IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 81

Civil Appeal No 227 of 2019

Between

Andrew Loh Der Ming

… *Appellant*

And

Koh Tien Hua

… *Respondent*

In the matter of Originating Summons No 1015 of 2019

In the matter of Section 97 of the
Legal Profession Act (Cap 161, 2009 Rev Ed)

And

In the matter of Koh Tien Hua (An Advocate & Solicitor)

And

In the matter of the Legal Profession Act (Cap 161, 2009 Rev Ed)

Between

Andrew Loh Der Ming

… *Applicant*

And

Koh Tien Hua

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Disciplinary proceedings]

Loh Der Ming Andrew
v
Koh Tien Hua

[2021] SGCA 81

Court of Appeal — Civil Appeal No 227 of 2019
Sundaresh Menon CJ, Judith Prakash JCA and Steven Chong JCA
1 July 2021

11 August 2021

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 What is a solicitor to do when fidelity to his client's instructions conflicts with his duty to the court not to advance unreasonable or incorrect legal positions? This problem arose in the present case where the appellant client instructed the respondent solicitor to resist an application to strike out certain parts of the appellant's Statement of Particulars. Many of these were scandalous and were bound to have been struck out in any event. In our judgment, the proper course for a solicitor in such circumstances is to communicate frankly and candidly with his client, with a view to persuading the latter to change his instructions. Failing that, the solicitor, because of the paramount duty he owes to the court, may have no choice but to discharge himself. The present respondent did not do that. Instead, he mishandled the situation by deciding of his own volition to consent to the striking out of those

particulars contrary to the appellant's instructions and then compounded that by concealing from the appellant what he had done. Although the respondent had acted correctly in the position he took before the court, his conduct was improper as far as his client was concerned. Because of these errors, the respondent has had to endure 5 years of proceedings arising from the complaint that the appellant made against him and he now faces the prospect of more proceedings. This case highlights the critical importance of solicitors communicating frankly and candidly with their clients and having a very clear idea of their duty to the court when confronted with client demands that may conflict with this. This is especially important in family law practice, which can be emotionally and relationally challenging, and where the clients are often in an emotionally wrought state.

2 This was an appeal from a decision of the High Court judge ("the Judge") pursuant to s 97 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"), and it additionally gives us the opportunity to clarify the role and powers of a judge hearing a s 97 review application. At the end of the oral hearing, we set aside the Judge's order which exceeded the scope of her powers. We also set aside part of the determination of the Disciplinary Tribunal ("DT") and directed the appellant to file an application to refer the matter to the Court of Three Judges ("C3J") pursuant to s 98 of the LPA. We now explain the grounds for our decision.

Material facts

3 On 7 July 2015, the appellant, Mr Andrew Loh Der Ming ("Loh"), engaged the respondent, Mr Koh Tien Hua ("Koh"), to represent him in his divorce proceedings. Loh was the plaintiff in the divorce proceedings, while the defendant was his wife and the co-defendant was a neighbour who Loh alleged

had been in an adulterous relationship with his wife. Loh's wife withdrew her defence to adultery, while the co-defendant maintained his defence and denied that he had committed adultery. The co-defendant filed two summonses, one of which, FC/SUM 2009/2015 ("SUM 2009"), was to strike out certain parts of Loh's Statement of Particulars ("SOP"). These applications were heard by Assistant Registrar Eugene Tay ("AR Tay") on 27 July 2015.

4 At the hearing, Koh consented to various parts of the SOP being struck out and to this extent, it was recorded as a consent order. It was disputed whether Koh had been authorised to consent to this in the exercise of his professional judgment. When Loh learnt that the particulars had been struck out, he insisted that an appeal be filed. Koh did not at that stage inform Loh that the particulars had been struck out by consent or that a consent order cannot ordinarily be appealed. With much reluctance on Koh's part, after considerable delay, and purely because of Loh's insistence, Koh eventually filed the appeal. Loh subsequently discovered what had transpired at the hearing.

5 On 12 May 2016, Loh lodged a complaint against Koh ("Complaint Letter") with the Law Society of Singapore ("Society") which included the following (see *Loh Der Ming Andrew v Law Society of Singapore* [2018] 3 SLR 837 ("*Andrew Loh (pre-DT)*") at [25]):

> (a) Seven heads of complaint against Koh under s 85(1) of the LPA alleging against Koh:
>
> (i) perjury, knowingly misleading the court, and breach of duty in court;
>
> (ii) dishonesty and lying;

(iii) acting against instructions and deception concerning consent orders;

(iv) acting against client's interest;

(v) acting in conflict of interest;

(vi) wasting the court's time; and

(vii) lack of fairness and courtesy to the judge and to the client.

(b) Six heads of complaint against Koh under s 75B of the LPA alleging that he:

(i) failed to provide diligent service;

(ii) failed to complete his work within a reasonable time;

(iii) failed to keep Loh informed on the progress of the case;

(iv) failed, without reasonable grounds, to respond to Loh;

(v) failed to explain important developments in the case to Loh; and

(vi) was incompetent.

6 On 27 May 2016, the Society informed Loh that his complaints under s 75B of the LPA would only be referred to the Council of the Law Society ("Council") for deliberation upon completion of the inquiry into his complaints under s 85(1) of the LPA (see *Andrew Loh (pre-DT)* at [26]).

7 On 1 August 2016, the Inquiry Committee ("IC") was constituted by the Chairman of the Inquiry Panel to inquire into the complaints under s 85(1) of

the LPA. The IC found that only the third head of complaint was made out, but that no formal investigation by a DT was needed, and that Koh should be ordered to pay a penalty of $2,500.

8 On 14 March 2017, the Society informed Loh that the Council had accepted the findings and recommendations of the IC (*Andrew Loh (pre-DT)* at [34]).

9 Loh was dissatisfied with this decision and applied to court for an order directing the Society to apply to the Chief Justice ("CJ") for the appointment of a DT pursuant to s 96(4)(*b*) of the LPA (*Andrew Loh (pre-DT)* at [37]). That application was heard by Woo Bih Li J (as he then was).

10 On 17 October 2017, Woo J issued his judgment, directing the Society to apply to the CJ for the appointment of a DT to investigate the following two heads of complaint which were stated in the Complaint Letter (*Andrew Loh (pre-DT)* at [170]) ("Woo J's remit"):

> (a) *first head of complaint*: that Mr Koh had knowingly misled the court and/or failed to discharge his duty to be honest and truthful to the court by stating three untrue statements to AR Tay at the hearing on 27 July 2015 … ; and
>
> (b) *third head of complaint*: that Mr Koh had acted against the Applicant's instructions by conceding to the Consent Order, and that Mr Koh had subsequently sought to deliberately suppress from the Applicant the fact that the Consent Order had been made and the effect of the concession on the viability of the Applicant's appeal against the Striking Out Order …

11 A DT was duly constituted comprising Dr Stanley Lai SC and Ms Tan Gee Tuan ("DT1"). On 25 October 2017, Loh submitted his complaint and Statement of Case to DT1. Loh brought a total of 14 charges against Koh, arising out of seven alleged acts. Two charges were brought in respect of each alleged wrongful act, one under s 83(2)(*b*) of the LPA for "fraudulent or grossly

improper conduct in the discharge of his professional duty" and one under s 83(2)(*h*) of the LPA for "misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession". The 14 charges are summarised at Annex A to this judgment.

