IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 28

Originating Application No 541 of 2023

Between

Attorney-General

… *Applicant*

And

(1) Shanmugam Manohar
(2) The Law Society of Singapore

… *Respondents*

JUDGMENT

[Legal Profession — Disciplinary proceedings — Review of determination of disciplinary tribunal]

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v
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31 January 2024 Judgment reserved

Hoo Sheau Peng J:

Introduction

1 This is an application by the Attorney-General ("AG") under s 97(1)(*a*) of the Legal Profession Act 1966 (2020 Rev Ed) (the "LPA") for a review of the determination of the Disciplinary Tribunal in DT/23/2022 (the "DT") made under s 93(1)(*b*) of the LPA dated 27 April 2023 (the "Determination").

2 The Determination is that as regards the professional conduct of the first respondent, Mr Shanmugam Manohar ("Mr Manohar"), which is the subject matter of the AG's complaint dated 2 July 2018 (the "Complaint"), there is no cause of sufficient gravity for disciplinary action under s 83 of the LPA. The Determination was accepted by the Council of the Law Society of Singapore (the "Council") on 15 May 2023.

3 Having reviewed the Determination, the AG asks that it be set aside under s 97(4)(*b*)(ii) of the LPA, and prays that pursuant to s 97(4)(*b*)(ii)(B) of the same, the second respondent, the Law Society of Singapore (the "Law Society"), be directed to apply to the Chief Justice for the appointment of another disciplinary tribunal to hear and investigate the matter afresh.

4 Having considered the parties' submissions, I dismiss the application. These are my reasons.

The nature of a review application

5 I begin by explaining the nature of a review application, and the powers of a Judge in the General Division of the High Court when hearing such an application. The relevant provision reads:

> 97.—(1) Where a Disciplinary Tribunal has made a determination under section 93(1)(*a*) or (*b*), the person who made the complaint, … 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.
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> …
>
> (4) The Judge hearing the application —
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> (a) has *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
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> (b) may make such orders as the Judge thinks fit, including —
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> …
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> (ii) an order setting aside the determination of the Disciplinary Tribunal and directing —
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> …

> (B) the Society to apply to the Chief Justice for the appointment of another Disciplinary Tribunal to hear and investigate the complaint or matter;
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> …
>
> [emphasis added]

6 In *Loh Der Ming Andrew v Koh Tien Hua* [2021] 2 SLR 1013 ("*Loh Der Ming Andrew*") at [32], the Court of Three Judges ("C3J") observed that s 97 of the LPA is framed broadly, and expressly empowers a Judge to determine the correctness of the determination of a Disciplinary Tribunal. In reviewing a matter, a Judge exercises both supervisory and appellate jurisdiction (*Law Society of Singapore v Yeo Khirn Hai Alvin and another matter* [2020] 4 SLR 858 ("*Yeo Alvin*") at [26]). In exercising the supervisory jurisdiction, the Judge may consider the "correctness, legality or propriety" of the determination, which is "directly referable to the traditional grounds of illegality, irrationality and procedural impropriety in judicial review" (*Iskandar bin Rahmat v Law Society of Singapore* [2021] 1 SLR 874 ("*Iskandar*") at [32]). However, while the ambit of the Judge's ability to consider and determine the correctness of the findings made by a Disciplinary Tribunal encompasses the traditional scope of judicial review, it is not so limited. Instead, in exercising the appellate jurisdiction, the Judge may also assess the substantive merits of the findings and the determinations of the Disciplinary Tribunal (*Loh Der Ming Andrew* at [34] and [36]).

7 That said, while the Judge may determine any question necessary to be determined for the purpose of doing justice in the case, under s 97 of the LPA, the Judge is nonetheless limited in the orders that may be made. In particular, the Judge does not have the power "to order any penalty or even to make recommendations as to any penalty" (*Iskandar* at [33], *Loh Der Ming Andrew* at [33]). Upon a review, the Judge may (a) direct that an application be made to

advance the matter to the C3J, or (b) set the matter aside and either remit it to the same Disciplinary Tribunal, or, as submitted by the AG in respect of this matter, direct that a new Disciplinary Tribunal "hear and investigate the complaint or matter".[1] With this framework in mind, I turn to the facts of the case.

Facts

The Complaint

8 The Complaint against Mr Manohar concerned the alleged practice of touting (which is prohibited by the LPA). At all material times, Mr Manohar was a partner of the law firm M/s K Krishna & Partners (the "Firm"). According to the Complaint, Mr Manohar had paid Mr Ng Kin Kok ("Mr Ng") a service charge of between $600 and $800 per case, in connection with at least five clients which Mr Ng had referred to the Firm.[2] Allegedly, Mr Manohar had also given Mr Ng copies of the Firm's warrant to act (with the Firm's stamp already affixed to them).[3] Mr Ng had asked the clients to sign on the warrants to act without the clients attending at the Firm to do so. This was the situation in relation to five clients.[4]

The first set of disciplinary proceedings – DT/9/2019

9 In 2019, based on the Complaint, the Law Society commenced disciplinary proceedings against Mr Manohar. The hearing took place on 18 and

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1 Written submissions of the Attorney-General dated 12 September 2023 ("AS") at para 27.

