IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 7

Originating Application No 2 of 2022

Between

The Law Society of Singapore

… *Applicant*

And

Syn Kok Kay

… *Respondent*

JUDGMENT

[Legal Profession — Disciplinary proceedings]

Law Society of Singapore
v
Syn Kok Kay

[2023] SGHC 7

Court of Three Judges — Originating Application No 2 of 2022
Sundaresh Menon CJ, Tay Yong Kwang JCA and Steven Chong JCA
11 October 2022

10 January 2023 Judgment reserved.

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 This is an application by the Law Society of Singapore ("the Law Society") for the respondent, Mr Syn Kok Kay, to be sanctioned under s 83(1) of the Legal Profession Act 1966 (2020 Rev Ed) ("LPA"), in respect of:

(a) his overcharging of a client, by charging $1,340,000 for work which was taxed at $288,000; and

(b) his non-compliance with an order of court, in failing to deliver a bill of costs for taxation for more than a year without just cause.

2 Having heard the parties and having considered their submissions, we find that there is due cause for the respondent to be sanctioned and that the appropriate sanction is a term of suspension of three years and nine months.

3 This case offers a timely opportunity for this court to consider a number of issues:

(a) the consolidation and elaboration of the principles relevant to the overcharging of solicitor's fees and the updating of the relevant precedents, which were decided under the repealed Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) (the "PCR 2000");

(b) the considerations underlying the sanction of a solicitor for non-compliance with a court order; and

(c) whether a period of suspension from practice for a bankrupt solicitor should commence immediately, or upon the discharge of the bankruptcy.

Background

Matters leading up to the Disciplinary Tribunal's hearing

4 The respondent is a solicitor of 29 years' standing, having been called to the Singapore Bar on 22 March 1993. At all material times, he was the sole proprietor of Patrick Chin Syn & Co.

5 In or around 2015, the respondent was engaged by JWR Pte Ltd ("JWR") to sue Mr Edmond Pereira ("Mr Pereira") and Edmond Pereira Law Corporation in HC/S 992/2015 ("Suit 992") for professional negligence relating to a previous suit in which Mr Pereira had represented JWR. The amount claimed against Mr Pereira was $8.9bn. Suit 992 was dismissed by the High Court in May 2019.

6 For his services in Suit 992, the respondent charged JWR a total of $1,364,089.80, comprising $24,089.80 in disbursements and $1,340,000 in professional fees. Bills were rendered on a regular, approximately monthly basis to JWR over a period from December 2015 to April 2019. Almost invariably, the bills relating to professional fees were not itemised, and comprised only round dollar figures which were merely described as being charged "[t]o account for … further costs". Nevertheless, JWR paid these disbursements and fees in full.

7 Subsequently, JWR filed HC/OS 989/2019 to seek an order to tax the rendered bills. On 24 October 2019, Tan Siong Thye J ordered taxation of the professional fees, and the respondent was ordered to deliver a bill of costs within 14 days (*ie*, by 7 November 2019) (the "Taxation Order") (see *JWR Pte Ltd v Syn Kok Kay (trading as Patrick Chin Syn & Co)* [2019] SGHC 253).

8 The respondent failed to do so, instead he filed an appeal against Tan J's decision on 8 November 2019. This appeal was dismissed by the Court of Appeal on 9 January 2020 for want of leave to appeal. A request by the respondent on 16 January 2020 to make further arguments was denied on 30 January 2020.

9 Still, the respondent did not file his bill of costs until 18 November 2020 – more than a year after the deadline of 7 November 2019 stipulated by Tan J. This was followed by an amended, more detailed bill of costs on 5 February 2021.

10 At the taxation hearing before Assistant Registrar Crystal Tan on 9 February 2021, the costs for work done other than for taxation were taxed down to $288,000 from $1,340,000. Given that JWR had paid the fees in full

previously, the respondent was to refund the difference of $1,052,000. The respondent's application for a review of AR Tan's decision was dismissed by Tan J on 12 April 2021.

11 To date, the respondent has yet to return the $1,052,000. To enforce the repayment of this sum, JWR served the respondent with a statutory demand on 2 June 2021. After failing to reach a satisfactory compromise, JWR applied for a bankruptcy order against the respondent on 30 July 2021. The respondent was adjudged bankrupt on 30 September 2021, and has yet to discharge his bankruptcy.

The hearing and the Disciplinary Tribunal's decision

12 From this background, arising out of a complaint made by JWR, the Law Society formulated and proceeded with three charges against the respondent. Summarised, these are:

(a) The "First Charge": that the respondent overcharged JWR by charging $1,340,000 for work taxed at $288,000, breaching r 17(7) read with r 17(8) of the Legal Profession (Professional Conduct) Rules 2015 ("PCR 2015") and thereby being guilty of improper conduct under s 83(2)(*b*) of the LPA.

