the position taken by Mr Sharma. WP's clarification must also be viewed in the light of the following background facts:

(a) The file reference number on WP's Letter of Proposal to Mr Sharma and WP's response to Mr Sharma's counter-proposal dated 20 November 2012 bore, *inter alia*, "AY". It is not disputed that "AY" refers to Mr Yeo SC.

(b) The Bills of Costs similarly contained "AY" in the file reference number. They also indicate that the solicitor in charge was: "1. Alvin Yeo SC".

(c) Mr Yeo SC was one of the solicitors who acted against Dr Lim in the underlying proceedings and that the Bills of Costs claimed, amongst others, his fees for those proceedings.

146 The review committee was introduced to be a "sifting mechanism" and its mandate is a limited one. Having said that, I am not saying that a review committee is never entitled to come to findings of fact based on answers that the solicitor (or the complainant for that matter) provides to the review committee in response to questions from it. A review committee may be able to come to findings of fact for it to determine whether a complaint is frivolous, vexatious, misconceived or lacking in substance. Section 85(7) of the LPA further provides a review committee with the power to have the complainant or solicitor answer any inquiry. However, it is not for a review committee to perform the task of an IC and make findings on disputed facts especially when the finding is based on a self-serving statement. The RC implicitly recognised this. The Decision Letter stated at para 5 that, "the RC is entitled to obtain verification of the status and facts where this do not require any consideration of credibility, weight or finding on the merits". Yet it seems that it proceeded to accept WP's explanation at face value which would involve, *inter alia*, a consideration of WP's credibility. It may turn out subsequently that Mr Yeo SC was indeed not involved at all in the matters complained of. Nevertheless, that was not a conclusion for the RC to make in the circumstances.

147 Therefore, although the RC's interpretation of WP's clarification was not irrational nor necessarily an error of law, it had exceeded its remit. The error would in principle entitle the court to set aside the RC's decision in respect of Mr Yeo's involvement. In the circumstances, it is unnecessary for me to consider whether Mr Sharma had a right to respond to WP's clarification.

Consequences of my findings

148 To summarise my findings thus far, I have found that the RC did not make any error of law under Grounds 1 and 2 and I have dismissed both grounds. I have, however, found that the RC exceeded its remit under Ground 3. I now proceed to consider the impact my findings would have on the RC's decision for the purposes of the present judicial review and whether Mr Sharma is entitled to the reliefs claimed.

149 Despite my finding that the RC had erred under Ground 3, I dismiss Mr Sharma's application in so far as it seeks to quash the RC's decision to direct the Council to dismiss Limb 1 of the Complaint against both Mr Yeo SC and Ms Ho. Even if Mr Yeo SC was indeed involved in the preparation of the Bills of Costs, the RC was entitled to conclude that Limb 1 of the Complaint lacked substance (see para 14(a)(iii) of the Decision Letter) and direct the Council to dismiss Limb 1 against both Mr Yeo SC and Ms Ho. I have found under Grounds 1 and 2 that the RC did not err in law in coming to this conclusion and accordingly, the RC's decision in respect of Limb 1 of the Complaint is upheld.

150 In respect of Limb 2 of the Complaint, I note that the RC had referred the matter to the Chairman to constitute an IC *vis-à-vis* Ms Ho but not Mr Yeo SC. The RC's reason for excluding Mr Yeo SC was that it concluded that Mr Yeo SC was "not involved with the preparation of the Bills of Costs and the proceedings related thereto" (see para 14(b)(i) of the Decision Letter). I have found that it was not for the RC to reach this conclusion (see above at [147]). Nevertheless, it does not necessarily follow that the RC's decision *not* to refer Limb 2 to the Chairman *vis-à-vis* Mr Yeo SC must be quashed.