12 On 24 July 2019, DT1 issued a report finding Koh guilty of the Fourth and Sixth charges, but acquitted him of all the other charges. DT1 also questioned whether it was appropriate for the Eleventh to Fourteenth charges to have been brought before it since they seemed to fall outside the scope of Woo J's order. DT1 found that Koh's misconduct in relation to the Fourth and Sixth charges did not constitute cause of sufficient gravity for disciplinary action under s 83 of the LPA, and thus did not recommend that the matter be advanced to the C3J. Instead, DT1 recommended a penalty of $10,000, or such sum that the Council shall determine under s 94(3)(*a*) of the LPA as being sufficient and appropriate to Koh's misconduct. DT1 also ordered Koh to bear 25% of Loh's costs for the proceedings before DT1.

13 On 8 August 2019, Loh filed HC/OS 1015/2019 ("OS 1015") applying for the High Court to review the entirety of DT1's determination pursuant to s 97 of the LPA, save for the findings that Koh was guilty of the Fourth and Sixth charges. This was heard before the Judge on 6 November 2019.

14 At the time of the hearing before the Judge, the Council had yet to decide whether to accept the determination of DT1. However, we inferred that the Council was inclined to accept the determination of DT1 because it would otherwise have been required to advance the matter to the C3J within a month, but it had not done so (see s 94(3)(*b*) of the LPA).

The Judge's decision

15 On 25 November 2019, the Judge found that, in addition to the Fourth and Sixth charges, Koh was also guilty of the Eighth and Tenth charges. The Judge concluded that there was no need to remit the matter to DT1 because her conclusions were based on matters that had been dealt with during the hearing by DT1.

16 The Eighth charge was framed as an alternative to the Seventh charge and concerned the allegation that Koh had acted contrary to Loh's instructions. The Judge considered that the Seventh charge was not made out. While Koh had consented to the striking out of particulars without Loh's instructions, this stemmed from a lack of care and thought, and was a decision Koh made in the moment without prior planning. Koh had in fact initially told the court that he had no instructions to agree. The Judge found that there was no intention to deceive the court.

17 The Tenth charge was framed as an alternative to the Ninth charge and concerned the allegation that Koh had concealed from Loh the fact that a consent order had been entered into. The Judge found that the Ninth charge was not made out because there was insufficient evidence to show that Koh's failure to inform Loh of the consent orders was fraudulent. Koh had received no financial advantage, and had in any case filed the appeal in time. Koh's advice to Loh that the appeal lacked merit was not inaccurate as seen in the fact that the District Judge had dismissed the appeal even without considering the fact that the particulars had been struck out by consent.

18 The Judge made no findings in relation to the Eleventh to Fourteenth charges, reasoning that those were outside the scope of Woo J's remit.

19 The Judge considered that Koh's misconduct was not sufficiently grave to warrant referral to the C3J. As to the financial penalty that had been recommended by DT1, the Judge considered that this had to be adjusted given that she found that four charges had been made out and not just two. She therefore substituted the recommendation made by DT1 with a recommendation that Koh should pay a penalty of $12,500 or such sum as the Council shall determine under s 94(3)(*a*) of the LPA. The Judge also ordered that Koh pay Loh two-thirds of Loh's legal costs and full disbursements for the DT1 proceedings, as well as all disbursements incurred for OS 1015.

20 On 21 December 2019, Loh filed the present appeal. On 6 January 2020, Koh applied to strike out the Notice of Appeal, contending that the Court of Appeal does not have jurisdiction to hear an appeal from a judge hearing a review pursuant to s 97 of the LPA. We dismissed the striking out application in *Loh Der Ming Andrew v Koh Tien Hua* [2021] 1 SLR 926 ("*Andrew Loh (jurisdiction)*"). What remained was the substantive appeal, which we heard and decided on 1 July 2021.

Loh's submissions on appeal

21 Before us, Loh argued that the Judge erred in substituting the penalty of $10,000 imposed by DT1 with a penalty of $12,500. He submitted that this was beyond the scope of her jurisdiction when dealing with an application under s 97 of the LPA. Further, having regard to the gravity of the matter, the Judge ought to have advanced the matter to the C3J.

22 Loh also submitted that the Judge erred in finding that the Seventh and Ninth charges were not made out.

Koh's submissions on appeal

23 Koh, on the other hand, contended that the Judge did not err in increasing the penalty from $10,000 to $12,500. He submitted that s 97(4)(*a*) of the LPA afforded a judge extensive powers to make such order as she thinks fit. While this court in *Andrew Loh (jurisdiction)* had stated that a judge hearing a review pursuant to s 97 of the LPA does not have the power to decide on or recommend a penalty, that issue was not squarely argued before the court in that case. Rather, the court had been principally focused on the question of jurisdiction and particularly on whether an appeal could be brought to this court against the decision and orders made by a judge under s 97 of the LPA.

24 Koh accepted the Judge's decision that he was guilty of the Eighth and Tenth charges. He submitted, however, that this foreclosed Loh's argument that Koh should also be convicted of the respective alternative charges. Where charges are framed in the alternative, the person being charged should only be liable to be convicted on one of the alternatives.

25 Koh argued that, in any event, the Seventh and Ninth charges, which were the more serious alternatives, were not made out and the Judge's findings on this should therefore be affirmed.

Issues

26 The following issues fell to be decided by us:

(a) whether the Judge exceeded her powers under s 97 of the LPA;

(b) whether the Seventh to Tenth charges were made out; and

(c) whether any consequential orders should be made and if so, what these should be.

27 We now explain our decision on these issues and will finally also address some miscellaneous points that were raised by the parties.

Whether the Judge exceeded her powers under s 97 of the LPA

28 The disciplinary framework under the LPA was considered and analysed in considerable detail by a five-judge panel of the Court of Appeal in *Iskandar bin Rahmat v Law Society of Singapore* [2021] 1 SLR 874 ("*Iskandar*") at [20]–[36]. In this appeal, it was only necessary for us to focus on the role and powers of a judge under s 97 of the LPA. For ease of reference, the relevant parts of s 97 state:

> **Application for review of Disciplinary Tribunal's decision**
>
> 97.—(1) Where a Disciplinary Tribunal has made a determination under section 93(1)(*a*) or (*b*), the person who made the complaint, the regulated legal practitioner or the Council may, within 14 days of being notified of that determination or any order under section 93(2) or (2A), apply to a Judge for a review of that determination or order.
>
> …
>
> (4) The Judge hearing the application —
>
> > (*a*) shall have full power to determine any question necessary to be determined for the purpose of doing justice in the case, including any question as to the correctness, legality or propriety of the determination or order of the Disciplinary Tribunal, or as to the regularity of any proceedings of the Disciplinary Tribunal; and
> >
> > (*b*) may make such orders as the Judge thinks fit, including —
> >
> > > (i) an order directing the person who made the complaint or the Council to make an application under section 98;
> > >
> > > (ii) an order setting aside the determination of the Disciplinary Tribunal and directing —
> > >
> > > > (A) the Disciplinary Tribunal to rehear and reinvestigate the complaint or matter; or

> (B) the Society to apply to the Chief Justice for the appointment of another Disciplinary Tribunal to hear and investigate the complaint or matter; or
>
> (iii) such order for the payment of costs as may be just.