(b) The "Second Charge": that the respondent failed to comply with the Taxation Order within the stipulated time frame, and thereby amounting to misconduct unbefitting an advocate or solicitor under s 83(2)(*h*) of the LPA.

(c) The "Third Charge": that the respondent retained the sum of $1,052,000, being the difference between the sum of $1,340,000

charged and taxed sum of $288,000, without proper basis, and thereby amounting to misconduct unbefitting an advocate or solicitor under s 83(2)(*h*) of the LPA.

13 The legislation referred to in the charges is set out below:

ss 83(2)(*b*) and 83(2)(*h*) of the LPA

83.— …

…

(2) Subject to subsection (7), 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 or her professional duty or guilty of such a breach of any of the following as amounts to improper conduct or practice as an advocate and solicitor:

(i) any usage or rule of conduct made by the Professional Conduct Council under section 71 or by the Council under the provisions of this Act;

(ii) Part 5A or any rules made under section 70H;

(iii) any rules made under section 36M(2)(*r*);

…

(*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;

…

rr 17(7) and 17(8) of the PCR 2015

17.— …

…

(7) A legal practitioner must not charge any fee or disbursements, or render a bill (whether or not subject to assessment) for an amount, which constitutes overcharging,

> even if there is a fee agreement that permits the charging of the fee, disbursements or amount.
>
> (8) For the purposes of paragraph (7), there is overcharging if a reasonable legal practitioner cannot in good faith charge the fee, disbursements or amount, taking into account all of the following matters:
>
> (*a*) the legal practitioner's standing and experience;
>
> (*b*) the nature of the legal work concerned;
>
> (*c*) the time necessary to undertake the legal work;
>
> (*d*) the instructions and requirements of the client concerned;
>
> (*e*) any other relevant circumstances.

14 The respondent pleaded guilty to all three charges. In *The Law Society of Singapore v Syn Kok Kay* [2022] SGDT 10 (the "Report"), the Disciplinary Tribunal found that there was cause of sufficient gravity for referral to the Court of Three Judges in respect of the First Charge and the Second Charge:

> (a) In respect of the First Charge, the Disciplinary Tribunal considered that, notwithstanding the agreed position that there was no fraud or dishonesty, there was a *prima facie* basis to find that the respondent had acted unethically in presenting bills which were far in excess of what he should have reasonably charged (at [20] of the Report).
>
> (b) In respect of the Second Charge, the respondent attributed the delay to his unfamiliarity with taxation proceedings and his appeal against the Taxation Order. The Disciplinary Tribunal considered that his incompetence, even if accepted at face value, did not reduce the gravity of his conduct, which lay in his failure to comply with the Taxation Order and the prejudice it caused JWR by delaying its recovery of the excess fees (at [23] of the Report).

15 As for the Third Charge, it was the respondent's position before the Disciplinary Tribunal that he was unable to make repayment at the material time. The Law Society did not dispute this position. However, it argued that the respondent's ability to make repayment was irrelevant to the charge as it was his legal obligation to do so. Further, it noted that these facts were not within its knowledge, and that it was not for the Law Society to speculate. The Disciplinary Tribunal ultimately took the view that the respondent's failure to pay was "due to his impecuniosity when his obligation to repay crystallised", which alone did not present a *prima facie* case of due cause for disciplinary action. Consequently, the Disciplinary Tribunal decided not to refer the Third Charge to the Court of Three Judges, but to reprimand the respondent instead (at [29]–[30] of the Report).

The present application

16 The Law Society proceeded to file the present application for the respondent to show cause, in respect of the First and Second Charges, as to why he should not be made to suffer sanction under s 83(1) of the LPA. It is the Law Society's position that the overall sanction that should be imposed is a term of two years' suspension, with immediate effect.

The issues in this application

17 The following questions are to be answered in relation to each charge:

(a) Is there due cause for the respondent to be sanctioned under s 83(1) of the LPA?

(b) If so, what is the appropriate sanction?

18 Further, if we find that a term of suspension is warranted, we must consider the effect the respondent's undischarged bankruptcy has on that term of suspension.

19 Finally, the consideration of whether due cause has been made out in respect of the respondent's overcharging and his non-compliance with an order of court provides an opportunity for a more comprehensive review of the applicable principles underlying these types of misconduct.

The First Charge

Is there due cause for sanction?

20 We begin with determining whether there is due cause for the respondent to be sanctioned for the First Charge. This in turn entails an examination of the following questions:

(a) Did the respondent – in breach of r 17(7) of the PCR 2015 – charge a fee constituting overcharging as defined in r 17(8) of the PCR 2015?