151 To recapitulate, Limb 2 of the Complaint was that Mr Yeo SC and Ms Ho had claimed costs in excess of the sums SMC were liable to pay WP. Such conduct is prohibited under s 112(2) of the LPA, which provides that a client shall not be entitled to recover from any other person more than the amount payable by the client to his own solicitor. It follows that a solicitor is prohibited from claiming P & P costs in excess of what his client is liable to pay him.

152 In the course of arguments, the Attorney-General submitted that there must be both a complaint *and* material on which a person may make that complaint, relying on the decision of the Court of Appeal in *Tang Liang Hong v Lee Kuan Yew and another* [1997] 3 SLR(R) 576 (at [80]). In the context of Limb 2 of the Complaint, the Attorney-General doubted in the first place that there was a complaint. He submitted that in any event there was no material to say that Mr Yeo SC and Ms Ho had claimed P & P costs in excess of the actual sums billed to SMC or that could be billed under arrangements agreed with SMC.

153 Looking at the Complaint again, I noted that Mr Sharma had not explicitly alleged that Mr Yeo SC and Ms Ho had claimed more than what SMC was liable to WP for. He had only alluded to general principles, for example, that a lawyer should not be allowed to claim costs against a losing party that are higher than what was paid or what was agreed to be paid by his own clients.[33]

154 Later in the Complaint, he said[34]:

[33] Page 3, last para of the Complaint.

[34] Page 7, 3rd para of the Complaint.

> I wish to highlight an additional point: When the fees were reduced voluntarily before the appeal hearing, it can either be that SMC gave a reduction but the lawyers maintained the original amount or, the lawyers reduced their fees. It is very clear from the submissions at the hearing and the notes of evidence that it was the lawyers who reduced their fees. If, additionally, the lawyers had not billed SMC the full amount before charging the 3 bills against my wife, then I would say that it is equivalent to serious violation of ethics, e.g. contingent if not a deliberate fraud to give the impression that they had billed SMC amounts which are equal or higher than those claimed in the 3 Bills.

155 This passage supports the view that Mr Sharma was not certain whether Mr Yeo SC and Ms Ho had in fact claimed more in the Bills of Costs than what SMC was liable to pay WP. But he thought that this might be so.

156 As a complainant, Mr Sharma has to make a positive assertion/complaint. He is not in the category of persons who may refer information touching upon the conduct of a solicitor to the Law Society (see [60]). Therefore, if there was no complaint as such then the RC should not have treated it as one.

157 On the other hand, it may be said that there was a complaint by Mr Sharma as summarised in Limb 2, however indirectly it may have been made. It seems to me that Limb 2 was really a subset of Limb 1 which was the complaint. Mr Sharma was complaining that WP had grossly over-claimed against Dr Lim and he then wondered whether WP might even have claimed more against Dr Lim than what SMC was liable to WP for. Limb 2 was therefore not a complaint as such. On this basis alone, Mr Sharma's application to quash the RC's decision in respect of Limb 2 *vis-à-vis* Mr Yeo SC should be dismissed.

158 However, assuming that Limb 2 was a complaint and a distinct one at that, the next point then is whether the court should consider whether there was some basis or material for the complaint.

159 Mr Sharma submitted that the court should refer the Limb 2 complaint back to the RC (or a newly constituted one) and not consider whether there is any substance in the Limb 2 complaint. This is because it is outside the purview of a supervising court to sift through the evidence and evaluate whether a tribunal was correct to arrive at a certain conclusion (see *Re Shankar Alan* at [39])

160 On the other hand, the Law Society submitted that the court may and should decide not to exercise its discretion to quash that part of the RC's decision on Limb 2 in respect of Mr Yeo SC if the court is of the view that the same decision would still be reached by the RC, citing *R v Knightsbridge Crown Court, ex parte Marcrest Properties Ltd* [1983] 1 WLR 300 and *R v Broadcasting Complaints Commission, ex parte Owen* [1985] 2 WLR 1025.