29 In essence, s 97 allows a complainant, a regulated legal practitioner or the Council to apply to the High Court to review a determination of the DT in certain circumstances. In broad terms, those circumstances are where the DT determines that no cause of sufficient gravity exists, *and* either: (a) that no further action is to be taken against the regulated legal practitioner; or (b) that action is to be taken against the regulated legal practitioner, but this does not rise to the level of advancing the matter to the C3J. The C3J alone is empowered to impose the most serious sanctions, including striking the solicitor off the Roll of Advocates and Solicitors, or imposing a period of suspension. The actions that the DT may recommend in circumstances where it finds that there has been some misconduct calling for the imposition of some sanction or measure, but not rising to the level of advancing the matter to the C3J, are that the regulated legal practitioner:

(a) be ordered to pay a penalty that is sufficient and appropriate to the misconduct committed (s 93(1)(*b*)(i) LPA);

(b) be reprimanded (s 93(1)(*b*)(ii) LPA);

(c) be ordered to comply with one or more remedial measures (s 93(1)(*b*)(iii) LPA); or

(d) be ordered to comply with one or more remedial measures *as well as* be reprimanded or ordered to pay a penalty (s 93(1)(*b*)(iv) LPA).

30 Where the DT recommends a penalty under s 93(1)(*b*)(i) of the LPA, it does not need to determine the quantum but merely needs to recommend that the regulated legal practitioner should be "ordered to pay a penalty that is sufficient and appropriate to the misconduct committed". If the Council accepts this recommendation, it is ultimately for the Council to determine the appropriate *quantum* of the penalty (see s 94(3)(*a*) LPA; see also *Iskandar* at [22(d)(ii)]). In other words, even if the DT recommends a quantum, the Council is entitled to make its own decision as to the appropriate quantum.

31 After the DT completes its investigation and proceedings, it must submit a report containing its findings and determination to the CJ, the Society, and, upon request, to the regulated legal practitioner concerned (s 93(4) LPA). The Council must then inform the complainant of the DT's determination within 14 days from the date the Society receives the report (s 94(4)(*a*) LPA). The complainant or regulated legal practitioner may apply to a High Court judge to review the DT's determination, even before Council reaches a decision on whether to accept this determination (s 97 LPA; *Iskandar* at [22(c)]). This is because, although s 94(4)(*b*) requires the Council to inform the complainant and the regulated legal practitioner of the Council's decision within 14 days from the date of its decision, it does not impose a deadline for Council to make this decision. In practical terms, while the complainant or regulated legal practitioner would be well advised to await the decision of the Council, and would, as we anticipated in *Iskandar* at [33], typically do so, there is no strict impediment to their making a s 97 application once Council has conveyed the DT's determination to them.

32 Section 97(4)(*a*) of the LPA deals with the ***findings*** that a judge reviewing the matter under s 97 may make. It gives a judge "**full power** to determine **any question** necessary to be determined for the purpose of doing

justice in the case", and this includes any question as to the "**correctness**, legality or propriety" of the determination or order of the DT [emphasis added]. The provision is framed broadly and expressly empowers a judge to determine the correctness of the determination of the DT.

33 In contrast, s 97(4)(*b*) deals with the ***orders*** that a judge hearing a s 97 review may make as a consequence of those findings. Although the opening words of s 97(4)(*b*) appear to confer a broad discretion on a judge to make "such orders as the Judge thinks fit", this must be read in light of the express words of s 97(4)(*b*), such that a judge's power are limited to ordering that the matter be advanced to the C3J; that the DT rehear and reinvestigate the matter; or that a different DT be established for this purpose (*Iskandar* at [22(*d*)(i)(D)], [23(b)], and [33]; *Andrew Loh (jurisdiction)* at [24]). A judge hearing a s 97 review does not have the power to order any penalty or even to make recommendations as to any penalty (*Iskandar* at [33]).

34 What this means is that a judge hearing a review under s 97 may assess the substantive merits of the findings and determinations of the DT, and if she decides that the DT had made an incorrect decision as to these findings and determinations, the judge may set it aside and either remit the matter to the same DT, to another DT, or advance the matter to the C3J for disposal.

35 In *Iskandar*, we stated as follows (at [32]):

> The Disciplinary Tribunal's decisions are also made subject to a Judge's powers of review under s 97. By restricting judicial review *to the extent provided* under s 97, among other provisions, s 91A(1) suggests that **the powers conferred on a Judge by s 97 are akin to those available in judicial review proceedings.** This is also evident from the language of s 97(4)(*a*), which was inserted into the LPA at the same time as s 91A. The provision states that the Judge shall have full power to determine any question necessary to be determined for the purpose of doing justice in the case, "including any question as

> to the correctness, legality or propriety" of the determination of the Disciplinary Tribunal, which mirrors the powers conferred on the C3J by s 98(8)(*a*) and is directly referable to the traditional grounds of illegality, irrationality and procedural impropriety in judicial review (see *Mohd Sadique* at [10] and *Law Society of Singapore v Yeo Khirn Hai Alvin and another matter* [2020] 4 SLR 858 ('*Alvin Yeo*') at [25]). We reiterate our view that a Judge hearing an application under s 97 does not appear to be concerned with the merits of the Disciplinary Tribunal's determination (see [23(*b*)] above). **Such a Judge does not have the express power to vary any determination of the Disciplinary Tribunal** in the same way that a Judge has the power to vary decisions of the Council, as found in, for instance, s 95(3) read with ss 95(4)(*b*) and 95(5). We add that such a Judge also does not have *all* the powers of the C3J. The C3J's power to consider the merits of the decision and make an order that a solicitor be struck off the roll, suspended from practice, censured or pay a penalty are contained in s 98(1). In contrast, **s 97(4)(*b*), while permitting the Judge some discretion, envisions the orders made by the Judge to be limited** to directing that an application be made to advance the matter to the C3J pursuant to s 98 or that the matter be reheard by the same or a different Disciplinary Tribunal, and/or any order as to costs. In our judgment, this must be so if we are to make sense of all the statutory provisions. [emphasis in original in italics; emphasis added in bold and underline]

