Law Society of Singapore *v* Andre Ravindran Saravanapavan Arul [2011] SGHC 224

Case Number	: Originating Summons No 170 of 2011
Decision Date	: 07 October 2011
Tribunal/Court	: High Court
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Philip Fong and Vikneswari d/o Muthiah (Harry Elias Partnership LLP) for the applicant; Francis Xavier SC, Mohammed Reza and Avinash Pradhan (Rajah & Tann LLP); Shashi Nathan and Tania Chin (Inca Law LLC) for the respondent.
Parties	: Law Society of Singapore — Andre Ravindran Saravanapavan Arul

Legal Profession – Disciplinary Proceedings

7 October 2011 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

Introduction

1 This is an application by the Law Society of Singapore ("the Law Society") made under s 98(1) of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("LPA") for Mr Andre Ravindran Saravanapavan Arul ("the Respondent") to show cause as to why he should not be dealt with pursuant to s 83(1) of the LPA. The Law Society's application arises from the findings of the disciplinary tribunal ("the DT") that the Respondent was guilty of the disciplinary offence of overcharging his client in a manner which amounted to grossly improper conduct within the meaning of s 83(2)(*b*) of the LPA, and that cause of sufficient gravity for disciplinary action existed under s 83 of the LPA: see *The Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] SGDT 2 ("the Report").

Background

2 The Respondent is an advocate and solicitor of the Supreme Court of 22 years' standing. He is the sole proprietor of the law firm known as "M/s Arul Chew & Partners" ("ACP"). He has had in his employment for the last ten years or so one Adrian Kho Ngiat Sun ("Kho"). Kho graduated with a law degree from the National University of Singapore and subsequently passed the Practical Law Course. He was qualified to be admitted to the Bar as he had also served his pupillage as required by the LPA. However, he did not hold a practising certificate. In fact, he was working as a paralegal in ACP at the material time.

3 The complainant is Management Corporation Strata Title Plan No 1886 ("MCST 1886"), a body corporate constituted to manage the condominium known as "West Bay Condominium" at 58 West Coast Crescent, Singapore 128039. At all material times, MCST 1886's Management Council chairman was Mr Jaffar bin Hassan ("Mr Hassan").

4 On 14 December 2007, Chew Swee Siong ("Chew"), an employee of MCST 1886's managing agent, confessed to misappropriating about $2m of MCST 1886's funds. In January 2008, a mutual friend of Mr Hassan and the Respondent recommended the Respondent to Mr Hassan, and this led to MCST 1886 appointing the Respondent as its solicitor to recover the misappropriated moneys from

Chew, his accomplices and others who might be held responsible for the losses suffered by MCST 1886, including its auditors and its bankers ("the intended defendants").

5 On 30 January 2008, MCST 1886 signed the Respondent's warrant to act captioned "Misappropriation of the MCST's funds and bank accounts and all related and/or ancillary matters and in respect of general advice on legal matters of the MCST 1886 (West Bay Condominium)" [note: 1] ("the Warrant to Act"). The Warrant to Act stated that the hourly charge rate was $450 for the Respondent and $350 for Kho. It was silent regarding Kho's status as a paralegal.

6 From 25 July 2008 to 13 May 2009, the Respondent rendered nine bills to MCST 1886, three of which form the subject of the amended primary charge against the Respondent for overcharging. These three bills ("the Bills") totalled $226,308.12 and their details are as follows:

Date	Bill No.	Sum claimed	Item billed for
25 Jul 2008	0096 of 2008 [note: 2]	$572.35	Disbursements from Jan 2008 to Apr 2008 (inclusive)
7 Aug 2008	0094 of 2008 [note: 3]	$38,725.00	Work done from 23 Jan 2008 to 12 Mar 2008
13 May 2009	0042 of 2009 [note: 4]	$187,010.77	Work done from 19 Mar 2008 to 23 Feb 2009