161 The Law Society also relied on O 55 r 6(7) of the Rules of Court which states that, "The Court shall not be bound to allow the appeal on the ground of misdirection … unless in the opinion of the Court substantial wrong or miscarriage has been thereby occasioned". I should observe that that provision applies to an appeal and not a review and hence is not applicable to Mr Sharma's application before this court.

162 The Attorney-General submitted that the court should not make a quashing order if the outcome would still be the same. He stressed that the court should not act in vain. He relied on *R (on the application of Garg) v Criminal Injuries Compensation Authority* [2007] EWCA Civ 797, *R v*

Secretary of State for the Home Department, Ex parte Fire Brigades Union and others [1995] 2 AC 513 and *R v Mansfield Justices, Ex parte Sharkey* [1985] QB 613. The Attorney-General also pointed out that a similar approach is taken by English and Singapore courts where there has been a breach of natural justice, citing *Malloch v Aberdeen Corporation* [1971] 1 WLR 1578, *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86 and *Management Corporation Strata Title Plan No 301 v Lee Tat Development Pte Ltd* [2011] 1 SLR 998.

163 Mr Sharma did not contest the proposition that the court has a discretion not to quash the decision of the RC even if the RC had exceeded its remit or made an error in law. His point was that the court should quash the decision and refer the matter back to a review committee.

164 I am of the view that since the court has a discretion whether to quash the decision of the RC or not, the court should consider whether it ought to issue a quashing order in the circumstances, while bearing in mind not to usurp the function of the RC.

165 I will now refer to the RC's report itself as it reflects the flow of the RC's reasoning better. Paragraph 13(c) of the report stated:

> (c) In respect of the second limb, the Complainant did not furnish any evidence, relying on the inference to be drawn from the fact that the amounts awarded on taxation were significantly less than the amounts claimed and from the manner in which the work done was described in the Bills of Costs.

166 This observation was expanded in para 14(e) of the report which stated:

> (e) In the premises, for [Limb 2] to have foundation, the amounts claimed in the bills of costs would have to be higher than what SMC was actually billed or what SMC could be liable to pay under its agreement with Wong Partnership. The bases of this complaint were that the significant reduction in the amounts allowed and the apparent discrepancy in hourly rates that could have been charged to SMC were indications that the amounts claimed in the bills of costs were in excess of what was actually billed to SMC and not in accordance with the rates agreed with SMC. The Complaint did not contain any assertion of what the terms between the SMC and Wong Partnership were, what amounts were billed, and what amounts would have been due under the terms of engagement. The Complaint did not set out any facts or evidence to support this assertion, except for Ian Winter Q.C.'s opinion. Given that the true state of affairs could be ascertained quite easily, we were of the view that clarification would be useful in consideration of the matter.

167 Although para 14(e) of the report identified two bases of complaint for Limb 2 (*ie*, the significant reduction in the amounts allowed and the apparent discrepancy in hourly rates), it suggested that the RC had proceeded to seek clarification from WP not because there was substance in the two bases of the Limb 2 complaint but because the RC was of the view that "the true state of affairs could be ascertained quite easily" and "that clarification would be useful in consideration of the matter". This is confirmed by the fact that the RC subsequently dismissed the two bases of the Limb 2 complaint, as gleaned from para 21(c) of the report which stated:

> (c) In relation to the Bills of Costs being excessive, we are of the view that the fact that the Bills were eventually taxed down significantly does not by itself give rise to an inquiry of professional misconduct, in the absence of other impropriety. We have noted the Complainant's allegation that the effective hourly rate would be excessive but accept that the amounts in the Bills of Costs reflect the work of all the solicitors involved.

The above passage is similar to the passage in para 14(a)(iii) of the Decision Letter (cited at [107] and [121] above).

168 In my view, the RC had erred in its approach here and, ironically, this error was in favour of Mr Sharma as the RC eventually referred Ms Ho to the IC on the Limb 2 complaint. I will now elaborate as to how this came about.