36 Counsel for Koh, Mr Narayanan Sreenivasan SC ("Mr Sreenivasan"), relied on that passage to contend that this might suggest that a judge hearing an application under s 97 does not have the power even to consider the correctness of the DT's finding. While we can see why Mr Sreenivasan took the point, it is evident in particular from the latter part of that passage that the focus of our attention there was on the ***powers*** (meaning the ***orders***) which a Judge is empowered to make under s 97. In this respect, we had found that the orders which a judge may make are limited and akin to those available in judicial review proceedings, and that a judge is not empowered to substitute the penalties recommended by the DT with either a recommended or imposed penalty: see, in particular, *Iskandar* at [32]–[33]. However, this is not the case with the ambit of the judge's ability to examine, consider and determine the correctness of the findings made by the DT. While that encompasses the

traditional scope of judicial review, we do not think it is limited to that. Indeed, it could not be the case. Section 97(4)(*b*)(i) of the LPA allows the judge to direct the complainant or Council to apply under s 98 of the LPA to advance the matter to the C3J. The *only* situation where this would be applicable is where the DT did *not* think that there is cause of sufficient gravity to advance the matter to the C3J but the judge hearing the s 97 review *disagrees*, taking the view that there *is* cause of sufficient gravity to do so. This *necessarily* involves looking at the *correctness* of the DT's determination to see if there is cause of sufficient gravity. While the judge may *also* examine whether there was procedural impropriety, illegality or irrationality, the presence of one of these grounds does not in and of itself warrant advancing the matter to the C3J, since the decision of the DT could simply be set aside and the matter referred back to the same DT or to another DT for rehearing. It is only where the court *in addition* finds that there is sufficient cause to advance the matter to the C3J that the court would order this to be done. This inherently requires an analysis of the *correctness* of the DT's determination. Therefore, in our judgment, the correct way to analyse s 97 is as we have set it out at [32]–[33] above.

37 In any case, what is material for present purposes is that the Judge had exceeded her powers in substituting DT1's recommended penalty with her own recommended penalty of $12,500 (see [15]–[19] above). We therefore set aside that order.

Whether the Seventh to Tenth charges were made out

38 We turn to explain our findings on whether the Seventh to Tenth charges were made out. In our judgment, based on the evidence that was before us, the Eighth and Ninth charges were made out.

The Seventh and Eighth charges

39 The Seventh and Eighth charges allege that Koh consented to certain orders being made at the hearing before AR Tay, contrary to the instructions he received from Loh. Since disciplinary proceedings are quasi-criminal in nature, the burden of proof lay on Loh as the complainant to prove his case beyond a reasonable doubt (see *Law Society of Singapore v Chiong Chin May Selena* [2013] SGHC 5 at [28]).

40 DT1 held that Koh did not enter into a consent order against Loh's instructions because:

(a) an email sent by Loh on 14 July 2015 and another email sent on 26 July 2015 showed that Loh had afforded Koh some latitude in his conduct of the case;

(b) Koh's conduct demonstrated an intention to achieve the best possible outcome for all parties concerned; and

(c) after the consent order was made, the co-defendant withdrew his defence, leading to an uncontested divorce.

41 Somewhat oddly, DT1 also noted that Loh had consistently maintained that he wished to resist the striking out of the particulars in the SOP because he wanted the court records to reflect what had transpired so that his children would know what had led to the divorce. It was not clear to us why DT1 relied on this point because it seemed to us that this went *against* its finding that Koh had not acted contrary to Loh's instructions.

42 In our judgment, DT1 erred in failing to take into account a number of relevant matters. Since it was undisputed that Koh consented to the striking out

of certain particulars at the hearing, the sole remaining question was whether he had been *authorised* to do so by Loh. In this regard, DT1 failed to consider various emails which showed that Loh did *not* authorise Koh to consent to the particulars being struck out.

(a) On 16 July 2015, Loh emailed Koh asking: "What are you putting forward in our skeletal submission?". This indicated that Loh wished to be apprised of the contents of the submissions.

(b) On 24 July 2015, Loh emailed Koh stating:

> You mentioned … that you might be in touch with opposing counsel, on amendment of pleadings, before next Monday's case conference. Are there any developments?
>
> What is our strategy?

This again showed that Loh wished to be kept updated of any developments as to the amendment of the pleadings.

(c) In this light, the email that Loh sent to Koh on 26 July 2015 became especially important. There he wrote as follows:

> … I cannot help feeling anxious over the Court Hearing on Monday …
>
> …
>
> **I want my pleadings to remain in the SOP, as much as possible**, so that my children can know the truth of the matter, and not to allow the co-defendant to twist the truth to suit his own purposes. As I have reiterated, it is harmful to my children, if they grow up to learn their mother was entirely complicit, rather than her being a victim of our neighbour, as shown in my full pleadings.
>
> **Please call me anytime during the Court Hearing, if any issues come out, which require more instructions from me.**

…

[emphasis added]

43 In our judgment, it was plain that Loh had an active interest in and a positive view of how his position should be presented to the court and why. It was also clear to us that he had not vested Koh with the discretion to decide how he should manage these questions at the hearing. On the contrary, his final position was that his pleadings should remain in the SOP as much as possible and that if issues arose during the hearing, Koh should contact him. It was entirely open to Koh in those circumstances to make it clear to Loh that he was not prepared to undertake the engagement on these terms. It would also have been perfectly appropriate for Koh to explain to Loh that he owed a paramount duty to the court and that this would or might constrain his ability to present Loh's position to the court in accordance with Loh's wishes. It seemed that Koh had considered Loh's position to be untenable. Had Koh conveyed that the only basis on which he was prepared to act for Loh was if he retained the discretion to make such concessions as he felt obliged to as an officer of the court, he would have been beyond reproach. However, he did no such thing. Instead, he never replied to Loh's email.

44 Unfortunately, DT1 did not consider these emails in relation to the Seventh and Eighth charge. This omission was unsatisfactory because DT1 had been aware of these emails. They had also expressly noted in relation to the Fifth and Sixth charge that Koh had testified during the DT proceedings that: "my impression was---his last email to me was that he wanted all his pleadings to maintain". In other words, **Koh had explicitly admitted that Loh had instructed him that Loh wanted all his pleadings to remain**. DT1 should have considered these emails and this admission. Had it done so, it would have found that Koh had consented to the orders, *knowing* that they were contrary to

Loh's instructions. It was therefore unsurprising that, before us, Koh did not attempt to challenge the Judge's finding that he was guilty of the Eighth charge.

45 DT1 also erred in taking account of irrelevant considerations. Koh's intention to achieve the best possible outcome for all parties concerned (assuming this was true) (see [40(b)] above) was irrelevant to the question of whether Koh had acted against Loh's instructions. So, too, was the fact that the co-defendant withdrew his defence after the consent orders were made (see [40(c)] above). While these considerations may have reduced the egregiousness of Koh's conduct, they were not relevant to the question of whether he had acted against Loh's instructions.

46 On the evidence before us, we were thus satisfied that Koh had entered into the consent order contrary to Loh's instructions.

