IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 269

Originating Application No 3 of 2022

In the matter of Sections 94(1) and 98(1) of the Legal Profession Act 1966

And

In the matter of Clarence Lun Yaodong, an Advocate and Solicitor of the Supreme Court of the Republic of Singapore

Between

The Law Society of Singapore

… *Applicant*

And

Clarence Lun Yaodong

… *Respondent*

GROUNDS OF DECISION

[Legal Profession — Show cause action]
[Legal Profession — Professional conduct — Breach]
[Legal Profession — Pupillage]

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Law Society of Singapore
v
Lun Yaodong Clarence

[2022] SGHC 269

Court of Three Judges — Originating Application No 3 of 2022
Sundaresh Menon CJ, Tay Yong Kwang JCA and Woo Bih Li JAD
10 October 2022

28 October 2022

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

1 C3J/OA 3/2022 ("OA 3") was an application by the Law Society of Singapore ("the applicant" or "Law Society") for Mr Lun Yaodong Clarence ("the respondent") to be sanctioned under s 83(1) of the Legal Profession Act 1966 (2020 Rev Ed) ("LPA"). From December 2019 to January 2020, the respondent purported to act as a supervising solicitor for two practice trainees ("trainees"). It was uncontroversial that at the material time, the respondent did not hold a practising certificate for five or more years in the seven years before he commenced the trainees' supervision, which was a breach of r 18(1)(*b*) of the Legal Profession (Admission) Rules 2011 ("the Admission Rules"). In light of these events, the applicant brought five charges against the respondent. The Disciplinary Tribunal ("DT") found cause of sufficient gravity in relation to the 1st, 2nd and 3rd charges (hereinafter the 1st to 3rd Charges individually). In OA 3, the applicant argued that due cause was shown in respect of these three

charges. It did not challenge the DT's dismissal of the 4th and 5th Charges in these proceedings.

Facts

2 The respondent was admitted as an advocate and solicitor on 10 April 2013. He was a lawyer of eight years' standing at the time of the commencement of disciplinary proceedings in 2021.

The respondent joined Foxwood LLC in July 2019

3 The conduct forming the basis of the charges took place while the respondent was practising with Foxwood LLC ("Foxwood"). Before the respondent joined Foxwood on 8 July 2019, it only had a corporate practice. In early 2019, Mr Goh Kheng Haw ("Mr Goh") was looking for a lawyer to start a dispute resolution practice in the firm. At all material times, Mr Goh was the sole director identified in Foxwood's records with the Accounting and Corporate Regulatory Authority.

4 The respondent was introduced to Mr Goh and Mr Joshua Tan Yi Shen ("Mr Tan"), another lawyer in Foxwood, in early 2019 by a mutual contact. The respondent eventually signed a Partnership Agreement ("the PA") with Foxwood. The PA charged the respondent with "starting, heading and maintaining the Dispute Resolution Division" in Foxwood. Clause 2 of the PA states as follows:

> **2. DISPUTE RESOLUTION DIVISION**
>
> 2.1 CL [*ie*, the respondent] shall be responsible for starting, heading and maintaining the Dispute Resolution Division.
>
> 2.2 CL shall have authority to, and be responsible for:

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> (a) accepting and opening files from new clients and commencing work on behalf of such clients, subject always to satisfactory client due diligence and conflicts check;
>
> (b) signing off on all correspondences (only with respect to Dispute Resolution Division) for and on behalf of Foxwood; and
>
> (c) hiring, employing and terminating DR Employees.
>
> 2.3 In consideration of the above, Foxwood shall pay to CL a partnership fee, to be paid out from the office account (account number: [•]) only, as and when instructed by CL. The amount of partnership fee shall be determined solely by CL.

5 Clause 3.1 obliged the respondent to pay Foxwood a monthly "Administrative Fee" of $1,500 for each fee-earner in the Dispute Resolution Division. Clause 3.2 of the PA obliged the respondent to pay Foxwood a refundable "Deposit" for each employee in the Dispute Resolution Division. In consideration for the payment of the Administrative Fee and Deposit, Clause 3.4 required Foxwood to provide the respondent and the Dispute Resolution Division with services defined in Schedule 2 of the PA:

> (a) Costs and use of the following software:
>
> (i) Microsoft 365:
>
> (ii) Lawnet (two users);
>
> (iii) E-litigation;
>
> (iv) Waveapp;
>
> (v) Clio; and
>
> (vi) Nuance Power PDF;
>
> (b) Pay-roll and Human Resource services;
>
> (c) Stationeries, such as name cards, pens and papers;
>
> (d) Client onboarding and invoicing;
>
> (e) Marketing efforts through digital and traditional means;

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> (f) General administrative work in relation to application for practicing certification, professional indemnity insurance, employee benefit

6 The respondent joined Foxwood as counsel. While the respondent was to establish and run the Dispute Resolution Division, he was not named as a director. It appears that this was because as at January 2019, the respondent did not fulfil the requirement in s 75C(1)(*b*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA (2009 Rev Ed)") (which is *in pari materia* with s 75C(1)(*b*) of the LPA) to be able to hold the position of a director of a law corporation: specifically, as Mr Goh noted in his affidavit of evidence-in-chief, since being admitted as an advocate and solicitor, the respondent had not been employed in a Singapore law practice for three continuous years, or for three out of a continuous period of five years. According to the respondent, it was intended that he would become an equity director after he "fulfilled [his] 3 years" or when he obtained an "exemption" from the Law Society.

The respondent recruited two trainees to Foxwood's Dispute Resolution Division

7 On 7 and 11 October 2019, the respondent offered training contracts ("TCs") to Mr Lim Teng Jie ("Mr Lim") and Ms Trinisha Ann Sunil ("Ms Sunil") respectively. Both Mr Lim and Ms Sunil were interviewed by the respondent. Their TCs were also signed by the respondent as "Head of Dispute Resolution" on behalf of Foxwood.

8 The respondent admits that when he began supervising Mr Lim and Ms Sunil, he was not qualified to act as their supervising solicitor because he did not hold a valid practising certificate for at least five years in the preceding period of seven years. He also accepts that he therefore breached r 18(1)(*b*) of the Admission Rules, which reads as follows:

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> **Supervising solicitor**
>
> **18.**—(1) A solicitor shall not be the supervising solicitor of a practice trainee unless the solicitor —
>
> (*a*) is in active practice in a Singapore law practice; and
>
> (*b*) for a total of not less than 5 out of the 7 years immediately preceding the date of commencement of his supervision of the practice trainee, has in force a practising certificate.

9 Mr Lim commenced his TC with Foxwood on 16 December 2019. On that date, the respondent had only held a practising certificate for *2 years, 10 months and 16 days* in the preceding seven years.

10 Ms Sunil commenced her TC on 2 January 2020. On that date, the respondent had only held a practising certificate for *2 years, 11 months and 3 days* in the preceding seven years. On 5 January 2020, Ms Sunil told the respondent that she intended to leave immediately for personal reasons unconnected to the respondent's inability to act as her supervising solicitor. During that conversation, the respondent informed her that she would have to pay a month's salary in lieu of notice if she wanted to terminate her employment immediately. Ms Sunil's last day of work at Foxwood was on 6 January 2020 and she made the payment on or around 11 January 2020.

