Singapore Medical Council *v* Lim Mey Lee Susan
[2015] SGHC 129

Case Number : Bill of Costs Nos 110 of 2014 and 111 of 2014 (Summonses Nos 4443 and SUM 4444 of 2014)

Decision Date : 13 May 2015

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Melanie Ho, Chang Man Phing and Jocelyn Ngiam (WongPartnership LLP) for the applicant; Paul Tan, Amy Seow and Alyssa Leong (Rajah & Tann Singapore LLP) for the respondent.

Parties : SINGAPORE MEDICAL COUNCIL — LIM MEY LEE SUSAN

Civil Procedure – Costs – Taxation

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 154 of 2015 was dismissed by the Court of Appeal on 7 March 2016. See [2016] SGCA 14.]

13 May 2015 Judgment reserved.

Woo Bih Li J:

Introduction

1 This review concerns two party-and-party bills rendered by the Applicant, the Singapore Medical Council ("SMC"), against the Respondent, Dr Susan Lim ("Dr Lim"):

(a) Bill of Costs No 111/2014 ("B/C 111/2014") for work done for hearings before two disciplinary committees from 2010-2012 (the "DC hearings"); and

(b) Bill of Costs No 110/2014 ("B/C 110/2014") for work done for an appeal to a Court of Three Judges.

2 On 4 September 2014, B/C 111/2014 and B/C 110/2014 ("the Bills") were taxed by an Assistant Registrar ("AR") in the following amounts (all excluding GST):

B/C No	Section No	Amount claimed by SMC	Amount suggested by Dr Lim	Amount taxed
111/2014	1	$900,000	$156,000	$180,000
	2	$ 6,000	$ 1,500	Each party bears own costs
	3	(i) First legal assessor's fees: $49,200	(i) First legal assessor's fees: $40,000	(i) First legal assessor's fees: $45,000

		(ii) Second legal assessor's fees: $235,635.40	(ii) Second legal assessor's fees: $20,000	(ii) Second legal assessor's fees: $22,000
		(iii) Dr Tan Yew Oo's fees: $12,145	(iii) Dr Tan Yew Oo's fees: $6,000	(iii) Dr Tan Yew Oo's fees: $9,000
		(iv) Dr Hong Ga Sze's fees: $40,000	(iv) Dr Hong Ga Sze's fees: $5,000	(iv) Dr Hong Ga Sze's fees: $5,000
		(v) Ring binders: $6.00 per unit	(v) Ring binders: $2.50 per unit	(v) Ring binders: $2.50 per unit
110/2014	1	$150,000	$40,000	$70,000
	2	$ 3,000	$ 1,000	$ 1,000

3 SMC then filed Summonses Nos 4444 of 2014 and 4443 of 2014 to seek a review of the AR's taxation of Sections 1, 2 and 3 of BC 111/2014 and Section 1 of BC 110/2014 respectively.

4 The Bills arose from disciplinary proceedings against Dr Lim. She was charged and found guilty on 94 charges of professional misconduct in respect of one and the same patient. The first 83 charges were for allegedly invoicing the patient medical fees that were far in excess of and disproportionate to the services rendered by Dr Lim and her medical team. The remaining 11 charges were for allegedly invoicing the patient medical fees that were far in excess of and disproportionate to the services rendered as well as falsely representing that such fees had been invoiced by and/or would be payable to certain named doctors, when Dr Lim knew or ought to have known that such representation was not true because she had added a significant and undisclosed markup to the actual fees charged by those doctors.

5 Although the disciplinary proceedings against Dr Lim are not the same as the usual civil or criminal proceedings in the High Court, it is common ground that in taxing the costs of a party to such proceedings, the court will have regard to all the relevant circumstances and, in particular, to the factors stipulated in O 59 Appendix 1 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) (see *Shorvon Simon v Singapore Medical Council* [2006] 1 SLR(R) 182 ("*Shorvon*") at [19]). The factors stipulated in Appendix 1 of O 59, some of which overlap, are:

(*a*) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(*b*) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;

(*c*) the number and importance of the documents (however brief) prepared or perused;

(*d*) the place and circumstances in which the business involved is transacted;

(*e*) the urgency and importance of the cause or matter to the client; and

(*f*) where money or property is involved, its amount or value.

6 It was also common ground that the charges raised issues of importance to both the SMC and to Dr Lim especially in the light of the quantum involved and the extent of the alleged overcharging. Dr Lim had charged the patient an aggregate total of $24m. She subsequently offered to withdraw certain invoices or discount her fees so that the aggregate would be reduced to about $12.6m. Even then, the Court of Three Judges agreed that the $12.6m figure would still be several times more than what she ought to have charged the patient.

7 WongPartnership ("WP") act for SMC. WP submitted that there were fundamentally important issues which were raised in the disciplinary proceedings. As the Court of Three Judges said in *Lim Mey Lee Susan v Singapore Medical Council* [2013] 3 SLR 900 ("*Susan Lim*") at [1] and [2]:

> 1 … [T]his appeal raises several related issues of fundamental importance. In particular, is there an *ethical* obligation on the part of all doctors who practise medicine in Singapore to charge a fair and reasonable fee for their services? If so, is such an obligation an inherent one, or must it first be embodied within published legislation or rules before it can be enforced? If such an ethical obligation exists, is it *inoperative in the face of a binding contract between a doctor and his or her patient* (assuming that the contract in question is not otherwise rendered invalid under the general principles of *contract law*)? These questions raise, in turn, an even more fundamental question – what does it mean to be a *professional*? More specifically, is a professional bound by *ethical* obligations which trump his or her *commercial* obligations and interests? If so, should a distinction be drawn between lawyers on the one hand and doctors on the other, given that for lawyers, the answer to the last-mentioned question is in the affirmative, whilst counsel for the Appellant has argued that the contrary should obtain for his client instead?
>
> 2 There are also numerous important issues of *application* as well. …
>
> [emphasis in original]

8 For Dr Lim, a finding that she had overcharged the patient was likely to attract a severe sanction such as suspension from practice or something else more severe in the light of the huge aggregate sum involved and the allegations of the extent of overcharging. Her professional reputation was very much at stake too.