(b) If so, does this breach constitute due cause for him to be sanctioned under s 83(1) of the LPA?

The test for overcharging and whether there was overcharging

21 In respect of the first question, the test for overcharging is an objective one, as held in *Law Society of Singapore v Low Yong Sen* [2009] 1 SLR(R) 802 ("*Low Yong Sen*") (at [38]):

> The test [for overcharging] is an objective one as determined by his peers of integrity and reasonable competence, having regard

> to the nature of the work done (contentious or otherwise) and any prior agreement between the parties.

22 Two additional observations may be made in relation to this test. First, under the PCR 2015, r 17(8) defines overcharging as the act of charging a fee which a reasonable legal practitioner could not in good faith have charged. Notably, the factors which are to be considered in this inquiry centre around the work undertaken (as well as the standing and experience of the legal practitioner). A central point of reference in determining whether a solicitor has overcharged a client is therefore the fee which would reasonably have been charged. As observed in *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184 ("*Andre Arul*") at [41], "taxation is the most objective and conclusive way of determining the amount of fees a solicitor is entitled to". However, it is not the case that a solicitor will be judged to have overcharged whenever the taxed amount is less than the rendered bill. The crucial question is whether the *extent of the excess* was such that it could not have been charged "in good faith" by a reasonable legal practitioner, per r 17(8).

23 The second observation has to do with *Low Yong Sen*'s acceptance of prior agreements between the parties as a relevant consideration in the determination of whether a solicitor has overcharged. We note that *Low Yong Sen* was decided when the PCR 2000 was in force, under which the prohibition against overcharging, as set out in r 38, did not explicitly address how a prior fee agreement should be treated:

> **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.

24 Under the PCR 2015, however, r 17(7) provides that a legal practitioner must not overcharge "even if there is a fee agreement that permits the charging of the fee, disbursements, or amount". This is not an issue squarely before us, as there is no indication that any prior fee agreement was actually reached between the respondent and JWR. However, preliminarily, it appears to us that r 17(7) of the PCR 2015 does indicate that a prior fee agreement between the parties does not necessarily preclude a finding of overcharging.

25 In the present case, the respondent charged $1,340,000 for his work, which was eventually taxed to be worth $288,000. The Disciplinary Tribunal considered the respondent's charges to be far in excess of and disproportionate to what he should have reasonably charged. Before us, the respondent accepts that he overcharged JWR. Having reviewed the materials placed before us and bearing in mind the extent of the excess, we agree that the respondent could not have charged what he did in good faith and had therefore overcharged JWR within the meaning of overcharging under r 17(8) of the PCR 2015.

Due cause for sanction and the seriousness of overcharging

26 The next question is whether the threshold of "due cause" has been crossed. It has been noted that "not every instance of overcharging would constitute grossly improper conduct": *Low Yong Sen* at [25]. While this relates to the "grossly improper conduct" limb of s 83(2)(*b*) of the LPA, it may equally be said that not every instance of overcharging under r 17(7) would satisfy the other limb under s 83(2)(*b*) of "improper conduct or practice as an advocate and solicitor". Otherwise, every instance of overcharging – even minor ones – would constitute due cause under s 83(2), and would have to be referred by Disciplinary Tribunals to the Court of Three Judges. This would be entirely inimical to the purpose of Disciplinary Tribunals as "filter[s] … ensuring that

only the most serious complaints are referred" (see *Law Society of Singapore v Jasmine Gowrimani d/o Daniel* [2010] 3 SLR 390 at [28]).

27 In other words, only sufficiently serious instances of overcharging will be deemed to constitute due cause for sanction. The precedents in this area have considered a number of factors in assessing the seriousness of overcharging, though none has examined these factors in a cohesive framework. We shall elaborate on each of these factors, before synthesising them into a consolidated approach.

Factors determining the seriousness of overcharging

28 The first point of reference is the extent of overcharging. As noted by this court in *Low Yong Sen* at [37], "the greater the amount of overcharging, the more seriously the misconduct will be viewed". Why this is the case is clear enough. A solicitor has a duty to charge fairly. If he fails in this duty, he should be held accountable for the extent of his failure. Such failure is not only detrimental to the interests of the solicitor's client, but is also liable to "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": *Andre Arul* at [31]. The greater the overcharging, the greater these negative consequences. This is not controversial.

29 This does, however, raise the question of what "greater" overcharging refers to. Should the court consider the overcharge in absolute or relative terms? The reference to the "amount of overcharging" in *Low Yong Sen* suggests that reference should be taken from the absolute quantum of the overcharge, *ie*, the difference between the amount charged and the amount which should reasonably have been charged. This is a factor which the court certainly should

consider. The quantum of the overcharge is a measure of both the detriment suffered by the client and the extent to which the solicitor has improperly enriched himself. Further, a lower quantum of overcharge would be a reliable indicator that the offence may not warrant referral to the Court of Three Judges, and may instead be dealt with by the Disciplinary Tribunal.

