IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 18

Civil Appeal No 82 of 2016

Between

DEEPAK SHARMA

… Appellant

And

LAW SOCIETY OF SINGAPORE

… Respondent

In the matter of Originating Summons No 593 of 2014

In the matter of Order 53, Rule 1 of the
RULES OF COURT (Cap. 322, Rule 5)

Between

DEEPAK SHARMA

… Plaintiff

And

LAW SOCIETY OF SINGAPORE

… Defendant

Version No 3: 27 Oct 2020 (22:40 hrs)

JUDGMENT

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

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Deepak Sharma
v
Law Society of Singapore

[2017] SGCA 18

Court of Appeal — Civil Appeal No 82 of 2016
Andrew Phang Boon Leong JA, Judith Prakash JA and Tay Yong Kwang JA
18 January 2017

16 March 2017 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 This is an appeal against the decision of the High Court judge ("the Judge") in *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 ("the Judgment"), dismissing an application for judicial review. The appellant sought a quashing order against the decision of a review committee, constituted under s 85(6) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA"), to dismiss in part a complaint made by the appellant against two lawyers. The complaint was, in essence, that the lawyers had made grossly excessive claims for party and party costs against the appellant's wife. The appellant claimed that the review committee had made errors of law in dismissing the complaint and sought judicial review on that basis.

2 The appeal raises the novel issue of whether, and to what extent,

lawyers owe ethical duties in advancing claims on behalf of their clients for *party and party* costs. The issue is thrown into sharp relief by the facts of the case, where the party and party costs claimed by the lawyers in question were substantially reduced on taxation and, indeed, partly as a result of the lawyers' own admission that they had erroneously included certain duplicated costs in their bills of costs. It is an inquiry that necessitates an inevitable and important comparison to the ethical obligations owed by lawyers in charging fees for *solicitor and client* costs. The question that confronts the court in the present case is as follows: when, if ever, can a finding of professional misconduct properly be drawn *solely* from the fact that there has been a significant reduction on taxation of party and party costs? It is, needless to say, an important question given the frequency with which lawyers' claims for party and party costs are reduced – sometimes very significantly so – on taxation.

3 It is also worth noting that this is the first case in which judicial review of a decision of a review committee has been sought. Before the Judge, questions were raised regarding the susceptibility of such decisions to judicial review and whether there is a requirement of *locus standi* to be satisfied by persons wishing to make complaints against lawyers to the Law Society of Singapore, the respondent in this case. But these are not questions that are on appeal before this court and are therefore best left for another day.

4 We will now explain our decision, beginning with the facts.

Factual background

5 The appellant, Deepak Sharma ("the Appellant"), is the husband of Dr Lim Mey Lee Susan ("Dr Lim"). The respondent is the Law Society of Singapore ("the Respondent").

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The disciplinary proceedings

6 It is appropriate to begin, by way of background to this appeal, with the disciplinary proceedings that were commenced by the Singapore Medical Council ("the SMC") against Dr Lim. Those proceedings have come before the courts on more than one occasion upon Dr Lim's application, and the present appeal represents the most recent episode in this series of litigation.

7 On 3 December 2007, the Ministry of Health of Singapore sent a letter of complaint against Dr Lim to the chairman of the SMC's Complaints Panel. The complaint concerned certain invoices that Dr Lim had issued to one of her patients, who was a member of the royal family of Brunei. Upon review of the complaint, a Complaints Committee ordered on 17 November 2008 that a formal inquiry should be held by a Disciplinary Committee. A total of 94 charges were proffered against Dr Lim. In the majority of those charges, Dr Lim was alleged to have invoiced the patient medical fees that were far in excess of and disproportionate to the services that she and her medical team rendered.

8 On 29 July 2010, after several days of hearing, the disciplinary committee recused itself upon an unopposed application for such recusal by Dr Lim's counsel. The SMC appointed a second disciplinary committee on 14 September 2010. Unhappy with the SMC's decision to recommence the disciplinary proceedings, Dr Lim filed Originating Summons No 1252 of 2010 ("OS 1252/2010") for leave to apply for a quashing order against the SMC's decision to appoint a second disciplinary committee and a prohibiting order to prevent the SMC from taking further similar steps. Dr Lim also filed Originating Summons No 1131 of 2010 ("OS 1131/2010"), seeking a declaration that the SMC had no legal right, for the purpose of the disciplinary

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proceedings against her, to adduce in evidence the confidential medical records of the patient without the consent of the patient or her next-of-kin.

9 The applications were heard by Philip Pillai J. During the hearing, counsel for Dr Lim withdrew OS 1131/2010, leaving only OS 1252/2010 in contention. On 26 May 2011, Pillai J dismissed OS 1252/2010 (see *Lim Mey Lee Susan v Singapore Medical Council* [2011] 4 SLR 156). Dr Lim filed Civil Appeal No 80 of 2011 ("CA 80/2011") against Pillai J's decision on 24 June 2011. This court heard the appeal on 10 November 2011 and dismissed it on 30 November 2011 (see *Lim Mey Lee Susan v Singapore Medical Council* [2012] 1 SLR 701).

10 Although the subsequent decision of the second disciplinary committee on the charges against Dr Lim and the related proceedings thereafter are not directly material for the present appeal, we note for completeness that the disciplinary tribunal convicted Dr Lim on all 94 charges on 21 June 2012. Dr Lim's appeal against her conviction was dismissed by the High Court on 28 June 2013. The High Court's decision is reported in *Lim Mey Lee Susan v Singapore Medical Council* [2013] 3 SLR 900 ("*Susan Lim (2013)*"). There were subsequent (and related) proceedings relating to the issue of costs (see *Lim Mey Lee Susan v Singapore Medical Council* [2015] SGHC 129, which decision was affirmed by this court in *Lim Mey Lee Susan v Singapore Medical Council* [2016] 2 SLR 933).

The costs hearings

11 On 19 April 2013, the SMC's lawyers, WongPartnership LLP ("WP"), filed three bills of costs for taxation. These were Bills of Costs Nos 65, 66 and 72 of 2013 (respectively "BC 65/2013", "BC 66/2013" and "BC 72/2013";

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and collectively "Bills of Costs"). The costs claimed were in respect of OS 1131/2010, OS 1252/2010 and CA 80/2011. A total sum of $1,007,009.37 (excluding GST and disbursements) was sought.

12 At the taxation hearing, an assistant registrar taxed down the costs sought by the SMC to a total of $340,000 for all the Bills of Costs. Dissatisfied with the result, the SMC applied for a review of taxation. At the taxation review hearing on 12 August 2013 before the Judge, WP indicated that it was reducing the total sum claimed in the Bills of Costs to $720,000 (excluding GST and disbursements). This represented a reduction of $287,009.37 from the amount originally claimed. WP's explanation for the reduction was that it "gave a discount of 20% on the time used because of overlap between lawyers. Then [WP] excluded re-getting up for new lawyers who joined the team".

13 The Judge increased the amount allowed for BC 65/2013 by $30,000. The SMC was therefore permitted to recover a total of $370,000 in costs.