7 By December 2008, MCST 1886 had paid $109,297.35 (including Disbursements Bill No 0096 of 2008 for $572.35) towards payment of the Bills. [note: 5] On 23 February 2009, MCST 1886 discharged the Respondent as its solicitor because of the slow progress in the recovery of its losses and also because of the quantum of the Respondent's charges. It was not disputed that up to the date of the Respondent's discharge as MCST 1886's solicitor, he had not sent out any letter of demand to any of the intended defendants. On 21 May 2009, MCST 1886 complained to the Law Society that it had been grossly overcharged by the Respondent for the amount of work he and Kho had done (for ease of discussion, references hereafter to work done by the Respondent should be read as including work done by Kho). This complaint resulted in the proceedings before us.

The charges

8 The amended primary charge based on s 83(2)(*b*) of the LPA, of which the Respondent was found guilty, reads as follows:

> You, [the Respondent], are charged that between 25 July 2008 and 13 May 2009, at 20 Maxwell Road, #02-13/14, Maxwell House, Singapore 069113, you did charge one [MCST 1886] a total fee of $226,308.12 (including S$572.35 for disbursements) for work done by you as its solicitor for the period 23 January 2008 to 23 February 2009, as evidenced by your Interim Bill No. 0094 of 2008 dated 7 August 2008, your Disbursement Bill No. 0096 of 2008 and Bill No. [0]042 of 2009 dated 13 May 2009, which fee was far in excess of and disproportionate to what you were reasonably entitled to charge for the services you rendered to MCST 1886, and such overcharging by you amounts to a breach of Rule 38 of the Legal Profession Professional Conduct Rules, and you have thereby breached a rule of conduct made by the Council under the

provisions of the [LPA] as amounts to grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the [LPA].

9 The Respondent was charged alternatively that his conduct in claiming the total fee set out in the Bills constituted overcharging amounting to misconduct unbefitting an advocate and solicitor within the meaning of s 83(2)(*h*) of the LPA. The amended alternative charge provides as follows:

> You, [the Respondent], are charged that between 25 July 2008 and 13 May 2009, at 20 Maxwell Road, #02-13/14, Maxwell House, Singapore 069113, you did charge one [MCST 1886] a total fee of $226,308.12 (including S$572.35 for disbursements) for work done by you as its solicitor for the period 23 January 2008 to 23 February 2009, as evidenced by your Interim Bill No. 0094 of 2008 dated 7 August 2008, your Disbursement Bill No. 0096 of 2008 and Bill No. [0]042 of 2009 dated 13 May 2009, which fee was far in excess of and disproportionate to what you were reasonably entitled to charge for the services you rendered to MCST 1886, and such overcharging by you amounts to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the [LPA].

10 Regarding the amended alternative charge under s 83(2)(*h*) of the LPA, the DT stated that since it had found the Respondent guilty of the amended primary charge under s 83(2)(*b*) of the LPA, it was not necessary to make a finding on the amended alternative charge. Nevertheless, it expressed the opinion that it was satisfied that the Law Society had proved beyond reasonable doubt that the amended alternative charge had been made out as well (see [93] of the Report).

The relevant statutory provisions

11 We set out the relevant statutory provisions here. Subsections 83(2)(*b*) and 83(2)(*h*) of the LPA provide as follows:

> **Power to strike off roll, etc**.
>
> **83**. …
>
> (2) Such due cause may be shown by proof that an advocate and solicitor —
>
> …
>
> (*b*) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as amounts to improper conduct or practice as an advocate and solicitor;
>
> …
>
> (*h*) has been guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession;
>
> …

Rule 38 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) ("LP(PC)R"), in respect of which the amended primary charge was brought, provides as follows:

Gross overcharging

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

The DT hearing and the DT's findings

12 The DT heard the parties over three days from 25 October 2010 to 28 October 2010. The witnesses for the Law Society were Mr Hassan, who testified on the legal work done by the Respondent, and Mr Peter Cuthbert Low ("Mr Low"), who testified as an expert on the value of the Respondent's legal work. The Respondent testified as to the nature of the work done by him, and Mr Sivakumar Vivekanandan Murugaiyan ("Mr Murugaiyan") testified as an expert witness on the following issues: [note: 6]

(a) how legal fees are charged;

(b) the practice of requiring a warrant to act as well as the terms thereof;

(c) whether it is common for interim bills to be rendered;

(d) whether legal fees chargeable by time costs include time spent by support staff and paralegals; and

(e) whether the Respondent's charge-out rate was reasonable.