30 Yet, to focus only on the quantum of the overcharge may not be adequate in understanding the extent and hence the gravity of the misconduct. An overcharge of $10,000 might appear quite different in the context of work which would reasonably cost $100,000 as opposed to work which would reasonably cost $1,000. In the former case, the overcharge is 10 percent while in the latter situation, the overcharge is a staggering 1,000 percent although both involved the same sum. That context, in our view, is crucial, and we would therefore consider the disproportionality of the overcharge – as embodied in the ratio of the overcharge to the sum reasonably charged – to be an equally important factor, if not more so, in assessing the extent of the overcharge. Notably, the more disproportionate the ratio between the overcharge and the sum reasonably charged, the firmer the suspicion would be that there was unethical behaviour on the part of the solicitor.

31 This brings us to the second consideration highlighted in the precedents: that the presence of dishonesty or deceit will be taken to be severely aggravating (see *Andre Arul* at [38]–[39]). This should come as no surprise. Recent decisions by this court have emphasised the centrality of integrity to the legal profession and the corresponding strictness with which dishonesty should be dealt with (see, for instance, *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 ("*Chia Choon Yang*") at [18] and [42]). Overcharging is no exception. Further, while the inquiry into whether the solicitor has overcharged is objective (see [21] above), the seriousness of his misconduct in overcharging involves a

separate analysis which permits the consideration of his intention and state of mind.

32 The paradigmatic instance of dishonesty in overcharging is dishonesty in the act of charging – for example, rendering bills to a client for work that was not in fact done. However, the court will not limit itself to considering only this form of dishonesty. In *Re Lau Liat Meng* [1992] 2 SLR(R) 186 ("*Re Lau Liat Meng*"), the solicitor was found to have falsified a time sheet presented to the Disciplinary Committee (at [11]). It was not clear whether the falsification took place contemporaneously or only for the purpose of the disciplinary inquiry, but the Disciplinary Committee considered – and the High Court affirmed – that "it was of much greater importance" that the time sheet *had* been falsified (at [8] and [18]–[19]). It is therefore clear that dishonesty *related to* the overcharging – *even if not specifically directed at the client* – is a relevant consideration.

33 Third, the making of restitution of the amount overcharged has been treated as a mitigating factor (see *Low Yong Sen* at [41]; *Re Han Ngiap Juan* [1993] 1 SLR(R) 135 ("*Re Han Ngiap Juan*") at [38]; *Re Lau Liat Meng* at [19]). In this regard, some observations are apposite. Restitution mitigates in so far as it redresses the detriment suffered by the client and demonstrates remorse. However, as noted at [28] above, the detriment suffered by the client is only one of the concerns that underlie overcharging. A solicitor who makes full and expeditious restitution will have redressed that detriment, but will still have failed in his duty to charge fairly in the first place and tarnished the image of the profession. He cannot then expect his restitution to wipe the slate clean entirely. On the other hand, a solicitor who wilfully refuses to make redress aggravates his initial misconduct.

34 Fourth, it is also relevant whether the solicitor offered his bill of costs for taxation. It was noted in *Andre Arul* (at [32]–[33]) that:

> 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 …
>
> 33 … 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.

35 In *Andre Arul*, a censure was imposed partly because the solicitor failed to offer his bill of costs for taxation (at [43(b)]). Similarly, in *Re Lau Liat Meng*, a "glaring factor" in deciding the relevant penalty to be imposed was that the solicitor had been given a chance to have the bill taxed, but had indicated that he would do so only on condition that the proceedings be withdrawn (at [19]). Though the significance of this was not spelt out, the implication is that an unwillingness to offer a bill of costs for taxation may be taken as indicative of a lack of remorse.

36 Returning to *Andre Arul* for a moment, the reference to "the frame of mind or intention to overcharge [the solicitor's] client" is worth exploring. In our view, the framing of overcharging as a strict liability offence in the PCR 2015 means that the absence of such an intention should not be taken to be a mitigating factor, though the presence of such an intention is surely aggravating. To that extent, the reasoning in *Andre Arul* should be slightly re-characterised. A solicitor who presents his bill of costs for taxation may perhaps be unlikely to have had the frame of mind or intention to overcharge his client, but this lack of intention is not itself a mitigating factor; it only confirms the absence of such aggravating intention. A proactive presentation of bill of costs

for taxation, however, will mitigate, as it signifies the solicitor's willingness to resolve the matter quickly and impartially.

37 Fifth, the court has taken into account other generally aggravating or mitigating offender-specific factors: *eg*, seniority of the solicitor and presence of antecedents.