169 As the Attorney-General stressed in his submission to this court, Limb 2 involved S & C privilege. It is worthwhile for me to mention that it is easy to overlook that such a privilege exists especially when complaints are frequently made by the clients themselves. In such a situation, it may be said that a client impliedly waives the privilege when he makes a complaint so that a solicitor and a review committee or an IC need not concern themselves about such a privilege. This is not so when the complainant is not the client.

170 It seems to me that the RC had overlooked the point that any request by the RC for a clarification from WP on Limb 2 was likely to intrude on S & C privilege as between WP and the SMC. What the RC should have done was to see first if there was any substance in the Limb 2 complaint *before* seeking any clarification from WP. If there was no substance, then the matter should have ended there. Instead, what the RC did was to seek clarification from WP even though it had not satisfied itself that there was some substance in the Complaint, thinking that the clarification would resolve the question quite easily. The RC then found that it had run into a brickwall because WP claimed S & C privilege in one of its responses. The RC then considered its options (see paras 10 and 20 of the report which are substantially repeated in paras 11 and 12 of the Decision Letter). Eventually the RC decided not to consider the material for which privilege was being claimed and the RC decided to refer Ms Ho to the IC for the Limb 2 complaint. It seems to me that the RC was distracted by the options it had to consider, in the light of the claim of

privilege, and had overlooked the fundamental point as to whether there was any substance in the Limb 2 complaint in the first place.

171 In a further irony, the RC had referred Ms Ho to the IC on the Limb 2 complaint but not Limb 1 when, ordinarily, a complaint in the nature of Limb 2 has to cross a higher threshold than Limb 1. I say this because if the complaint under Limb 2 were made out, it would mean that there was gross over-claiming by WP which would amount to misconduct. However, the converse is not true – even if there was a gross over-claim which would amount to misconduct, it would not necessarily mean that the Limb 2 complaint was made out. In my view, the RC had referred Ms Ho to the IC on the Limb 2 complaint but not on Limb 1 because of the incorrect approach the RC had adopted.

172 Therefore, having not received any useable information from WP or SMC due to S & C privilege, the RC was essentially back at its starting point, which was its view that the Limb 2 complaint was not supported by any facts or evidence, *ie*, that the Limb 2 complaint was lacking in substance. However, instead of directing the Council to dismiss the Limb 2 complaint, the RC referred that complaint in respect of Ms Ho to the Chairman to constitute an IC. In my view, such a course of action was inherently contradictory to the RC's *own* findings and was irrational.

173 I appreciate that the RC's decision on the Limb 2 complaint in respect of Ms Ho is not before the court for review. In this regard, I agree with the submission of the Attorney-General that there is nothing for this court to do *vis-à-vis* Ms Ho and it is up to Ms Ho to take whatever steps she wishes regarding the Limb 2 complaint. Instead, it is only the RC's decision on the

Limb 2 complaint in respect of Mr Yeo SC that is before the court for review. It would, however, be incongruous for the court to refer the Limb 2 complaint *vis-à-vis* Mr Yeo SC back to the RC when the RC had already, in essence, found that the Limb 2 complaint was lacking in substance. Even if the RC did not make the error that it did under Ground 3, its decision on Limb 2 *vis-à-vis* Ms Ho should still be the same as for Mr Yeo SC, *ie*, to direct the Council to dismiss it. Accordingly, I was not inclined to exercise my discretion to quash the RC's decision in respect of Limb 2 *vis-à-vis* Mr Yeo SC. However, for completeness, I have considered further whether a refusal to quash the RC's decision would result in some injustice to Mr Sharma. I have done so even though this may entail going into the merits of the remainder of his allegations as those allegations raise important points of principle or approach.

174 It appears from the Complaint that Mr Sharma was relying on various allegations to draw an inference to support the Limb 2 complaint. The RC had referred to two of the allegations which it dismissed:

(a) the fact of the significant reduction in the amount allowed on taxation; and

(b) the excessive hourly rates alleged by Mr Sharma.