Mr Murugaiyan was not asked to opine on what would have been a reasonable fee for the Respondent's work. The Respondent's defence to the amended primary and alternative charges was that he had rendered the Bills on the basis of his and Kho's respective hourly rates as set out in the Warrant to Act (which the Respondent had signed after due deliberation).

13 It is not necessary for us to go into the detailed evidence adduced by both parties before the DT. A number of irrelevant issues were raised, such as whether MCST 1886 was informed that Kho was only a paralegal (the DT found that it was not informed (at [57] of the Report)) and whether Kho's hourly rate of charge of $350 was too high (the DT found that it was high but did not determine what rate would have been reasonable (at [60]–[61] of the Report)). The material issue was whether the total fee of $226,308.12 charged for a 13-month period of preparatory work (including attending to clients, seeking information from the police, answering queries, researching the law and giving legal opinions, *etc*), which did not result in any letter of demand being sent to the intended defendants, was grossly excessive. In this connection, the Respondent's evidence that he had prepared a draft statement of claim which he said he had not shown to Mr Hassan or any representative of MCST 1886 during a meeting with them was rejected by the DT (at [78] of the Report).

14 The Law Society analysed the timesheets produced by the Respondent and was able to point to a number of inconsistencies in the entries. In some cases, the time periods for which the Respondent charged MCST 1886 could not be reliably matched to either the work items in the Bills or contemporaneous documents. On the other hand, the Respondent was able to show that the timesheets had omitted a number of items of work which had been recorded in his files. In effect, the Respondent did not keep proper timesheets for the work done.

15 After the hearing concluded, the DT considered the evidence and found (at [76] and [79] of

the Report) that the only substantive work which the Respondent had done to progress the matter was limited to three legal opinions rendered to MCST 1886, and that the total of 570 hours spent on the case by the Respondent (at 260 hours) and Kho (at 310 hours) was "exceptionally astronomical and totally unjustified" (at [79] of the Report).

16 With respect to the value of the work done by the Respondent, the DT accepted Mr Low's expert evidence that a sum of around $75,000 would have been an "eminently reasonable [sum]" (at [90] of the Report) to charge MCST 1886 (adding 10% if the alleged draft statement of claim had indeed been prepared). Accordingly, the DT found that the Respondent's conduct in claiming a total sum of $226,308.12 in the Bills amounted to gross overcharging as that sum was more than 300% of what the work done was worth (at [90] of the Report).

The show cause proceedings

17 Before us, the Respondent accepted unequivocally the DT's decision on the amended primary charge under s 83(2)(*b*) of the LPA that he had grossly overcharged MCST 1886 for the amount of work he had done. He also accepted "in large part" [note: 7] the DT's finding that his services comprised mainly the rendering of the three legal opinions mentioned at [15] above, with much of the other work taking the form of liaison work and the sending of chasers. He further accepted the following shortcomings on his as well as ACP's part: [note: 8]

(a) the recording of timesheets fell short of the desirable level of detail and particularity (in mitigation, the Respondent said that this was because ACP was a small firm and did not have timesheet accounting software);

(b) the Bills did not expressly set out a sufficient breakdown of the time spent and the work done; and

(c) the Respondent should have proposed to MCST 1886 that his bills for the work done in respect of its matter be taxed.