A consolidated approach to the seriousness of overcharging

38 The above factors may be consolidated into a cohesive approach that examines the solicitor's conduct in the following chronological order, to properly appreciate the gravity of the overcharging:

(a) First, *the extent of the overcharging*: the greater the extent of the overcharging (both as a ratio of the underlying sum that should reasonably have been charged and in absolute terms), the more seriously it will be viewed.

(b) Second, *the intention of the solicitor during the material period of overcharging*: the absence of an intention to overcharge does not mitigate, but the presence of such an intention aggravates, particularly if it is overlaid with dishonesty or deceit.

(c) Third, *the solicitor's conduct following the overcharging*: actions which demonstrate remorse or go towards remedying the detriment suffered by the client, such as restitution, an offer to submit the bill of costs for taxation, or a sincere early plea of guilt, are mitigating, while improper actions taken to justify the overcharge, such as the falsification of time sheets or the padding of bills of costs submitted for taxation (see, *eg*, *Law Society of Singapore v Ang Chin*

Peng and another [2013] 1 SLR 946 ("*Ang Chin Peng*") at [60]–[61] and [73]), will be taken to be aggravating.

(d) Fourth, *other generally aggravating and mitigating offender-specific factors*, such as the seniority of the solicitor or the presence of antecedents.

The seriousness of the misconduct in the present case

39 We turn to assess the seriousness of the misconduct in the present case.

40 It is clear to us that the extent of the overcharge was egregious. A charge of $1,340,000 for work taxed to be worth $288,000 means that the respondent had charged over 4.65 times what he should have charged, amounting to an overcharge of $1,052,000. In our view, this gives rise to a strong inference of unethical behaviour, as was noted by the Disciplinary Tribunal at [20] of the Report.

41 The respondent submits in mitigation that he genuinely believed that the fees he charged were reasonable. This belief is said to be founded on: (a) JWR's acquiescence in paying his invoices, which he took for agreement as to the fees charged; (b) the complexity and contentiousness of the suit; and (c) the fact that the suit had gone on for three and a half years. In our view, however, this submission cannot be sustained. First, even if the respondent were to be taken at his word, a genuine belief that the fees charged were reasonable would not mitigate, as we have noted at [36] above. Second – and more to the point – we do not think that the respondent even truly believed that he was charging reasonably. It is worth noting that the respondent billed JWR at regular intervals for round figures without any sort of itemisation for his professional fees. It would have been a significant stretch to consider JWR's mere payment of such

bills to constitute an *agreement* to the fees charged therein. Nor does the bill of costs ultimately submitted by the respondent disclose any reasonable justification for these bills. In the bill of costs, the respondent listed the documents prepared in the matter and his attendance at various meetings and hearings. Then – with none of the details which one would normally expect – he concluded that he spent 2,233 hours on this matter at a charge of $600 per hour, making for a total bill of $1,340,000. Nothing is disclosed that would remotely suggest that the respondent had a firm grasp of why he was charging what he did, let alone that he had so charged in the belief that he was being reasonable. The irresistible conclusion on the facts and materials before us is therefore that in truth, the respondent *intentionally* and *unethically* took advantage of JWR.

42 Nor does the respondent's conduct following the overcharging assist him. There are four aspects of his conduct which are pertinent here: (a) his extensive delay in presenting his bill of costs for taxation; (b) his guilty plea before the Disciplinary Tribunal; (c) his failure to make restitution; and (d) his disposal of certain assets during the taxation proceedings. We consider the respondent's delay in presenting his bill of costs for taxation to be indicative of the respondent's utter lack of remorse and to be seriously aggravating; however, as this delay is the subject of the Second Charge, we shall deal with it separately to ensure that it does not feature in our considerations for the First Charge. Meanwhile, we place little weight on the respondent's guilty plea, given that he was already bankrupt, and so any sanction would be of limited practical effect on him; he could not be fined and could not practice anyway. In any event, it would have been immensely difficult for the respondent to challenge the First Charge in light of the amount which was taxed off.

43 As for the respondent's failure to make restitution, he attributes this to his impecuniosity when the obligation to repay crystallised upon AR Tan's decision. In our view, that explanation is of little assistance. As stated at [33] above, restitution or the lack thereof touches on the concerns of remorse and redress. The respondent's impecuniosity tells us little about the former. As for the latter, a solicitor must charge fairly, and if he does not, then he must be prepared to bear the consequences, which include making redress to his client. Reasons given for failure to make such redress do not change the fact that redress was not made. JWR stands $1,052,000 poorer than it would have been had the respondent charged fairly, and that cannot be anything but aggravating.