11 The respondent had reminded Ms Sunil on 9 January 2020 to make payment of her salary in lieu of notice. In the 4th Charge, it is alleged that the respondent took unfair advantage of Ms Sunil by pressing her to pay this sum to Foxwood when it was "not recoverable by due process of law". The DT dismissed this charge as it was unclear whether the respondent actually knew, on or around 5 and 9 January 2020, that Ms Sunil's TC was a nullity because no lawyer in Foxwood was fit to be her supervising solicitor. As we shall shortly explain, the DT erred in this regard.

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The respondent discovered that he was unable to act as a supervising solicitor

12 The respondent claimed that he learnt for the first time on 6 January 2020, that he was not qualified to act as a supervising solicitor for trainees. As we elaborate subsequently, what struck us was the respondent's abject failure even to check whether he satisfied the regulatory requirements to act as a supervising solicitor before he engaged the two trainees.

13 According to the respondent, while waiting to board a flight from Perth to Singapore on 6 January 2020, the respondent decided to review the relevant legislation concerning trainees. He claimed that he had wanted to know how Foxwood was going to "take care" of trainees in the firm and what "procedures and compliance issues had to be followed." He then discovered that he "did not appear to qualify to be a supervising solicitor."

14 The respondent checked if Mr Goh or Mr Tan were qualified to act as Mr Lim's supervising solicitor, but they too were not so qualified. The respondent then reached out to Mr Rayney Wong ("Mr Wong") of Vision Law LLC to enquire if his firm was able to take in Mr Lim as a trainee. Mr Wong agreed to assist the respondent. On 14 January 2020, just over a week after discovering his breach of the Admission Rules, the respondent claimed that he presented several options to Mr Lim:

> (a) Join Vision Law LLC as a practice trainee, with the freedom to join another law firm of his choice to continue his traineeship.
>
> (b) Wait for the respondent to find placements in other law firms for Mr Lim. Mr Lim's notice period in his TC with Foxwood would be waived.

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(c) Join Vision Law LLC as a trainee, but spend four to six weeks with Foxwood to further his experience in commercial litigation.

(d) Join Foxwood as a paralegal, and if the respondent was able to qualify as a supervising solicitor in May 2020, commence the TC then. The 5th Charge alleged that the respondent misrepresented to Mr Lim that he would be able to act as a supervising solicitor by May 2020. The DT dismissed this charge as it was unclear whether the respondent had qualified this representation by saying that he needed to confirm the position with the Singapore Institute of Legal Education ("SILE") and Law Society.

15 Mr Lim eventually secured a new TC with Wee Swee Teow LLP and resigned from Foxwood on 30 January 2020. As discussed with the respondent, Mr Lim's notice period was waived. The DT found that Mr Lim secured the new TC "through his own endeavors and not because of anything that the Respondent did."

16 In total, Mr Lim was employed by Foxwood for over *six weeks* (from 16 December 2019 to 30 January 2020) *without* receiving proper supervision in law.

Mr Lim had to apply for abridgement of time to file papers to apply for admission as an advocate and solicitor in August 2020

17 Mr Lim began his new TC with Wee Swee Teow LLP on 3 February 2020, and this was scheduled to run from 3 February to 3 August 2020. To participate in the mass call in August 2020, he had to file his "Affidavit for Admission" by 3 August 2020. However, he was unable to obtain an "SILE Certificate" confirming, among other things, that he had completed

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the practice training period by that date, which was something he was required to exhibit in his Affidavit for Admission under r 25(4)(*a*) of the Admission Rules.

18 On 4 August 2020, Mr Lim applied for abridgement of time by one day ("the Abridgement") to obtain the SILE Certificate and file his Affidavit for Admission. He stated as follows in the affidavit supporting his application for the Abridgement:

> I verily believe that I have good reasons for being unable to file my supporting documents by the stipulated deadline. I *had not expected that [the respondent] did not qualify as a supervising solicitor, which had invalidated the past 1.5 months of training period I had with Foxwood LLC*. This had severely disrupted my original practice training completion date of 16 June 2020, which would have given me more than ample time to file my supporting documents in AAS 531/2020. ...
>
> [emphasis added]

19 The Abridgement was granted and Mr Lim participated in the mass call on 26 August 2020.

Findings of the inquiry committee: no cause of sufficient gravity

20 In light of the foregoing circumstances, on 27 August 2020, the applicant referred a complaint regarding the respondent to an Inquiry Committee ("IC") convened by the Law Society. The IC unanimously found that "no cause of sufficient gravity exists for a formal investigation".

21 According to the IC, the respondent demonstrated a "patent lack of care taken in relation to his responsibilities in taking on trainees", but "he had made a mistake". The IC "did not detect any intention on his part to take unfair advantage of any trainee, nor was he fraudulent or deceitful."

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22 Considering that two trainees were involved and there was no evidence, as at the date of the IC's "Revised Report" (dated 30 March 2021), of restitution to Ms Sunil of the sum of $1,793.13 she had paid as salary in lieu of notice, the IC recommended a $7,000 fine.

23 The Council of the Law Society ("Council"), which was obliged to consider the IC's Revised Report under s 87 of the LPA (2009 Rev Ed), disagreed with the IC's recommendations. The Council decided that there should be a formal investigation and requested the Chief Justice to appoint a DT (see s 87(2)(*b*) LPA (2009 Rev Ed)). A DT was duly appointed on 18 June 2021.

The charges against the respondent

24 By the time the DT was appointed, the applicant had issued its Statement of Case ("SOC") on 31 May 2021, which it subsequently amended on 28 October 2021 and 31 December 2021.

25 By the amended SOC dated 31 December 2021, five charges were brought against the respondent. As stated earlier (see [1] above), OA 3 concerns only the first three charges and, where relevant, their alternatives. The 1st Charge alleged:

> That you, Clarence Lun Yaodong, an Advocate and Solicitor of the Supreme Court of Singapore are guilty of breaching rule 36(2)(*a*)(ii) of the Legal Profession (Professional Conduct) Rules 2015 …, as part of the management of a Singapore law practice known as Foxwood LLC, by failing to ensure that [Mr Lim] and [Ms Sunil], who were practice trainees serving their respective practice training periods under separate practice training contracts with Foxwood LLC, were supervised during each of their practice training periods with Foxwood LLC by a supervising solicitor who had in force a practicing certificate for a total of not less than 5 out of the 7 years immediately preceding the date of the supervision of each of the said practice trainees, which amounts to improper conduct or practice as an

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> advocate or solicitor within the meaning of s 83(2)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed) … .

The "Alternative 1st Charge" alleged that the conduct described in the 1st Charge amounted to "misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession" under s 83(2)(*h*) of the LPA (2009 Rev Ed) (which is identical to s 83(2)(*h*) of the LPA).

26 The 2nd Charge alleged:

> That you, Clarence Lun Yaodong, an Advocate and Solicitor of the Supreme Court of Singapore are guilty of contravening Rule 18(1)(b) of the Legal Profession (Admission) Rules 2011, by being the supervising solicitor during the practice training periods of [Mr Lim] and [Ms Sunil], who were practice trainees under separate practice training contracts with Foxwood LLC, while having in force a practicing certificate of a period of less than 5 of the 7 years immediately preceding the date of the commencement of your supervision of Mr Lim and Ms [Sunil] which warrants disciplinary action within the meaning of s 83(2)(j) of the Legal Profession Act (Cap. 161, 2009 Rev Ed).