The first of these allegations is already dealt with in my discussion of Ground 1, and the second is already covered in my discussion of Ground 2.

175 It appears to me that Mr Sharma was also relying on the following additional allegations to draw inferences in respect of Limb 2 (as well as Limb 1):

(a) In WP's without prejudice letter dated 12 March 2012, they had asked for $865,000 for costs, excluding disbursements and GST. When that proposal was rejected, they increased the amount claimed to $1,007,009.37 in the three Bills of Costs which they filed ("Reason A").

(b) When the Bills of Costs was being reviewed by the judge, after taxation done by the AR, WP had reduced their claim by $287,009.37 (see [6]) ("Reason B").

176 However, the question still arises as to whether any of these allegations is applicable to sustain the Limb 2 complaint.

177 As for Reason A, I am of the view that it was not open to Dr Lim or Mr Sharma to refer to the without prejudice proposal by WP dated 12 March 2012. It was not disputed that the proposal was made without prejudice and in good faith to try and reach a settlement on the costs payable by Dr Lim to SMC. Accordingly, since that proposal was not accepted, Dr Lim would have been precluded from referring to it in the course of taxation in order to argue that the amount being claimed in the Bills of Costs was an over-claim to the extent that it was more than what SMC was liable to pay WP. Such is the protection accorded by a proposal made without prejudice.

178 Had Dr Lim made the Complaint herself, she would still have been precluded from referring to the without prejudice proposal in order to support her complaint of over-claiming in the Bills of Costs. The reason is obvious. Generally, parties and their solicitors are encouraged to make without prejudice proposals on costs so as to avoid further dispute on the subject. It would negate the rationale for encouraging such proposals if the proposal

could be referred to in making a complaint about over-claiming even though it cannot be referred to in the taxation itself. Put another way, no solicitor could safely assume that the proposal would not be referred to (if it were not accepted), if one could still refer to it to make a complaint about gross over-claiming as between party and party. If an opponent were to allege that the amount claimed in the P & P bill of costs was excessive to the extent that it exceeded what the other party was liable to pay his solicitors, he will have to do so without referring to the without prejudice proposal.

179 Mr Sharma cannot be in a better position than Dr Lim. As Dr Lim would have been precluded from referring to the without prejudice proposal in any complaint which she might choose to make about over-claiming, Mr Sharma is likewise precluded. Therefore, even though the without prejudice proposal was in fact made it cannot sustain any such complaint.

180 Even if Mr Sharma were entitled to refer to the proposal, it is not evidence of a gross over-claim, let alone that WP was claiming more than what SMC was liable to pay them. It is in the nature of a without prejudice proposal that the amount proposed is less than the actual claim if pursued. Furthermore, even if no detail or reason was given by WP for claiming more than what it had proposed, it was for WP to justify its claim in taxation. The position remains that the proposal made without prejudice cannot be referred to in order to argue that the claim was grossly excessive or more than what SMC was liable for.

181 I now come to Reason B. Was the reduction by WP of $287,009.37 during the hearing of the review application as sinister as Mr Sharma was suggesting? Before I continue, I will address a point made by Mr Sharma in

oral submissions. It was argued that this reduction was a distinct complaint although it was also part of the overall complaint about gross over-claiming. I do not consider this reduction as a distinct complaint. Furthermore, it was not treated as such by the RC, and the Statement in support of the application before me did not allege that the RC had erred in failing to consider it as a distinct complaint.

182 In the Complaint, Mr Sharma stressed (at p 7) that the reduction of this sum demonstrated that WP "had already attempted to overcharge [Dr Lim] by" the same amount. There cannot be any dispute that since WP had reduced their claim by $287,009.37 for the review hearing, there was an over-claim by WP of this amount during the initial taxation. However, in my view, that is not the point. The point is whether this was done deliberately.