18 In his written submissions, the Respondent apologised unreservedly to MCST 1886 and to this court for these shortcomings, and expressed his remorse by accepting the amended primary charge against him. [note: 9] He also stated his intention (and this was reiterated to us at the hearing) to refund to MCST 1886 the sum of $33,725, which is the difference between the amount paid by MCST 1886 up to the time of the disciplinary proceedings (*viz*, $109,297.35) and the sum of $75,572.35 (comprising the sum of $75,000, which the DT had found to be a reasonable quantum for the work done (see [16] above), and disbursements of $572.35). [note: 10]

The issue before this court

19 In the circumstances, the only live issue which we have to decide in the present case is the appropriate sanction to impose on the Respondent. Counsel for the Law Society, Mr Philip Fong ("Mr Fong"), argued that the Respondent's conduct was egregious in the light of the DT's findings as to: (a) the quantum of gross overcharging which the Respondent was guilty of; (b) the Respondent's failure to inform MCST 1886 that Kho was a paralegal and not an advocate and solicitor; (c) Kho's high hourly rate of charge; and (d) the improperly maintained timesheets. However, Mr Fong accepted that it was not the Law Society's case that the Respondent's conduct had been dishonest, or that he had fabricated bills for work which had not been done, or that he had cheated MCST 1886. Rather, the Law Society's case was that the Bills simply could not be justified by the amount and the nature

of the work done. In other words, the Respondent had charged for a lot of work which would not have been necessary had he conducted the matter efficiently.

20 For these reasons, Mr Fong submitted that the sentence of a suspension from practice for nine months would be appropriate. He referred to the following precedents where solicitors had been suspended from practice for the gross overcharging of clients: *Re Lau Liat Meng* [1992] 2 SLR(R) 186, *Re Han Ngiap Juan* [1993] 1 SLR(R) 135 and *Law Society of Singapore v Low Yong Sen* [2009] 1 SLR(R) 802 ("*Low Yong Sen*"). In these three cases, the court had imposed suspension periods of three to six months for this disciplinary offence.

21 In rebuttal, counsel for the Respondent, Mr Francis Xavier SC ("Mr Xavier"), submitted that the DT's findings – *viz*, that MCST 1886 had not been informed of Kho's status as a paralegal, that Kho's hourly charge rate was high and that the Respondent's claim to have drafted a statement of claim was dubious – should all be disregarded by the court in determining the appropriate penalty to impose as these matters were not part of the statement of the Law Society's case against the Respondent, who thus had no notice that these specific matters formed part of the allegations against him. He further argued that if, as the DT found, a sum of around $75,000 was a reasonable fee for the work done by the Respondent, there would still be a buffer to be crossed before the fee charged by the Respondent became grossly excessive. He also pointed out that the Respondent had in fact written to MCST 1886 twice in October 2008 [note: 11] reminding it about his proposal for an agreed fee of around $220,000 [note: 12] for an eight-day High Court trial (which proposal was not accepted by MCST 1886). The Respondent had even stated that his costs charged on an hourly basis (for the period from 19 March 2008 to 30 September 2008 alone) had already reached $110,998.29, effectively indicating to MCST 1886 that the proposal of an agreed fee of around $220,000 was a much better bargain for it. [note: 13] However, MCST 1886 never signed the fee agreement proposed by the Respondent.

22 Mr Xavier thus submitted that in the circumstances of this case, a "hefty fine" combined with a censure would be an appropriate sanction for the Respondent.

Our decision

New sanction of a monetary penalty

23 This is an important case for the legal profession as this is the first time that a solicitor has been found guilty of gross overcharging since s 83(1) of the LPA was amended in 2008 to provide for the additional sanction of a monetary penalty for disciplinary offences committed by solicitors. Prior to that amendment (which came into effect on 1 December 2008), the court could only strike off an advocate and solicitor from the roll of advocates and solicitors of the Supreme Court, suspend him from practice for a period not exceeding five years or censure him. As pointed out by Prof Tan Yock Lin in his article, "Sentencing for Legal Professional Misconduct" (2000–01) 21 Sing L Rev 62 (at pp 66–68), the lack of the power to impose a fine could result in disproportionate punishments being imposed on errant solicitors. This point was noted by the Committee to Develop the Singapore Legal Sector (chaired by V K Rajah JA) in its report published in September 2007 (at para 4.20), and its recommendation (at para 4.33 of the same report) led to the then version of s 83 of the LPA being amended by the Legal Profession (Amendment) Act 2008 (Act 19 of 2008).