2 Affidavit of Hui Choon Kuen on behalf of the AG dated 26 May 2023 ("HCK") at p 20.

3 HCK at p 21.

4 HCK at p 21.

19 August 2020. The Disciplinary Tribunal in DT/9/2019 (the "First DT") found Mr Manohar liable on the disciplinary charges brought against him for professional misconduct, and found cause of sufficient gravity for a referral under s 83(1) of the LPA for Mr Manohar to be sanctioned. Accordingly, the matter was referred to the C3J.[5]

10 The C3J set aside the First DT's decision on the basis that the hearing had not been properly conducted, as there was incorrect admission of certain evidence which had a material impact on the determination. Specifically, the First DT had wrongly relied on inadmissible evidence in the form of statements taken in the course of criminal investigations from Mr Manohar, Mr Ng and a partner of the Firm, Mr Krishnamoorthi s/o Kolanthaveloo ("Mr Krishna") (see *Law Society of Singapore v Shanmugam Manohar* [2022] 3 SLR 731 ("*Shanmugam Manohar*") at [123], [124] and [131]).

11 Nonetheless, under s 98(8)(*b*)(ii) of the LPA, the C3J directed the Law Society to apply for the appointment of another Disciplinary Tribunal to hear and investigate the Complaint afresh. The C3J noted that "there is clearly a strong public interest in having a fresh hearing so that [Mr Manohar's] alleged misconduct can be properly investigated", and that "[t]his is necessary to uphold the high standards of the legal profession and to retain public confidence in the honest, integrity and professionalism of its members" (*Shanmugam Manohar* at [141]).

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5 HCK at p 7.

The second set of disciplinary proceedings – DT/23/2022

12 Consequently, DT/23/2022 was convened, and the DT appointed on 18 November 2022. The Law Society placed a total of 12 charges (with alternative charges) before the DT:[6]

(a) The first five charges (with alternative charges) concerned touting (the "touting charges"). These touting charges alleged that in contravention of s 83(2)(*e*) of the LPA, Mr Manohar made payments to Mr Ng for "obtaining the retainer" from five individuals involved in motor accidents. These clients were Mr Mah Wai Chuen ("Mr Mah"), Mr Tok Chee Tiong ("Mr Tok"), Mr Lee Kek Soon ("Mr Lee"), Mr Woo Keng Chung ("Mr Woo") and Mr Tan Kim San ("Mr Tan"), and the payments were between $600 and $800 for each referral;

(b) The next five charges (with alternative charges) concerned Mr Manohar's failure to communicate directly with each client (*ie,* Mr Mah, Mr Tok, Mr Lee, Mr Woo and Mr Tan) to obtain or confirm instructions at the outset of their respective retainers, as each warrant to act was obtained through Mr Ng (the "non-communication charges"); and

(c) The last two charges (with alternative charges) related to Mr Manohar's failure to communicate directly with each client (*ie,* Mr Tok and Mr Woo) to obtain or confirm instructions at all appropriate stages of the matter (the "total non-communication charges").

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6 Report of the Disciplinary Tribunal dated 27 April 2023 ("Report") at paras 7 to 9.

Hearing

13 The hearing took place on 23 and 24 March 2023.[7] There were five witnesses for the Law Society. Mr Mah and Mr Tan provided affidavits of evidence-in-chief, while Mr Tok, Mr Lee and Mr Woo attended under orders to attend court.[8]

14 While the Law Society intended to call Mr Ng and Mr Krishna, it was unable to personally serve on them the two orders to attend court obtained from the court on 9 February 2023 (the "Attendance Orders").[9] It also failed in its applications to obtain orders for substituted service of the Attendance Orders (the "substituted service orders").[10] In due course, I shall set out more details on certain events in February and March 2023. As it transpired, Mr Ng and Mr Krishna were not served with the Attendance Orders, and they did not give evidence before the DT.

Outcome

15 At the close of the Law Society's case, as Mr Ng and Mr Krishna did not appear before the DT, the DT found that there was "no evidence about the alleged payments" from Mr Manohar to Mr Ng "from any of the witnesses who did give evidence".[11] Hence, Mr Manohar "had no case to answer in relation to the [touting charges]."[12]

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7 Report at para 10.

8 Report at para 11.

9 Report at para 12.

10 Report at para 13.

11 Report at para 21.

12 Report at para 22.

16 Pursuant to the parties' request, the matter was then stood down for them to discuss the matter. Subsequently, the parties came to an agreement. The DT permitted the Law Society to withdraw two non-communication charges (including the alternative charges) relating to Mr Manohar's failure to communicate directly with two of the clients at the outset of the retainers (*ie,* Mr Lee and Mr Woo).[13] The DT also permitted the withdrawal of the two total non-communication charges (including the alternative charges) in relation to Mr Tok and Mr Woo. I shall refer to these four charges (including the alternative charges) as the "withdrawn charges".[14]

17 Thereafter, Mr Manohar pleaded guilty to the remaining three non-communication charges (as further amended) involving Mr Mah, Mr Tok and Mr Tan (the "admitted charges").[15] In respect of Mr Mah and Mr Tok, such conduct which occurred in March 2014 was said to contravene Rule 11A(2)(*f*) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) (the "PCR 2011"). As for Mr Tan, the contravention in February 2016 related to Rule 39(2)(*g*) of the Legal Profession (Professional Conduct) Rules 2015 (the "PCR 2015"). The amendments essentially removed references to Rule 11A(1) of PCR 2011 and Rule 39(1) of PCR 2015.[16]

18 Based on the conviction on the admitted charges, the DT found that there was no cause of sufficient gravity for disciplinary action against Mr Manohar

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13 Report at para 29.

