Law Society of Singapore *v* Ang Chin Peng & another
[2012] SGHC 234

Case Number	: Originating Summons No 74 of 2012
Decision Date	: 26 November 2012
Tribunal/Court	: Court of Three Judges
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Dinesh Singh Dhillon and Ramesh s/o Selvaraj (Allen & Gledhill LLP) for the Applicant; S Magintharan, Liew Boon Kwee James and B Uthayachanran (Essex LLC) for the first and second Respondents.
Parties	: Law Society of Singapore — Ang Chin Peng & another

Legal Profession – Professional conduct – Grossly improper conduct

26 November 2012 Judgment reserved

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 Originating Summons No 74 of 2012 is instituted by the Law Society of Singapore ("the Law Society") pursuant to s 94(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA") praying that this court deal with the two respondents, *ie*, Ang Chin Peng ("the 1st Respondent")_ and DeCruz Martin Francis ("the 2nd Respondent") (collectively, "the Respondents"), in accordance with s 98(1) of the LPA, following the findings of the Disciplinary Tribunal ("the DT") that the Respondents had committed grossly improper conduct by grossly overcharging their clients in respect of professional work relating to two estates, *ie*, the estate of Mr Quek Seng Kee ("Quek Estate") and the estate of Madam Leong Siew Fong ("Leong Estate") (collectively, "the two Estates"). The key question which this court has to address in this proceeding is whether the Respondents were guilty of grossly improper conduct by grossly overcharging when what they had charged to each estate was in accordance with an oral agreement reached with the executors and trustees of the respective estates.

The charges against the Respondents

2 The charges brought by the Law Society against the Respondents were identical. We will thus only set out the charges brought against the 1st Respondent:

> 1st Charge
>
> You, Ang Chin Peng, an Advocate and Solicitor of the Supreme Court of Singapore and practising in the firm ALD LLP (formerly Ang & Lee), did charge the Executors and Trustees of the Estate of Quek Seng Kee ("QSK"), fees of S$53,000.00 and S$359,417.17 for services rendered by you as their solicitor in relation to the Estate of QSK, as evidenced by your invoices dated 14 December 1999, 13 September 2001 and 2 September 2004, which fees were far in excess of and disproportionate to what you were reasonably entitled to charge for the services you rendered, and such overcharging by you amounts to a breach of Rule 38 of the Legal Profession

(Professional Conduct) Rules and you have thereby breached a rule of conduct made by the Council under the provisions of the Legal Profession Act as amounts to grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap. 161).

Alternative 1st charge

You, Ang Chin Peng, an Advocate and Solicitor of the Supreme Court of Singapore and practising in the firm ALD LLP (formerly Ang & Lee), did charge the Executors and Trustees of the Estate of Quek Seng Kee, fees of S$53,000.00 and S$359,417.17 for services rendered by you as their solicitor in relation to the Estate of QSK, as evidenced by your invoices dated 14 December 1999, 13 September 2001 and 2 September 2004, which fees were far in excess of and disproportionate to what you were reasonably entitled to charge for the services you rendered, and such overcharging by you amounts to misconduct unbefitting an Advocate and Solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap. 161).

2nd Charge

You, Ang Chin Peng, an Advocate and Solicitor of the Supreme Court of Singapore and practising in the firm ALD LLP (formerly Ang & Lee), did charge the Executors and Trustees of the Estate of Leong Siew Fong ("LSF"), fees of S$52,631.14 and S$100,640.00 for services rendered by you as their solicitor in relation to the Estate of LSF, as evidenced by your invoices dated 7 March 2005 and 17 December 2007 respectively, which fees were far in excess of and disproportionate to what you were reasonably entitled to charge for the services you rendered, and such overcharging by you amounts to a breach of Rule 38 of the Legal Profession (Professional Conduct) Rules and you have thereby breached a rule of conduct made by the Council under the provisions of the Legal Profession Act as amounts to grossly improper conduct in the discharge of your professional duty within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap. 161).

Alternative 2nd charge

You, Ang Chin Peng, an Advocate and Solicitor of the Supreme Court of Singapore and practising in the firm ALD LLP (formerly Ang & Lee), did charge the Executors and Trustees of the Estate of Leong Siew Fong, fees of S$52,631.14 and S$100,640.00 for services rendered by you as their solicitor in relation to the Estate of LSF, as evidenced by your invoices dated 7 March 2005 and 17 December 2007 respectively, which fees were far in excess of and disproportionate to what you were reasonably entitled to charge for the services you rendered, and such overcharging by you amounts to misconduct unbefitting an Advocate and Solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap. 161).

Background facts

3 The 1st Respondent is an Advocate and Solicitor (for simplicity, hereinafter referred to as "Solicitor") of 19 years' standing and the 2nd Respondent of 21 years'. At all material times, the Respondents were partners of the firm Ang & Lee. Subsequently, Ang & Lee was reconstituted as ALD LLP. However, later on 22 July 2010, ALD LLP was dissolved.