The "Alternative 2nd Charge" alleged that the conduct described in the 2nd Charge amounted to "misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession" under s 83(2)(*h*) of the LPA (2009 Rev Ed).

27 The 3rd Charge alleged:

> That you, Clarence Lun Yaodong, an Advocate and Solicitor of the Supreme Court of Singapore have behaved in a manner inconsistent with the public interest by being the supervising solicitor during the practice training periods of [Mr Lim] and [Ms Sunil], who were practice trainees under separate practice training contracts with Foxwood LLC, when you did not have in force a practicing certificate for a total of not less than 5 out of the 7 years immediately preceding the date of the commencement of your supervision of Mr Lim and Ms [Sunil] as required under Rule 18(1)(b) of the Legal Profession (Admission) Rules 2011 …, which amounts to misconduct

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> unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(h) of the Legal Profession Act (Cap. 161, 2009 Rev Ed) … .

Findings of the DT: cause of sufficient gravity for the 1st to 3rd Charges only

28 In its report dated 22 March 2022 ("DT's Report"), the DT determined, pursuant to s 93(1)(*c*) of the LPA (2009 Rev Ed), that cause of sufficient gravity existed:

(a) under s 83(2)(*b*) of the LPA (2009 Rev Ed) in respect of the 1st Charge;

(b) under s 83(2)(*j*) of the LPA (2009 Rev Ed) in respect of the 2nd Charge; and

(c) under s 83(2)(*h*) of the LPA (2009 Rev Ed) in respect of the Alternative 1st Charge, the Alternative 2nd Charge and the 3rd Charge.

The 4th and 5th Charges and their alternatives were dismissed.

29 The DT's salient findings were as follows.

30 First, the respondent's conduct was *not* simply a matter of negligence, a mistake or some oversight (DT's Report at [50]–[51]). Rather, he "simply did not care whether there were any rules [relating to being a supervising solicitor] and, if so, what they were" (DT's Report at [21]). The DT observed that the respondent "did not know what the qualifying requirements were to be a supervising solicitor and did not bother to check."

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31 Second, in relation to the 1st Charge, the DT accepted that the respondent was part of the management of Foxwood due to the autonomy he had in running the Dispute Resolution Division (DT's Report at [76]–[81]). The IC had reached the same conclusion.

32 Third, in the main, cause of sufficient gravity arose because the respondent's "complete disregard ... and disinterest" had "imperiled the careful framework put in place to ensure the quality of advocates and solicitors admitted to the Bar." He had threatened "the broader public interest of ensuring the quality of legal advice available to clients" (DT's Report at [61]–[62]). The DT characterised the respondent's breach as a "serious" one (DT's Report at [85] and [88]).

Parties' submissions

Applicant

33 In relation to the 1st to 3rd Charges (and the alternatives of the 1st and 2nd Charges), the applicant submitted that due cause had been shown and that the respondent should be suspended from practice for a period of not more than one year.

34 In respect of whether the relevant rule in each charge was breached, the applicant's submissions broadly cohered with the DT's analysis. For the 3rd Charge, a point that the DT did not appear to have considered, and which the applicant sought to establish before us, was that a lawyer's duty to act in the public interest is grounded in the common law.

35 As for why due cause was shown, the applicant submitted that the respondent's conduct "posed a serious danger to the public as it could have

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resulted in persons being admitted to the Bar without having the proper guidance to discharge their duty to the court." This broadly echoed the DT's reasoning (see [32] above). To this, the applicant added that: "the Respondent's conduct recklessly endangered the future of vulnerable trainees. There is certainly the risk that the Respondent's conduct could have resulted in a trainee being called to the Bar without having been properly supervised."

36 As for the appropriate sanction, the applicant argued that a fine was insufficient due to: (a) the need to send a "strong message" to the profession; and (b) the aggravating factors and lack of mitigating factors at play in this case. It also argued that the respondent has shown a lack of remorse.

Respondent

37 Preliminarily, the respondent disputed that the relevant rule in the 1st and 3rd Charges was breached. For the 1st Charge, he argued that r 36(2)(*a*)(ii) of the Legal Profession (Professional Conduct) Rules 2015 (2010 Rev Ed) ("PCR") was not breached because he was not part of Foxwood's "management". For reference, that rule states:

> **Responsibilities to practice trainees in law practice**
>
> …
>
> (2) The management of a law practice must ensure that all of the following apply to each practice trainee who serves the practice training period under a practice training contract with the law practice:
>
> > (*a*) the practice trainee is supervised by a supervising solicitor who —
> >
> > > (i) is in active practice in the law practice; and
> > >
> > > (ii) has in force a practising certificate for a total of not less than 5 out of the 7 years immediately preceding the date the supervision of the practice trainee starts;

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> (*b*) the practice trainee is resident in Singapore during the practice training period;
>
> (*c*) the supervising solicitor performs the supervising solicitor's responsibilities in accordance with the Guidelines for Practice Training Contracts issued under rule 23 of the Legal Profession (Admission) Rules 2011 (G.N. No. S 244/2011).

38 For the 3rd Charge, the respondent acknowledged that "there is a general public interest in ensuring that lawyers follow rules". However, he argued that there was no actual danger of the public interest being compromised because he "came to the realisation that he was not qualified fairly early, and hence acted to rectify the error."

39 The respondent argued that, in any event, no due cause was shown. He submitted that his "inadvertence, coupled with the limited damage caused and the overall mitigating circumstances, [meant that this] was a case of simple negligence." He also relied on several mitigating factors, including that the harm caused was "not grave".

40 If, contrary to his submissions, the court found that due cause was shown, the respondent submitted for a fine and no suspension. He said that the severity of his breaches was at the lower end of the spectrum. He argued that there was neither dishonesty nor a "very serious misjudgement" on his part and that failing to familiarise himself with r 18(1) of the Admission Rules "[did] not bring discredit to [him] and the legal profession."

Issues before this court

41 In light of the foregoing, the issues for this court's determination were:

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(a) Whether due cause was shown in respect of the 1st, 2nd and/or 3rd Charge (and/or the alternatives of the 1st and 2nd Charges); and

(b) If (a) was answered in the affirmative, what the appropriate sanction was under s 83(1) of the LPA.

Whether due cause was shown

*2nd Charge: breach of r 18(1)(*b*) of the Admission Rules*

42 As the 2nd Charge captured the gravamen of the respondent's misconduct, and he had admitted breaching r 18(1)(*b*) of the Admission Rules, our analysis on due cause begins here. It was undisputed that in the period between 16 December 2019 and 30 January 2020, the respondent contravened r 18(1)(*b*) of the Admission Rules by purporting to act as Mr Lim's and/or Ms Sunil's supervising solicitor when he had held a practising certificate for less than five of the seven years preceding the commencement of their training (see [8] above). The question was whether due cause was shown under s 83(2)(*j*) of the LPA. That provision requires proof of (a) a contravention of the LPA that (b) warrants disciplinary action. For reference, s 83(2)(*j*) states as follows:

> (2) Subject to subsection (7), such due cause may be shown by proof that an advocate and solicitor —
>
> …
>
> (*j*) has contravened any of the provisions of this Act in relation thereto if such contravention warrants disciplinary action; …

43 We agreed with the applicant that the breach of r 18(1)(*b*) of the Admission Rules constitutes, for the purposes of this provision, a contravention of the LPA. As the DT observed, contraventions of the LPA recognised under s 83(2)(*j*) "must necessarily extend to and encompass contraventions of

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subsidiary legislation and regulations promulgated under the [LPA].” In the present context, the Admission Rules were promulgated pursuant to the power conferred on the Board of Directors of the SILE under s 10(1) of the LPA. Section 10(3) of the LPA also provides that “[d]isciplinary proceedings may be taken against any advocate and solicitor ... who contravenes any rules [in the Admission Rules].”