14 Report at para 29.

15 Report at para 25.

16 Report at para 25.

under s 83 of the LPA, and that a financial penalty of $3,000 was "sufficient and appropriate".[17]

19 On 15 May 2023, the Council accepted the Determination on the issue of liability, and duly notified Mr Manohar of the same. Pursuant to s 94(3)(*a*) of the LPA, the Council may impose a penalty of not more than $20,000. In that regard, the Council expressed that it would first hear from Mr Manohar before imposing the appropriate sanction.[18]

Failure to obtain substituted service orders

20 As indicated above at [14], the Law Society intended to call Mr Ng and Mr Krishna as witnesses. To this end, on 9 February 2023, the Law Society obtained the Attendance Orders. This was in accordance with Rule 11 of the Legal Profession (Disciplinary Tribunal) Rules (Cap 161, R 2, 2010 Rev Ed) (the "DT Rules"), read with O 15 r 4 of the Rules of Court 2021 (the "ROC"). However, despite various attempts, the Law Society was unable to effect personal service of the Attendance Orders on Mr Ng and Mr Krishna. The Law Society then proceeded to apply for substituted service orders from the court.

21 On 24 February 2023, Counsel for the Law Society wrote to the DT, setting out the situation encountered in the Supreme Court Registry (the "Law Society's Letter").[19] Based on the account given in the letter, on 22 February 2023, the Law Society had applied for the substituted service orders from the court pursuant to O 7 r 7(1) and (2) of the ROC. When Counsel for the Law Society appeared before the assistant registrar (the "first AR"), the first AR

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17 Report at para 42.

18 HCK at p 118.

19 Applicant's Bundle of Documents ("ABD") at pp 11 to 12.

indicated that he was not inclined to make any order. He reasoned that Rule 11 of the DT Rules does not expressly refer to O 7 r 7 of the ROC. He also pointed out that Rule 26(1) of the DT Rules states that a Disciplinary Tribunal "shall have the power to regulate its own proceedings, and in doing so, the Disciplinary Tribunal shall have regard to the practice and procedure of the Courts." He thus concluded that the DT might have the power to grant the substituted service orders, and that it would be preferable for the Law Society to apply to the DT instead.[20]

22 In response, Counsel for the Law Society had argued that O 7 r 7(1) of the ROC is broad enough to encompass any situation where a document is required to be served personally, and this would include the orders to attend court obtained under O 15 r 4(3) of the ROC (which is referred to in Rule 11 of the DT Rules). The first AR was unpersuaded by the arguments from Counsel for the Law Society. He directed the Law Society to write to the DT to seek its views. If the DT was of the view that only the court could grant the substituted service orders, the Law Society was to re-submit its applications to the court.

23 Pursuant to the above, in the Law Society's Letter, Counsel for the Law Society sought the DT's views on the issue, and requested appropriate directions from the DT. Counsel for the Law Society maintained the position that it was the court which should deal with the matter. The Law Society also indicated its readiness to re-submit its applications to the court.

24 On 26 February 2023, the DT replied to Counsel for the Law Society as follows (the "DT's response") which I set out in full:[21]

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[20] HCK at para 9.

[21] ABD at pp 14 to 15.

> Dear [Counsel for the Law Society],
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> I refer to [the Law Society's Letter] (the "Letter").
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> In *Tan Ng Kuang Nicky (the duly appointed joint and several liquidator of Sembawang Engineers and Constructors Pte Ltd(in compulsory liquidation)) and others v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 ("*Tan Ng Kuang Nicky*"), the Court of Appeal observed at [62] that "the essential duty of the court… is to determine disputes, not to render advice or comment upon hypothetical issues" and at [69] that "in the absence of a live issue the court will decline to hear arguments… in relation to that issue."
>
> Under Rule 26(1) of the Legal Profession (Disciplinary Tribunal) Rules, the Disciplinary Tribunal is to have regard to this practice of the Courts.
>
> In the circumstances, as there is no application before the Disciplinary Tribunal, it is unable to comment or hear arguments on the point.
>
> In the Letter, the Law Society has made it clear that its position is that only the Court can grant what the Letter describes as the Substituted Service Orders. It would also appear from the Letter that the Law Society does not wish to make any application to the Disciplinary Tribunal. Consequently, there is no live issue before the Disciplinary Tribunal.
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> With regard to paragraph 9 of the Letter, whether the Law Society wishes to re-submit its application to the Court and to make submissions before the Duty Judge are matters for it to decide.