9 As for complexity, the AR noted WP's argument that the charges necessitated an understanding of the technical medical services provided. The AR also noted that Rajah & Tann ("R&T") who act for Dr Lim, did not really challenge the complexity of the matter. [note: 1] Indeed, as WP pointed out, the written submissions for Dr Lim to the Court of Three Judges stated:

> "This is a case that involves very complex and novel issues of law. It involves very complex and intricate facts almost none of which have been analysed or presented in comprehensible form …"

10 Even so, the AR was of the view that the factual complexity of Dr Lim's matter was not of the level as that in *Pang Ah San v Singapore Medical Council* [2014] 1 SLR 1094 ("*Pang Ah San*") or that in *Shorvon*. [note: 2]

11 The AR observed that in *Pang Ah San*, it was necessary to examine the medical procedure performed because one of the key issues of fact was whether the loop-percutaneous endoscopic gastronomy procedure performed was generally accepted by the medical profession.

12 The AR also observed that in *Shorvon*, "a thorough understanding of scientific and medical practices, methodologies, ethics …" was required as was observed by the Court of Appeal in that

case. Also several of the charges in *Shorvon* involved an examination of whether the doctor there had failed to safeguard the best interests and health of patients afflicted with Parkinson's disease by exposing them to unnecessary risks.

13 It was therefore no surprise that R&T seized on the AR's observations to argue that Dr Lim's case was not as complex as claimed by WP.

14 I am of the view that while the disputes in Dr Lim's case did not involve a consideration of a medical procedure as in *Pang Ah San*, Dr Lim was facing 94 charges whereas in *Pang Ah San*, the doctor was facing one main charge. While it is true that the 94 charges were grouped into two main categories, there were a further six sub-categories. The SMC, as the prosecution, had the burden of establishing each and every charge even though there would be some overlap for similar services. Indeed, the Court of Three Judges noted that SMC had in fact placed a detailed rendition of each charge before the DC (see *Susan Lim* at [77]) and the Court of Three Judges themselves also scrutinised all the 94 charges. Dr Lim did not concede the fact or extent of over-charging and it was only late in the day, as I shall elaborate later, that she said that she was not going to call any evidence on her behalf.

15 Furthermore, documents totalling 12,531 pages were involved for the proceedings at the inquiry stage before the two disciplinary committees. While there was overlap of documents between the SMC and Dr Lim, this case was obviously document intensive.

16 As for *Shorvon*, there were a number of charges but not close to 94 and while some factual issues there were complicated, that case was not as document intensive as Dr Lim's case. It seems to me that, bearing in mind the legal and factual issues, Dr Lim's case was more complex that Dr Shorvon's. Furthermore, Dr Shorvon did not appear or have anyone represent him to contest the SMC's case unlike Dr Lim whose solicitors vigorously contested the charges.

17 Therefore, it was no wonder and it is worth reiterating that the submissions for Dr Lim to the Court of Three Judges stated that the case involved "very complex and novel issues of law" and involved "very complex and intricate facts".

18 SMC and Dr Lim were each represented by senior counsel and each senior counsel had a team of solicitors to assist him. While R&T stressed that SMC did not obtain a certificate for two or more counsel, the complexity of the matter was still a matter to be considered.

19 For the rest of my judgment, I will first consider the work done for the inquiry before the disciplinary committees and then the work done for the appeal to the Court of Three Judges.

B/C 111/2014

Section 1

20 The number of hearing days is a guide for the court but it is only a rough guide. There were two disciplinary committees as the first one decided to recuse itself after the close of the prosecution's case in the light of an objection raised by Dr Lim which I need not elaborate on here. I will refer to the two disciplinary committees as "the First DC" and "the Second DC" respectively.

21 WP alleged that there was a total of 13.5 days of hearing before the First DC and the Second DC. R&T initially suggested that the total was 8.5 days if one were to adopt the method of counting hearing days which the SMC had used in *Pang Ah San* but, eventually, R&T proceeded on the basis of

13 days. R&T said they used 13 days as they excluded a half day when the First DC recused itself. I am of the view that that half day should be included as a start. Whether Dr Lim is liable to pay for that half day is a separate matter.

22 After the close of the prosecution's case, Dr Lim made a submission of no case to answer. Written submissions were tendered by each side. However, on 29 July 2010, after the written submissions had been tendered, the First DC decided to recuse itself in the light of an objection by Dr Lim. Thereafter, a Second DC was constituted on 14 September 2010. However, Dr Lim took up judicial review ("JR") proceedings to challenge the legality of the Second DC. Her application was heard and eventually dismissed by a single judge on 26 May 2011. Her appeal to the Court of Appeal was dismissed on 30 November 2011.

23 Thereafter, the inquiry before the Second DC was to continue. However, Dr Lim stated, through correspondence from R&T of 28 February 2012, that she was not going to call any evidence on her own behalf. Had she adduced evidence, the number of hearing days would have increased. In any event, WP had already done their getting up to establish the 94 charges and presented SMC's case. They had also prepared to cross-examine Dr Lim's witnesses until she said she was not calling any evidence. I understand from counsel that in the meantime Dr Lim decided not to pursue the argument of no case to answer, on which there was no ruling yet, since she was not going to call evidence in any event. Parties then proceeded with closing submissions.