183 Mr Sharma also alleged in the Complaint (at p 6) that he found it "curious" that WP only discovered the overlap when the SMC appealed against the AR's decision and that this overlap should already have been apparent to WP when they first rendered the Bills of Costs. He believed that the reduction was indicative of the fact that WP could not justify the original amount claimed in the Bills of Costs. I agree that the fact that WP reduced their original claim would mean that they cannot justify the original claim, but that again is neither here nor there. The point again is whether they included the $287,009.37 deliberately.

184 The dispute between SMC and Dr Lim was not a simple one. The taxation was also not simple. I reiterate that although WP could claim for two solicitors only, in fact more than two were involved. In such a situation, one

cannot assume that the existence of an over-claim necessarily means that it was done deliberately.

185 Mr Sharma submitted that a mere acknowledgment of an error by a solicitor will not necessarily absolve the solicitor of all wrongdoing. That is true. However, it is also true that an acknowledgment of an error is not necessarily evidence of misconduct. The circumstances under which the error was made should be considered.

186 WP disclosed the specific over-claim for the taxation review which I had heard. It was not as though its back was to the wall and the court was close to discovering that over-claim when WP revealed it. Thus Mr Sharma stopped short of saying that the court would have discovered the over-claim in any event.

187 In the circumstances, I am of the view that WP had made the disclosure voluntarily and no adverse inference should be drawn from such a disclosure. Otherwise, WP would be damned for disclosing the over-claim and damned if they did not and the error was subsequently discovered. That cannot be right for it will discourage solicitors from redressing their errors. Therefore, the fact that WP had voluntarily disclosed the over-claim cannot sustain any complaint of misconduct let alone the Limb 2 complaint.

188 Furthermore, there was no complaint by R&T about Limb 2 (or even Limb 1) during the taxation. On this point, the Attorney-General had submitted that this omission precluded Dr Lim or Mr Sharma from raising the Limb 2 complaint. He relied on *Pamplin v Express Newspapers Ltd* [1985] 1 WLR 689 ("*Pamplin*") to submit that Dr Lim should have raised the point in taxation so that the SMC could have elected then whether to waive S & C

privilege and not be troubled by this issue when the Complaint was made later. He submitted that the Complaint constituted re-litigation and encourages satellite litigation.

189 Mr Sharma submitted that the Complaint was not re-litigation. He was not seeking to go behind the result of the taxation and was instead acting upon that result. He also submitted that the omission to make any complaint of misconduct in taxation did not preclude him from making the Limb 2 complaint.

190 I agree that this was not a case of re-litigation. Whether it was satellite litigation is neither here nor there. The case of *Pamplin* does not assist the submission of the Attorney-General. In that case, the question was whether a litigant was entitled to see certain material from his opponent which was filed for taxation proceedings and which was available to the taxing master. The court was considering a conflict between two legal principles. The first was that a party may not make secret communications to the court. The second was the right of a party not to disclose to his opponent documents or transactions covered by legal professional privilege. It was in that context that the court said that a litigant has to choose what evidence he will adduce and to what extent he will waive his privilege. That case is not authority for the proposition that failure to raise an issue in taxation precludes the raising of that issue in a subsequent complaint about the conduct of a solicitor.

191 Therefore, I am of the view that the omission to raise the point in taxation did not preclude Dr Lim, or Mr Sharma, from raising it in a complaint. However, the omission to do so did militate against the validity of such a complaint.

192 In all the circumstances, I am of the view that while WP should have been more careful in preparing the Bills of Costs, there is no basis for suggesting that they had over-claimed the $287,009.37 deliberately. *A fortiori*, there is no basis for using the over-claim to suggest that WP had in fact claimed more in the Bills of Costs than what SMC was liable for to them. For the avoidance of confusion, I would mention that the argument based on the over-claim of $287,009.37 was different from that about the alleged excessive hourly rates of Mr Yeo SC and Ms Ho although the $287,009.37 was part of the overall complaint of over-claiming. The argument of excessive hourly rates arose because the hours spent by other solicitors were not taken into account. The $287,009.37 reduction did take into account the work done by other solicitors but it also took into account any overlap between solicitors which should not have been included. The $287,009.37 was supposed to represent the overlap.