The complaint

14 On 23 January 2014, the Appellant sent a letter of complaint ("the Complaint") to the Chairman of the Complaints Panel of the Respondent. The complaint was directed against two lawyers from WP, namely, Mr Yeo Khirn Hai Alvin SC ("Mr Yeo") and Ms Ho Pei Shien Melanie ("Ms Ho"). In essence, the complaint was that Mr Yeo and Ms Ho were "charging bills of costs against [Dr Lim] which were clearly exorbitant and which … would amount to grossly improper conduct and/or conduct unbecoming as members of an honourable profession". The Appellant claimed that the difference between the amount sought in the Bills of Costs and the amount that was

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finally awarded at the taxation review indicated that there was "gross overcharging".

15 The Respondent replied in writing to the Complaint on 10 April 2014, informing the Appellant that a Review Committee ("the RC") had been constituted to consider the complaint and that the RC had reached a decision. We will refer to the Respondent's written reply conveying the RC's decision and reasons as "the Decision Letter". In brief, the RC determined that the Appellant's complaint against Mr Yeo should be dismissed in its entirety as it was lacking in substance, but that part of the complaint against Ms Ho should be referred back to the Chairman of the Inquiry Panel to constitute an Inquiry Committee for further inquiry, with the remaining part of the complaint against Ms Ho to be dismissed for lack of substance.

16 The RC considered that there were two limbs to the Complaint, which it described at para 4 of the Decision Letter as follows:

> a) that the sums claimed by the Respondents were exorbitant and demonstrative of a persistent conduct of gross overcharging by the Respondents as well as improper and/or fraudulent conduct that was opportunistic, arbitrary, unconscionable and unjustified; and
>
> b) that the sums claimed were probably in excess of what was billed to, or could have been billed under arrangements with the Respondents' client; i.e., the Singapore Medical Council ("SMC") to which you assert that the claim for party and party costs were in excess of the actual sums billed, or that could be billed under arrangements agreed with the SMC and amounted to misconduct.

For convenience, we will use the Judge's references to "Limb 1" and "Limb 2" to refer to these respective parts of the Complaint.

17 In so far as Limb 1 of the Complaint was concerned, the Respondent

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(conveying the RC's decision) stated as follows, at paras 9 and 14(a)(iii) of the Decision Letter:

> 9. In terms of the first limb of the complaint, to wit, the amounts claimed in the first bill of costs were excessive, the RC finds it apposite to note that taxation of bills is in itself, an adjudication process and ***a reduction by the taxing master (Registrar or Judge of the Supreme Court) of the costs claimed even if significant, would not amount to misconduct in the absence of improper or fraudulent claims***. Sanctions remain in place in relation to cost orders that can be made following taxation and the SMC in this instance, was given costs of the taxation notwithstanding the significant reduction in the amounts it was entitled to and awarded as such. The RC opines on the face of the first limb of your complaint in relation to claiming obsessive [*sic*] costs *per se*, no professional misconduct has been disclosed.
>
> …
>
> [14(a)(iii).] In relation to the Bills of Costs being excessive, the RC takes the view that ***the fact that the Bills were eventually taxed down significantly does not in itself give rise to an inquiry of professional misconduct, in the absence of other impropriety***. In this regard, the RC records that ***it has noted that you alleged that the effective hourly rate would be excessive but the RC accepts the amounts in the Bills of Costs reflect the work of all the solicitors involved***. As such, it finds that this header of your complaint against [Mr Yeo and Ms Ho] is lacking in substance and directs the Council to dismiss this header of the complaint.
>
> [emphasis added in bold italics]

18 The two paragraphs extracted above are central to this appeal. Put shortly, in so far as the Appellant's allegation that the amounts claimed in the Bills of Costs were excessive was concerned, the RC stated that a reduction upon taxation of the costs claimed – *even if* such reduction was significant – would *not* amount to misconduct *in the absence of improper or fraudulent claims*. In so far as the allegation that the effective hourly rate was excessive was concerned, the RC accepted that the amounts claimed in the Bills of Costs reflected the work of all the lawyers involved and found that the hourly rate

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was therefore *not* excessive. The RC accordingly dismissed Limb 1 of the Complaint in relation to both Mr Yeo and Ms Ho.

19 In so far as Limb 2 of the Complaint was concerned, the Respondent stated at para 11 of the Decision Letter that, in the RC's view, there would be some substance to Limb 2 if the amounts claimed in the Bills of Costs exceeded what the SMC had actually paid or was liable to pay to WP. The RC had therefore sought to obtain from WP "clarification" on the terms of engagement between the SMC and WP and the amounts billed. WP's reply was that Mr Yeo was "not involved in drawing up the Bills of Costs or the taxation proceedings", that the SMC's engagement of WP was on WP's standard fee arrangement based on actual time spent by the lawyers on the files, and that the SMC had approved of and paid each of WP's bills in full. The SMC separately confirmed in writing to the RC that the total amount billed to the SMC was higher than the amount claimed in the Bills of Costs, and that it had paid WP's bills in full. Ultimately, however, the RC decided not to have regard to "significant parts of [WP's] response" because of WP's position that they were covered by privilege.

20 At paras 14(b)(i) and (ii) of the Decision Letter, the Respondent went on to state the RC's finding that Mr Yeo was not involved in the preparation of the Bills of Costs and the related proceedings and its conclusion that there was therefore no misconduct on his part. However, in relation to Ms Ho, the RC decided that Limb 2 of the Complaint was not frivolous, vexatious, misconceived or lacking in substance, and accordingly decided to refer this part of the Complaint against Ms Ho to the Chairman of the Inquiry Panel.

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Application for judicial review

21 On 26 June 2014, the Appellant filed Originating Summons No 593 of 2014 ("OS 593/2014"), seeking leave to apply for a quashing order against the RC's decision, as well as an order that the complaint be heard by a freshly constituted review committee.

22 The Appellant had three grounds of disagreement with the RC's decision:

(a) First, the RC had erred in law in concluding that professional misconduct through "gross overcharging" could not be established by objective evidence that the fees claimed were grossly excessive "in the absence of other impropriety" ("Ground 1").

(b) Second, the RC had erred in law in concluding that the pursuit of the fees claimed could not constitute professional misconduct on the basis that they reflected the work of all the solicitors involved ("Ground 2").

(c) Third, the RC's reasons for concluding that the complaint against Mr Yeo were "lacking in substance were legally inadequate and unsustainable in law, being incapable of sustaining the [RC's] conclusion, and having no reasonable or proper evidential basis, and were not open to the [RC] acting reasonably and lawfully" ("Ground 3"). From a reading of the Appellant's Statement filed in support of the judicial review application, it is apparent that the crux of Ground 3 pertains to the RC's reliance on WP's purported clarification, issued to the RC, that Mr Yeo was not involved in drawing up the Bills of Costs or in the taxation.

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The decision below

23 OS 593/2014 was heard by the Judge (*ie*, the same judge who heard the taxation review for the Bills of Costs). Apart from the Appellant and Respondent, the Attorney-General was also represented at the hearing.