24 The AR had used the average daily rate of hearings from the taxation of costs in *Pang Ah San* and in *Shorvon* as a guide. WP submitted that there were higher daily rates from other taxation precedents and said that it was not clear why the AR had not used those other rates. In my view, this was an unfair comment. The AR had explained that those other cases were taxed on the basis of two counsel whereas in Dr Lim's case, SMC did not obtain a certificate for two counsel. The AR had used the average daily rates in *Pang Ah San* and *Shorvon* as a comparison because in these two cases, the costs were taxed on the basis of one counsel.

25 Even then, the number of hearing days is a rough guide only as I have said. To put it another way, it is one of the factors to be considered. As already mentioned, Dr Lim's case involved 94 charges and was document intensive. Much of the factual getting up would have already been done before the first day of hearing before the First DC. Indeed, WP argued that it had to spend much time to present the facts in the form of a detailed table although R&T sought to minimise the work done by describing some of the work as a cut and paste exercise using Dr Lim's own invoices. I think that that argument was rather unkind as the work was more than just a cut and paste exercise.

26 Aside from the number of hearing days, another relevant and perhaps more useful factor, was the number of hours spent in the getting up and in submissions.

27 WP alleged that they had spent in all 1900 hours and $1,229,804 in total time costs for the inquiry before the disciplinary committees. The 1900 hours was already a reduced figure as they had given a discount to take into account the fact that there was overlap of work when one solicitor took over from another. Thereafter, they reduced the aggregate claim for the costs of the inquiry to $900,000. The breakdown is as follows:

Before the First DC	
Alvin Yeo SC	$290,000
Melanie Ho	$290,000

Before the Second DC	
Alvin Yeo SC	$224,000
Lim Wei Lee	$ 96,000
Total:	**$900,000**

28 R&T argued that the number of hours claimed by WP was excessive and should not be allowed for various reasons.

29 First, there was much overlap in the getting up on the facts. Before the hearing before the Second DC commenced, WP had already reviewed the facts twice more after the First DC had recused itself. The first time was for the JR proceedings before the single judge and the second time was for the JR proceedings before the Court of Appeal. R&T also stressed that WP had claimed to do extensive work for both JR proceedings when taxing the bills of costs for the same. These bills had been taxed before the two bills of costs for the disciplinary proceedings (*ie*, before the disciplinary committees and the Court of Three Judges) were taxed. Since SMC had already been granted quite substantial costs in the taxation of costs for the JR proceedings, this should be taken into account for the taxation of costs for the disciplinary proceedings. Yet, significantly, R&T did not allege that there had been double counting. For example, R&T did not allege that the number of hours which WP had said they had spent on the inquiry proceedings before the disciplinary committees included work done for either of the JR proceedings. Their point was that, given the familiarity with the facts, WP should not have had to incur so many hours for the inquiry proceedings.

30 Secondly, R&T argued that while they accepted that WP would still have to do some refresher work for the proceedings before the Second DC, Dr Lim should not be liable for such refresher costs which were incurred through no fault of hers. They estimated such refresher costs to be 20% of the total costs for the inquiry. I will come back to the refresher costs later.

31 Thirdly, R&T stressed that SMC was entitled to claim for costs of one counsel alone as SMC did not obtain a certificate for costs of two or more counsel. There were six solicitors on WP's team, two of whom were replaced by another two solicitors which in turn resulted in unnecessary costs being incurred as replacement solicitors would go over some of the same ground already done by those they were replacing. Furthermore, there was inadequate breakdown of the work done by the solicitors.

32 R&T argued that by including both Mr Alvin Yeo, SC ("Mr Yeo") and another solicitor in the claim for costs as set out above at [27], WP was trying to circumvent the fact that SMC was entitled to claim costs for one counsel/solicitor only. They suggested that only the time costs (and hourly rate) of Mr Yeo should be allowed.

33 According to the AR, SMC had submitted before her that it was only claiming for the costs of one counsel. At each point in time of the inquiry, the costs being claimed were with respect to a single counsel. WP had submitted that before the First DC, Mr Yeo had handled the opening statement and the preliminary arguments while Ms Melanie Ho ("Ms Ho") had led evidence for the prosecution; and before the Second DC, Mr Yeo prepared for cross-examination of Dr Lim's witnesses and presented the written submissions while Ms Lim Wei Lee drafted the submissions for the Second

DC.

34 The AR did not accept this argument for various reasons. First, such a breakdown was absent from the relevant bill of costs. Secondly, different hourly rates apply to different counsel. In the AR's view, SMC's approach had the insidious effect of making redundant the securing of a certificate for more than one counsel.

35 However, it was not disputed that even though SMC was entitled to claim costs for one counsel alone, this did not mean that one counsel must do all the work himself. For example, if another solicitor and not Mr Yeo, had spent time to prepare the table which I referred to above at [25], then the number of hours he put in and his hourly rate should be taken into account. The fact that his hourly rate is different does not preclude the claim from being made but it means that WP has to be more careful and give a more detailed breakdown. While WP did stipulate the number of hours spent by each solicitor and the hourly rates of each, WP did not specify how each solicitor had spent his or her time, for example, how much time was spent on preparing the table or doing research on a point of law. While it is true that it is not practical to go into every detail, there must be enough breakdown so that one can better gauge whether there was overlapping work and the extent of the overlap especially since the amount claimed for Section 1 was a huge sum of $900,000. For example, it did not help for WP to submit that Mr Yeo had handled the opening statement and the preliminary arguments while Ms Ho had led evidence for the prosecution before the First DC. Both of these solicitors would have had to read and study the charges and the facts although to different degrees. They would cover the same ground to some extent and the question was how much the overlap was. The same point applies in principle to the other solicitors in the team.