44 The final aspect of the respondent's conduct following the overcharging that came to our attention was his disposal of certain assets at key junctures in the taxation proceedings. After the respondent filed his first bill of costs on 18 November 2020, he transferred a vehicle to his wife for $1 on 1 December 2020. Thereafter, following AR Tan's decision at the taxation hearing on 9 February 2021 and the dismissal of the respondent's appeal therefrom on 12 April 2021, the respondent transferred a membership of the Chinese Swimming Club to his wife on 1 July 2021, again for $1. The respondent explained to us that these transfers were made with a view to retaining the vehicle and the club membership for his family's use, rather than recouping some negligible scrap or resale value. This, however, is not a convincing explanation. The fact that the transfers to his wife were to enable his family to continue to enjoy the use of the vehicle and the club membership does not offer any justification for why the transfers had to be effected at nominal consideration. Instead, it appears more likely to us that the respondent had sought to dispose of his assets at a significant undervalue, so as to conceal his assets from his creditors. In particular, the club membership was transferred at

a time when the respondent's liability to JWR was apparent. Admittedly, it was unlikely that the value of these assets would have been sufficient to satisfy the debt of $1,052,000 owed to JWR. Nonetheless, the respondent's disposal of the assets shows that when faced with the consequences of his actions, he chose evasion over contrition. His attempts at concealing his assets constituted an extension of his unethical behaviour in overcharging JWR, and further signified an utter lack of remorse.

45 Finally, turning to the offender-specific factors in this case, the respondent's seniority is undoubtedly aggravating (*Law Society of Singapore v Ezekiel Peter Latimer* [2020] 4 SLR 1171 at [4]). He also has a relevant antecedent, having previously received a warning letter from the Law Society dated 31 December 2013 for failure to adhere to an agreed fee cap on his professional fees. Though he pleads that this should not be taken against him, no sound basis has been provided for this. Notably, less than two years after this warning letter, the respondent began issuing his un-itemised bills to JWR. In mitigation, he cites his history of public service, but this bears limited weight in disciplinary proceedings (*Loh Der Ming Andrew v Koh Tien Hua* [2022] 3 SLR 1417 at [123]).

46 In the circumstances, there is undoubtedly due cause for the respondent to be sanctioned in respect of the First Charge.

The appropriate sanction

47 Turning to the issue of the appropriate sanction for the First Charge, the following guidance was laid down in *Andre Arul* (at [36] and [38]–[39]):

> 36 … 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. …
>
> …
>
> 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. …
>
> 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. …

48 We agree with and affirm this guidance in *Andre Arul*, save for two clarifications. First, this guidance should not be read to constrain the enhancement of a sanction from fine to suspension to only instances where the overcharging is "redolent of cheating or deceiving the client". Deception is a core concern that cuts to the heart of the solicitor-client relationship and the trust reposed in lawyers, but the display of other ethical failings in the course of overcharging may attract a heavier sanction as well. Second, *Andre Arul* suggested the prospect of striking a solicitor off the roll merely as a *possibility* in the most egregious cases involving cheating. However, in our view, where dishonesty has been proven in relation to overcharging, the solicitor will have almost invariably demonstrated a character defect rendering him unsuitable for the profession. As we contemplated in *Chia Choon Yang* at [39], a solicitor who has demonstrated such a character defect will not simply face the *possibility* of being struck off; instead, striking off is the *presumptive* penalty.

49 In the present case, the agreed position between the Law Society and the respondent is that the respondent did not act fraudulently nor dishonestly. However, the Law Society considered the respondent's misconduct to be *prima*

facie unethical. We agree with this characterisation (see [40]–[41] above). Indeed, we find that the respondent's misconduct, as exemplified by the combination of the egregious overcharge and his inability to provide any sort of reasonable explanation, borders on dishonesty, and so warrants a suspension from practice.

50 The precedents involving overcharging similarly redolent of dishonesty suggest that a suspension of three to six months is the norm:

(a) In *Re Lau Liat Meng*, a solicitor charged $22,454.60 in relation to work that was assessed to be worth no more than $4,000. The solicitor was found to have dishonestly inflated a fee note and to have put up a false time sheet in support of it. Taking into account the fact that he would only have submitted his bill for taxation if disciplinary proceedings were withdrawn, but also that he had ultimately refunded the whole of his fee, the court ordered a suspension of three months (at [14], [19] and [21]).

(b) In *Low Yong Sen*, a solicitor charged $4,300 on $1,385.62 worth of disbursements. This overcharging was: (i) disguised through an arrangement with other parties (which the court considered "border[ed] on dishonesty" (at [41])); and (ii) only two years removed from a previous offence of a similar nature. The solicitor was given a suspension of six months (at [43]).