24 The amended version of s 83 of the LPA provides as follows:

> **Power to strike off roll, etc**.

83.—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown —

(*a*) to be struck off the roll;

(*b*) to be suspended from practice for a period not exceeding 5 years;

(*c*) *to pay a penalty of not more than $100,000*;

(*d*) to be censured; or

(*e*) *to suffer the punishment referred to in paragraph (*c*) in addition to the punishment referred to in paragraph (*b*) or (*d*)*.

…

[emphasis added]

Precedents for penalising overcharging

25 An important point which we need to address in the present proceedings is the status of past precedents where solicitors were suspended from practice for the disciplinary offence of overcharging. We consider, first, the three precedents relied upon by counsel for the Law Society (see above at [20]). In *Re Lau Liat Meng*, the Court of Three Judges found the solicitor guilty of grossly improper conduct in overcharging his client by billing a total of $23,000 (for professional fees) and $604.60 (for disbursements) for work done in connection with obtaining letters of administration for an estate with $68,394.53 in assets. The expert in that case assessed the proper fee as being "at the most $4,000" (at [11] of *Re Lau Liat Meng*). The court suspended the solicitor from practice for three months.

26 In *Re Han Ngiap Juan*, the Court of Three Judges likewise suspended the solicitor from practice for three months for grossly improper conduct in overcharging his client. The solicitor had billed his client $6,725 for acting in the purchase of a property and $3,000 for filing an application for the lapsing of a caution when the prescribed fees were only $1,975 and $100 respectively.

27 Finally, in *Low Yong Sen*, the Court of Three Judges found the solicitor guilty of overcharging his client by charging disbursements of $4,300 when the fair amount was $1,385.62. Although the overcharged sum was not large in absolute terms, it was about 210% of the fair amount, and four of the disbursement items were overcharged (egregiously, in our view) by 346%, 598%, 600% and 855% respectively. More importantly, the court had particular regard to the subterfuge which the solicitor resorted to (by way of charging the inflated disbursements bill through a third party), and found such misconduct to border on dishonesty (at [41] of *Low Yong Sen*). Another aggravating factor which the court took into account was that in 2006, the solicitor had been fined $7,500 by the Council of the Law Society on each of three charges of overcharging and reprimanded on two other charges of overcharging. Considering all these factors, the court suspended the solicitor from practice for six months. In our view, all these precedents have to be reconsidered in the light of the new punishment regime under the LPA.

The nature of the disciplinary offence of overcharging

28 Allegations of overcharging of fees for professional work are not infrequent in the services sector. This is particularly true in the legal and the medical professions, where there are no prescribed

fees for certain kinds of services (like advocacy or surgery) as these services are highly dependent on personal skills and their benefit to the client or the patient concerned may not be quantifiable in terms of money. Furthermore, overcharging may also occur because a lawyer with an inflated idea of his own legal knowledge or forensic skills may think that his work is worth more to the client than what the client thinks.

29 It should be noted that in some jurisdictions, overcharging of legal fees may not amount to a disciplinary offence where the client has agreed to a fixed fee for a specific job or transaction (*eg*, to give a legal opinion or to conduct a trial), however exorbitant or unreasonable the fee might appear to a third party or another solicitor. In Australia, for instance, it would appear that a barrister or solicitor is entitled to charge what the market can bear (*ie*, what the client is prepared to pay) and the court will not inquire into the exorbitance of a contractually agreed fee in any disciplinary proceedings for overcharging (see *D'Alessandro v Legal Practitioners Complaints Committee P9/1996* [1996] HCA Trans 300 (9 August 1996) *per* Toohey J). In contrast, the legal position in Singapore, which is governed by s 109 of the LPA (for non-contentious business) and s 111 read with s 113 (for contentious business), is that the court or the judge may cancel any agreement on costs which is unfair or unreasonable (see the observations of the Court of Appeal in *Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052 at [25]–[26]). Nevertheless, even if the court or the judge were to cancel an agreement on costs on the ground that it is unfair or unreasonable, it does not necessarily follow that the overcharging by the advocate and solicitor would constitute grossly improper conduct (see further [33]–[34] below).