36 Fourthly, R&T submitted that WP had claimed to have spent even more hours for the JR proceedings before a single judge and was allowed only $230,000 for Section 1 for the relevant bill of costs. Applying that amount to the number of hours allegedly spent then, R&T submitted that even the $180,000 allowed by the AR was generous. However, R&T's argument assumed that the $230,000 which was allowed was for the entire number of hours claimed for the JR proceedings before a single judge. If the entire number of hours claimed was allowed, the amount allowed for taxation would have been much more. The fact that "only" $230,000 was allowed means that the court did not accept that the JR issues required so many hours to be put in even if that many hours were in fact spent.

37 While the JR proceedings before the single judge involved difficult legal issues as well as an understanding of the facts and the numerous charges, I am of the view that most of the factual getting up was done before the inquiry proceedings first started.

38 Furthermore for all R&T's attempts to downplay the complexity of the case and the appropriate amount of time spent, R&T chose not to say how many hours they themselves (or any other relevant firm of solicitors) had spent for the inquiry. In my view, for all the comparison that one may make with other cases, the best comparison is, *prima facie*, what one's opponent had said or done for the same case. For example, if R&T had submitted before the disciplinary committees or the Court of Three Judges that there were complex issues of fact, then it was difficult for R&T to argue otherwise when it came to taxation. Again, if R&T had spent, say, 1700 hours for the inquiry as compared with WP's claim for 1900 hours, then again it would be difficult for R&T to argue that 1900 hours was clearly excessive and to suggest a much lower figure.

39 R&T said they were not in a position to say how many hours they had spent. I do not think that this meant that they had not kept time sheets or a record of hours spent and by whom. What R&T meant was that they would prefer not to elaborate. Accordingly, they undermined the strength of their arguments.

40 I note that the second legal assessor ("the Second LA") had sent an invoice for $235,200 on the basis that he had spent 224 hours at $1,050 per hour. R&T did not dispute the amount of time spent by the Second LA. Instead, R&T's position was that the Second LA had done more work than he should have done bearing in mind the scope of his duty as a legal assessor. I will address that submission later. For the time being, the fact that the Second LA had spent 224 hours was itself also an indication that the charges raised complex issues and the inquiry was document intensive. Furthermore, even if the Second LA had done more work than he should have, there was no suggestion that he did more work than WP for the inquiry. Accordingly, his fee of $235,200 suggested that the $180,000 allowed by the AR for the inquiry was too low.

41 I am mindful that the first legal assessor ("the First LA") had sent an invoice for $52,644 but he did not elaborate on his hourly rate or how many hours he had spent. It was also not clear whether he was charging only for his attendance at the inquiry and in internal discussions with members of the First DC or he had included time spent to peruse documents.

42 Nevertheless, it was still for WP to establish its claim for $900,000.

43 In my view, notwithstanding that there were difficult and complex legal and factual issues and the various factors I have set out above, I am of the view that there is substantial overlapping of work. Again, I must emphasise that SMC is entitled to claim costs for one counsel only in so far as the inquiry itself is concerned.

44 In all the circumstances, I am of the view that an appropriate amount for Section 1 for the inquiry (before the First and Second DC) is $400,000 if there is no refresher costs.

45 As for refresher costs, R&T had submitted before the AR and the AR had accepted that Dr Lim should not be liable for refresher costs as the recusal of the First DC was through no fault of Dr Lim. However, I am of the view that that is not the point. The starting point is what order of costs was made by the Second DC. Its costs order was as follows:

> That the [Respondent] pay to the [Applicant] the costs and expenses of and incidental to these disciplinary proceedings, including the (First DC), such costs to include the fees, disbursements and other expenses of counsel for the [Applicant] and the fees, disbursements and other expenses of the legal assessor appointed to this DC, pursuant to section 45(4) read with section 45(7) of the Act.

46 If this order meant that Dr Lim was liable for all costs of the inquiry proceedings, then it was too late for Dr Lim to argue that she should not be liable for refresher costs or any other fees or costs associated with the recusal of the First DC. Likewise, if the order meant that she was not liable, then it did not matter whether she ought to be liable.

47 It is true that the order did not explicitly say that Dr Lim was liable for refresher costs. However, that did not necessarily mean that the order excluded such costs. R&T must have realised this and that is why their argument was not that that order had excluded such costs but that Dr Lim should not be liable for such costs. Implicit in that argument is an acknowledgement that the order did include such costs but that Dr Lim should not have been made liable for the same.

48 In any event, I am of the view that the order means that Dr Lim is liable for all costs of the inquiry before the First DC and the Second DC. This includes refresher costs as well as the half day during which the First DC recused itself. While there may be some merit in the argument that Dr Lim should not have been made liable for refresher costs, I am afraid that it is too late for her to say so

now. Dr Lim should have made the point to the Second DC after the Second DC had made the costs order. If there was any ambiguity, she should have sought a clarification. She took neither of these steps. Furthermore, the costs order was part of Dr Lim's overall appeal to the Court of Three Judges. Yet no arguments were made for her in that forum in respect of the costs order. R&T suggested to me that that was because the costs order would follow the outcome of the appeal but that was not necessarily the case since it is her own case that, whatever the substantive outcome, she should not be liable for refresher costs.

49 Just as SMC is constrained by the fact that there is no certificate for costs of two or more counsel for the inquiry proceedings, Dr Lim is also constrained by the costs order.

50 In the circumstances, Dr Lim is liable for refresher costs. Bearing in mind the number of occasions which WP had to go through the facts although not necessarily to the same extent each time, I am of the view that $20,000 is a fair sum for refresher costs for one counsel.