44 In our judgment, the respondent’s contravention of r 18(1)(*b*) of the Admission Rules, plainly warranted disciplinary action. The principal purposes of disciplinary proceedings – to protect the public and uphold confidence in the integrity of the legal profession (*Seow Theng Beng Samuel v Law Society of Singapore* [2022] 3 SLR 830 at [16]) – were squarely engaged. This was because the respondent’s conduct affected, on two levels, the public for whose protection the rules on training and qualification of lawyers exist.

45 At one level, because of the respondent’s ineligibility to act as a supervising solicitor, Mr Lim had performed work for the respondent’s clients for more than six weeks without due supervision. This state of affairs was plainly unfair and prejudicial to the respondent’s clients. They were entitled to legal advice and representation from qualified lawyers who, if at all, were assisted by trainees who were *properly supervised* by an *eligible* supervising solicitor. That this was not the case represented the real harm caused by the respondent’s conduct.

46 At the hearing before us, counsel for the respondent argued that the clients’ interests were not harmed because the respondent would review Mr Lim’s work and take responsibility for it, and the present situation was no different from that of a paralegal or secretary being asked to assist on a matter. We disagreed. If work had been done by a paralegal or secretary, or for that

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matter by junior solicitors who have been duly trained and admitted to the roll of advocates and solicitors of the Supreme Court ("roll"), the position, at least presumptively, is that the solicitor in charge of the matter is entitled to employ such persons with the aim of using their services in the way he has, subject to ensuring that any work that is subsequently produced by his employees has been duly checked and endorsed by him and adopted as work for which he is responsible. However, in the present context, the respondent was not entitled to employ either Mr Lim or Ms Sunil as trainees to begin with because he, and for that matter anyone else at Foxwood, was not qualified to supervise their work. As a matter of law, the logical consequence of this state of affairs was that given the prevailing regulatory regime, such work *should* not have been done by them at all as practice trainees and *could* not be legally done by them in that capacity. This would not change even if the respondent had reviewed that work and such review could not transform such work into work that met the interests of the clients in question. Pertinently, Mr Lim had been working on client matters throughout the six or more weeks he was employed by Foxwood. To exacerbate the difficulties we have noted, no evidence was led as to safeguards that were put in place by the respondent to ensure the quality of the trainee's work, even after the respondent discovered by 7 January 2020 that no one in Foxwood was eligible to act as a supervising solicitor. This leads to the next point, which is that the respondent's breach also affected the public by compromising the training of lawyers.

47 A practice trainee may be an employee of a law practice, but he or she is a particular *type* of employee. The main purpose of that employment is to provide the training necessary to imbue aspiring lawyers with the character and competencies expected of an advocate and solicitor. This much is clear from the definition of a "practice training contract" as a "*formal training arrangement* between a qualified person and a Singapore law practice, pursuant to which the

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qualified person receives, and the Singapore law practice provides, *supervised training in relation to the practice of Singapore law*" [emphasis added]: s 2(1) of the LPA. What the respondent was providing Mr Lim, for the *entirety* of the six or more weeks in which Mr Lim was with Foxwood, could not in any way be meaningfully described as "supervised training in relation to the practice of Singapore law". Accordingly, once the respondent knew that neither he nor anyone else in Foxwood was able to provide such supervision, it was improper and mischievous of him to insist that Mr Lim continue working. As a result of the respondent's misconduct, the six weeks that Mr Lim worked in Foxwood did not count towards the fulfilment of his six-month practice training period and Mr Lim needed to apply for the Abridgement to file the necessary papers to be called to the Bar in August 2020. The respondent did not manifest any appreciation of this in his submissions or in the conduct of his defence.

48 A series of WhatsApp messages exchanged between Mr Lim and the respondent in the period from 14 to 30 January 2020 was particularly troubling. By this time, the respondent knew that there was no eligible supervising solicitor in Foxwood who could oversee Mr Lim's work. Yet, the respondent continued to direct Mr Lim to perform substantive work, including drafting a letter seeking timelines from the court for amendments to a "Reply", preparing an affidavit of evidence-in-chief, and performing legal research. Further, when Mr Lim informed the respondent on 30 January 2020 of his intention to resign and commence his TC with another law practice, the respondent replied at 4.22pm as follows: "*to be fair to all parties*, can you start on Monday [3 February 2020], after completion of the submissions" [emphasis added]. In short, he was pressing Mr Lim to continue to work at Foxwood to enable the respondent to meet a deadline, without any regard to the fact that Mr Lim should not have been undertaking any such work at all at this time, given the absence of a suitable supervising solicitor.

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49 Trainees depend on their supervising solicitors to acquire the values, competencies and skills necessary to become members of a noble and honourable profession: see SILE's "Guidelines for Practice Training Contracts" with effect from 3 May 2011; Jeffrey Pinsler, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing, 2nd Ed, 2022) ("*PCR Commentary*") at paras 36.017–36.019. To uphold the quality of supervision afforded to trainees, r 18(1) of the Admission Rules only permits lawyers of a certain seniority to act as supervising solicitors. Rule 18 also places limits on the number of trainees one can supervise:

> **Supervising solicitor**
>
> **18.**—(1) A solicitor shall not be the supervising solicitor of a practice trainee unless the solicitor —
>
> (*a*) is in active practice in a Singapore law practice; and
>
> (*b*) for a total of not less than 5 out of the 7 years immediately preceding the date of commencement of his supervision of the practice trainee, has in force a practising certificate.
>
> (2) A supervising solicitor who is a solicitor of not less than 12 years' standing must not supervise more than 4 practice trainees at any time.
>
> (2A) A supervising solicitor who is a solicitor of less than 12 years' standing must not supervise more than 2 practice trainees at any time.
>
> …

50 These rules exist to ensure lawyers are training appropriately and also to ensure that there is no compromise in the quality of any work that trainee lawyers do. The respondent's clients were denied the benefit of these rules implemented to safeguard the quality of supervision provided to trainees, and ultimately to protect and uphold the quality of legal services dispensed to the clients. Moreover, as the applicant submitted, this was no technical breach of r 18(1)(*b*). In the seven years before the respondent commenced his supervision

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of Mr Lim and Ms Sunil, the respondent had held a practising certificate for only 2 years, 10 months and 16 days, and 2 years, 11 months and 3 days respectively. This was *far* short of the minimum of five years prescribed in r 18(1)(*b*). In these circumstances, we dismissed the respondent's contention that the "overall harm" caused by his conduct was "not grave".