30 We should add that where fees are charged on a time basis, overcharging can also occur even where the client has agreed to the tariff of charges (as in the present case, where the tariff set out in the Warrant to Act was $450 per hour for the Respondent and $350 per hour for Kho) if the number of hours billed for has been inflated or if work unnecessary to achieve the purpose of the retainer has been billed for. This is because while the client has contractually agreed to the tariff of charges, he has not agreed to the number of hours which he may be charged for. He trusts his solicitor to bill fairly for the time taken to work on his matter, and rules of professional conduct are in place to prevent that trust from being abused by unethical solicitors.

31 Rule 2(2)(*c*) of the LP(PC)R 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 (reproduced at [11] above)). 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.

Taxation

32 Even where a bill rendered by a solicitor is *prima facie* excessive, any potentiality of the solicitor's conduct in rendering that bill being regarded as professional misconduct in the form of overcharging can usually be remedied or ameliorated by an offer to have the bill taxed (if it is taxable) under the Rules of Court (Cap 322, R 5, 2006 Rev Ed) (in this regard, see *The Law Society of Singapore v Tan Thian Chua* [1994] SGDSC 11 at [5], where the solicitor was merely reprimanded and ordered to pay the costs incurred by the Law Society in the disciplinary proceedings as, *inter alia*, his

bill, although excessive, had been accompanied by an offer of taxation in the first place). Taxation provides the best means for an aggrieved client to determine what the proper fee is for the actual work done by his lawyer, and for the lawyer to avoid having to face a disciplinary charge for overcharging. If the bill is not taxable, the prudent course is for the solicitor to negotiate a mutually acceptable amount or even offer mediation.

33 In the present case, the Respondent did not offer to have his bills for the work done in respect of MCST 1886's matter taxed. If he had done so, the DT might well have concluded that his overcharging (albeit "gross" because of the amount or percentage of overcharging involved) did not constitute grossly improper conduct since he did not have the intention to overcharge (*ie*, he did not intend to charge more than what he would have received had his costs been taxed). If the Respondent had offered taxation and MCST 1886 had refused, then it would have been more difficult for the DT to have found that the Respondent had overcharged MCST 1886 in a manner which amounted to grossly improper conduct. All solicitors should act on the basis that they can have their bills of costs taxed under the law, and they must remember that many clients do not know this. Accordingly, they have an obligation to inform their clients of this option, and they fail or omit to do so at their peril. A solicitor who offers to have his bill of costs taxed is, in our view, unlikely to have the frame of mind or intention to overcharge his client.

Proportionate sanctions for overcharging

34 It can be seen from the foregoing discussion (especially at [33] above) that not all cases of overcharging amount to grossly improper conduct. As the Court of Three Judges in *Low Yong Sen* stated at [25]:

> *We recognised that not every instance of overcharging would constitute grossly improper conduct*. In *Re Han Ngiap Juan* [1993] 1 SLR(R) 135, the court of three judges constituted under the LPA stated (at [34]):
>
> > Obviously not every case of overcharging will constitute grossly improper conduct. Inevitably there will be some diversity of opinion as to what would or would not be correct in each case, and where the line ought to be drawn. The passages quoted from [the case of *Re Lau Liat Meng* [1992] 2 SLR(R) 186] indicate clearly that the extent to which a client is overcharged is a very strong factor against an advocate and solicitor accused of overcharging amounting to grossly improper conduct under s 83(2)[(*b*)] of the [LPA], and this must be so whether or not there is any allegation of dishonesty or deceit. In our view, while this may not be a conclusive factor, it is a very material one, and the more a client is overcharged, the harder it will be for the advocate and solicitor concerned to persuade the court that the explanation he gives does justify the overcharge.
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> [emphasis added]

Further, in cases where overcharging does amount to grossly improper conduct, whilst all such instances of overcharging are punishable as disciplinary offences, not all are deserving of the penalty of suspension from practice, much less of disbarment.