24 In deciding whether leave should be granted to the Appellant to bring the judicial review proceedings, the Judge decided two important issues in favour of the Appellant. First, he held that the RC's decision was susceptible to judicial review. The parties disagreed on whether, in light of the statutory framework for disciplinary proceedings established in the LPA, Parliament intended that the RC's findings be susceptible to judicial review. The Judge found that judicial review should in principle be available over decisions made by a review committee and that the overall scheme of the LPA pointed towards the availability of judicial review of decisions of a review committee (see the Judgment at [25] and [37]). Second, the Judge decided that the Appellant had sufficient *locus standi* to make the Complaint to the Respondent and to bring the present judicial review proceedings. The Attorney-General took the position that as the Appellant was not a party to the taxation proceedings (he was simply the husband of Dr Lim), he did not have standing to make the Complaint. This raised the preliminary question of whether a putative complainant had to establish standing in order to make a complaint to the Respondent. The Judge considered s 85 of the LPA and its legislative history, and found that Parliament intended that *any person* may make a complaint against a lawyer to the Respondent. He buttressed his views by explaining why such a reading of the LPA was justified on policy grounds. The Judge concluded that the Appellant need not establish standing before making the Complaint.

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25 In so far as Ground 1 of the Appellant's dissatisfaction with the RC's decision was concerned, the Judge found that the correct position in law is that a significant reduction in costs on taxation, taken alone, *will not ordinarily mean* that there is gross over-claiming amounting to misconduct. However, this *does not mean* that a significant reduction will never, in and of itself, be sufficient to constitute misconduct (see the Judgment at [101]). The Judge provided an example of a bill of costs for $200,000, filed in relation to a claim for the repayment of a $500,000 loan where the defendant had capitulated after the submission of a 10-page statement of claim, and where the costs sought had then been taxed down to $10,000. The facts of such a case *in themselves* might be sufficient to suggest that there was gross over-claiming such as to constitute misconduct on the part of the plaintiff's lawyer (see the Judgment at [104]). The Judge also found that, on a proper reading of the RC's language in the Decision Letter, the RC had adopted the correct legal approach and therefore had not erred (see the Judgment at [110]).

26 In so far as Ground 2 was concerned, the Judge held that it would not be a breach of O 59 r 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court") to claim in a bill of costs the total number of hours spent by all the lawyers who worked on the matter, even though there were more than two such lawyers. Absent a certificate from the court, the court would only award costs for the work that would reasonably have been done by a notional two-man team, assuming they did all the work (although that work could in fact have been done by more than two solicitors) (see the Judgment at [125]). Thus, the RC had not erred in law in stating that the effective hourly rates of Mr Yeo and Ms Ho were not excessive given that "the amounts in the Bills of Costs reflect[ed] the work of all the solicitors involved". That, in the Judge's view, was simply a shorthand description of what was permitted under

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O 59 r 19 of the Rules of Court ("O 59 r 19"). The RC was *not* stating (contrary to the Appellant's characterisation of what was said in the Decision Letter) that it was permissible for all work to be included regardless of duplication (see the Judgment at [132] and [133]).

27 In so far as Ground 3 was concerned, the Judge found that the RC should not have relied on WP's purported clarification that Mr Yeo was not involved in drawing up the Bills of Costs or the taxation proceedings, as WP's assertion was unsupported by any documentation or objective evidence (see the Judgment at [145]). However, given the RC's finding that there was in essence no substance in the Limb 2 complaint against Mr Yeo (*ie*, claiming against Dr Lim for costs exceeding the amount that the SMC paid), there was no reason to refer the Limb 2 complaint against Mr Yeo back to the RC (see the Judgment at [173]).

Submissions on appeal

28 The Appellant's submissions on appeal track his three grounds of disagreement with the RC's decision (and the Judge's decision thereon).

29 In so far as Ground 1 is concerned, the Appellant alleges that the Judge erred in concluding that, on a proper reading of the Decision Letter, the RC had *not* applied the principle that the significant taxing down of a bill of costs could never amount to misconduct unless there was "some other impropriety". According to the Appellant, the RC *had* applied such a principle, and such a principle was an incorrect statement of the law.

30 The Appellant further claims that in the Judge's consideration of Ground 2, the Judge had failed to address the issue of whether the RC had "erred and/or misdirected itself in law by altogether failing to consider"

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whether WP's inclusion of "duplicated costs" of $287,009.37 – which led to WP's decision to reduce its claim for costs at the taxation review by that amount (see above at [12]) – was in breach of O 59 r 19. Finally, in relation to Ground 3, the Appellant submits that if the RC had erred as stated in either or both Ground 1 and Ground 2, it follows that Ground 3 (*ie*, that the RC had erred in relying on WP's clarification) is an additional reason for this court to quash the RC's decision to dismiss the complaint against Mr Yeo.

31 It will be apparent that the Appellant's argument on Ground 3 will therefore turn on whether this court finds that the RC had erred in the manner alleged in the first two grounds. In other words, if this court *does not find* that the RC had erred in law in deciding that there was no over-claiming or wrongful inclusion of "Duplicated Costs" (for the reasons stated in the first two grounds), the question of whether Mr Yeo was involved in drawing up the Bills of Costs or in the taxation proceedings would be *irrelevant*.

The issues

32 In our view, there are three issues in this appeal:

(a) Whether, on a proper reading of the Decision Letter, the RC had applied the principle that a significant reduction of costs on taxation, in the absence of other impropriety, *will not ordinarily mean* that there is gross over-claiming amounting to professional misconduct, or if it had applied some other proposition of law. This raises the preliminary (and important) issue of whether such a principle is, in the first place, a *correct* statement of the law.

(b) Whether the Judge failed to address the Appellant's argument that the RC had erred and/or misdirected itself in law by "altogether

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failing to consider" whether the Bills of Costs were in breach of O 59 r 19, given WP's admission at the taxation review that it should not have included the sum of $287,009.37 in its original costs claim.

(c) In the event that this court finds that the RC had erred in the manner alleged in the first two grounds, whether the RC also erred in determining that Mr Yeo had not been involved in the taxation.

33 We will address the above issues *seriatim*. However, before doing so, we think it important to make an observation regarding an issue that is not before us on appeal, but which we think is of wider importance and which therefore warrants a brief observation. This is the issue of *locus standi*.

Our decision

An important preliminary point

34 It is significant to note that a major part of the Judge's decision related to the issue of *locus standi* – in particular, whether the Appellant had the legal standing to even make an application for judicial review in the first place. The length and care of the Judge's consideration of this issue was no doubt due not only to the fact that it was a *novel* issue, but also that it was an *important* one with wider implications – it identifies the scope or class of persons who can properly bring a complaint against a lawyer to the Respondent. In this regard, the Judge did *not* agree with the view expressed (albeit by way of *obiter dicta*) in the Singapore High Court decision of *Re Fordham, Michael QC* [2015] 1 SLR 272 with regard to the effect of s 85(1) of the LPA. That was a related matter in which the Appellant sought to have Mr Michael Fordham QC admitted as an advocate and solicitor in order to represent the Appellant in these judicial review proceedings. The High Court judge in that case

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ultimately found that it was not necessary to make a determination as to whether the Appellant had to establish standing in order to make the Complaint, but made certain observations that appeared to support the view that there was such a standing requirement.