The Quek Estate and the Leong Estate

The Quek Estate and the Leong Estate

4 Mr Quek Seng Kee died testate on 24November 1987, leaving behind an estate worth, at the time, around $3.7 million, made up mainly of stocks and shares in Singapore, Hong Kong, Sydney and London. The beneficiaries of the Quek Estate were his wife, Madam Leong Siew Fong ("Leong"), who was entitled to 35% of the residuary estate; his grandson, Quek Tsiu Weng ("the Complainant"), who was entitled to 30%; his adopted grandson, Goh Wee Hiong ("Goh"), who was entitled to 20% and his son Quek Chin Soon ("QCS"), who was entitled to 15%. The executors and trustees of the Quek Estate were Mr Kang Seow Kiam ("Kang"), who was a friend of Quek Seng Kee, and Mr Quek Chin Yick ("QCY"), Quek Seng Kee's nephew.

5 In 1990, Kang and QCY engaged the law firm, Laycock & Ong ("Laycock"), to obtain the grant of probate for the Quek Estate. The 2nd Respondent, who was then a legal assistant at Laycock, worked on the file. He was assisted by a probate clerk, Mr KC Chng ("Chng"). Laycock performed various legal services for the Quek Estate, including, *inter alia*, applying and obtaining the grant of probate in 1991.

6 In 1999, the Quek Estate file was transferred from Laycock to Ang & Lee where the Respondents were practising. Given that Laycock had already extracted the grant of probate, the work which the Respondents rendered at Ang & Lee was mainly the following:

(a) arranging for the re-sealing of the grant of probate in the relevant foreign jurisdictions;

(b) engaging and dealing with solicitors and other service providers such as stock brokers in the relevant jurisdictions;

(c) realising the assets (mainly shares) in those foreign jurisdictions; and

(d) arranging for the distribution of the said assets to the beneficiaries as and when instructed.

Notably, the Respondents were not instructed to administer the Quek Estate.

The fee agreement for the Quek Estate

7 In relation to the question of fees which the Respondents could charge for their professional services, the Respondents averred that they had an oral agreement with Kang and QCY, the executors and trustees of the Quek Estate, to fix the fees for the legal services provided by them at 5% of the gross value of the Quek Estate as at the date of the realisation of the assets. In this respect, the Complainant, the Law Society, and the DT had all accepted that there was such an oral agreement to that effect. [note: 1] The Respondents also claimed that the same fee arrangement was entered into previously while the Quek Estate's file was handled by Laycock.

8 Leong passed away on 21 October 2001, while the Quek Estate was still being attended to by the Respondents. Kang and QCS were named in Leong's will as the executors and trustees of the Leong's estate ("the Leong Estate"). The beneficiaries under Leong's will were the Complainant and Goh, who were also the main beneficiaries of the Quek Estate (see [4] above). The gross value of the Leong Estate was estimated at $3.1 million, which comprised mainly of Leong's 35% share in the Quek Estate.

9 Kang passed away on 2 February 2004, leaving QCY as the sole executor and trustee of the

Quek Estate. As regards the Leong Estate, the Complainant and Goh were appointed in place of Kang and they, together with QCS, continued to act as the executors and trustees of the Leong Estate.

10 On 2 September 2004, QCS, the Complainant and Goh ("the Trio"), met the Respondents to discuss the terms for engaging the latter for handling the Leong Estate. At the meeting, the Respondents proposed that the same fee arrangement as that for the Quek Estate be applied, *ie*, 5% of the gross value of the Leong Estate as at the date of the realisation of the assets. The Trio were not agreeable as they felt that there would be considerable overlap between the work to be done for the two Estates. [note: 2]

11 On 8 September 2004, the Respondents wrote to the Trio, making the following representations that: [note: 3]

(a) the Respondents' legal cost for acting in all estate matters was 5% of the gross value of the estate, and that this was taken from the Public Trustee's guide of between 2% to 6% when acting in the administration of estates;

(b) a major consideration in their quotation of fees was the fact that the Respondents had a probate and estates team in place, with experience in the area of work of more than 30 years, and that they would be able to complete the handling of estates, both large and small, quickly,;

(c) there were not many firms that had the experience in handling estates like the Respondents' firm. The Respondents also claimed that their proposed fees were compatible with those with the relevant experience; and

(d) as the Respondents had acted for the Quek Estate, most of the documentation required for the Leong Estate were already with them. If instructed, processing time would be reduced.

The fee agreement for the Leong Estate

12 Another meeting between the Trio and the Respondents took place on 20 September 2004, and in view of the overlap between the work to be done for the two Estates, it was agreed that the Respondents' fees for handling the Leong Estate would only be 3% of the gross value of the Leong Estate as at the date of the realisation of the assets. [note: 4] On 23 September 2004, the Respondents sent a letter to the Trio to confirm the agreed fees. [note: 5]

13 On 2 September 2004, the same day the Trio met to discuss the terms for engaging the Respondents to handle the Leong Estate (see above at [10]), Ang & Lee issued an invoice (Bill No 24-0188) for the total sum of $489,267.17, for work done for the Quek Estate. [note: 6] After taking into account previous payments, including those made to Laycock and to Ang & Lee, the remaining amount payable was $359,417.17. [note: 7] On 21 February 2005, the Quek Estate paid Ang & Lee the sum of $300,000, leaving a balance of $59,417.17. [note: 8]

14 On 7 March 2005, Ang & Lee issued an invoice (Bill No 25-0104), for the sum of $50,000, for work done for the Leong Estate during the period from August 2004 to March 2005. [note: 9] On 17 December 2007, another invoice (Bill No 28-0001) was rendered by Ang & Lee for the sum of $100,640 for work done on the Leong Estate. [note: 10] The total sum invoiced to the Leong Estate was thus $150,640.