51 Indeed, even for Ms Sunil, the respondent's conduct demonstrated a dire lack of concern for the trainee's position. While the applicant was not proceeding with the 4th Charge that the respondent took unfair advantage of Ms Sunil in asking her to pay her salary in lieu of notice, the point is that once the respondent was aware on 6 January 2020 about his own lack of qualification, and by 7 January 2020 that no one else in Foxwood was qualified to be a supervising solicitor, he should have informed Ms Sunil that he would have had to terminate her contract in any event. Instead, he reminded her on 9 January 2020 to make payment of her salary in lieu of notice. It was fortuitous that Ms Sunil did not serve as a trainee with Foxwood for a longer period. Further, the respondent only made restitution to Ms Sunil at a much later time. On 5 May 2021, the Law Society informed the respondent that it disagreed with the IC's Revised Report and would prosecute him before a DT. *The same day*, the respondent messaged Ms Sunil to "ask how things are", and followed this up by offering to make restitution on 9 May 2021. The timing of this, and the fact that the IC had earlier noted his failure to make restitution in adverse terms suggested a cynicism that did not escape us. However, since the DT did not find cause of sufficient gravity in respect of the 4th Charge, and the applicant did not challenge this before us, we did not factor the respondent's treatment of Ms Sunil into our finding of due cause. We merely mention these facts to complete the narrative surrounding the respondent's misconduct.

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52 The respondent's misconduct also warranted disciplinary action because it threatened confidence in the legal profession's integrity, competence and diligence.

53 Misconduct that undermines confidence in the profession is egregious because public confidence is "an *indispensable* element in the fabric of the justice system" [emphasis added]: *Law Society of Singapore v Tan See Leh Jonathan* [2020] 5 SLR 418 at [5]. The administration of justice depends upon the public's ability to repose confidence in the legal profession, the courts' ability to depend on the honesty and integrity of practitioners appearing before them, and solicitors' ability to rely on the honesty of other solicitors with whom they deal: *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 at [12].

54 The respondent's misconduct undermined confidence in the legal profession because it suggested that these rules which serve critical purposes are not in fact viewed and applied with adequate rigour and commitment. It also eroded trust in the work of freshly qualified lawyers, because the quality of their training may be called into question.

55 Aside from this, we also found the respondent's attitude, to the whole question of his ability to take on the training of solicitors, appalling. In essence, he failed to conduct *any* checks on the regulatory requirements for becoming a supervising solicitor prior to 6 January 2020. His oral testimony evidenced a *gross* degree of negligence. Under cross-examination, the respondent admitted that he performed *no checks whatsoever* on whether he was in a position to accept Mr Lim and Ms Sunil as trainees and suggested instead that any regulatory requirements would be flagged out to him by Mr Goh:

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> Q: I understand what you are saying. Under these circumstances, I hear you. But my question to you is, would I be right to say you read nothing when you accepted the two trainees?
>
> A: (No audible answer)
>
> Q: This pause is being recorded.
>
> A: *I don't think you are wrong there; I think you are right.*
>
> Q: So, Mr Lun, I'm sorry to say this, so there was no mistake. It's just that you didn't read anything.
>
> A: I mean, I always thought if there is some rules and regulations that I needed to be flag out with---it would have been flag out to me. Because I joined---I joined a firm, and---and I---I---I thought I that all the relevant regulatory rules and all the (indistinct) stuff would have been taken care of. I'm not running and---absconding away---I'm not running away from my responsibility. And I have already said I have made a mistake.
>
> [emphasis added]

We agreed with the DT that the respondent "simply did not care whether there were any rules and, if so, what they were."

56 Not only was the respondent negligent in respect of his professional obligations, but he also demonstrated a blatant disregard for the interests of his clients and trainee. At the hearing before us, the respondent's counsel accepted that by 7 January 2020, the respondent had reached out to Mr Goh and Mr Tan and discovered that *no one* in Foxwood was eligible to be a supervising solicitor. At that point, the respondent should have *immediately* terminated Mr Lim's TC in order to be fair both to Mr Lim and to the respondent's clients. Nothing of the sort was done. On the contrary, he continued to demand work from Mr Lim right until the latter's resignation on 30 January 2020 (see [48] above).

57 The respondent's conduct was even more reprehensible considering that sometime before that, he had appreciated that he could not become a director in

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Foxwood because he lacked sufficient years of practice with a Singapore law practice (see [6] above). In other words, several months before the charged offence took place, the respondent was aware that there were rules affecting his ability to become a director of a law corporation. Yet, he did not bother to check if there were similar rules governing his ability to take on trainees.

58 For completeness, we mention that there was evidence from two advocates and solicitors – Mr Tan Yingxian, Selwyn ("Mr Selwyn Tan") and Mr Giam Zhen Kai ("Mr Giam") – that each had discussed with the respondent the question of the respondent's qualification to be a supervising solicitor before he entered into the TCs, on behalf of Foxwood, with the two trainees.

59 Mr Selwyn Tan practised at Foxwood between September 2019 and April 2020. He said that when he learned that two trainees would be joining Foxwood's Dispute Resolution Division in December 2019, he had some concerns that the respondent would be their supervising solicitor since the respondent was the most senior lawyer heading litigation and dispute resolution at Foxwood. Mr Selwyn Tan checked the applicable rules and the respondent's LinkedIn profile and concluded that the respondent would be unlikely to meet the applicable criteria. He said that during a break in trial proceedings in November 2019, he had highlighted the applicable rules to the respondent and had "asked [the respondent] directly if he had sufficient years of practice with a practi[s]ing certificate in force to supervise trainees." Mr Selwyn Tan said that the respondent had replied that "there would be 'no issue'" and that Mr Goh would be the trainees' supervising solicitor.

60 Mr Giam practised at Nair & Co LLC with the respondent from February 2019 before moving with the respondent to Foxwood in July 2019 and practising there until November 2019. He testified that soon after he joined Nair

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& Co LLC in February 2019, he was told that the reason Mr Suresh Nair was his supervising solicitor (and not the respondent) was that the respondent was not qualified to act as a supervising solicitor.

61 Mr Giam said that during the period when the respondent was considering joining various other firms, the respondent had assured him that his practice training "would not be affected as [the respondent] would be able to assign qualified persons to be [his] supervising solicitor in those firms."

62 Mr Giam also said that he had accompanied the respondent to interview Mr Lim sometime in early October 2019, and that he had asked the respondent shortly after the interview whether the respondent would be Mr Lim's supervising solicitor. Mr Giam said the respondent replied that "he would not be Mr Lim's supervising solicitor and that one of the other partners of Foxwood LLC would be named as Mr Lim's supervising solicitor."

63 Although the respondent objected to the admission of these portions of the evidence of Mr Selwyn Tan and Mr Giam, the DT dismissed the objection.

64 The DT noted that both Mr Selwyn Tan and Mr Giam candidly admitted that their relationship with the respondent had soured. However, they steadfastly maintained that their evidence was true.

65 Furthermore, at the hearing before the DT, the DT found that the respondent had not directly challenged the evidence of Mr Selwyn Tan and Mr Giam in relation to these respective conversations. Instead, he sought to undermine their evidence on this issue by challenging their evidence on the events that led to these alleged conversations.

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66 The DT accepted that there were some inconsistencies in the evidence of both Mr Selwyn Tan and Mr Giam but found that these inconsistencies did not detract from their unchallenged evidence on their respective conversations with the respondent.