25 After receiving the DT's response, on 28 February 2023, Counsel for the Law Society re-submitted its applications for substituted service orders to the court.[22] However, at the hearing on 9 March 2023, another assistant registrar (the "second AR") dismissed the applications, indicating that the DT was the proper body to determine whether substituted service should be granted. The Law Society did not appeal against this decision.

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22 ABD at pp 17 to 79.

26 Instead, on 10 March 2023, the Law Society wrote to the DT, formally applying for substituted service orders.[23] By way of letters on 17 and 18 March 2023, Mr Manohar responded to the application by the Law Society. On 20 March 2023, the DT dismissed the application, with brief reasons to explain that it did not have the power to grant substituted service orders of the Attendance Orders (the "March Decision").[24] I discuss the March Decision in greater detail below.

27 Thereafter, as the Law Society did not ask for a postponement of the hearing fixed for 23, 24 and 30 March 2023, the hearing proceeded, and was completed by 24 March 2023. With that, I turn to the parties' cases.

The parties' cases

28 According to the AG, the DT proceedings were irregular, and the DT made incorrect findings or decisions. There are three main contentions:[25]

(a) that the DT erred in failing to give its views earlier and direct the Law Society to re-apply for substituted service orders from the court;

(b) that the DT erred in determining that the Law Society could withdraw four charges (*ie*, the withdrawn charges at [16] above) that were already before the DT; and

(c) that the DT erred in holding that there is no cause of sufficient gravity for disciplinary action under s 83 of the LPA in relation to the admitted charges.

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23 ABD at pp 81 to 88.

24 ABD at pp 90 to 92.

25 HCK at para 16; AS at para 9.

29 In response, the Law Society and Mr Manohar disagree that there were any irregularities in the DT proceedings, or that the DT made any errors in its findings or decisions. I shall deal with the issues in turn, and expand on the arguments of the parties as required.

Issues to be determined

30 From the parties' cases, the three issues to be determined are:

(a) whether the DT erred in failing to give its views earlier, direct the Law Society to re-apply for substituted service orders from the court, and/or take steps to secure the attendance of Mr Ng and Mr Krishna as witnesses (the "first issue"). Encompassed within this is the sub-issue of whether it is the Disciplinary Tribunal or the court which has the power to grant a substituted service order in respect of an order to attend disciplinary proceedings;

(b) whether the DT erred in making the permitting the withdrawal of the charges by the Law Society (the "second issue"); and

(c) whether the DT erred in holding that there is no cause of sufficient gravity for disciplinary action under s 83 of the LPA in relation to the admitted charges (the "third issue").

Decision

The first issue

31 I turn to the first issue, and I begin with the sub-issue. On this question, all the parties, *ie,* the AG, the Law Society and Mr Manohar, agree that the DT did not have the power to order substituted service of the Attendance Orders.

Having considered the matter, I agree that it is the court, and not the DT, which has the power to deal with the substituted service of the Attendance Orders.

32 I start with s 91(2)(*b*) of the LPA, which states that for the purpose of any complaint heard and investigated by a Disciplinary Tribunal, the Law Society "may sue out subpoenas to testify". Section 92(4) provides that such subpoenas "*shall be served* and *may be enforced* as if they were subpoenas issued in connection with a civil action in the High Court [emphasis added]."

33 While Rule 26 of the DT Rules provides that a Disciplinary Tribunal "shall have power to regulate its own proceedings", this is "[s]ubject to" the DT Rules. In turn, by Rule 11 of the DT Rules, "a request for an order to attend court" under s 91(2) of the LPA "shall be made at the Registry of the Supreme Court" in accordance with O 15 r 4 of the ROC.

34 Pursuant to O 15 r 4(1) of the ROC, a party may request the Registrar to issue an order to attend court. Specifically on the issue of service, O 15 r 4(3) of the ROC provides that an order to attend court must be personally served on the witness. O 7 r 7(1) of the ROC provides that where a document is required to be served personally but it is impractical to do so, a party may apply to serve it by substituted service, with O 7 r 7(2) stating that "the Court may order any method of substituted service that is effective in bringing the document to the notice of the person to be served".

35 Reading these provisions, the Registrar of the Supreme Court has the power to issue orders to attend court for disciplinary proceedings. As these orders shall be served on witnesses as if they relate to High Court actions (*ie,* s 91(4) of the LPA), these orders shall be personally served (*ie,* O 15 r 4(3) of the ROC). If it is impractical to personally serve any such order, it may then be

served by way of substituted service pursuant to an order of court. As with an order to attend which relates to a High Court action, O 7 r 7 of the ROC would be applicable. Indeed, given that such orders are served as if they relate to High Court actions, by s 91(4) of the LPA, they may also be enforced by the machinery of the court to compel the attendance of witnesses.

36 In any event, it seems to me that the first AR should have proceeded to deal with the applications based on his view of the legal provisions, rather than to direct Counsel for the Law Society to seek the DT's views. Further, and with due respect to the second AR, I disagree with the decisions to dismiss the applications. With all that said, it was completely open to Counsel for the Law Society to appeal against the decisions. But this was not done.