35 As mentioned above at [24], the Judge held that *any* person could make a complaint pursuant to s 85(1) of the LPA. In essence, the Judge based his view on the wider (and, overriding) public interest in maintaining the high standards and good reputation of the legal profession.

36 The issue of legal standing was not, however, canvassed by the parties in the present appeal. We do not find this surprising because, even on the assumption that there was a requirement of *locus standi*, the Appellant *would*, in our view, have been able to satisfy the court that he did have the legal standing to apply for judicial review based on *the particular facts in the present case*. We note, in particular, that he was a co-funder of the present proceedings *and* is the husband of Dr Lim. But in any event, whilst we consider the view expressed by the Judge on the issue of standing persuasive, it is unnecessary for us to decide this important question in the absence of detailed arguments by the parties. We will express a conclusive view only when it is directly in issue before us.

Issue 1: gross over-claiming of party and party costs

37 Put simply, the first issue that arises is whether the RC had applied the wrong legal test in arriving at its decision – or, worse still, whether it had (in substance at least) applied no real legal test at all. In this regard, the crucial parts of the Decision Letter are to be found at paras 9 and 14(a)(iii), which we reproduce here again for ease of reference:

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> 9. In terms of the first limb of the complaint, to wit, the amounts claimed in the first bill of costs were excessive, the RC finds it apposite to note that taxation of bills is in itself, an adjudication process and ***a reduction by the taxing master (Registrar or Judge of the Supreme Court) of the costs claimed even if significant, would not amount to misconduct in the absence of improper or fraudulent claims***. Sanctions remain in place in relation to cost orders that can be made following taxation and the SMC in this instance, was given costs of the taxation notwithstanding the significant reduction in the amounts it was entitled to and awarded as such. The RC opines on the face of the first limb of your complaint in relation to claiming obsessive costs per se, no professional misconduct has been disclosed.
>
> …
>
> [14(a)(iii).] In relation to the Bills of Costs being excessive, the RC takes the view that ***the fact that the Bills were eventually taxed down significantly does not in itself give rise to an inquiry of professional misconduct, in the absence of other impropriety***. In this regard, the RC records that it has noted that you alleged that the effective hourly rate would be excessive but the RC accepts the amounts in the Bills of Costs reflect the work of all the solicitors involved. As such, it finds that this header of your complaint against [Mr Yeo and Ms Ho] is lacking in substance and directs the Council to dismiss this header of the complaint.
>
> [emphasis added in bold italics]

38 It appears that the RC had indeed formulated *a legal test* at para 9 of the Decision Letter that, *ex hypothesi*, is of general as well as normative import. It had then *applied* that test at para 14 of the Decision Letter (specifically para 14(a)(iii) of the same), referring specifically to the Bills of Costs that were in issue before it. At this juncture, we pause to observe that the legal test was not one that was devoid of any content or substance; rather, it purports to set out the necessary conditions for a finding of misconduct in the context of claiming party and party costs. Before we elaborate on this and, indeed, on the legal test which the RC had formulated, it is of the first importance to note that the Decision Letter in general and the legal test formulated by the RC in particular must be read in the *context* of the

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proceedings as a whole – and it is to this particular point that we first turn our attention.

39 As both counsel for the Respondent, Mr Christopher Anand Daniel, and counsel for the Attorney-General's Chambers, Mr Khoo Boo Jin ("Mr Khoo"), pertinently observed, this was *not* a case of alleged overcharging involving a lawyer and *his client*. In other words, we are *not* dealing with a case involving *solicitor and client* costs. We are concerned, instead, with a case involving *party and party* costs. In the former case, it is axiomatic that overcharging on the part of the lawyer in respect of his own client can – in and of itself – amount to professional misconduct. Indeed, the Appellant, in his Complaint to the Respondent, cited the views of the Singapore High Court in *Susan Lim (2013)*. However, that decision is not entirely on point inasmuch as it related to a doctor's ethical obligation to charge a fair and reasonable fee to his patient for services rendered, although a comparison was drawn to lawyers' obligations in charging fees to their clients. It would be apposite to set out the court's observations in that case (at [43]−[46], [52] and [56]) in full, in order to explain not only the context of that decision but also the court's process of reasoning and analysis:

> ***Is there an ethical obligation to charge a fair and reasonable fee on the part of all doctors practising medicine in Singapore?***
>
> 43 Given the fact that *ethical* obligations are an integral part of professions in general and the medical profession in particular, are all doctors who practise medicine in Singapore under an ethical obligation to charge a fair and reasonable fee for their services? As we have already indicated above (at [28]), we would answer this question in the affirmative.
>
> 44 As counsel for the Respondent, Mr Alvin Yeo SC ("Mr Yeo"), quite correctly pointed out, the bedrock of the relationship between a professional and his or her client is *trust and confidence* (see also, to like effect, the DC decision at [4.5.2] as well as generally above at [32]–[42]). We also agree

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with Mr Yeo that in this regard, there can be no distinction between doctors on the one hand and lawyers on the other. This proposition – *viz*, that the relationship between a professional and his or her client is founded on trust and confidence – is so basic as to underpin every professional relationship and, indeed, applies with arguably greater force to medical practitioners, given the particular vulnerability of those who seek out medical services and the high stakes involved in many medical decisions. The especial vulnerability of patients and their dependence on health care professionals are heightened by the reality that information is (in the nature of things) distributed unequally in the medical setting, with a doctor invariably possessing far more information than his or her patient regarding the medical options and services available, where they may be found and how they should be priced. In such a setting, it is imperative to ensure that the sanctity of the trust and confidence reposed by a patient in his or her medical practitioner is safeguarded to the fullest extent possible. Put simply, given a doctor's specialised knowledge and training coupled with his or her duty to utilise these skills both to heal the patient and to look after the latter's welfare generally (with conscience and dignity, as embodied in the pledge set out above at [39]), any action on the part of a doctor which results in the taking advantage of his or her patient's vulnerability (and this includes overcharging) would be *a contradiction in terms* and, indeed, would represent *an unacceptable conflict of interest*. It is therefore clear, in our view, that every doctor is under an ethical obligation to charge a fair and reasonable fee for services rendered to his or her patient. The corollary of this is that overcharging would constitute an abuse of the trust and confidence placed by a patient in his or her doctor, and this would (in turn) constitute conduct that is dishonourable to the doctor as a person as well as in his or her profession, *ie*, it would constitute *professional misconduct* within the meaning of s 45(1)(*d*) of the MRA.

Overcharging in the legal profession

45 Indeed, it has been clearly established that gross overcharging by *a lawyer* constitutes professional misconduct (notwithstanding the presence of a fee arrangement or an agreement between the lawyer and his or her client).