47 We considered that this constituted the Eighth but not the Seventh charge. As stated above, the Seventh charge pertained to fraudulent or grossly improper conduct under s 83(2)(*b*) of the LPA, while the Eighth charge pertained to misconduct unbefitting an advocate and solicitor under s 83(2)(*h*) of the LPA. A solicitor's conduct is grossly improper if it is dishonourable to the solicitor concerned as a man and in his profession (*Law Society of Singapore v Ezekiel Peter Latimer* [2019] 4 SLR 1427 ("*Ezekiel*") at [37]). In contrast, the test for misconduct unbefitting an advocate and solicitor is broader, and considers whether reasonable people, on hearing what the solicitor had done, would have said without hesitation that as a solicitor he should not have done it (*Ezekiel* at [38]).

48 We found that the Eighth charge was clearly made out because any reasonable person would have said without hesitation that a solicitor should not

act contrary to his client's express instructions as Koh had done. As we have noted above, Koh accepted this. However, we were satisfied that the Seventh charge was *not* made out because, seen in the totality of the circumstances, Koh's conduct did not constitute fraudulent or grossly improper conduct. First, there was no dishonesty to the court. Koh had clearly informed AR Tay that he had no instructions to agree to the striking out. Next, Koh had not in fact compromised Loh's interests. It is evident from the transcript of the hearing before AR Tay that Koh had in general acted in accordance with Loh's instructions and resisted the striking out of particulars where he was plausibly able to contend that they did not contravene the rules governing pleadings. In general, it appeared that Koh only consented to the striking out of particulars where this, in his view, amounted to evidence, matters of opinion rather than fact, and/or submissions, and were therefore contrary to the rules on pleadings. This was not an unreasonable assessment and, in our judgment, those paragraphs were inappropriate and would likely have been struck out even if Koh had not consented. Consistent with this, the District Judge hearing the appeal against the striking out order dismissed the appeal against the striking out of almost all of those paragraphs.

49 In the round, we thought that Koh had acted appropriately in his conduct before the court. By consenting to have the particulars struck out, he had saved judicial time and resources. However, where Koh erred was in failing to advise his client properly and failing to inform his client of the position he would be taking before the court. This was improper, but in the circumstances, it was not grossly so, and it certainly was not fraudulent.

The Ninth and Tenth charges

50 The Ninth and Tenth charges allege that Koh had deliberately and/or intentionally concealed from Loh that consent orders had been entered into at the hearing, in relation to SUM 2009. The Ninth charge was under s 83(2)(*b*) of the LPA while the Tenth charge was under s 83(2)(*h*) of the LPA.

51 DT1 found that the charges were not made out, but its reasoning in coming to this view was not clear. It noted that the Notice of Appeal had been ultimately filed in time, and that, under cross-examination, Koh did not appear to have intended to deceive or mislead Loh as to the *effect* of the consent orders. DT1 also seemed to have accepted Koh's claim that he did not realise the distinction between: (a) *conceding* certain points in the course of making submissions to the court; and (b) *consenting* to certain orders. The distinction was relevant to Koh's contention that he did not inform Loh of the *consent* orders because, in his mind, he had only made *concessions* as to certain legal positions. DT1 further reasoned at paragraph 92 of its report that Koh's actions in: (a) omitting to inform Loh of the consent orders in his communications after the hearing; and (b) failing to advise Loh as to the difficulty of appealing a consent order, were consistent with the fact that Koh did not appreciate that these were consent orders. Yet, in the very next paragraph of its report, DT1 also observed that "it is inexplicable that a lawyer of [Koh's] experience and standing should not perceive the distinction between 'concession' and 'consent'".

52 In our judgment, DT1 was wrong. It was clear from the evidence that Koh had intentionally concealed from Loh that he had entered into a consent order. We begin by noting that DT1 had erred in taking into account various irrelevant considerations.

53 First, it was irrelevant whether Koh knew or appreciated the distinction between the legal effect of a concession and of a consent order. The starting point of the analysis is the undeniable fact that *Koh had never told Loh just what he had done during the hearing*. Even if he had somehow mistakenly thought that he had merely *conceded* points of law instead of having *consented* to certain orders, he should have conveyed this to Loh because this would inevitably prejudice any prospect of an appeal. Indeed, it may amount to an abuse of process to retract a concession on a legal issue and the courts will ordinarily dismiss a new argument that is raised contrary to an earlier concession (see *Zyfas Medical Co (sued as a firm) v Millennium Pharmaceuticals, Inc* [2020] 2 SLR 1044 at [29]–[32]; *Recovery Vehicle 1 Pte Ltd v Industries Chimiques Du Senegal and another appeal and another matter* [2021] 1 SLR 342 ("*Recovery Vehicle*") at [110]–[111]; see also *JWR Pte Ltd v Edmond Pereira Law Corp and another* [2020] 2 SLR 744 at [31]–[33]). Notably, this court in *Recovery Vehicle* at [111] had endorsed and emphasised the following passage from *Bryanston Finance Ltd v De Vries (No 2)* [1976] 1 Ch 63 at 77:

> … ***The primary function of the appellate court is to decide whether the judge at first instance has reached the right conclusion on the material before him. This material must include any concession made before him. If the appellate court were to be satisfied that the concession was made as the result of some misunderstanding or for some other reason justice required that the party should be allowed to withdraw it, [i]t might allow the withdrawal of the concession. Otherwise the concession must hold.***
>
> [emphasis in original]

Mr Sreenivasan accepted during the oral arguments that, regardless of whether one concedes or consents to certain orders, the point would no longer be appealable.

54 Furthermore, whether Koh knew of the distinction between the *legal effect* of a concession and of consenting to certain orders was irrelevant because the material point was that Koh knew as a matter of *fact* that a consent order had been recorded at the hearing. He had been expressly told this by AR Tay, not once, but at almost every point when Koh consented to striking out the particulars, as well as at the very end where AR Tay summed up the paragraphs which would be struck out by consent. We set out a small extract of the transcript to illustrate this:

> P/C: … Paragraph 2k: I have no objections to this being struck out. In my view, this is an opinion.
>
> Ct: **Can I have paragraph 2k recorded as by-consent?**
>
> P/C: Yes.
>
> …
>
> P/C: … Paragraph 2p: … I concede this is an opinion … Suggest that part of this paragraph can be deleted.
>
> Ct: Which part? Or conceding whole paragraph?
>
> P/C: … I concede 2nd sentence is opinion.
>
> …
>
> P/C: … Paragraph 2w: I concede 2w should be removed. Opinion.
>
> Ct: **Can I record it as by-consent?**
>
> P/C: Yes
>
> …
>
> P/C: Paragraph 2ee: In my view, it is evidence. It should be removed.
>
> Ct: **Can I record it by-consent?**
>
> P/C: Yes
>
> …
>
> P/C: Paragraph 2jjj: … I concede jjj should be removed.

> Ct: **Record as by-consent?**
>
> P/C: Yes
>
> …
>
> ORDERS
>
> …
>
> In respect of prayer 2:
>
> …
>
> (i) **By-consent**: paragraphs … to delete …
>
> [emphasis added]

55 It was evident that, although there were times when Koh used the word "concede", AR Tay expressly clarified that Koh was agreeing to the order being recorded by "consent". Koh thus knew as a matter of *fact* that the order was being recorded as a consent order. It was also notable that, on 31 July 2015, a few days after the hearing on 27 July 2015, Koh endorsed a draft order of court, prayer 3(ii) of which was a consent order to strike out certain particulars. Yet, Koh did not draw Loh's attention to the consent order (although the draft order of court containing prayer 3(ii) was emailed to Loh by Koh's colleague).