67 Nevertheless, the DT was unwilling to conclude with the necessary degree of certainty that these conversations had registered in the respondent's mind or that he was otherwise aware, prior to 6 January 2020, that he was not qualified to act as a supervising solicitor for practice trainees. We note in passing that if the DT had accepted the accounts of Mr Selwyn Tan and Mr Giam, as it did, its decision to disregard their evidence is puzzling to say the least. These individuals were not claiming that they informed the respondent of a critical requirement that he was not aware of, such that a failure to register these conversations might in some way justify not taking this into account in assessing the respondent's culpability. On the contrary, their evidence was to the effect that the respondent in fact was aware of the constraints that prevented his acting as a supervising solicitor and claimed that there would be a workaround solution to address this. Once the DT considered this, then it would and should have had a very material impact on assessing the respondent's culpability. In any case, the applicant did not challenge the finding of the DT and we therefore do not take this into account in assessing the culpability of the respondent.

68 We also rejected the respondent's attempts to downplay the degree of his negligence and/or the gravity of its impact.

69 First, the respondent denied that his misconduct posed a real risk to the public because he claimed that other stakeholders would help to detect trainees who had not received adequate supervision. For instance, the SILE is required

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to issue a certificate to confirm, among other things, satisfactory completion of a practice training period (see r 25(4)(*a*) of the Admission Rules).

70 We were unable to agree with the respondent. It was irrelevant that there may be other stakeholders who play a part in detecting breaches of the Admission Rules. For one, these additional layers of protection simply underscore the overriding interest in protecting the public from under-trained lawyers. Moreover, these other stakeholders did not absolve the respondent of his own failures. As the DT observed, "each advocate and solicitor bears *personal* responsibility to ensure that the *applicable* rules of practice are strictly adhered to in all areas of *his* practice" [emphasis added] (DT's Report at [19]). All solicitors ought to be familiar with the rules made under the LPA and will at any rate be deemed to be aware of their existence and applicability: *Law Society of Singapore v Chiong Chin May Selena* [2005] 4 SLR(R) 320 at [25]. Therefore, the supervision afforded by other stakeholders cannot be a justification for lawyers to abdicate their personal responsibility to familiarise themselves and comply with the rules governing their eligibility to act as supervising solicitors. In addition, the fact that there are other stakeholders to ascertain the *completion* of satisfactory training does not in any way address the harm to trainees who undergo training without knowing that the solicitor supervising them is not qualified; or the harm to clients who are at the receiving end of their work.

71 Second, the respondent's attempts here and below to shift the blame to Mr Goh signalled a lack of remorse. Before us, he argued that Mr Goh bore "the primary responsibility" for ensuring the proper supervision of trainees and that he only bore a "secondary responsibility". Before the DT, he went so far as to call Mr Goh "a shield". In our view, frivolous attempts to deflect blame and responsibility undermine the existence of remorse: see *Law Society of*

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Singapore v Ooi Oon Tat [2022] SGHC 185 at [48]; *Law Society of Singapore v Seow Theng Beng Samuel* [2022] SGHC 112 ("*Samuel Seow*") at [19] read with *The Law Society of Singapore v Seow Theng Beng Samuel* [2020] SGDT 2 at [51]).

72 More fundamentally, the respondent's attempt to shift the blame to Mr Goh was reprehensible because the respondent could have had no genuine expectation of such regulatory oversight on the part of Mr Goh.

73 For one thing, Mr Goh afforded the respondent a high degree of autonomy to run the Dispute Resolution Division. This included the freedom to "hire his own staff". Mr Goh even testified under cross-examination that the respondent did not need his approval for *anything*. In this connection, Clause 2.2(c) of the PA states that the respondent "shall have authority to, and be ***responsible for***: ... (c) hiring, employing and terminating [Dispute Resolution] Employees" [emphasis added in bold italics]. We thus upheld the DT's finding that even if, in *theory*, Mr Goh had the final say in decisions relating to the Dispute Resolution Division, the respondent in fact had a free hand to manage the division (DTs Report at [81]). In these premises, the responsibility for offering TCs to Mr Lim and Ms Sunil, in breach of r 18(1)(*b*) of the Admission Rules, rested squarely on the respondent's shoulders.

74 Additionally, in so far as the respondent suggested that Schedule 2 of the PA supported his expectation of guidance from Mr Goh, we rejected this. Clause (f) of Schedule 2 (see [5] above) states that Foxwood will provide the respondent and the Dispute Resolution Division with, among other services, "[g]eneral ***administrative*** work in relation to application for practicing certification ..." [emphasis added in bold italics]. However, "administrative"

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support was a far cry from Mr Goh having undertaken to *substantively* advise the respondent on regulatory compliance.

75 For all of these reasons, we found that due cause was proved under s 83(2)(*j*) of the LPA in respect of the 2nd Charge. We therefore need not consider the Alternative 2nd Charge.

1st Charge: breach of r 36(2)(*a*)(ii) of the PCR

76 We next turn to consider the 1st Charge, which alleges a breach of r 36(2)(*a*)(ii) of the PCR (see [37] above). This rule repeats the elements of r 18(1)(*b*) of the Admission Rules, with the additional requirement that the respondent formed part of Foxwood's management at the material time.

77 It was therefore necessary to interpret the term "management" in the *chapeau* of r 36(2). Both parties submitted that the meaning of "management" in r 36(2) of the PCR must be the same as defined in r 35(8) of the PCR. We agreed. Rules 35 and 36 of the PCR *together* constitute Part 4 of the PCR, which is entitled "Rules Applicable to Management and Operation of Law Practices". The term should therefore be read consistently across these two provisions (see also *PCR Commentary* at para 36.003; *Woon Brothers Investments Pte Ltd v Management Corporation Strata Title Plan No 461 and others* [2011] 4 SLR 777 at [19]).

78 We first direct our attention to r 35, which deals with the responsibilities in relation to the management and operation of a law practice. Among other duties, the rule obliges the law practice's management to ensure that the law practice complies with the requirements of the LPA, including the PCR (r 35(7)). Crucially, for our purposes, "management" is defined in r 35(8) in these terms:

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> **Responsibilities in relation to management and operation of law practice**
>
> …
>
> (2) The management of a law practice must ***notify*** the Society of the name and contact details of a member of the management within 14 days after the member is appointed.
>
> …
>
> (8) In this rule, 'management', in relation to a law practice, ***means*** —
>
> (*a*) the sole proprietor of the law practice;
>
> (*b*) the partners or directors of the law practice ***who have been notified*** to the Society under paragraph (2); ***or***
>
> (*c*) ***all*** the partners or directors of the law practice where no notification under paragraph (2) has been made.
>
> [emphasis added in bold italics]

79 We agreed with the respondent that *if* a law practice notifies the Law Society of the members of its management under r 35(2) of the PCR ("r 35(2) notification"), pursuant to r 35(8)(*b*), the management can only comprise lawyers *named in the r 35(2) notification*. No other lawyers shall form part of management for the purposes of rr 35 and 36. This notification requirement "ensures that each member of the management is made officially accountable through the communication of his details to the Law Society" (*PCR Commentary* at para 35.007). On the other hand, if no notification under r 35(2) has been made, then "***all*** the partners or directors of the law practice" will be deemed to form part of management [emphasis added in bold italics] (r 35(8)(*c*) PCR). Thus, it is only under r 35(8)(*c*), if at all, that *de facto* directors or partners may form part of the law practice's management.

80 It may be that there is a gap in the PCR in the sense that a law practice may deliberately or inadvertently exclude a solicitor who is a *de facto* director

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or partner from a r 35(2) notification which has been sent to the Law Society. However, that is a matter that will have to be addressed elsewhere.