46 In *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184 ("*Arul*"), it was observed thus (at [31]): client).

> Rule 2(2)(*c*) of the LP(PC)R [the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev

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> Ed)] provides that every advocate and solicitor is obliged to 'act in the best interests of his client and to charge fairly for work done'. What is a 'fair' charge depends very much on all the circumstances of the case, including the standing of the lawyer concerned, the nature of the legal work, the time spent on the work, *etc*. Different lawyers will have different opinions about their professional worth. Similarly, different clients will have different opinions on the professional worth of the same lawyer. As a general concept, a fair charge is merely a general guide to a lawyer not to grossly overcharge his client to the extent that it will 'affect the integrity of the profession' (see r 38 of the LP(PC)R …). ***The corollary of the integrity of the legal profession being undermined is that the entire profession will be brought into disrepute. Gross overcharging will create a reaction or perception from the public that lawyers are merciless parasites, and that will produce a stain on the noble nature of legal services.*** [emphasis added in bold italics]

…

The ethical obligation not to overcharge in the context of the medical profession

52 Although we have dealt with the Appellant's specific submissions in some detail, they are, with respect, not only unmeritorious, but also completely ignore the foundational proposition (already emphasised above) to the effect that there are ethical obligations which professionals must observe *regardless* of their respective professions. More specifically, the charging of fees is common to *all* professions, and there must therefore be – even in the absence of express statutory provisions or regulations – an ethical obligation on the part of a professional, *over and above contractual and market forces*, to charge his or her client only a fair and reasonable fee for services rendered. As already explained above, a professional possesses special expertise and learning which clients or patients (in a natural position of vulnerability) depend upon, reposing (in the process) trust and confidence in the professional concerned. Hence, an ethical obligation to charge a fair and reasonable fee for services rendered is necessary, lest there be an abuse of the trust and confidence reposed by the client in the professional concerned (regardless of: (a) whether the latter is a lawyer, a doctor or, indeed, any other professional; and (b) whether the services concerned are provided in a public or a private context). This is logical, commonsensical and flows from *first principles*. Express

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> statutory provisions or regulations in this regard merely restate this. We have also explained that the rationale for this ethical obligation to charge fairly and reasonably applies with paramount force to medical professionals, given the immeasurable trust and confidence bestowed on them both by their patients and by the community at large.
>
> …
>
> 56 In our view, the *substance* of the Appellant's case is that a doctor does *not* have any ethical obligation to charge a fair and reasonable fee for services rendered, although the quantum or size of the fee concerned might be a *factor* in ascertaining whether or not (when taken into account together with *all other relevant factors*) the doctor concerned is guilty of professional misconduct in the form of overcharging. We have already explained that this approach is flawed, not least because it erodes the relationship of immense trust and confidence that exists between a doctor and his or her patient. It is, however, understandable why the Appellant has adopted such an approach. For one, it paves the way for the further (and closely related) argument that where there is a valid and binding agreement between a doctor and his or her patient: (a) the mere quantum of the fee which the parties agreed on cannot (in the absence of other factors) give rise to a breach of any ethical obligation; and (b) on the contrary, such an agreement is enforceable by the doctor concerned. This would be an appropriate juncture to deal with this last-mentioned argument.
>
> [emphasis in original]

40 As will be evident, the situation in the present appeal is quite different as it is *not*, unlike the situation involving a lawyer or doctor (as the case may be) and his own client, one that involves a relationship of ***trust and confidence*** between the same. At this juncture, we think that it is of the first importance to underscore this ***underlying thread or theme*** – that in a case involving *party and party* costs, the relationship of trust and confidence between solicitor and client is *not* involved. Indeed, as Mr Khoo was at pains to emphasise during the course of oral submissions to this court, if there has been any professional misconduct on the facts of this appeal, that would be misconduct involving the breach of a solicitor's duty to the *court* rather than to his client. This is, in our

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view, an important distinction because this particular context will inform the nature of the legal test that the RC formulated in the Decision Letter.

41 Put simply, the fact that this particular case involves *party and party* costs entails – leaving aside, for the moment, the overarching duty owed by a solicitor to the court – that the claim for costs in this particular situation occurs in what is essentially an ***adversarial*** context. It is often, if not invariably, the case that a party's claim for party and party costs will be *reduced* by the court on taxation, for the reason (if nothing else) that taxation is an adversarial process and the quantum of costs to be allowed will typically be disputed by the opposing party. The corollary of the adversarial nature of the taxation of party and party costs is that an excessive claim for such costs would *not (in and of itself) generally* constitute professional misconduct by the lawyer concerned.

42 One might, of course, encounter the *extremely rare* situation where the making of such a claim might (in and of itself) properly be regarded as professional misconduct − for example, where the initial claim for party and party costs is for an *astronomical* figure which has been taxed down by the taxing master or court to an amount that is *a tiny fraction* of the aforesaid figure. We observe that the Judge provided a similar example at [104] of the Judgment. However, a moment's reflection will reveal how extraordinarily rare such a situation is likely to be. Indeed, it seems to us that this is likely to be more theoretical than real simply because no reasonable lawyer would countenance making such a *completely disproportionate and unjustifiable* claim on behalf of his client (even in a party and party costs context) in the first place. It is far more likely that a lawyer's excessive claim for party and party costs will be *coupled with* some other questionable conduct on the part of the lawyer, and that when, taken together, his behaviour constitutes a

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breach of the duty to the court and, hence, constitutes professional misconduct.

43 However, we understand the Appellant's argument in the present appeal to be that the RC had committed an error of law because it had posited a legal principle to the effect that over-claiming could *never – in and of itself –* constitute professional misconduct and that, in order to constitute such misconduct, it had *always* to be accompanied by some other form of improper conduct. We have explained that in a situation relating to party and party costs, that proposition is indeed likely to hold true for *the vast majority* of cases – save for the extremely rare situation in which the disproportionality would *itself* suggest that there was (without more) professional misconduct on the part of the lawyer concerned.

44 Hence, we find that the statement of legal principle set out by the Judge at [101] of the Judgment is ***thoroughly accurate.*** That statement can be summarised as follows: While a lawyer's gross over-claim of party and party costs *might* (in an extremely rare) instance constitute professional misconduct by that lawyer *in and of itself*, professional misconduct will generally be found in a situation where such overcharging is ***coupled with*** some other form of misconduct on the part of that lawyer. *Everything turns, in the final analysis, on the* ***precise facts and circumstances*** *of the case concerned*.

45 The issue that then arises is whether or not the RC had (particularly at paras 9 and 14(a)(iii) of the Decision Letter) misstated this statement of legal principle. Before we proceed with our analysis of that issue, it is of fundamental importance to bear in mind that this is an application for ***judicial review***. It is *not* an ***appeal against the merits*** of the RC's decision. This is why the focus of this part of the present appeal is on whether or not the RC had *misstated the relevant legal principle* and therefore had committed an *error of*

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law that was susceptible to judicial review. Indeed, the law on this particular point is well-established. As this court observed in *Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] 2 SLR 844 at [53]:

> We also could not accept the Respondent's argument that the CJ's power under s 90(1) of the LPA should not be amenable to judicial review because even if an exercise of this power was tainted by alleged illegality, procedural irregularity or irrationality, it may not necessarily lead to actual prejudice being suffered by the Appellants in the DT proceedings. This argument missed the point. In principle, the amenability of particular decisions or types of decisions to judicial review does not hinge on whether an applicant has in fact suffered harm as a result of the alleged illegality, procedural irregularity or irrationality. In *Teo Soh Lung v Minister for Home Affairs* [1988] 2 SLR(R) 30, Lai Kew Chai J stated (at [24]–[25]):
>
> > 24 … A correct perception of the true basis and nature of judicial review will ensure that a court of law will properly keep within the limits of judicial review over a decision-making process to ensure that there has been no unlawfulness in the decision-making process and will also prevent a court from becoming an appellate court and thereby wrongly deciding whether a decision is right or wrong or in either affirming or substituting its decision for the decision of the authority vested with the discretionary power.
> >
> > 25 … Judicial review is concerned with the legality of any aspect or any decision made in the exercise of executive discretionary powers. *In looking at any such aspect or any such decision, courts do not look at the merits of the decision. They do not ask whether the decision is 'right or wrong' because that decision has been entrusted to another authority.* In a judicial review, courts should only ask whether a decision made in the exercise of an executive discretionary power is 'lawful or unlawful'. …
> >
> > [emphasis added]
>
> A decision-maker would have overstepped the limits of his power if he had, for instance, been influenced by irrelevant considerations, even though he may well have reached the same decision if not influenced by such considerations. This follows from the nature of judicial review, which generally speaking is only concerned with the reasoning process and not the actual decision made. Thus, proof of actual harm to

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> the applicant or anyone else as a result of the particular impugned decision is not an essential prerequisite to the amenability of that decision to judicial review. If a decision-maker has exceeded the legal limits of his powers, that would be the basis upon which the courts would intervene by judicial review …

46 Returning to the crucial paragraphs in the Decision Letter, it will be recalled that we have already observed that para 9 of that letter embodies a *legal* test, which test was *applied* at para 14(a)(iii) of the same. In so far as para 9 is concerned, the RC observed that "a reduction by the taxing master (Registrar or Judge of the Supreme Court) of the costs claimed *even if significant*, would *not* amount to *misconduct in the absence of* ***improper or fraudulent*** *claims*" [emphasis added in italics and bold italics]. It is important to also bear in mind the *context* in which this observation (or, rather, general statement of principle) was made, which we have already noted to be that of party and party costs, where the duty owed is not to the client as such, but, rather, to the court.

47 Bearing that context in mind, in our view, what the RC was stating as a statement of principle was as follows: Given the adversarial nature of the proceedings (which is an inherent characteristic of the taxation of party and party costs), an excessive claim for costs (the quantum of which is reduced by the court) would *not, in and of itself, generally* constitute professional misconduct by the lawyer concerned, *absent proof that the lawyer* has *put forward either an* ***improper claim*** *or a* ***fraudulent claim***. It will be immediately seen that professional misconduct involving an excessive claim for party and party costs, the quantum of which has been reduced by the court, may accordingly be established in either one of two situations – (1) where such a claim is ***improper***, *or* (2) where such a claim is ***fraudulent***. The situation in (2) is an obvious one whilst that in (1) is more general and would,

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in our view, *cover a myriad of situations*, *including one where* ***the very quantum of the claim itself is so astronomical as to be so disproportionate and unjustifiable that the making of that claim would itself constitute professional misconduct****, given that no reasonable lawyer would even countenance making such a claim on behalf of his client (even in the context of party and party costs) in the first place*. *The* ***more likely*** *situation would be where an excessive claim for party and party costs is* ***coupled with*** *some other conduct on the part of the lawyer which, taken together, constitutes a breach of the duty to the court and hence constitutes professional misconduct.*

48 We pause at this juncture to emphasise a vital point. And it is that a moment's reflection will reveal that what has just been stated in the preceding paragraph is *precisely the same test that was set out by the Judge*, and which (just as importantly) *all parties accepted as an accurate statement of the legal test to be applied*. In the premises, it *cannot* therefore be said that the RC had misstated the relevant legal principle. It had therefore *not* committed an error of law that was susceptible to judicial review.

49 Indeed, this conclusion is reinforced when we turn to consider para 14(a)(iii). It will be recalled that the RC's views in that particular paragraph of the Letter was an *application* of the legal principle set out at para 9 to the particular facts of the case. In this regard, the RC held that "the fact that the Bills were *eventually taxed down significantly* does *not in itself* give rise to an inquiry of professional misconduct, ***in the absence of any other impropriety***" [emphasis added in italics and bold italics]. We think it clear that the RC's mention of "the Bills" is a reference to the Bills of Costs that WP had submitted for taxation. In our view, the RC had found that, *on the facts* of the present case, the significant reduction in the quantum of party and party costs by the court did *not*, *in and of itself*, indicate that the lawyers were guilty of

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professional misconduct. That such an *application* of the legal principle to the facts of the present case resulted in this particular factual finding is not surprising simply because, as we have already noted above at [47], the quantum claimed must be ***so disproportionate and unjustifiable as to itself constitute professional misconduct on the part of the lawyer concerned***. In our view, the RC was perfectly entitled to arrive at the conclusion that the quantum claimed in the present case was *not*, in fact, so astronomical, and indeed we see nothing on the facts to suggest otherwise.

50 The question that then remained was whether – as the RC (correctly, in our view) proceeded to ask – there was, *nevertheless*, some "other impropriety" that, when taken *together with* the excessive quantum of costs claimed, might constitute a breach of duty to the court and, hence, result in professional misconduct on the part of the lawyer concerned. It is evident from the Decision Letter that the RC did not find that fraudulent claims had been advanced by the lawyers in question. Again, it is clear that the RC had merely *applied the very same legal principle that was set out above* (at [47]). We have explained our view that that principle is a correct statement of the law. It is equally clear that the merits of the RC's decisions are not, as we have emphasised above, within the purview of the present proceedings. Finally (and for the avoidance of doubt), we note that there has been no allegation of fraud by the Appellant and there is therefore no need to apply the part of the test, set out above, that requires a consideration of whether the claim was fraudulent.

51 In the premises, it is clear that the appeal in relation to Issue 1 must fail.

52 Let us now turn to consider Issue 2.

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Issue 2: WP's voluntary reduction of its claim for costs

53 It is important to note that this particular issue is *not* the same in substance as *Ground 2* which was canvassed in the court below. On appeal, it appears that the Appellant is *not* contesting the Judge's decision that it was permissible for the work of solicitors other than the two named solicitors (*ie*, Mr Yeo and Ms Ho) to have been included in the Bills of Costs, and that in finding that the Bills could "reflect the work of all the solicitors involved", the RC had therefore not pronounced an erroneous statement of law that failed to take into account the prohibition in O 59 r 19. Instead, the crux of the Appellant's submission on appeal is that the RC had erred or misdirected itself in law in *failing to take into account WP's acknowledgment* that it had included $287,009.37 of duplicated costs in its claim, which was a breach of O 59 r 19. The Appellant alleges that the RC had failed to take this into account even though he had assigned prominence to this particular matter in his Complaint by dedicating four paragraphs of the Complaint to it. The Judge's decision that the RC had not erred in finding that the Bills of Costs could reflect the work done by all the solicitors involved simply did not, the Appellant argues, address the matter of WP's admitted inclusion of those impermissible costs. The Appellant goes on to suggest that had the RC "taken into account the fact that the Bills of Costs had been improperly inflated by [$287,009.37] in breach of the 2-solicitor rule [*ie*, O 59 r 19]", the RC "could not have concluded that the Complaint of gross overcharging was lacking in substance".