56 In any case, DT1 should have considered the fact that Koh was a senior and experienced lawyer, called to the Bar in 1994, who had been practising since then, and who was then a partner of an established law firm and co-head of its family and matrimonial law department. As DT1 itself observed, it was "inexplicable" that someone of Koh's standing did not know the difference between a concession and an order by consent. This led to the inevitable inference that this was in fact an attempt to conceal the real reason why he failed to inform Loh just what had transpired at the hearing, namely, that he had acted against Loh's instructions and did not want to be found out.

57 DT1 also failed to consider that Koh himself had admitted during cross-examination that he knew exactly what it meant to consent to something:

> Q … **you know exactly what you mean when you consent to something.** Do you agree with me?
>
> A **Yes**, but in my mind unfortunately, I---it was a concession rather than a consent order.
>
> [emphasis added]

58 Since it was clear that Koh knew as a matter of fact that he had entered into a consent order and it was undisputed that Koh did not inform Loh of this, the real question that should have been asked was whether his failure to inform Loh was intentional.

59 We found that it was. The Judge too reached a similar conclusion, finding that "[i]t must therefore follow as a logical inference that there ought to have been a finding of deliberate and intentional concealment". In this regard, DT1 again erred in taking account of various irrelevant factors.

60 First, DT1 erred in concluding that the fact that the Notice of Appeal was ultimately filed was somehow relevant towards showing that the charges were not made out. To the contrary, it was precisely *because* the Notice of Appeal was filed that Koh should have informed Loh about the consent order *before* filing the Notice of Appeal, since that would ordinarily bind the parties unless fresh proceedings were commenced to set it aside (see *Wiltopps (Asia) Ltd v Drew & Napier and another* [1999] 1 SLR(R) 252 at [23]; *Siva Kumar s/o Avadiar v Quek Leng Chuang and others* [2021] 1 SLR 451 at [34]). Even if Koh had thought that the legal effect of concession and consent were the same, it was inexplicable why he did not inform Loh *before* filing the appeal as to the prejudicial effect that the concession would have on the appeal.

61 Second, DT1 misdirected itself by focusing on the question of whether Koh intended to deceive Loh as to the *effect* of the consent orders. The correct question should have been whether Koh intended to conceal from Loh the *fact* that consent orders had been entered into.

62 Third, DT1 failed to consider the email correspondence between the parties which supported the conclusion that Koh had concealed the truth about the consent order.

63 The correspondence exchanged between Loh and Koh's office showed that Loh had asked Koh directly or through his colleague on *multiple* occasions to furnish the Notes of Argument of the hearing. Koh ignored these requests and never issued a reply. His silence and inaction were inexcusable because AR Tay had uploaded his Minute Sheet and Notes of Argument on the very day of the hearing and Koh could easily have obtained it and sent it to Loh. Koh ultimately never sent the Notes of Argument to Loh. Instead, some two months later, after Loh had discharged Koh, Loh obtained the notes by applying directly to the Family Justice Courts. Koh's failure to send the Notes of Argument to Loh led to the inference that Koh did not want Loh to obtain them, since they would have revealed just what had transpired.

64 The correspondence also showed that Loh had sent around 20 emails to Koh or his colleague expressing his wish and intention to appeal the striking out order and instructing them in no uncertain terms that an appeal should be filed. Initially, Koh side-stepped the issue of the appeal, and instead suggested filing a summons to amend the SOP. When Loh persisted, Koh said that there was no need to appeal the striking out order as this would incur costs. Loh persisted yet again whereupon Koh continued to delay acting upon Loh's instructions and instead sent him a draft of an amended SOP. When Loh instructed Koh yet again

to file the appeal, Koh appealed against another order of AR Tay made on the same date in relation to another summons, but *notably* chose not to file the appeal against the striking out order. Loh continued to press Koh to file the appeal against the striking out order, whereupon Koh informed Loh that he thought that the appeal against the striking out order may "prove to be a superfluous exercise given that [they were] amending the SOP", and that "in any event [he was] not confident that [Loh would] succeed in the Appeal given that submissions and opinions and evidence are not allowed to stand as pleadings". *Crucially, Koh did not go on to inform Loh that precisely because he had formed this view, he had already consented at the hearing to these particulars being struck off*. Loh then instructed Koh to file the appeal immediately, and in the absence of a response, even approached the managing partner of Koh's firm for help. An appeal was eventually filed.

65 It was also significant that when Koh's colleague responded to Loh on 28 July 2015, the day after the hearing, Loh was told of three categories of orders made at the hearing: (a) "To be strike out unless otherwise stated as per submitted by the Co-Defendant" [*sic*]; (b) "Order to be strike out" [*sic*]; and (c) "No Order". What was troubling was the noticeable absence of any mention of the fact that the first category of orders consisted of those made by consent. This, in fact, was the only real difference between the first and the second categories.

66 In our judgment, the only reasonable conclusion to be drawn was that Koh was reluctant to file the appeal because he had consented to the very orders he was being asked to appeal against, and he therefore did his best to ignore or avoid the issue by pointing Loh towards an application to amend the pleadings. When Koh realised that this diversion was not going to work since Loh was adamant about pursuing the appeal, he argued against this, citing costs and a

low chance of success. However, throughout these many exchanges, Koh never informed Loh that the relevant orders had been made by consent and that this, in and of itself, was a major obstacle standing in the way of his being able to file an appeal as that would, in some respects, be an abuse of the process of the court.

67 We further noted that on 31 August 2015, Koh informed Loh that his firm had waived all time costs incurred in the conduct of the proceedings and that Koh would refund the deposit placed by Loh, after settling the disbursements. Koh gave no reason to explain this, despite its patently unusual character. This was especially odd since Loh had not even asked for a waiver. Koh submitted that he did this "so that he would have nothing further to do with [Loh]", but this made no sense, since he could have discharged himself while retaining the payment for work he had already done.

68 DT1 failed to consider all these facts and, had they done so, it would have been evident that Koh had intentionally concealed the fact that he had entered into a consent order. In our judgment, this constituted the Ninth charge in that it was grossly improper conduct because the essence of such concealment was to deceive and mislead Loh, who was Koh's client, as to what had transpired in the conduct of his own matter before AR Tay: see also *Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466 at [51]; *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("*Udeh Kumar*") at [33]. In this regard, the remarks of the court in *Law Society of Singapore v Nor'ain bte Abu Bakar and others* [2009] 1 SLR(R) 753 at [46] were relevant:

> … advocates and solicitors should be held to a higher standard of conduct than others who have not been accorded the privileges that advocates and solicitors have under the law and whose professional ethos requires them to act honestly and

> with utmost integrity in their vocation, especially as counsel before the court. An advocate and solicitor will be held to have acted fraudulently or deceitfully if he has acted with the intention that some person, including the judge, be deceived and, by means of such deception, that either an advantage should accrue to him or his client, or injury, loss or detriment should befall some other person or persons. **He need not make an explicit false representation; it is fraudulent if he intentionally seeks to create a false impression by concealing the truth: *suppressio veri, suggestio falsi.***
>
> [emphasis in original in italics; emphasis added in bold and underline]

69 The Judge concluded that Koh did not have a fraudulent intention to deceive Loh because Koh did not stand to receive any financial advantage. However, with respect, this conclusion did not follow from the premise. There was no need for any such advantage to be financial in nature. Koh was seeking to protect his own position by concealing the fact that he had acted against Loh's instructions, and was hoping thereby to prevent the matter from escalating into disciplinary proceedings.