(c) Finally, *Ang Chin Peng* involved two instances of overcharging by a pair of solicitors, one being a charge of $412,417.17 on work taxed to be worth $120,000 and the other being a charge of $150,640 on work taxed to be worth $50,000. The solicitors' conduct in misrepresenting to their client the contents of the Public Trustee's Guide for the

> Administration of Small Estates of Deceased Persons, adamantly refusing taxation, and tendering grossly inflated bills of costs for taxation was considered to border on dishonesty (at [73]), and each solicitor was suspended for three months (at [75]).

51 In our view, these precedents take too lenient an approach towards overcharging redolent of dishonesty. Dishonesty is one of the most serious forms of misconduct, if not the cardinal one, that a solicitor can commit. For a solicitor whose acts border on or strongly imply dishonesty to receive a suspension of only months leaves the temptation for less scrupulous solicitors to try their luck. A stronger response is warranted in order to deter such misconduct.

52 Therefore, bearing in mind the factors we have set out at [40]–[45] above, we hold that the appropriate sanction for the First Charge is a suspension of three years.

The Second Charge

53 We turn to the Second Charge, which charges the respondent with misconduct unbefitting an advocate or solicitor within the meaning of s 83(2)(*h*) of the LPA, through his failure to comply with the Taxation Order within the stipulated time frame of 14 days.

54 We first consider whether there is due cause for sanction. To begin with, non-compliance with a court order entails disrespect to the court and potential prejudice to any party the order is meant to benefit. However, not every instance of non-compliance by a solicitor will necessarily be serious enough to warrant disciplinary sanction. The court will consider the degree of disrespect and/or prejudice, as well as any other pertinent aspects of the non-compliance.

55 That the court will scrutinise the context of the non-compliance is illustrated by the recent case of *Law Society of Singapore v Nalpon, Zero Geraldo Mario* [2022] 3 SLR 1386 ("*Zero Nalpon*"). That case involved a solicitor who had been ordered to pay costs to the Attorney-General's Chambers. He failed to make payment for over two years, instead publishing various posts on social media seeking to garner support. This court found that non-compliance with a costs order could not, in and of itself, amount to misconduct for the purposes of a disciplinary charge, given that an order for a sum of money to be paid could be enforced through a range of civil avenues (at [59]). However, the combination of the solicitor's deliberate non-compliance with the costs order and his attempts to garner public support for his disobedience constituted due cause for sanction (at [62]). In particular, conduct that sought to publicly justify non-compliance with an order of court on spurious grounds was plainly misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court and as a member of an honourable profession (at [59]).

56 The context of the non-compliance in the present case is very different. The process of taxing a solicitor's bill is meant to ensure a financial outcome that is fair to both solicitor and client. As much as possible, it should be done expeditiously to resolve the disputed fees. It is therefore crucial that the solicitor presents his bills of costs timeously. Where this is not possible, it is only to be expected, as a matter of courtesy and professional responsibility, that the solicitor immediately furnishes an explanation for the delay.

57 The respondent in the present case has not directed us to any contemporaneous explanation that was provided to JWR for his inordinate delay in filing his bill of costs. It appears that it is only now – belatedly – that he seeks to justify this delay. Even then, his explanation holds little water. According to

the respondent, his delay was largely due to the time he spent appealing against the Taxation Order and his subsequent request for further arguments. That is factually untrue. The period of delay was from 7 November 2019 to 18 November 2020, but the respondent's request for further arguments in relation to the Taxation Order was refused on 30 January 2020. In other words, the better part of the delay – close to ten months – could not be attributed to the respondent's efforts in fending off the Taxation Order. The respondent then attempts to explain this delay as stemming from his lack of familiarity with formatting his bill of costs to comply with the rules at the time, and therefore the product of incompetence rather than wilful non-compliance. This too is unconvincing. Even mere incompetence, when stretched out over such a lengthy period, begins to resemble wilful non-compliance or negligence at the very least. Indeed, the fact that the respondent failed to provide any update to JWR over this period of delay strongly suggests that the respondent was *intentionally* putting off JWR. The respondent's delay in presenting his bill of costs thus embodied a disservice to and a disrespect of his client inimical to both the fundamental compact between solicitor and client and the honourable manner in which solicitors are required to conduct themselves.

58 We therefore consider that the respondent's non-compliance with the Taxation Order constitutes misconduct unbefitting an advocate or solicitor under s 83(2)(*h*) of the LPA, and that there is due cause for sanction in this regard. Bearing in mind the considerations above, the appropriate sanction is a suspension of nine months.