81 We turn to r 36, which formulates the responsibilities of the *management* to provide supervised training to each practice trainee. As earlier explained, the interpretation of "management" in r 35 applies equally under r 36(2). Therefore, it was incumbent on the applicant to prove, beyond a reasonable doubt, that Mr Goh *did not* submit the r 35(2) notification to the Law Society on or before January 2020. Only then could r 35(8)(*c*) PCR apply, such that a *de facto* director may arguably form part of the management.

82 However, there was no evidence before us as to whether either r 35(8)(*b*) or r 35(8)(*c*) of the PCR applied in this case.

83 The applicant did not point to any evidence that the respondent was named in a notification to the Law Society under r 35(2). We also thought it highly unlikely that any such notification would have been given because, as noted at [6] above, Mr Goh knew that the respondent was not qualified to be named as a director, and hence, presumably, also not to be a member of Foxwood's management. But the fact that the respondent was unlikely to be named in any such notification does not mean that no notification at all was submitted to the Law Society. As to this, as we have already noted, we were none the wiser because there was no evidence at all before us.

84 In the absence of proof either that a notification was given under r 35(2) naming the respondent as part of Foxwood's management, or that *no* r 35(2) notification was given by Foxwood, the applicant had not proved which limb of r 35(8) was engaged in this case. We declined to presume that r 35(8)(*c*) applied. It was never put to Mr Goh that he failed to submit the r 35(2) notification.

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Moreover, Mr Goh testified in this regard that he had done "everything that [he] was supposed to do" when he incorporated Foxwood on 3 April 2017, but could not remember specifically whether he had submitted the r 35(2) notification:

> Mr Goh's cross-examination by respondent's counsel
>
> Q: So at 35, Rule (2), it says:
>
> [Reads] 'The management of a law practice must notify the Society of the name and contact details of a member of the management within 14 days after the member is appointed.'
>
> Could you confirm that when you incorporated Foxwood, that your name was given, and that ***this notification was done***?
>
> A: I don't remember. As I was the only sole director, I did ***everything that I was supposed to do***. I am not sure if this was part of it or if it is a separate piece of things that I need to do in addition to whatever that I did---I have already done, so I have no---I don't---I ***don't remember doing this or not doing this***.
>
> [emphasis added in bold italics]

85 Accordingly, the applicant cannot invoke r 35(8)(*c*) to deem the respondent to be treated as a member of Foxwood's management.

86 In any event, even if the respondent was part of the management of Foxwood, it was not clear to us why there was a need to proceed with the 1st Charge against the respondent. The respondent had already admitted to having purported to act as Mr Lim's and Ms Sunil's supervising solicitor and breaching r 18(1)(*b*) of the Admission Rules, which was the basis of the 2nd Charge, and it is not clear to us what the 1st Charge would add to this. The latter seemed to us to be a form of secondary or vicarious liability which was unnecessary to invoke in a case like the present where the primary liability was not contested.

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3rd Charge: breach of common law duty to act in the public interest

87 What remains is the 3rd Charge in respect of which we only make some brief remarks. While it may be true that advocates and solicitors have a common law duty to act in the public interest, this would only arise for consideration, if at all, as an alternative to the 2nd Charge. Since due cause was established in respect of the 2nd Charge, it was wholly unclear what the point of the 3rd Charge was. We also disregarded the 3rd Charge for the purpose of sentencing, because the conduct forming the 2nd and the 3rd Charge was identical.

The appropriate sanction under s 83(1) of the LPA

88 We turn to the appropriate sanction to be imposed in respect of the 2nd Charge. The following sentencing considerations are relevant in disciplinary proceedings (*Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 ("*Ravi*") at [35]):

(a) the protection of members of the public who are dependent on solicitors in the administration of justice;

(b) the upholding of public confidence in the integrity of the legal profession;

(c) deterrence against similar defaults by the same solicitor and other solicitors in the future; and

(d) the punishment of the solicitor who is guilty of misconduct.

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Whether striking off, a suspension or a monetary penalty was more appropriate

89 Gross negligence may attract different disciplinary sanction(s) depending on the overall circumstances and gravity of the misconduct. In cases of misconduct not involving dishonesty or conflicts of interest, if "a solicitor conducts himself in a way that falls below the required standards of integrity, probity and trustworthiness, and *brings grave dishonour to the profession*, he will be liable to be struck off" [emphasis in original in italics] (*Law Society of Singapore v Ismail bin Atan* [2017] 5 SLR 746 at [21]). We set out the approach to considering whether a striking off order is warranted in such cases in *Samuel Seow* at [41]:

> 41 The approach to considering whether a striking off order is warranted in cases of misconduct not involving dishonesty or conflicts of interest should therefore be as follows:
>
> > (a) The first question the court should consider is whether the misconduct in question attests to any character defects rendering the solicitor unfit to be a member of the legal profession (this is similar to the first step of the sentencing framework for dishonesty; see *Chia Choon Yang* at [20]).
> >
> > > (i) The list of character defects may include a fundamental lack of respect for the law (such as a lawyer who racks up multiple convictions even for relatively more minor offences), volatility or lack of self-control detracting from the ability to discharge one's professional functions (such as in *Law Society of Singapore v Wong Sin Yee* [2003] 3 SLR(R) 209 at [19]), and other predatory instincts (such as in *Ismail bin Atan* at [18]). This is not a closed list, and may be expanded upon, bearing in mind in particular the duties that a solicitor owes to the court, to his clients, to other practitioners and to the general public.
> > >
> > > (ii) The assessment of whether misconduct demonstrates a character defect rendering a solicitor unfit to be a member of the legal profession depends on the particulars of the misconduct, and the court should consider,

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> taking into account all the circumstances of the misconduct, whether the misconduct stemmed from a lapse of judgment rather than a character defect (*Chia Choon Yang* at [31]; *Andrew Loh* at [75], [84] and [106]; *Thirumurthy* at [4(c)]).
>
> (b) The second separate question the court should consider is whether the solicitor, through his misconduct, has caused grave dishonour to the standing of the legal profession (*Ismail bin Atan* at [21]). One example would be where the lawyer is convicted of molesting a victim. In our judgment, the outcome would be unaffected even if the offence were compounded, as happened in *Ismail bin Atan* (at [11]).
>
> (c) If the answer to either of these two questions is 'yes', striking off will be the presumptive penalty. While we do not foreclose the possibility that this presumption may be rebutted, we foresee that this would only occur in exceptional cases. Indeed, where mitigating factors are raised to rebut the presumptive penalty of striking off, the solicitor would essentially be arguing that despite being *unfit* to remain an advocate and solicitor and/or having brought *grave dishonour* to the legal profession, he should nonetheless be allowed to remain on the rolls. In any event, we reiterate that personal mitigating circumstances that diminish the culpability of the solicitor carry less weight in disciplinary proceedings than they would in criminal proceedings (*Ravi* at [40]–[41]).
>
> (d) If the answer to both these questions is 'no', the court should proceed to examine the facts of the case closely to determine whether there are circumstances that nonetheless render a striking off order appropriate (*Chia Choon Yang* at [38]). The court should compare the case with precedents to determine the appropriate sentence, taking into account any aggravating and mitigating factors (as was done in *Law Society of Singapore v Dhanwant Singh* [2020] 4 SLR 736 at [137]–[138]).
>
> [emphasis in original in italics]

90 If striking off is not appropriate, among other penalties, the court may impose a monetary penalty, suspend the solicitor from practice or do both. Aggravating circumstances, such as a previous disciplinary record of

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misconduct, may conduce towards a suspension over a monetary penalty: *Law Society of Singapore v Chiong Chin May Selena* [2013] SGHC 5 at [45].