37 With the sub-issue dealt with, I turn to consider whether the DT erred by not providing its views earlier to Counsel for the Law Society, and by not directing the Law Society to re-apply to the court for substituted service orders. As pointed out by the AG, the touting charges were the more serious charges before the DT. A charge of touting "if found proved could attract the punishment of disbarment" (*Re Ong Tiang Choon* [1977-1978] SLR(R) 291 at [21]). It is contended that because the DT failed to give timely directions to secure the attendance of key witnesses before the DT, it resulted in Mr Manohar having "no case to answer" in relation to the touting charges.[26]

38 Specifically, the AG argues that the DT's reliance on the *dicta* in *Tan Ng Kuang Nicky* in its response (see above at [24]) was misconceived. Both the court and the Law Society were seeking the DT's view on the issue of whether substituted service orders should be obtained from the court (or the DT). It was

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[26] AS at paras 7(a) and 9(b).

not a hypothetical issue.[27] The AG further submits that if the DT had agreed with the Law Society, it should have clearly indicated this, and directed the Law Society to obtain substituted service orders from the court. Under Rule 12(1) of the DT Rules, the DT "may give the parties directions for the conduct of the matter by way of a letter". Further, under Rule 13 of the DT Rules, the DT "may, of its own motion …, direct the parties to attend a pre-hearing conference, in order that it may make such orders or give such directions as it thinks fit for the just, expeditious and economical disposal of the matter." The DT could have sought clarifications at a pre-hearing conference and given the appropriate directions to Counsel for the Law Society.[28] Having failed to do any of the above, the DT had allegedly erred.

39 Upon consideration, I am unable to agree with the AG's position. In my view, like the court, a Disciplinary Tribunal should not have to deal with hypothetical issues. The DT was under no duty to provide its views or advice to the Law Society. Indeed, the DT correctly took the view that what the Law Society sought from it was a view or advice without any subsisting application before it. There was no live issue before the DT, and yet, the DT was asked to give an answer, *in vacuo,* as to whether it would have the power to grant an order for substituted service. It seems to me that in such circumstances, the court would not have granted an answer to the legal question without an application before it, and equally, I do not see why the DT should have been expected to. Notwithstanding the case management powers and responsibilities of the DT, the DT did not err in refraining from answering the hypothetical question put to it.

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27 AS at para 14(d), (e) and (f).

28 AS at para 14(g) and (h).

40 I go further to consider in more detail how the DT's response featured in this saga. Despite taking the position that it was not required to state its view, the DT pointed out that it was the prerogative of the Law Society to re-submit its applications to the court, and on 28 February 2023, Counsel for the Law Society in fact took steps to do so. This was well ahead of the hearing dates beginning 23 March 2023. Unfortunately, as set out above, the applications were dismissed on 9 March 2023. In this light, even if, for the sake of argument, the DT erred in failing to give a definitive answer to the Law Society, I cannot see how the DT's response led to there being no evidence before it on the alleged payments made by Mr Manohar to Mr Ng. Therefore, even if the DT had erred in its response, this did not, in my view, have a material impact on the course of the disciplinary proceedings and their eventual outcome.

41 Moreover, it appears to me that two aspects of the Law Society's conduct thereafter may well be considered unsatisfactory. First, as I mentioned earlier at [36] above, Counsel for the Law Society could have appealed against the second AR's decisions, but did not. Counsel for the Law Society could also have applied for a postponement of the hearing before the DT, until any appeals were dealt with. Instead, on 10 March 2023, the Law Society made a formal application before the DT for substituted service orders. Secondly, having had the formal application turned down by the DT on 20 March 2023, by way of the issuance of the March Decision, again, Counsel for the Law Society could have sought a postponement of the hearing, or having dealt with the other five witnesses, could have applied for further time to re-consider its position in relation to the two witnesses, including any appeal against the second AR's decisions. Of course, I would imagine that Mr Manohar would have objected to any such measures. However, the point to be made is that Counsel for the Law

Society, presumably in consultation with the Law Society, did not take these steps.

42 Before me, the Law Society did not fully explain the reasons for the approach taken by Counsel for the Law Society, save for its explanation that even if Mr Ng and/or Mr Krishna had attended the hearing, it did not seem that they would have been cooperative, or given useful evidence in support of the touting charges. According to the Law Society, when interviewed by Counsel for the Law Society, Mr Ng had shown himself unwilling to give any information on the matter. In fairness to the Law Society, I observe that although Mr Ng testified as a witness in the first set of disciplinary proceedings, *ie,* DT/9/2019, pursuant to a subpoena, it seemed that the First DT had to rely mainly on the strength of the investigation statements which were eventually ruled as inadmissible, including two statements given by Mr Ng (*Shanmugam Manohar* at [18]-[19]). With all that said, I am not entirely satisfied with the explanation of the Law Society for its approach. By s 91(5) of the LPA, any person giving evidence before a Disciplinary Tribunal is legally bound to tell the truth. If Mr Ng had attended the hearing pursuant to a subpoena, this provision would have been applicable. Be that as it may, the AG does not seriously take issue with the Law Society's conduct of the case. Rather, the AG's arguments are focused on whether, in the face of the approach taken by the Law Society, the DT erred in managing the proceedings and in proceeding with the hearing.