193 Mr Sharma also submitted that the court should consider WP's vacillatory conduct on the whole: first, in increasing the amount claimed in the Bills of Costs to more than what was claimed in the without prejudice proposal and then in reducing the amount claimed in the Bills of Costs by the over-claimed amount of $287,009.37.

194 In the first place, as I mentioned already, the without prejudice proposal cannot be referred to in the Complaint. As for the over-claim of $287,009.30, this was revealed voluntarily as I have said.

195 In the circumstances, there was still no basis to draw any inference to support the Limb 2 complaint. Therefore, I am of the view that I should

decline to quash the RC's decision on Limb 2. I am satisfied that this will not be an unjust result to Mr Sharma.

196 Accordingly, I dismiss Mr Sharma's application in this regard.

197 I add that the reasons I have considered would also not support an allegation of misconduct under Limb 1 of the Complaint for similar reasons.

Summary and Remedies

198 I summarise my findings in relation to the substantive merits of this application:

(a) Under Ground 3, I find that it was not for the RC to reach the conclusion that it did based on a self-serving statement. However, there is no reason to disturb the RC's decision in respect of Limb 2 of the Complaint *vis-à-vis* Mr Yeo SC.

(b) Under Ground 1, I find that the RC had not made an error of law in its reasoning in dismissing Limb 1 of the Complaint.

(c) Under Ground 2, I find that the RC had not made an error of law.

199 In the circumstances, I dismiss OS 593. The Law Society is to notify both the Chairman and the RC of this judgment.

200 I will hear the parties on costs and on any consequential order that may be sought.

General observations

On complaints about over-claiming

201 In future, due to the intrusive nature of an allegation that a solicitor has claimed more costs from the other party than what is due to him from his own client, a review committee (or any other tribunal down the line) may want to consider asking a complainant whether he is prepared to reveal the S & C costs of the alleged victim where there is no independent objective evidence to support the complaint. If the victim's own S & C costs are themselves more than what was claimed on a P & P basis, then on what basis does a complainant say that the opposing solicitor had claimed more than that solicitor's own S & C costs? If the complainant does not reveal the information, that is a factor which may be taken into account.

202 Likewise, when an argument is made that the hours claimed in a bill of cost is grossly excessive, it may be worthwhile to ask the disputing solicitor how many hours he himself had put in as a comparison although bearing in mind that P & P costs are different from S & C costs. This was a question that I had asked R&T in the review of Bills of Costs in related proceedings but no information was provided. The hours put in by the disputing solicitor may provide a further gauge in assessing whether there was gross over-claiming in the first place.

On the current parties and disclosure of report

203 I have other general observations as well. I note that during the course of the hearing, a dispute arose as to whether the Law Society is the correct defendant to be named in this application. It arose because the remedies Mr Sharma applied for are a quashing order of the RC's decision and a mandatory

order for a fresh review committee to be constituted. In relation to the quashing order, the decision that is sought to be quashed was not made by the Law Society and the Law Society said it was unable to speak for the RC. In relation to the mandatory order, the Law Society submitted that it has no power under the LPA to appoint or re-constitute a review committee. That power is vested in the Chairman or Deputy Chairman under s 85(6) of the LPA, both of whom are independent of the Law Society. Therefore, an argument was made that even if the court was minded to grant the reliefs which Mr Sharma is seeking, the Law Society will not be able to comply with them.