54 It should be noted, as a preliminary matter, that the Appellant's argument that the RC *failed to consider* WP's reduction is, under the principles of judicial review, ***quite distinct from*** an argument that the RC *erred in law* in reaching its conclusion that the Bills of Costs were not

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excessive. The former involves an allegation of *procedural impropriety*, while the latter concerns the existence of *illegality*. They are conceptually distinct heads of review.

55 Indeed, from a perusal of the Appellant's Statement in support of his judicial review application, as well as his written submissions before the Judge, it is clear that the Appellant's allegation about the RC's failure to consider WP's voluntary reduction merely formed a *secondary* aspect of his primary submission that the RC had erred in law in concluding that the Bills of Costs were not excessive because the hourly rates reflected the work of all the solicitors involved. It is therefore unsurprising that the Judge's focus was on whether an error of law had been committed by the RC in coming to its conclusion as to whether the Bills could "reflect the work of all the solicitors involved", and *not* on whether the RC had failed to consider WP's admission that the amount claimed should be reduced by $287,009.37. Indeed, the Judge himself noted at [181] of the Judgment that the Appellant's argument about WP's reduction was not distinct from his overall complaint about gross over-claiming, and therefore discussed that argument only later (see [181]−[197] of the Judgment), and *not* within that part of the Judgment (see [118]−[134] of the Judgment) where he set out his findings on Ground 2 itself.

56 However, the Appellant now characterises (in his written case before this court) Ground 2 as follows: "[t]he premise for Ground 2 is that the RC had made an *error and/or misdirection in law* in *failing altogether to take into account* the plainly relevant fact that the Bills of Costs contained a claim for impermissible Duplicated Costs" [emphasis added]. With respect, it is difficult to understand what the Appellant means. The conflation of a complaint founded on illegality with one founded on procedural impropriety is conceptually incoherent and, in our view, stems from a belated attempt to

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assign greater prominence to the issue concerning WP's reduction of its claim. Put simply, the Appellant's case in this particular respect has not only ***morphed*** but has also ***elevated what was then a subsidiary point at best into a main one at present***.

57 Be that as it may – and taking the Appellant's case on appeal at its highest – there is nevertheless *no* good reason to think that the RC had not considered or taken into account the Appellant's argument concerning WP's acknowledgment, made during the taxation review, that its claim for costs should be reduced by $287,009.37. Let us elaborate.

58 ***First***, ***the Appellant has not identified any evidential basis*** for his argument that the RC had "simply ignored", "completely disregard[ed]", "failed *in toto* to address" or "abject[ly] fail[ed] to consider" WP's voluntary reduction of its claim. Conceivably, what the Appellant relies on, although he does not state so expressly, is the fact that the RC did not make any express reference to WP's decision to reduce its claim by $287,009.37 at the taxation review, and did not make any express finding thereon.

59 The approach towards ascertaining whether a breach of natural justice has occurred following a tribunal's failure to consider important pleaded issues has been discussed extensively in a series of cases involving decisions of arbitral tribunals. Whilst it is unnecessary to adopt these principles *in toto*, they nevertheless furnish (by way of analogy) general guidelines on procedural fairness where there is an allegation by a party of a failure on the part of the tribunal concerned to consider a particular issue (or issues), and it is thus useful to have regard to them:

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(a) A failure to consider an important issue that has been pleaded is a breach of natural justice because the tribunal would not have brought its mind to bear on an important aspect of the dispute before it: see the decision of this court in *AKN and another v ALC and others and other appeals* [2015] 3 SLR 488 ("*AKN*") at [46].

(b) If the facts are consistent with (i) the tribunal simply having misunderstood the aggrieved party's case; (ii) having been mistaken as to the law; or (iii) having chosen not to deal with a point pleaded by the aggrieved party because it thought it unnecessary (notwithstanding that this view may have been formed based on a misunderstanding of the aggrieved party's case), then the inference that the tribunal did not apply its mind at all to the dispute (or to an important aspect of the dispute) and so acted in breach of natural justice should *not* be drawn: see *AKN* at [46].

(c) There will be no breach of natural justice if the tribunal reaches its decision on the argument implicitly (*ie*, without articulating its reasoning), or reaches the wrong decision, or in fact fails to understand the argument: see the Singapore High Court decision of *ASG v ASH* [2016] 5 SLR 54 at [91].

(d) The explicability of the decision is only one factor which goes towards proving that the tribunal did not in fact properly attempt to consider or comprehend the party's arguments. The central inquiry is whether the decision reflects the fact that the tribunal had applied its mind to the critical issues and arguments: see the Singapore High Court decision of *TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 at [89] and [90].

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60 Having regard to the general principles set out in the preceding paragraph, it is clear that the Appellant has not provided a sufficient explanation for his allegation that the RC had failed to consider the matter at hand. For instance, the Appellant has not shown that it was *not* the case that the RC had (to use the language of *AKN* at [46]) simply "chosen not to deal with [the] point … because [the RC] thought it unnecessary" to do so in light of the fact that WP had *voluntarily admitted* its erroneous inclusion of $287,009.37 and *successfully rectified* the error at the taxation review. Indeed, it appears that the crux of the Appellant's complaint lies, instead (and in the final analysis), in his disagreement with the *outcome* of the RC's determination. This is revealed most clearly from the following paragraph in his written submissions:

> 98. Finally, most fundamentally, Justice Woo did not address the RC's abject failure to consider whether the inclusion of the substantial Duplicated Costs would by necessary implication render the original Bills of Costs grossly inflated. We reiterate: *the RC could not have concluded that the Complaint of gross overcharging was lacking in substance had it taken into account the fact that the Bills of Costs had been improperly inflated by $287,009.38 [sic] in breach of the 2-solicitor rule.* This was the RC's error and misdirection in law. [emphasis added]

In our view, however, this does not assist the Appellant in demonstrating that his argument had not been considered. In essence his argument simply consists of *a mere assertion (without more)* that (i) his complaint would not have been dismissed had his argument been considered, and the corresponding claim that (ii) since the complaint was dismissed, it must be the case that his argument had not been considered. With respect, this is a circular argument which is ultimately devoid of content − quite apart from the fact that the explicability of a decision (see above at [59(d)]) is only one factor in the analysis.

61 ***Secondly (and in any event), the RC had, in fact, found that no***

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improper claims had been made. To elaborate, the RC took the position that "the fact that the Bills were eventually taxed down significantly does not in itself give rise to an inquiry of professional misconduct, *in the absence of other impropriety*" [emphasis added] or "in the absence of improper or fraudulent claims": see the Decision Letter at paras 14(a)(iii) and 9. We have already determined (pursuant to *Issue 1*) that this was a correct statement of legal principle. In so far as the present issue (*viz*, Issue 2) is concerned, the RC clearly arrived at the conclusion that *no such improper claims had been submitted*. If it had found that such claims had indeed been advanced, it is perfectly reasonable to assume that the RC would have pursued the matter.