35 The case precedents show that prior to 1 December 2008, solicitors who were found guilty under the then version of s 83 of the LPA of grossly improper conduct arising from overcharging clients were punished either by censure or suspension from practice. In our view, as most of those cases were of too serious a nature to merely merit censures, the court had no choice but to suspend the solicitors concerned from practice for periods ranging usually from three to six months. In many of

those cases, there was also evidence of some degree of deception, dishonesty or unfairness by the solicitors in taking advantage of the ignorance of their clients. In those circumstances, the only punishment that would meet the requirements of just deserts, deterrence and the protection of public confidence was suspension from practice. A censure would not have been a sufficient sanction. Indeed, the case of *Low Yong Sen* shows that a censure would often just be water off a duck's back.

36 The current regime provides for a new penalty in the form of a maximum fine of $100,000. This penalty was introduced to enable the Court of Three Judges to impose fines for disciplinary offences that are too serious to be punished with mere censures, but insufficiently serious to deserve the punishment of suspension from practice. In our view, the disciplinary offence of overcharging amounting to grossly improper conduct falls within this category of disciplinary offences, provided no deception or dishonesty is involved. We hold that the starting point in imposing a proportionate penalty for overcharging amounting to grossly improper conduct should be a fine in the first instance, and not a suspension of the errant lawyer from practice. A fine, especially a heavy fine, together with payment of the disciplinary tribunal's and the Law Society's costs in the proceedings, should generally be an adequate punishment for the errant solicitor. Repeat offenders will, of course, be penalised more severely. In this regard, we note the observations of this court in *Low Yong Sen* (at [38]) that:

> … overcharging may seem to be a minor transgression when compared to the case of a solicitor who commits a breach of trust of a client's money … But the harm done by such misconduct can be far more insidious and prolonged. Whereas the dishonest lawyer who absconds with his client's money would likely be found out soon enough and be disbarred, and thus prevented from further cheating any future clients, the solicitor who systematically overcharges by small amounts and is not discovered over an extended period can potentially defraud a large number of clients. We must therefore not condone an act of overcharging merely because it involves a small sum as ultimately, what is at stake is of far greater importance – the integrity and standing of the profession.

37 Nevertheless, we also note that these observations were made in the context of a punishment regime under which the court had no power to fine the errant lawyer. Under the current regime, the court has the power to impose a fine of up to $100,000. This is a not inconsiderable sum for many lawyers, especially sole proprietors whose annual net income might not even reach this amount.

38 Of course, if the gross overcharging in question is redolent of cheating or deceiving the client, the penalty for such unprofessional conduct may be enhanced to suspension from practice. One example of such unprofessional conduct can be found in *Re Han Ngiap Juan*, which involved conveyancing fees based on a prescribed scale that was or should have been known to the solicitor concerned. Yet, the solicitor charged a fee well in excess of the scale charges. He also appeared to have tried to take advantage of an ignorant client by charging $3,000 for routine work that was estimated to cost only about $100. Another example is the case of *Low Yong Sen*, where the solicitor set up a fig leaf arrangement with a third party to camouflage the fact that he was benefiting from inflated disbursement charges (see *Low Yong Sen* at [23]).

39 In the most egregious cases where cheating is involved (such as where there are fabricated bills or invoices for work which has not in fact been done), the penalty may even be enhanced to striking the solicitor off the roll. In this connection, it is necessary to note that counsel for the Law Society has not brought to our attention any disciplinary case in the Commonwealth where a lawyer has been struck off the roll or disbarred for the disciplinary offence of overcharging clients without more. The nature of this disciplinary offence would not normally, in our view, call for such a drastic punishment when the penalty of suspension from practice is available.