91 This was not a case in which striking off was warranted (nor did the applicant seek this). The respondent's misconduct did not attest to a character defect or suggest a "fundamental lack of respect for the law", as might be inferred if a lawyer "racks up multiple convictions even for relatively more minor offences" (*Samuel Seow* at [41(a)(i)]). This was the respondent's first disciplinary proceeding and he was being sentenced for a single offence.

92 While the respondent caused dishonour to the legal profession, it was not to a degree that warranted his being struck off the roll. We were guided in this context by our decision in *Law Society of Singapore v Ong Ying Ping* [2005] 3 SLR(R) 583 ("*Ong Ying Ping*"), where a two-year suspension was imposed on a lawyer who made no attempt to discover the rule that was breached. The rule in question there was "that no close relative of a prisoner would be allowed to accompany the prisoner's lawyer to the interview between lawyer and client/prisoner" (at [42]). Mr Ong Ying Ping ("Mr Ong") had a prisoner's wife accompany him for a visit to his client in prison by telling the prison officers a half-truth – that she was his assistant without disclosing that she was the prisoner's wife (at [54]). Mr Ong's culpability was higher than the present respondent's because Mr Ong at the very least "strongly suspected" what the rule he had breached was as the prisoner's wife had arrived earlier to the prison, and had already been *denied* permission to accompany Mr Ong by the Chief Wardress (at [10] and [56]). Mr Ong was found to have been *at least* reckless (at [47]) and had undermined *two* key institutions – the legal profession and the prison system (at [67]).

93 In our judgment, a suspension was appropriate in this case because of the presence of several aggravating factors. ***First***, the respondent's culpability was moderately high due to his abject failure to check the regulatory requirements for acting as a supervising solicitor (see [55]–[57] above). ***Second***, his insistence that Mr Lim continue working even after discovering that there was no eligible supervising solicitor in Foxwood indicated a blatant disregard for the interests of his clients and also of Mr Lim (see [56] above). ***Third***, the respondent caused real harm to his clients and to Mr Lim (see [45]–[50] above). ***Fourth***, the respondent had not shown remorse for his actions (see [71] above).

94 We have addressed the latter three factors in some detail above. We now elaborate on the first factor in the context of sentencing. In this regard, a spectrum of culpability, and attendant sentencing consequences, was helpfully set out in *Law Society of Singapore v Yap Bock Heng Christopher* [2014] 4 SLR 877 (in relation to the then Legal Profession (Solicitors' Accounts) Rules (1999 Rev Ed) ("SA Rules")) (at [32]):

> … As we indicated above, at one end of the spectrum, a solicitor may commit a ***one-off trivial or technical breach*** of the SA Rules due to inadvertence or negligence which has since been resolved. If the solicitor has ***by and large adhered to the SA Rules, save for that one technical breach***, a fine should suffice. At the other end of the spectrum, a solicitor may have ***systematically and deliberately flouted*** the SA Rules in an effort to obfuscate the systematic diversion of clients' moneys for personal use. In such a case, the solicitor should be struck off the roll.
>
> [emphasis added in bold italics]

95 The respondent's conduct did not lie on the lower end of the spectrum. If the respondent here had been inadvertent due to simple negligence – such as if he had familiarised himself with *some* of the relevant rules, but happened to overlook r 18(1)(*b*) of the Admission Rules – a fine might perhaps have sufficed. However, his utter failure to do *anything* to ascertain or check on his

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eligibility to act as a supervising solicitor, before offering TCs to Mr Lim and Ms Sunil and commencing their supervision in December 2019 and January 2020 revealed something more insidious – a disregard for his professional obligations. His default was even more reprehensible given his prior knowledge that he was ineligible to serve as a director in Foxwood. Such gross negligence strongly engaged the need for general and specific deterrence (see [88(c)] above) and was, in our view, damaging to public confidence in the profession (see [88(b)] above).

96 In this light, a fine neither sufficed to capture the deplorable nature of the respondent's conduct nor adequately signalled our disapproval of it. The remaining question was what the term of suspension should be.

What was the appropriate term of suspension

97 Having regard to all the circumstances of this case, we held that a suspension of 18 months was appropriate. Our reasons were as follows.

98 First, the *gravity* of the default and concomitantly the degree of culpability on the part of the respondent warranted a substantial period of suspension. The sentence we arrived at signalled the *serious* nature of the respondent's abject failure to consider his regulatory obligations before taking on trainees, *and* our condemnation of his treatment of Mr Lim, and therefore his clients, after he discovered that no one in Foxwood was qualified to act as Mr Lim's supervising solicitor.

99 Second, the respondent's misconduct caused real harm to his clients and Mr Lim. His clients were denied the benefit of the rules implemented to safeguard the quality of supervision provided to trainees and therefore the standard of legal services dispensed to the public. Mr Lim also spent over six

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weeks with Foxwood which did not count towards his practice training period. These were real consequences of the misconduct in this case. As mentioned, it was fortuitous that Ms Sunil did not serve as a trainee for a longer period.

100 Third, the respondent's lack of remorse in attempting to shift the blame to Mr Goh enhanced the need for punishment and specific deterrence.

101 Finally, in arriving at the appropriate sanction, we took into account the fact that this was the respondent's first disciplinary proceeding and he was unlikely to re-offend. However, other personal mitigating circumstances that allegedly diminish the culpability of the solicitor carry less weight in disciplinary proceedings than they would in criminal proceedings: *Ravi* at [40]–[41]; *Samuel Seow* at [41(c)]. Accordingly, the respondent's submissions that his breach was "one-off", not "systematic and deliberate", "fairly momentary", that he "did not benefit" from the breaches, and that he notified Mr Lim of the breach about a week after discovering it did not alter our view.

102 We return here to our earlier reference to *Ong Ying Ping*, where the respondent in that case received a two-year suspension even though he, at the very least, strongly suspected what the rule he had breached was. Given the holding of the DT to disregard the evidence of Mr Selwyn Tan and Mr Giam (see [67] above), we do not regard the respondent as being in a similar situation. Further in *Ong Ying Ping* at [67], it was noted that aside from harm to the legal profession, the security interest of the prison system was potentially undermined. That too is not the case here. Therefore, in relative terms, we view the respondent as somewhat less culpable than Mr Ong. That should not, however, detract from the *gravity* of the respondent's infraction in disregarding the interests of his clients, his trainee and the legal profession. An 18-month suspension was therefore a condign punishment. We do observe in passing that

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the respondent should appreciate that this is a lenient sentence in all the circumstances brought about by the errors of the DT in failing to appreciate the true position in relation to the 4th Charge and in failing to appreciate the full extent of the respondent's culpability in relation to the 2nd Charge, both of which were not challenged by the applicant or its counsel before us.

103 For these reasons, we imposed a suspension of 18 months under s 83(1)(*b*) of the LPA and ordered that the suspension commence on 7 November 2022. We also made an order for costs in favour of the applicant in the aggregate sum of $10,000, which was the amount sought.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Sarbjit Singh Chopra and Roshan Singh Chopra (Selvam LLC) for the applicant;
Mark Jerome Seah Wei Hsien and Lau Wen Jin (Dentons Rodyk & Davidson LLP) for the respondent.

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