43 At the hearing, the AG suggested that the DT's response (with an unclear position) left the Law Society with little time to react when the DT finally refused the application on 20 March 2023. The AG also faulted the DT for not exercising proper case management powers thereafter, submitting that the DT could have initiated a postponement of the DT hearing on its own motion, so as

to secure the attendance of the witnesses. The AG pointed out that disciplinary proceedings are not purely criminal proceedings, and that the DT has a duty to investigate the matter by ensuring that the necessary evidence is put before it.

44 I have great difficulty with these arguments. I agree that the DT has a duty to hear and investigate the Complaint. Section 93 of the LPA provides that after "hearing and investigating any matter referred to it", a Disciplinary Tribunal shall make its determination. However, in my view, a Disciplinary Tribunal hears and investigates the matters based on what is "referred to it", *ie*, the evidence put before it by the parties. Like the court, and any other tribunal, a Disciplinary Tribunal has to remain impartial, and it must be circumspect about its role in relation to the procurement and presentation of evidence. Ahead of the hearing, I do not think it was for the DT to speculate whether the Law Society had the necessary evidence to proceed with the charges, and to take steps on its own initiative to secure evidence to shore up one party's case. Even though Mr Ng and Mr Krishna were clearly key witnesses, it is not the AG's position that the DT *knew* that they were the only ones who were able to give evidence in relation to the alleged payments from Mr Manohar to Mr Ng. After all, the five clients were called as witnesses. If at all, it appears to me that if Counsel for the Law Society had known of the difficulties with its case, in consultation with the Law Society, it should have taken the necessary steps to address these issues. If the DT had entered into the fray, prematurely assessing the sufficiency of the evidence, and granting an adjournment on its own motion to facilitate potential evidence being placed before it (without being in the position to know in detail the evidential case of the Law Society), its actions might well have been susceptible to challenge by Mr Manohar on other grounds.

45 Finally, the AG also argued at the hearing that while others might have been at fault, it remained the role of the DT to ensure that the Complaint was

properly investigated. If no evidence at all was received on the touting charges, this would have been no different from the Law Society bringing forward charges which do not capture the gravamen of the Complaint. According to the AG, in both scenarios, the Disciplinary Tribunal would not be in a position to properly investigate the matter, and any determination would be liable to be set aside. I beg to differ. In the latter situation, where charges do not capture the gravamen of a complaint, a Disciplinary Tribunal is deprived of jurisdiction (see *Yeo Alvin* at [79]). Even if the evidence led goes towards the complaint, but the complaint falls outside the charges, the Disciplinary Tribunal would not be able to meaningfully consider such evidence. However, when a charge is properly framed to capture the gravamen of a complaint, the Disciplinary Tribunal is in the position to investigate the matter – but only based on the relevant evidence placed before it by the parties. I see nothing to suggest that a Disciplinary Tribunal has a duty to search and gather the necessary evidence on its own motion; this role remains that of the parties.

46 Accordingly, I do not think that the first issue provides any basis to set aside the Determination of the DT. In providing the DT's response, the DT did not err. Further, there was no irregularity in the proceedings arising from the DT's response.

The second issue

47 I turn to the second issue. As AG points out, the DT reasoned that Rule 26 of the DT Rules provides that a Disciplinary Tribunal "shall have regard to the practice and procedure of the Courts".[29] Relying on this, the DT held that, in the same way that "the Courts do not force the prosecution to prosecute charges

[29] AS at para 18.

which it wishes to withdraw", it should not compel the Law Society to proceed with charges it wishes to withdraw.[30] According to the AG, the DT erred in equating the Law Society's powers in disciplinary proceedings to the Public Prosecutor's wide prosecutorial discretion, and thereby erred in permitting the withdrawal of the two non-communication charges and the two total non-communication charges.[31]

48 At the hearing, the AG confirmed that it does not dispute that the Law Society has the power and discretion to withdraw charges. Rather, its contention is that, while a Disciplinary Tribunal has the power to regulate its own proceedings under Rule 26 of the DT Rules, it cannot permit the Law Society to withdraw charges if that would detract from the gravamen of the complaint made against the legal practitioner (*Yeo Alvin* at [77]). To do so would "undermine the overriding purpose of legal disciplinary proceedings – to protect the public and uphold public confidence in the legal profession" (*Law Society of Singapore v Constance Margreat Paglar* [2021] 4 SLR 382 ("*Constance Margreat Paglar*") at [39]).[32]

49 As the Law Society and Mr Manohar point out, when a Disciplinary Tribunal is appointed, under Rule 3(1)(*b*) and 3(2)(*b*) of the DT Rules, the task falls on the Law Society to draft the charges against the legal practitioner and to furnish a statement of case "specifying the charges" that the legal practitioner is to answer. Based on the principle of self-regulation, the Law Society has the power and discretion in formulating as well as amending the charges (*Yeo Alvin* at [74]). It follows that the Law Society has the power and discretion to

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30 Report at para 33.