51 Therefore, for Section 1 of B/C 111 of 2014, I allow $400,000 + $20,000 = $420,000, excluding GST.

Section 3

52 I will next deal with some disputed items under Section 3 before I come back to Section 2.

53 WP had initially wanted a review on the cost of each ring binder but this was eventually not pursued. Four other items under Section 3 remained in dispute.

54 The first two concerned the fees of the legal assessors and the next two concerned the fees of two medical experts.

55 Before I continue, I should mention that before the AR, WP submitted that the assessors' fees are not subject to taxation and that therefore the SMC was entitled to claim full reimbursement of the assessors' fees. [note: 3] WP also referred to s 61(3) of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("MRA") and observed that there is no qualification that the assessors' fees have to be reasonable. However, WP did also try to persuade the AR that the fees of the assessors were in any event reasonable.

56 Section 61(3) MRA states:

> The Medical Council may pay to persons appointed to act as assessors such remuneration, to be paid as part of the expenses of the Medical Council, as the Medical Council may determine.

57 The AR was of the view that the criterion of reasonableness must apply to the taxation of fees of legal assessors as it applies to the taxation of expert's fees. Just because such fees are incurred as disbursements, it does not mean that the requirement of reasonableness has no application. [note: 4] I agree. While it is for the SMC to pay such remuneration to a legal assessor as it may determine, this does not mean that the doctor in question has to reimburse the SMC in full. Otherwise, it will be tantamount to giving the SMC or the legal assessor a blank cheque.

58 In the application for review before me, WP no longer took the position that SMC did not have to establish that the quantum claimed by each legal assessor is reasonable. Accordingly, WP sought to persuade me that the fees of both legal assessors were reasonable.

59 The First LA was Mr Giam Chin Toon, SC. He charged $49,200. The AR awarded $45,000 after considering the fees of legal assessors claimed in other cases.

60 R&T submitted that SMC should not be allowed to claim against Dr Lim for the time spent by the First LA outside of the statutory scope of work for a legal assessor. SMC could only claim for his time in attending hearings and not for discussion with members of the First DC.

61 As it was, the invoice of the First LA was unfortunately short on elaboration. It contained two lines stating that it was for professional services rendered by him as legal assessor to the DC on certain specified dates which was the only elaboration given.

62 WP had sought to explain how the First LA had spent his time but R&T pointed out that their explanations were not consistent. In any event, R&T's point was that not all the time of the First LA was spent at hearings. Some were allegedly spent on discussions with members of the First DC. Hence, R&T's submission was that SMC could not claim for the time of the First LA in attending discussions with members of the First DC. This was said to be outside the statutory scope of a legal assessor. R&T submitted that such meetings could not have been for the legitimate purpose of advising the First DC on questions of law arising from the inquiry. If such advice had been given, Dr Lim would have been informed as required under the Medical Registration Regulations (Cap 174, Rg 1, 2000 Rev Ed).

63 I am of the view that R&T's submission was based on a very restrictive view of the scope of a legal assessor's duty. It is true that a legal assessor under those regulations had certain specific duties, that is:

(a) to advise a DC only on questions of law arising from the disciplinary proceedings; and

(b) to inform the DC of any irregularity in the conduct of such proceedings and advise them of his own motion where it appears that, but for such advice, there is a possibility of a mistake of law being made.

However, I am of the view that the above does not mean that the legal assessor is to attend only the formal hearings and not any internal meetings with the DC.

64 I do not think it is in the interest of any medical practitioner who is facing disciplinary proceedings or the SMC or the public to try and strait-jacket the role of a legal assessor although there may be arguments that it is for the DC and not the legal assessor to make the decision. I am of the view that the scheme under the regulations does not prohibit the legal assessor from attending internal meetings of a DC to ensure that the DC does not run afoul of any substantive, procedural or evidentiary law (see also *Medical Council of Hong Kong v Helen Chan* [2010] HKCU 1041 ("*Helen Chan*") at [33]). I also understand that new regulations have been made and they come into operation on 1 December 2010. Such regulations suggest that a legal assessor may attend internal meetings as he may be present during deliberations of a Disciplinary Tribunal. I would add that under the new regulations, the relevant body is described as a "Disciplinary Tribunal" and not a "Disciplinary Committee" although Reg 67 (which specifies the duties of a legal assessor) refers to a Disciplinary Tribunal along with other bodies therein as "the Committee" for convenience.

65 R&T's second reason to object to the quantum of fees of the First LA was that no hearings took place on 4, 5 and 8 February 2010 which were three dates mentioned in the invoice of the First LA. However, this did not mean that the First LA was back at his office. It appears to be accepted that he did go to the venue where the hearings were to take place but there was no formal hearing.

Accordingly, the First LA should be entitled to claim for his attendance there in principle.

66 On the other hand, I agree that it is not clear how many hours the First LA was claiming for each of the days in question or what his hourly rate was although one could infer his hourly rate from a process of deduction to be much below that of the Second LA which I shall come to later.

67 It appears that SMC or WP had simply accepted the invoice of the First LA without requiring an elaboration. This may be understandable if the amount claimed is easily justifiable based on information known to all parties. Otherwise, elaboration should be sought. Nevertheless, it seems to me that after taking into account the factors mentioned above in the discussion of the SMC's costs for the inquiry and the scope of a legal assessor's role, the overall fee of the First LA is reasonable. I am of the view that I should not reduce the amount claimed by him and I will allow it in full, *ie*, $49,200.