62 This is also a point made by Mr Khoo, who submits that a fair interpretation of the RC's decision would be that the RC disagreed that there was any "other impropriety", *including any impropriety in respect of WP's voluntary reduction*. In our view, there is some strength to this particular argument. If the RC was satisfied that there was substance in the Appellant's complaint that WP had breached O 59 r 19 by including getting-up costs for more than two solicitors within its Bills of Costs, or had otherwise improperly claimed for duplicated work, then it would *not* have concluded that there were no improper or fraudulent claims.

63 The Appellant emphasises that he had dedicated four paragraphs in the Complaint to WP's reduction of its Bills of Costs (a point which we have already noted above at [53]), and on this basis asserts the egregiousness of the RC's failure to take the matter into account. This does not necessarily assist him. Given the prominence to which the Appellant had (as he asserts) given the matter, it would be reasonable to think that the RC *had not in fact* overlooked or disregarded it. Added to the fact that the RC had specifically directed itself to the inquiry of whether there was, on the evidence before it,

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any indication of improper claims, fraudulent claims or other impropriety, the more likely inference is that the RC *had* considered the issue of WP's voluntary reduction and decided that there was no substance in the complaint.

64 If the RC had directed itself to the right inquiry and concluded that there was no impropriety, it would be outside the purview of a supervising court to itself sift through the evidence and evaluate whether or not the RC was correct to arrive at that conclusion (see the Singapore High Court decision of *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 ("*Shankar*") at [39]). As already noted above, the supervising court is *not* exercising appellate jurisdiction and it should not stray beyond its proper remit by venturing improperly into the merits: see above at [45] as well as *Shankar* at [39]. It is ultimately for the RC to make the essentially *factual* determination of whether there was substance in the allegation of misconduct, either because there was "overcharging" on the part of WP, or because WP's claim for costs was in breach of O 59 r 19.

65 ***Thirdly, little, if any, prejudice was (in any event) ultimately caused*** to Dr Lim by WP's admitted inclusion of duplicated costs in its original Bills of Costs. The RC was entitled to take this into account in determining whether this aspect of the Complaint was "lacking in substance" pursuant to s 85(8) of the LPA, such that the Council should be directed to dismiss the matter and no Inquiry Committee need be constituted.

66 A review of the circumstances in which the voluntary reduction was made quickly bears out this point. The taxation review was brought on WP's own application. At the review, WP voluntarily informed the Judge and opposing counsel that it was reducing its claim by $287,009.37 because it had wrongly included the costs of duplicated work and of getting-up by new

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lawyers on the file. The reduction was, naturally, not challenged by Dr Lim's counsel. From the perspective of *harm* to Dr Lim, given that the over-claim was ultimately brought to light, at a stage where the over-claim could be and was rectified, it is clear that minimal harm was caused. From the perspective of *culpability or fault* on the part of the solicitors, given that the taxation review was brought by WP itself, and that WP had voluntarily brought the over-claim to light in circumstances in which the Appellant makes no suggestion that the over-claim would have otherwise been discovered, we find that the culpability of the solicitors involved was also minimal. A clear and successful effort was made to rectify the over-claim.

67 Bearing in mind the circumstances in which WP reduced its claim, it is entirely possible that the RC might have chosen not to articulate its decision on this aspect of the Complaint, or perhaps might have thought it altogether unnecessary to deal with the point (see also above at [60]), on the ground that the Appellant's argument was simply *so lacking in substance* that it was not necessary to address it explicitly. We also note that the Appellant did not explain in his Complaint why a breach of O 59 r 19 *ipso facto* constitutes professional misconduct on the part of the lawyer advancing the costs claim. This was an unspoken assumption that the Appellant did not substantiate. In our view, it would have been important for the Appellant to demonstrate why a breach of the Rules of Court, taken alone, would furnish sufficient grounds for an allegation of professional misconduct, with all the attendant implications that disciplinary action potentially entails. We would go so far as to say – without deciding the point – that such a proposition seems inherently unlikely and unattractive. The Rules of Court regulate and prescribe the procedure and practices to be followed in our courts in all causes and matters (see *Singapore Civil Procedure 2017* vol 1 (Foo Chee Hock gen ed)

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(Sweet & Maxwell, 2017) at para 1/0/2), and they are accordingly an indispensable component of Singapore procedural law, but it *does not flow* as a matter of logic or principle that a breach of these rules (without more) ought properly to entail disciplinary consequences. The onus clearly lay on the Appellant to satisfy the RC of this difficult point. From what he stated in his Complaint to the Respondent, it does not appear that he even made any attempt to do so. Nor did he seek to demonstrate that WP's original inclusion of duplicated costs was done intentionally or did not otherwise flow from any misreading of O 59 r 19. Finally, we observe that Dr Lim herself did not raise any objection in this regard at the taxation review – nor, indeed, has she made any complaint against WP, Mr Yeo and/or Ms Ho since then.

68 For the above reasons, the appeal in relation to Issue 2 must fail.

69 As a final matter, we note that the Judge included within his Judgment a discussion of whether there was any basis to suggest that WP had over-claimed that $287,009.37 deliberately, concluding at the end of that discussion that there was no such basis (see the Judgment at [181]–[192]). The Appellant submits that the Judge should not have relied on his "own personal perception of what transpired at the taxation review hearing" in order to come up with his own conclusion on the complaint. We do not think there is merit in the submission. First, while it is true that the Judge in hearing the judicial review application was sitting in a different capacity than he was at the taxation review, the Judge had explained, prior to the discussion, that he had considered whether a refusal to quash the RC's decision would result in some injustice to the Appellant, and that he had done so "even though this may entail going into the merits" (see the Judgment at [173]). The Judge was accordingly fully aware of the nature of his inquiry. Second, it was open to the Judge to consider whether quashing the RC's decision in order that the

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Complaint be considered afresh would lead to a different and meaningful outcome. Third, and more importantly, the Judge *had not relied* on his "own personal perception" as to what had transpired at the taxation review hearing. The observations set out by the Judge in his discussion were *not* observations that were available *only* from his personal knowledge as judge in the taxation review, but were facts observable or inferable *from the record* (such as the complexity of the dispute between Dr Lim and the SMC, and the complexity of the taxation that followed).

Issue 3: the RC's reliance on WP's purported clarification

70 Given our decision that the appeal must fail with regard to both Issue 1 as well as Issue 2, it follows that there is no basis upon which the Appellant can ground Issue 3 and, hence, the appeal in relation to Issue 3 must also fail.

Conclusion

71 For the reasons set out above, the appeal is dismissed. On the matter of costs, we direct all three parties to file written submissions on costs. Each of these submissions is not to exceed 10 pages, and they are to be exchanged simultaneously within 2 weeks of the date of delivery of this judgment.

Andrew Phang Boon Leong	Judith Prakash	Tay Yong Kwang
Judge of Appeal	Judge of Appeal	Judge of Appeal

Abraham S Vergis and Danny Quah (Providence Law Asia LLC) for the appellant;
Christopher Anand Daniel and Harjean Kaur (Advocatus Law LLP) for the respondent;

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Khoo Boo Jin and Sivakumar Ramasamy (Attorney-General's Chambers) for the Attorney-General.

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