59 As a final note, the respondent sought to compare his present situation to the case of *Re Marshall David* [1971–1973] SLR(R) 554 ("*Re Marshall David*"), where a solicitor who had been found to have breached an oral undertaking to the Attorney-General was suspended from practice for six

months. However, this comparison was flawed. As noted in *Law Society of Singapore v Naidu Priyalatha* [2022] SGHC 224, a solicitor's undertaking is *sui generis*, owing to its status as an instrument which can be relied upon (at [32]):

> 32 There is a unique status that is accorded to an undertaking given by a member of the legal profession, that allows the average person and even the court to rely on it without question. Parties in dispute may decide to compromise their positions and even halt or forgo proceedings, on the faith of what the solicitor has promised that she would or would not do. Quite simply, a solicitor should *only* give an undertaking with which she is able to comply. Once given, there is no turning back. The solicitor can be called to account for any breach of the undertaking given, which accounting includes both legal repercussions and possible disciplinary action. In our view, if such breaches are not met with the strongest disapprobation from the profession, it would severely erode the trust one can place on a solicitor's undertaking and fundamentally change the way modern legal business and dispute resolution is conducted. [emphasis in original]

However, as indicated at [54] above, different considerations underlie the court's disapprobation of a solicitor's non-compliance with a court order, especially if it is deliberate. It follows that *Re Marshall David* does not assist in our evaluation of the Second Charge.

The overall sanction and the effect of the respondent's undischarged bankruptcy

60 We therefore hold that the appropriate sanctions for the First and Second Charges are three years' suspension and nine months' suspension respectively. While the respondent's delay in submitting his bill of costs is both the subject of the Second Charge and a factor relevant to the First Charge, we have dealt with it purely within the confines of the Second Charge (see [42] above), and so there is no issue of the respondent being doubly faulted. The overall sanction

that is to be imposed is therefore a period of suspension of three years and nine months.

61 The final issue that remains to be determined is when this period of suspension should commence, given the respondent's status as an undischarged bankrupt. Section 26(1)(*e*) read with s 26(9)(*b*) of the LPA indicate that when a solicitor is declared a bankrupt, his practising certificate ceases to be in force, and that so long as he does not discharge his bankruptcy, he cannot resume practice:

> **Disqualification for practising certificates**
>
> **26.**—(1) A solicitor must not apply for a practising certificate —
>
> …
>
> (*e*) if he or she is an undischarged bankrupt;
>
> …
>
> (9) A practising certificate issued to a solicitor ceases to be in force —
>
> …
>
> (*b*) upon the solicitor becoming subject to any disqualification under subsection (1)(*e*), (*f*), (*g*) or (*h*); or
>
> …

62 What these sections mean is that any period of suspension running *in parallel to* such an inability to practise might be ineffective in achieving the aims of disciplinary sanctions – namely, the protection of the public; the upholding of public confidence; general and specific deterrence; and punishment of the solicitor (*Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 at [31]). Any protection of the public afforded by a period of suspension would be superfluous to the extent that it overlaps with the solicitor's inability to practice. Any such overlap might also render the period

of suspension ineffective as a punishment, and to that extent less effective as a signal restoring public confidence and as a deterrent. In fact, if the solicitor remains an undischarged bankrupt for a period longer than the suspension, the suspension will have no practical effect.

63 These considerations call for an appropriate adjustment to the sanction to take into account the bankrupt status of the errant solicitor. However, to lengthen the period of suspension itself is not an appropriate adjustment. First, associating an undischarged bankruptcy with a greater period of suspension runs the risk of sending the erroneous message that bankruptcy itself is an indicator of some moral or ethical taint that justifies a heavier punishment (see, in this regard, *Law Society of Singapore v Chiong Chin May Selena* [2005] 4 SLR(R) 320 at [32]). Second, to lengthen the period of suspension by a fixed duration cannot reasonably account for the indeterminacy of the length of time the solicitor will take to discharge himself from his bankruptcy.

64 In our view, in cases where solicitors who are undischarged bankrupts are found to be deserving of a period of suspension, the most appropriate adjustment to make is to order the suspension to commence upon the discharge of the bankruptcy. It is within the court's powers under s 83 of the LPA to do so – s 83(1)(*b*) does not prescribe when the period of suspension should commence. At the hearing, we raised the prospect of ordering the period of suspension to commence upon the respondent's discharge of his bankruptcy and neither party disputed that it was within our power to do so. We therefore so order in respect of the respondent.

Conclusion

65 We therefore find that there is due cause for the respondent to be sanctioned under s 83(1) of the LPA, and order that he be suspended for three years and nine months, with the period of suspension commencing upon his discharge from his bankruptcy. The respondent is ordered to pay costs to the applicant fixed at $10,000 inclusive of disbursements.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Sean Francois La'Brooy and Faustina Joyce Fernando (Selvam LLC) for the applicant;
Giam Chin Toon SC and Teo Hui Xian Astrid (Wee Swee Teow LLP) for the respondent.