68 I now come to the fees of the Second LA Mr Vinodh Coomaraswamy, SC. His invoice was for $235,200 for his fees and $435.40 for his disbursements. His fees were based on 224 hours at an hourly rate of $1,050 per hour. The invoice covered a period of about 23 months from 27 August 2010 to 17 July 2012. Unlike the bill from the First LA, the bill from the Second LA did set out the numbers of hours spent and the hourly rate. It also had more elaboration on the work done, *ie*:

(a) attending nine pre-inquiry conferences;

(b) attending five inquiry hearings on 21 to 27 May 2012, 21 June 2012 and 17 July 2012;

(c) attending internal meetings with DC members; and

(d) reviewing inquiry submissions.

69 There was also a general clause in the bill referring to the perusing and reviewing of documents, correspondence, telephone calls, conducting research and all other incidental work.

70 The AR allowed only $22,000 for the fees of the Second LA. Nothing was said about his disbursements which may have been overlooked.

71 The AR noted that the bill of the Second LA was for work done for a period commencing 27 August 2010 to 17 July 2012. The date of 27 August 2010 was before the date when the Second DC was constituted, *ie*, 14 September 2010. This was a point which R&T also made. However, it was not suggested that the date of 27 August 2010 was a false one or was inserted by error. According to WP, the Second LA had perhaps been informed of his appointment (and would have started work) before the Second DC was constituted. If so, then the work he did would have been done in any event whether before or after the Second DC was constituted. I do not think that his fees should be reduced because of a technicality. Having said that, I am of the view that this scenario should not be repeated. Steps should be taken by the relevant authority to ensure that a legal assessor is not appointed until a DC is appointed.

72 The AR doubted whether the Second LA had drafted the grounds of decision of the Second DC. This was an explanation given by WP on instructions when elaborating on the work done by the Second LA. However, the AR noted that his invoice did not mention that he had drafted the grounds of decision. I also doubt if the Second LA had done such work for the same reason given by the AR. WP did not say that they had personal knowledge that the Second LA had carried out such work. In the circumstances, it is not necessary for me to decide whether the drafting of the grounds of

decision is outside the scope of work of a legal assessor, a point taken by R&T. In Hong Kong, the position appears to be that such work is within the scope of work of a legal assessor (see *Helen Chan*). In Singapore, new regulations have clarified that a legal assessor may assist to draft the grounds of decision but not to participate in or influence the decision of a DC.

73 The AR also noted that the Second LA was charging $1,050 per hour. This appeared high when compared with the approximate hourly rate of $570 per hour of the First LA which the AR had deduced. However, the comparison did not necessarily mean that the hourly rate of the Second LA was excessive. On the contrary, it may be that the hourly rate of the First LA was rather low. I am of the view that that was the case and it may be that the First LA had given a discount for work done as a legal assessor. However, the Second LA was not obliged to give a discount and R&T did not suggest that he must. Instead R&T argued that a legal assessor has a limited role and therefore his charges should not be as if he were acting as counsel.

74 I have already stated above that the scope of work a legal assessor may undertake even under the relevant regulations (before the current ones) is not as limited as R&T suggests. Nevertheless, I agree that a legal assessor does not have to do as much work as counsel from either the prosecution or the defence. For example, he does not have to do as much getting up on the facts or on the law as counsel would have to. However, that would already be reflected in the number of hours he puts in. It does not mean that the hourly rate of $1,050 is excessive.

75 In my view that hourly rate is reasonable given the complexities of the case which I will not repeat.

76 The next question then is whether the number of hours that the Second LA had spent was reasonable in the circumstances. The AR was of the view that the Second LA would have spent no more than 32 hours for the nine pre-inquiry conferences and five hearings for the inquiry proper as stated in the invoice. This would leave a balance of about 180 hours. I believe that since the Second LA had spent 224 hours, the remaining number of hours should be 192 hours (and not 180 hours). The AR noted that it may be that the bulk of his time was spent on internal meetings with the DC but there was no elaboration on the number of meetings and the number of hours spent. She thought that without such information, it would be difficult to say whether any of those internal meetings may properly be treated as part of the scope of his work. [note: 5]

77 With respect, I do not see how the number of meetings or the number of hours spent in each meeting will assist the court to determine whether the meetings were within the scope of the Second LA's work. It seems to me that the question is whether he is allowed to attend internal meetings or not. I have already said above that a legal assessor may attend internal meetings of the DC even before the new regulations were made.

78 Furthermore, I am of the view that the 192 hours were probably not spent only on internal meetings but also on reviewing documents such as the transcripts of proceedings before the First DC and the various submissions. This is within the scope of a work of a legal assessor.

79 This brings me to the next point which arises from the recusal of the First DC.

80 The AR was of the view that because the need for the Second LA arose from the recusal of the First DC, Dr Lim should not be made to bear the full brunt of the recusal by paying for all 224 hours of the Second LA at $1,050 per hour. [note: 6]

81 This observation raises two sub-points. First, that it was not fair for Dr Lim to have to pay the

fees of a legal assessor based on a rate higher than the rate of the First LA. The AR's reasoning was that if the First DC had not recused itself, the First LA would have continued. That may well be the case but one did not know then whether the Second LA's hourly rate would be higher or lower or the same as that of the First LA. What if his hourly rate was lower? Should Dr Lim not have the benefit of the lower hourly rate? The answer is obvious. Whoever has to pay has to take the risk of the hourly rate being higher.

82 The second sub-point is that the Second LA's work would overlap with work already done by the First LA. For example, he would have to review documents which the First LA had already done. Even his review of the transcripts of proceedings before the First DC would be without the benefit of his personal attendance at the hearings for which the First LA would have charged. However, here again, the question is not whether Dr Lim should be liable for the overlap. As discussed above, under the relevant costs order, she is liable for all costs associated with the recusal of the First DC.