The present case

The present case

40 Reverting to the present case, there was no allegation that the Respondent cheated MCST 1886 or fabricated any bills. Further, the Law Society's position was that the Respondent's conduct leaned more towards being unethical rather than dishonest. As mentioned above at [13], the material issue before the DT was whether the total fee of $226,308.12 charged for the Respondent's work was grossly excessive. An objective evaluation by Mr Low (the Law Society's expert witness) concluded that it was, and that a sum of around $75,000 instead would have been a reasonable fee. The DT accepted Mr Low's evidence (see [16] above). We see no reason to disagree with the DT's decision, even though we would have been prepared to accept an even lower valuation of the Respondent's work. Hence, in determining the appropriate sanction to impose on the Respondent, who has admitted to overcharging MCST 1886 in a manner which amounted to grossly improper conduct, we evaluate the extent of his overcharge by reference to the sum of around $75,000.

41 This is an appropriate juncture for us to mention that in future cases involving complaints of overcharging, the Law Society, instead of embarking on an investigation into the complaint without more, should first advise or require the aggrieved party to apply to court to have the bill of costs taxed (where the bill in question is taxable, as in the present case). As alluded to above at [32], taxation is the most objective and conclusive way of determining the amount of fees a solicitor is entitled to. The opinion of another solicitor (called as an expert witness for the Law Society) on the matter, regardless of how eminent he may be, would ultimately still be a personal opinion and, thus, would not have the same degree of objectivity as a taxation done by the court. Further, it can be invidious for a solicitor to give expert evidence on the monetary value of another solicitor's professional services. For these reasons, we would advise that *vis-à-vis* future complaints of overcharging, the Law Society should not pursue such complaints without more (not even with the aid of expert evidence) if the bill in question is taxable. Instead, it should advise or require the aggrieved party to have the bill taxed first. The amount of fees awarded by the court upon taxation would then enable the Law Society to assess whether the aggrieved party's complaint of overcharging merits investigation (see, in this regard, *Wee Soon Kim Anthony v Law Society of Singapore* [2007] 1 SLR(R) 482 at [36]).

42 We also suggested earlier (see above at [33]) that in the present case, had the Respondent offered taxation to MCST 1886 when the latter expressed dissatisfaction or unhappiness with the quantum of the Bills, these proceedings might never have been necessary and the Respondent might not have ended up much worse off, as he is now. Let this be a morality tale for the edification of all like-minded solicitors in similar situations.

Conclusion

43 Taking into account all the circumstances of the case, including the Respondent's undertaking to refund the sum of $33,725 to MCST 1886, we make the following orders against the Respondent:

(a) that he be fined $50,000;

(b) that he be censured (for failing to keep proper timesheets, failing to offer taxation and taking, in the proceedings before the DT, an indefensible stance on the amended primary and alternative charges against him); and

(c) that he pay the costs of the Law Society for the proceedings before this court.

We also affirm the DT's order that the Respondent pay the Law Society's costs for the proceedings before the DT.

[note: 1] Record of Proceedings ("ROP") Vol 5 Part B, p 3073.

[note: 2] Applicant's Core Bundle ("ACB") Vol 1 at p 57.

[note: 3] *Id* at pp 60–63.

[note: 4] *Id* at pp 77–102.

[note: 5] ACB Vol 1, p 24; see also para 99 of Mr Hassan's Affidavit of Evidence-in-Chief dated 6 October 2010 in ROP Vol 3 Part A, p 87.

[note: 6] See para 5 of Mr Murugaiyan's expert report in ROP Vol 3 Part F, p 1560.

[note: 7] Respondent's Written Submissions, para 8.

[note: 8] *Id* at para 9.

[note: 9] *Id* at para 10.

[note: 10] *Id* at para 11.

[note: 11] ROP Vol 5 Part R, pp 7591 and 7607.

[note: 12] Respondent's oral outline dated 4 July 2011, para 6.3.

[note: 13] *Supra* n 11, p 7591.