70 The Judge also placed some weight on the fact that the appeal was filed in time and that Koh was not wrong to advise Loh that the appeal lacked merit. However, with respect, these were not material to whether the charge had been made out. As mentioned above, it was precisely because of Loh's insistence that the appeal be filed that Koh should have informed him about the consent order, given its significance to any prospects of a successful appeal (see [60] above). Further, the fact that Koh correctly advised Loh that the appeal was without merit was irrelevant to whether Koh acted dishonestly in concealing the fact that the order had been made by consent and that this contributed to the futility of any appeal.

71 For these reasons, we concluded that the Eighth and Ninth charges were made out.

The appropriate order to be made

72 We next explain why we ordered Loh to apply for the matter to be advanced to the C3J.

73 The general objectives that guide the determination of appropriate sanctions for errant solicitors are well established (*Ezekiel* at [45]–[46]):

(a) to uphold public confidence in the administration of justice and in the integrity of the legal profession;

(b) to protect the public who are dependent on solicitors in the administration of justice;

(c) to deter errant solicitors and other solicitors from committing similar offences; and

(d) to punish the errant solicitor for his misconduct.

74 It is also trite that where these matters pull the court in different directions in any given case, it is the interest of the public that will be paramount and must therefore prevail. Hence, the principal purpose of sanctions is not to punish the errant solicitor but to protect the public and uphold confidence in the integrity of the legal profession. Hence, a particular sanction that might appear excessive when assessed solely from the perspective of the errant solicitor's culpability may nonetheless be warranted to protect the public and uphold confidence in the profession (*Ezekiel* at [45]–[46]).

75 In the present case, we were satisfied that there was cause of sufficient gravity for disciplinary action to be taken against Koh pursuant to s 83 of the LPA, and that the matter should be advanced to the C3J.

76 First, Koh did not commit a one-off error but had committed multiple misdeeds resulting in multiple charges. In such circumstances, the conduct should be assessed in the round in order to determine the overall gravity that is presented (see *Udeh Kumar* at [87]). While the Judge may have been correct to observe that this was an unfortunate case where one bad mistake led to another, it did not detract from the fact that these had come together to bring Koh down a slippery slope to a point where he was seeking to mislead his client as to what had transpired in the conduct of his client's matter before the court. We considered this to be grave as it went to the heart of the solicitor-client relationship.

77 Second, a fine is not generally appropriate where the regulated legal practitioner's conduct goes beyond mere inadvertence (*Law Society of Singapore v Tan See Leh Jonathan* [2020] 5 SLR 418 at [13]). While Koh's conduct in relation to the Fourth, Sixth and Eighth charges might arguably have been characterised as unintentional or grossly negligent, the same could not be said for the Ninth charge which was rooted in Koh's deliberate concealment. Where the solicitor concerned is guilty of such intentional misconduct, the gravity of the matter should not be understated. This is all the more so when the dishonesty (in the sense of concealing the truth) is directed towards the solicitor's own client.

78 Third, Koh was a senior member of the Bar (see [56] above). The more senior the offending solicitor is, the greater the damage done to the standing of the legal profession (*Udeh Kumar* at [88]). This therefore aggravated the gravity.

79 Much had been said by DT1, the Judge and Koh about Loh's conduct and how that ought to mitigate the consequences to be visited on Koh in the

present case. DT1 noted that: "[i]t cannot be the case that a lawyer must carry out every single one of his client's instructions, no matter how unreasonable or geared toward an improper purpose they may be". Likewise, the Judge placed weight on the fact that the practice of family law can be challenging, that the proceedings that Koh was conducting on Loh's behalf had been rendered even more challenging because of Loh's conduct, and that Loh had insisted on a litigation stance that was ultimately not in the best interests of himself or his children. Koh also argued that Loh had been "extremely emotional", trying to "pursue an all-out assault on the [co-defendant] and take him to task", and that Koh had faced the "uphill task" of having to deal with Loh while ensuring that the best interests of Loh's children are protected.

80 On many of these points, we had considerable sympathy for Koh. However, none of these justified his conduct in relation to Loh. Although DT1 was right to say that a solicitor is not obliged to comply with every one of his client's unreasonable instructions, where a client instructs the solicitor to take a position that the solicitor considers to be untenable or that he is unwilling to take for good reason, the course open to the solicitor is to make his position known to the client with an explanation of why he takes that position. If, despite this, the client insists on that course, the solicitor should discharge himself: see *Richard Buxton (a firm) v Mills-Owens* [2010] 4 All ER 405 at [45]–[51] where the court held that a solicitor should refuse to argue a point which is not properly arguable, and that the solicitor is entitled to terminate the retainer should the client insist on him arguing it. What he cannot do in such circumstances is to go ahead and *conduct the case in a manner that is contrary to his client's instructions*.

81 The fact that Loh might have been a difficult client was no excuse for Koh acting in breach of his professional duties. Unfortunately, it is not

uncommon to come across strong-willed clients who may be ill-informed, but who nonetheless have firm views about how their case is to be run, even if these views are wrong and even contrary to good sense. The solicitor in such circumstances remains under a duty to communicate frankly, firmly and clearly to his client what his views are and what he regards as the applicable limits of what he can do to accommodate the client. Having so communicated the position, the solicitor should discharge himself if the client remains adamant.

82 In all the circumstances, we found that there was sufficient cause for disciplinary action under s 83 and that the matter should be referred to the C3J. We did not make any findings on the sanctions as that is obviously a matter for the C3J to deal with.

Miscellaneous matters

83 Finally, we address some miscellaneous points raised by parties.

Whether Koh can be convicted of multiple charges relating to the same act

84 As stated at [24] above, Koh argued that it would be unfairly prejudicial to him to also be found guilty of the Seventh and Ninth charges because he had already been found guilty of the Eighth and Tenth charges.

85 In our view, this was a very technical point which could easily be dealt with. It was clear that the Seventh and Ninth charges were the primary charges (being the more serious charges) and the Eighth and Tenth charges were alternative charges (being the less serious charges). It was noted in *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 ("*Allan Chan*") at [24] that it is well established in practice for two charges to be brought on the same facts, the primary charge under s 83(2)(*b*) and the alternative charge under

s 83(2)(*h*). Where the primary charge is admitted to or otherwise made out, it does not matter whether the alternative charge is withdrawn; the court will just proceed on the basis of the admitted charge (*Allan Chan* at [25]).