83 Finally, the question is whether the $235,200 is a reasonable sum incurred by the Second LA. I agree that it appears excessive when compared with the fees of other legal assessors in past cases but that is not the point. As I have said, I do not think his hourly rate of $1,050 per hour is unreasonable in view of the complexities in the case. This brings us to the number of hours he spent on internal meetings and reviewing documents. I have already mentioned the complexities and the document intensive nature of the dispute. In addition, the Second LA would have been aware of the recusal of the First DC. He (and the Second DC) would have had to be extra careful to ensure that the Second DC did not trip up over any point.

84 In the circumstances, I am of the view that the 224 hours is reasonable and I allow his fees of $235,200. As there was no dispute on his disbursements, I will allow them at $435.40.

85 I now come to the fees of the two medical experts. The first expert was Dr Tan Yew Oo ("Dr Tan"). His fees were $12,145. The AR allowed $9,000.

86 Dr Tan gave some breakdown of the work he did, the time spent and his charges. From the breakdown, one could deduce the hourly rate he was applying. For perusing documents and writing his expert report and attending discussions with counsel, he charged $6,500 for 13 hours, *ie*, $500 per hour. For appearing at a hearing which was cancelled, he charged $1,000 for two hours, *ie*, $500 per hour. For waiting time, he charged $400 for two hours, *ie*, $200 per hour. For being questioned while on the witness stand, he charged $4,200 for six hours, *ie*, $700 per hour.

87 R&T submitted that Dr Tan's own charges for an extended medical consultation was $240-$320 per hour if calculated on his published charges of $60-$80 for each block of 15 minutes of consultation. Dr Tan's charge for writing a specialised medical report was $200-$500 per report. Therefore, as Dr Tan was engaged in rendering a subjective opinion on what he would bill for certain medical services, his work was non-medical. Therefore his hourly rate should be less than what he would charge for medical work. R&T submitted that Dr Tan's non-medical role was relevant to what he was entitled to charge, citing the judgment of the Court of Three Judges for the appeal by Dr Lim at [82] and [104].

88 The AR noted that Dr Tan was not charging for his services as a medical specialist but she did not say that this necessarily meant that he must charge an hourly rate less than his published rates for consultation or writing a report. Based on taxing precedents which I will come back to, she reduced Dr Tan's fees.

89 I am of the view that while Dr Tan was not exercising his specialist skills, this does not

necessarily mean that he must charge less than his fees for consultation or for writing a specialist report. Reading documents and writing a report for litigation is no easy task. Dr Tan would have been outside his usual range of work and would realise the importance of the litigation. The responsibility he was undertaking was important. The effort he would have had to put in would be more than for his usual range of work. In the circumstances, $500 per hour seems reasonable to me. In fact he even charged only $200 per hour for waiting time. As for his charge of $700 per hour while being on the witness stand, the time spent then would be the most intensive for him whether he was being questioned on a medical procedure or billing amounts. In my view a charge of $700 per hour seemed reasonable too.

90 What then of the taxing precedents? I will come to three precedents which the AR referred to.

91 The first was the case concerning Dr Eric Gan Keng Seng. The dispute in that case involved a procedure used to remove a stone in the common bile duct. The prosecution's expert's fees were allowed at $8,050 (on a 70% basis). However, based on WP's table at Annex D of WP's submissions, it seems that that expert claimed $11,500 in all. This comprised $500 for one hour's work for preparing a report and $11,000 for attendance at an inquiry totalling 22 hours. The latter also worked out to $500 per hour with no differentiation between waiting time and time on the witness stand. I am of the view that this precedent did not suggest that Dr Tan's hourly rates were excessive unless a distinction was to be drawn between the specialist evidence that was being given in that case and the evidence which Dr Tan was giving about reasonable amounts for billing of certain services. For reasons mentioned above, I do not draw such a distinction. The work done in either case would be for litigation. One might even argue that giving evidence on a familiar area or topic is less difficult than on a less familiar topic.

92 The second precedent was the case concerning A/Prof Eu Kong Weng where the dispute arose out of a procedure performed on a patient without informing him of other alternatives and explaining the risks of possible complications to him. The sum claimed was $23,500 as a lump sum and 70% of that sum was allowed at $16,450. No hourly rate was given.

93 The third precedent was the case concerning Dr Wong Yoke Meng. There the dispute was over the application of certain procedures which were not medically proven and outside the respondent's registered speciality. The total sum claimed by the medical experts was $7,900 but there were no details of the hourly rates.

94 It seemed to me that the second and third precedents were not helpful without the hourly rates although the AR relied on the three precedents and drew a distinction between evidence on medical procedures or services, on the one hand, and evidence on the reasonableness of fees on the other hand, with the former being more "valuable" evidence than the latter. As mentioned above, I do not think that such a distinction should be drawn.

95 However, R&T relied on another taxing precedent. They submitted that in Dr Pang Ah San's case, the expert's fee was $7,000 (it was actually $6,542 if GST is not yet taken into account as in the other precedents) and his report was 12 pages long with seven pieces of medical literature annexed. It was an extremely complex and technical case and his report was relied on heavily by the DC. I note that the report there was seven pages long with an eighth page containing diagrams excluding the medical literature. Dr Tan's report was slightly over 11 pages. While the issue of the reasonableness of Dr Lim's bills was not medically challenging, it was still factually intensive and complex. As Dr Tan said at para 16 of his report, "I spent a lot of time trying to understand the multiple invoices submitted by Dr Lim and her related companies for the various services provided. I find it extremely challenging to understand the invoices and I like to highlight several instances of

"unusual charges" by Dr Lim which appear to be inordinately high and disproportionate to the services provided." Dr Tan then proceeded to list out these unusual charges. Furthermore, I do not know how much overall time the expert in Dr Pang Ah San's case had spent.