204 I note that all the parties are in agreement that the Law Society can and should be named as the nominal defendant in this application. The gravamen of the Law Society's objection was essentially its concern over its ability to comply with the relief being sought by Mr Sharma. I also note that O 53 r 2(3) of the Rules of Court provides that "all persons directly affected" by the application for judicial review must be served with the documents filed for the application. O 53 r 2(5) further provides that the court may adjourn the hearing in order that the said documents may be served on any person that ought to be served but had not been served. Considering the foregoing, I made the following directions:

(a) The Law Society is to formally notify the Chairman about these proceedings and to serve the Chairman with copies of OS 593 and affidavits already filed;

(b) The Law Society is to ask the Chairman to also notify the RC about these proceedings and to serve the RC with copies of OS 593 and affidavits already filed; and

(c) The Law Society is to ask the Chairman whether he or the RC wishes to be heard by the court. It is also to ask the Chairman and the RC whether they undertake to comply with any order or direction from the court.

205 The RC replied indicating that it would leave the matter in the hands of the court and will be bound by any order or direction made by the court. The RC also attached its full grounds of decision in its reply. That is how its full grounds were eventually made available to the court (see [8] above). The Chairman also replied stating that any decision of the court in a proceeding to which the Law Society is a party will bind him and be implemented by the Chairman. Thus there was no substantive issue about implementation of any court order that might require further steps to be undertaken.

206 Coming back to the RC report. I note that initially the report of the RC was not provided to Mr Sharma (or to the court). It was not clear to me why this was so. Perhaps the Council of the Law Society thought that since s 85(9)(*b*) of the LPA requires the Council to furnish a complainant with the reasons of a review committee in writing for dismissing the matter, there was no need to furnish a copy of the RC report to Mr Sharma (and to the court). The Law Society may also have thought that since s 66 of the LPA states that confidentiality shall be maintained in proceedings conducted by a review committee or IC, the report ought not to be disclosed to the complainant.

207 It seems to me that the Council would be complying with s 85(9)(*b*) LPA if it had simply forwarded a copy of the RC report to Mr Sharma and it would not be in breach of s 66 in doing so. There was no need to generate another letter to state the reasons of the RC. Indeed, if there was any

impediment to disclosing the report, the RC would not have forwarded the report eventually to the court.

208 Unless there are good reasons for not furnishing a copy of the report, it may be that in future the furnishing of a copy should be the preferred approach for the following reasons:

(a) The extra effort and time to generate another letter to state the reasons of the RC would be saved.

(b) The risk of the letter being inaccurate when compared with the report will be avoided.

(c) The letter may also not give the full flavour of the report when considered in its entirety.

209 However, as there was no elaboration by the Law Society about the non-furnishing of the report, I will say no more.

On solicitor and client privilege

210 This application has highlighted the difficulty that a review committee or any other tribunal down the line may face if a complaint is made by a non-client which impinges upon solicitor and client privilege. In *Pamplin*, the court suggested that if a taxing master is to be given the power to decide an issue on the basis of material which the respondent is to have no right to see, that power should be expressly given by the Rules of the Supreme Court (at 698). Likewise, I would suggest that power be expressly given to the review committee and to any other tribunal down the line as well as the court of three judges to consider material which is covered by S & C privilege without

necessarily disclosing the content of such material to the complainant or to the Law Society.

Conclusion

211 This has been an exceptional case which is unusual in many respects. Some of these unusual features are as follows:

(a) This is the first case in which a complaint of misconduct was made in respect of an allegation of over-claiming in P & P taxation.

(b) The complaint was not made by the party legally liable to pay the costs, raising the question of *locus standi*.

(c) The complaint raised matters not raised at the taxation.

(d) This is the first time that an application for review was made against a decision of an RC, raising the novel question as to whether judicial review of such a decision is available.

(e) Limb 2 of the Complaint touched upon and intruded into a matter involving S & C privilege where the complainant was not the client himself.

(f) An error of the RC was made in favour of the applicant seeking judicial review.

212 I would like to thank all counsel for their assistance.

Woo Bih Li
Judge

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