31 AS at paras 7(b), 9(c) and 18.

32 AS at para 20(d) and (e).

withdraw the charges as well.[33] That said, the Law Society notes that in *Law Society of Singapore v Ravi Madasamy* [2007] 2 SLR(R) 300 ("*Ravi Madasamy*") at [46]-[48], the C3J observed that while the Law Society has the discretion in relation to how it wishes to proceed with the case, the same would be subject to judicial review.[34] Thus, broadly speaking, the Law Society does not take the position that its discretion is wholly unfettered.

50 I agree with the AG that the Law Society does not enjoy the same breadth of discretion to frame, amend, or withdraw charges as the Public Prosecutor does in respect of criminal charges. As observed by the C3J in *Ravi Madasamy* at [47], the source of the Law Society's power to "prosecute" advocates and solicitors for disciplinary offences is a statutory power derived from the LPA, and the exercise of the disciplinary powers by the Law Society is susceptible to judicial review. In contrast, the Public Prosecutor has wide prosecutorial discretion to institute, conduct or discontinue any proceedings for any offence under Art 35(8) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint), and as the AG highlights, there is a presumption of legality or regularity in relation to the exercise of prosecutorial discretion.[35] In so far as the DT seems to suggest that the Law Society's power and discretion are as wide as those of the Public Prosecutor,[36] I do not think the DT was correct. The DT also commented that, just as a plaintiff in civil proceedings can apply to amend its statement of claim, "there is no reason why the [Law Society]

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33 The first respondent's written submissions dated 12 September 2023 ("1RS") at paras 26 to 39; The second respondent's written submissions dated 12 September 2023 ("2RS") at paras 38 to 46.

34 2RS at para 44.

35 AS at para 20(a).

36 Report at paras 33 and 36.

cannot withdraw parts of its statement of claim".[37] Again, for similar reasons, this observation is not wholly correct.

51 While a Disciplinary Tribunal has "no jurisdiction to hear and investigate anything else other than the complaint" (*Yeo Alvin* at [92]), it must also confine its findings to the charges brought before it and is not at liberty to consider allegations which are omitted therefrom (*Constance Margreat Paglar* at [31]-[32]). Consequently, "[w]here the Law Society has framed a defective charge that fails to reflect the substance of the complaint, the [Disciplinary Tribunal] lacks jurisdiction in hearing and investigating the charge and making a determination thereon, and the [Disciplinary Tribunal's] determination is liable to be set aside" (*Constance Margreat Paglar* at [37]). Similarly, where charges which are essential to capturing the gravamen of the complaint are withdrawn by the Law Society, the final determination will also be liable to be set aside (*Yeo Alvin* at [79(a)] and [83]).

52 The question, therefore, is whether the admitted charges which remained before the DT for its final determination, after the Law Society's decision to withdraw was made and acted on, accurately reflected the gravamen of the Complaint, or whether they were different "in form and substance" (*Yeo Alvin* at [92]). In this regard, *Yeo Alvin* and *Constance Margreat Paglar* are instructive. In *Yeo Alvin*, the complaint related to a client's "capacity to instruct the respondent and [his firm] and to agree to the fees charged" (at [83]), whereas the charges which were brought before the Disciplinary Tribunal for final determination (after several others had been withdrawn) pertained only to overcharging and made no mention of the client's mental capacity. The charges were therefore different from the complaint "in form and substance" and failed

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[37] Report at para 36.

to reflect the gravamen of the complaint, which warranted setting aside the determination of the Disciplinary Tribunal (*Yeo Alvin* at [92]).

53 On the other hand, in *Constance Margreat Paglar*, the gravamen of the complaint was the "respondent's failure to obtain [the client's] approval before negotiating further on his behalf and the fact that she had acted wholly contrary to his explicit instructions – in other words, [the client's] complaint was really that the respondent had not been entitled to make the 21 June Offer in the first place" (at [38]). In contrast, the "tenor of the amended charge was that the respondent had merely failed to provide [the client] with an update on the progress of the matter" (*Constance Margreat Paglar* at [38]). While the C3J found that the "amended charge did not capture the full extent of the respondent's transgression, it was not so defective as to warrant setting aside the DT's determination" (*Constance Margreat Paglar* at [39]).

54 In my view, the present case is much more akin to the facts and circumstances of *Constance Margreat Paglar* than *Yeo Alvin*. The AG suggests that the reference to "at least five cases" in the Complaint suggests that the gravamen of the Complaint must comprise some element of "frequency of Mr Manohar's misconduct".[38] It is not clear to me that the frequency of misconduct could be said to be the gravamen of the Complaint. As stated at [8] above, setting aside the touting allegation, the nub of the Complaint was about the failure to attend to each client when the warrant to act was signed. In form and substance, the admitted charges capture the crux of the Complaint. However, even if the frequency of misconduct is an important aspect of the Complaint, I do not think that the withdrawal of two non-communication charges and two total non-communication charges materially detracted from that gravamen. By

[38] AS at para 21(a).

way of comparison, it was found in *Constance Margreat Paglar* that the charge of "failing to update a client" did not fail to reflect the gravamen of the complaint of acting wholly contrary to client's instructions to such a degree as to warrant setting aside the determination. In the present case, the admitted charges involved three clients, with the infractions taking place in different years, *ie,* two in 2014 and one in 2016. The admitted charges reflected that such conduct was not one-off, and that the infractions happened over time. Accordingly, it cannot be said that the decision to permit withdrawal of the charges was wrong, or that the remaining charges were so defective that the DT lacked jurisdiction, such that its Determination ought to be set aside.