96 In the circumstances, I consider the hourly rates of Dr Tan to be reasonable and the 23 hours he spent (including two hours of waiting time) to be reasonable. I allow his fees of $12,145.

97 I now come to the fees of Dr Hong Ga Sze ("Dr Hong") who was also a medical expert giving evidence on the reasonableness of Dr Lim's fees. He claimed $40,000 as his fees. His tax invoice gave the following breakdown without stating the number of hours he had spent:

(a)	Expert evidence on 8 April 2010	$14,000
(b)	Standby for trial 4 February 2010	$6,000
(c)	Trial preparation : 18 March 2009 to 3 February 2010 for pre-trial discussion with WP	$14,000
(d)	Preparation of trial report	$6,000

The AR allowed $5,000 for Dr Hong's fees.

98 Without the number of hours which Dr Hong had claimed to have spent, it was difficult to say whether his fees were reasonable or not. Nevertheless, I considered his report. It was four pages long and was less detailed than Dr Tan's. However, WP said that Dr Hong spent five to seven hours to prepare his report based on a cross-examination of Dr Hong. Perhaps this included time to peruse documents for which Dr Tan spent six hours. It seemed to me that he had spent less time than Dr Tan to prepare his report and yet he was claiming $6,000 to prepare his report compared with Dr Tan's $1,000 for his own report.

99 Secondly, R&T submitted that Dr Hong's oral testimony was just under five hours whereas Dr Tan's was just over six hours. Dr Tan was more senior than Dr Hong in terms of number of years after graduation and had more years in clinical experience than Dr Hong.

100 WP submitted that perhaps the reason for the apparent discrepancy between Dr Tan's charges and Dr Hong's was that Dr Tan was charging a lower rate out of goodwill. WP submitted that the expert in A/Prof Eu Kong Weng charged a lump sum of $23,500 as compared with Dr Hong's $34,000 and the former case was shorter in duration and involved less documents. I should mention that Dr Hong's total charges, excluding GST, was $40,000 and not $34,000 as WP had said.

101 It seems to me that the best comparison is the fee charged by Dr Tan. Where Dr Tan's fee for the inquiry was based on a rate of $500 or more per hour, such a rate would already be higher than his consultation rate. Therefore, it was difficult to conclude that Dr Tan was charging a lower rate for the inquiry than he was entitled to do. Even if Dr Tan was charging a lower rate, how much higher should Dr Hong be entitled to charge? Furthermore, Dr Hong did not say how many hours he had spent in total. The only indication was from R&T who said that his oral testimony was of a slightly shorter duration than Dr Tan (see [99] above) for which he charged $14,000 compared to Dr Tan's $4,200 and Dr Tan was already charging $700 per hour for the time spent on the witness stand. Also, as mentioned above, Dr Tan's report was more detailed than Dr Hong's. In the circumstances, Dr Hong's invoice for $40,000 appears excessive and should be less than Dr Tan's although the $5,000 allowed by the AR for Dr Hong appears low. I will allow $8,000 for Dr Hong's fees.

102 I understand that Dr Hong's fees are the subject of a complaint to the SMC. R&T had therefore proposed that Dr Hong's fees be excluded from BC 111/2014 but WP did not agree. In the circumstances, I add that the view I have expressed on his fees is based on the information that I have and is not binding on the tribunal that is considering the complaint.

103 I think SMC or its solicitors should alert legal assessors and medical experts to provide elaboration in their invoices of the work done and should provide some guidance on what details should be included and the nature of the breakdown. SMC or its solicitors should also be prepared to seek elaboration where necessary and not assume that invoices of assessors or experts will be paid as presented.

104 For the avoidance of doubt, the amounts I have allowed for each of the legal assessors and the two medical experts do not include GST which may be included where applicable.

Section 2

105 I will hear counsel on Section 2, which concerns the costs for the taxation of BC 111/2014, now that they are aware of my decision on the disputed items in Sections 1 and 3.

B/C 110/2014

106 I do not intend to repeat what I have said in respect of various factors which I considered for B/C 111/2014.

107 Unlike the bill of costs for the appeal to the Court of Appeal in respect of the JR proceedings, WP was claiming for the costs of two counsel for the hearing before the Court of Three Judges in B/C 110/2014. This it was entitled to do.

108 First, WP stressed that the hearing before the Court of Three Judges lasted five hours in contrast to typical hearings of between 1.5 to three hours.

109 Secondly, at the request of Dr Lim's counsel, the Court had directed that SMC's and Dr Lim's solicitors file submissions and reply submissions respectively after the hearing.

110 Thirdly, WP were directed by the Court to provide, within one week, references to any other invoice which Dr Lim had issued covering the same treatment in respect of the charges relating to Dr Lim's pre-2007 invoices involving services of other doctors. This was done and a table of 232 pages was prepared within the week.

111 WP stated that 292 hours were spent by seven solicitors. WP claimed a total of $150,000 excluding GST (*ie*, $90,000 for work done by Mr Yeo and $60,000 for work done by Ms Ho). Presumably, WP was trying to claim for work done by a notional two counsel.

112 I have taken into account the extra work done even after the hearing before the Court of Three Judges.

113 I will allow WP $100,000 for Section 1. For the avoidance of doubt, this sum excludes GST.

Costs for the reviews

114 I will also hear counsel on costs for the reviews of the Bills.

[note: 1] Notes of Evidence ("NE") 4/9/2014 at [12]

[note: 2] NE 4/9/2014 at [12]

[note: 3] NE 21/7/2014 p 5 lines 23-24

[note: 4] NE 4/9/2014 pp 28-29 at [59]

[note: 5] NE 4/9/2014 at [72]

[note: 6] NE 4/9/2014 at [74]