86 In the present case, while Loh did not frame the charges as alternatives in his complaint to DT1, he should not be faulted on such a technical ground. It would be unduly technical to hold that Koh could not be found guilty of the Seventh and Ninth charges (the more serious charges) because he had been found guilty of the Eighth and Tenth charges (the less serious charges). Indeed, where a DT determines that a matter should be advanced to the C3J, it would often make sense for it to express its findings and views on both the primary and the alternative charges and leave it to the C3J to determine what the solicitor should be sanctioned for. The only real constraint is that a solicitor should not be penalised for *both* the primary and the alternative charge as that would amount to double punishment. That was not in issue here.

Miscellaneous allegations brought by Loh

87 Loh alleged that Koh had lied to DT1 when he maintained that he did not understand the difference between a concession and consent, and that Koh also lied to the Attorney-General's Chambers that he had been permitted by the court to extend copies of a certain judgment to the media. This judgment was completely unrelated to the present case. Loh submitted that the Judge had erred in failing to address these allegations of perjury against Koh.

88 We have already dealt with the first allegation at [53]–[58] above to the extent that it was relevant to these proceedings. We did not need to consider the second allegation because it was not among the 14 charges brought by Loh against Koh, and it is not the role of the court hearing a s 97 review to decide

fresh complaints. Furthermore, this was subject of separate disciplinary proceedings against Koh and was wholly irrelevant to the present case.

89 Loh also made various allegations and remarks about the conduct of: (a) Mr K Gopalan (a director of the Law Society secretariat who was holding a watching brief during the proceedings before the Judge); (b) Mr Sreenivasan; and (c) Dr Stanley Lai SC and Ms Tan Gee Tuan (the members of DT1). Loh's tendency to make such allegations freely and generally in an undiscerning manner was inappropriate and wholly unhelpful. In any case, these points had nothing to do with this appeal.

Conclusion

90 For these reasons, we:

(a) set aside the Judge's order to substitute DT1's recommended penalty with a penalty of $12,500;

(b) set aside DT1's findings that Koh was not guilty of the Seventh to Tenth charges; and

(c) directed Loh to make an application under s 98 of the LPA to advance the matter to the C3J to consider the Fourth, Sixth, Eighth and Ninth charges.

91 At the close of the oral hearing, we directed parties to file written submissions on costs. We have since considered these submissions and set out our decision herein.

92 Loh argues that the costs should include: (a) the costs of the appeal; (b) the costs of CA/SUM 5/2020 ("SUM 5") which was Koh's application to strike out the Notice of Appeal; and (c) CA/SUM 35/2020 ("SUM 35") which was

Loh's application for an extension of time to file a reply affidavit in SUM 5. The court deciding SUM 35 had ordered that costs for SUM 35 be costs in the appeal, and the court deciding SUM 5 had ordered that costs for SUM 5 be reserved pending the determination of the substantive appeal (see *Andrew Loh (jurisdiction)* at [26]). Loh seeks a total of $25,000 in costs which comprises $2,000 for SUM 35; $5,000 for SUM 5; and $18,000 for the substantive appeal. He also seeks $10,901.56 in disbursements. He argues that these costs are modest. Loh spoke for less than 20 minutes at the oral hearing of the substantive appeal while Mr Sreenivasan spoke for well over an hour. Likewise, Loh and his counsel only spoke for 10–15 minutes at the oral hearing of SUM 5, while Mr Sreenivasan spoke for well over an hour.

93 On the other hand, Koh argues that no order should be made as to costs. He avers that Loh had deliberately and maliciously included unreasonable and unmeritorious issues in his Appellant's Case and Reply which had no relevance to the appeal. These were filed when Loh was still represented by counsel, and Loh should not be allowed to recover counsel's costs arising from these unmeritorious issues. Loh had also made various baseless and irrelevant submissions at the oral hearing.

94 Koh also argues that, in any event, Loh should not be entitled to costs for SUM 35 as that application was only necessitated by Loh's own failure to file his reply affidavit on time and Koh should not be penalised for this. Koh should also not be made to pay Loh costs for SUM 5 as that application to strike out the Notice of Appeal was correctly brought by Koh based on the prevailing law at that time which provided that there was no right of appeal from a decision of a judge hearing a review application under s 97.

95 Alternatively, if the court were minded to order costs, this should only be a sum of $5,000 in light of the irrelevant matters raised by Loh. Koh also requests that Loh provide proof of payment of fees to his previous solicitors and proof of the quantum of reasonable disbursements that he has incurred.

96 In our judgment, Loh should not be awarded costs for the appeal. Loh conducted the appeal on his own. Although he contends in his costs submissions that he was assisted by counsel, the benefits of such assistance were not evident to us. Further, we take into account the fact that he raised many irrelevant matters. However, we think Loh should be entitled to reasonable disbursements incurred in the appeal and these are to be taxed if they are not agreed.

97 We do not think that Loh should be awarded any costs or disbursements for SUM 35 which was only necessitated by his counsel's failure to file the reply affidavit and this was not through any fault on Koh's part. As for SUM 5, we make an order for the payment of Loh's reasonable disbursements which are to be taxed if they are not agreed. However, we award Loh no costs in respect of SUM 5 as Loh's counsel was of no assistance to us in the summons. For completeness, we note that while the law was changed as a result of our ruling in SUM 5, this is not a reason for not awarding costs to Loh, who had succeeded in the matter.

Sundaresh Menon
Chief Justice

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

The appellant in person;
Narayanan Sreenivasan SC and Ranita Yogeeswaran (K&L Gates Straits Law LLC) for the respondent.

Annex A – Table summary of the charges filed with DT1

S 83(2)(*b*) LPA "fraudulent or grossly improper conduct in the discharge of his professional duty"	**S 83(2)(*h*) LPA** "misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession"	**Wrongdoing**
First charge	Second charge	Koh misrepresented to [AR] Tay that he had spoken to counsel for the co-defendant in relation to the settlement of SUM 2009 and that he was trying to reach a settlement in terms of pleadings
Third charge	Fourth charge	Koh misrepresented to [AR] Tay that he had sought but been unable to secure Loh's confirmation on the issue of settling SUM 2009
Fifth charge	Sixth charge	Koh misrepresented to [AR] Tay that his instructions for SUM 2009 were to contest the application in its entirety when these were not the instructions he received from Loh
Seventh charge	Eighth charge	Koh entered into consent orders at the hearing of SUM 2009, against the instructions received from Loh
Ninth charge	Tenth charge	Koh deliberately and/or intentionally concealed from Loh that consent orders had been entered into at the hearing in relation to SUM 2009
Eleventh charge	Twelfth charge	Koh failed to provide Loh with sufficient legal advice on appealing the orders granted in SUM 2009 and another summons despite repeated requests from Loh for such advice
Thirteenth charge	Fourteenth charge	Koh failed to provide Loh with sufficient legal advice concerning the effect that entering the consent orders had on the possibility and prospect of success of Loh's appeal of the order in SUM 2009