The third issue

55 Turning to the third issue, the AG contends that the DT failed to appreciate the seriousness of the admitted charges, and thereby erred in finding that there was no cause of sufficient gravity for a referral under s 83 of the LPA.[39] In particular, the DT failed to appreciate that these charges amounted to serious professional misconduct on Mr Manohar's part.[40] Instead, the DT found that a financial penalty of $3,000 would suffice.[41]

56 To reiterate, in the admitted charges, Mr Manohar was found to have contravened Rule 11A(2)(*f*) of PCR 2011 in relation to the incidents in March 2014, and the equivalent provision (*ie,* Rule 39(2)(*g*)) in PCR 2015 for the matter in February 2016. I shall set out the latter provision:

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39 AS at para 7(c).

40 AS at para 9(d).

41 AS at para 7(c).

> (2) Without prejudice to the generality of paragraph (1), where there is reason to believe that a client is referred to a legal practitioner or law practice by any other person, the legal practitioner or law practice –
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> …
>
> (g) must communicate directly with the client to obtain or confirm instructions when providing advice and at all appropriate stages of the transaction.

57 Mr Manohar[42] and the Law Society[43] draw attention to the fact that Mr Manohar's failure to communicate with his clients only really occurred at the beginning of the respective retainers. Soon after the warrants to act were signed, Mr Manohar would meet up with the clients and take instructions. Mr Manohar relies on two cases concerning charges of failing to keep clients informed of matters. In *Constance Margreat Paglar*, the matter was referred back to the Disciplinary Tribunal by the C3J for determination of an appropriate order to be made, and in *The Law Society of Singapore v Krishnamoorthi S/o Kolanthaveloo* [2023] SGDT 2, the respondent was ordered to pay a penalty of $3,500. Mr Manohar argues that in comparison, the penalty of $3,000 imposed upon him is not inappropriate.

58 The Law Society also referred to *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2013] 3 SLR 875 ("*Udeh Kumar*"), which concerned a contravention of Rule 11A(2)(*f*) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) (which corresponds to Rule 11A(2)(*f*) of PCR 2011 and Rule 39(2)(*g*) of PCR 2015). There, the complaint arose out of a sale of a flat in divorce proceedings. Throughout the retainer, the respondent did not communicate directly with the complainant to obtain or confirm her instructions, and he was suspended from practice for three months. The Law

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42 1RS at paras 40 and 41.

43 2RS at paras 51 and 52.

Society argues that *Udeh Kumar* is readily distinguishable, as Mr Manohar met with the clients concerned soon after the warrants to act were executed.[44] As there was no gross dereliction of duty, the Law Society argues that a financial penalty suffices to reflect the seriousness of the transgressions, and that the Council is in any case able to depart from the DT's recommendation and order a higher financial penalty of up to $20,000 under s 94(3)(*a*) of the LPA.[45]

59 I agree with the Law Society. I acknowledge that, as the AG points out, a legal practitioner has a duty to explain to a prospective client the terms of a retainer and their respective rights and obligations thereunder before a warrant to act is signed. The AG also highlights that the warrants to act contained onerous terms authorising the Firm to "defray all incidental cost and expenses on [the client's] behalf/account". The clients were also required to acknowledge that "[the Firm] may at all times discharge themselves without any given reason and then upon discharge they shall have a lien over all documents and money held on behalf of [the clients] until payment of [the Firm's] professional costs".[46] However, I disagree with the AG that these unusual terms "heightened the importance" of Mr Manohar personally explaining their effect to his prospective clients before the warrants to act were signed, such that the matter warrants a referral to the C3J.[47] At the end of the day, Mr Manohar's failure is that of not communicating with the three clients at the outset. He communicated with the three clients thereafter, and the terms of the warrants to act which were signed did not give rise to any particular harm to these clients.

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44 2RS at para 51.

45 2RS at para 53.

46 AS at para 24.

47 AS at para 24(c).

60 For the foregoing reasons, and in light of the precedent cases involving similar infractions, I do not see any basis to intervene with the Determination on this ground.

Conclusion

61 Finally, I note that in addition to his responses to the AG's arguments, Mr Manohar submits that the justice of the case lies in favour of allowing the decision of the DT to stand.[48] He explains that he had presented himself before the DT, and it was no fault of his that the Law Society was unable to obtain the substituted service orders, such that Mr Ng and Mr Krishna were absent at the hearing, and the evidence was lacking to the extent that there was no case to answer in relation to the touting charges.[49] Hence, according to Mr Manohar, it would be grossly unfair to him to have to undergo a third set of proceedings.[50] Given that I disagree with the AG on the three grounds raised against the DT, I do not see the need to deal with Mr Manohar's contentions. For all the foregoing reasons, I dismiss the application.

Hoo Sheau Peng
Judge of the High Court

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48 1RS at para 48.

49 1RS at paras 48 and 49.

50 1RS at para 50.

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