15 In the meantime, also in December 2007, the Complainant and Goh instructed Rajah & Tann LLP ("R&T") to take over the handling of the Leong Estate. At the time, the grant of probate to the Leong Estate had yet to be extracted and the declaration of estate duty had been filed but not yet accepted by the Commissioner of Estate Duty. Later, on 20 February 2008, R&T wrote to the Respondents complaining that the fees charged by Ang & Lee for attending to the Leong Estate were grossly excessive, and inviting them to either set out their reasonable costs or have the bill taxed. [note: 11]

16 Two days later, on 22 February 2008, the Respondents replied to R&T by letter, stating that "[a]s legal costs had been agreed upon, the issue of re-negotiation of legal costs or taxation of our legal costs does not arise." [note: 12]

17 Subsequently, on 21 April 2009, Lee & Lee, who was by then acting for the Quek Estate, also wrote to the Respondents asking for taxation of the invoices for the Quek Estate. [note: 13] The Respondents replied on 24 July 2009, again declining the offer.

The complaint to the Law Society

18 On 23 December 2008, the Complainant lodged a complaint with the Law Society, alleging, *inter alia*, that both the Quek Estate and the Leong Estate had been grossly overcharged by the Respondents. An Inquiry Committee was convened on 29 June 2009 and it ruled that the complaint merited referral to the DT for further investigation and action. Accordingly, the present disciplinary proceedings were formally commenced on 30 June 2010 with the Law Society filing its Statement of Case.

The applications to the court for taxation of the Respondents' bills

19 As the Respondents refused to agree to the taxation of their invoices issued against the two Estates, QCY on behalf of the Quek Estate, and the Complainant and Goh on behalf of the Leong Estate, applied to the court (*viz*, Originating Summons No 166 of 2010 and Originating Summons No 200 of 2010 respectively) for an order that the Respondents' respective invoices be taxed. [note: 14] Both applications were granted by the court.

20 Pursuant to the orders of court, the Respondents filed their Bills of Costs for both the Quek Estate (Bill of Cost No 171 of 2010) ("BC No 171") [note: 15] and the Leong Estate (Bill of Cost No 172 of 2010) ("BC No 172") for taxation. [note: 16] Upon review of the costs taxed by the taxing Registrar, the amount of legal fees allowed by the reviewing Judge for BC No 171 was $120,000.00 [note: 17] and $50,000 for BC No 172. [note: 18]

Decision of the DT

21 In the meantime, the disciplinary proceedings brought against the Respondents continued. The DT was informed of the taxed fees allowed against the two Estates. In rendering its decision on 30 December 2011, the DT held, pursuant to s 93(1)(c) of the LPA, that cause of sufficient gravity for disciplinary action existed against the Respondents under s 83(2)(b) of the LPA. First, it found that the Respondents were guilty of overcharging after taking into account the following factors:

(a) the results of taxation, an objective process, were a strong indicator that the Respondents had overcharged;

(b) the extent of overcharging was grossly excessive;

(c) in relation to the fee agreements, the DT said that even though the requirements of s 109(4) of the LPA (*ie*, in writing and signed) were not satisfied, more likely than not, there were indeed two separate agreements between the Respondents and the two Estates to charge 5% (for the Quek Estate) and 3% (for the Leong Estate) of the gross value realised from the assets of the respective estates;

(d) however, the DT held that the oral agreements could not provide the Respondents with a defence against overcharging. It noted at [87] of its report that the fee arrangements under the two oral agreements were really in the nature of a gamble (as the eventual fees would depend on whether the assets of each estate had appreciated or depreciated) rather than a genuine assessment of fair compensation for work done; and

(e) in any event, the DT also noted that, regardless of the existence of any fee agreement, an a Solicitor should have, at the time of issuing an invoice for work done, applied his/her mind to determine whether the quantum of the invoice raised was excessive. This should have been done in this case, as under the two oral fee agreements the exact fee to be charged against each estate could only be determined as at the time the invoice was issued.

22 The DT also made the following determinations in response to the arguments raised by the Respondents:

(a) the oral fee agreements need not be specifically set aside under s 109(6) of the LPA before an allegation of overcharging can be sustained; and

(b) the Respondents suffered no prejudice by having the disciplinary proceedings conducted concurrently with the taxation process. Closing submissions to the DT were only filed after the taxation hearing and the subsequent review of the taxed bills had been concluded.

23 Finally, the DT found that the level of overcharging in the present case amounted to grossly improper conduct in the discharge of the duty of a Solicitor. None of the work done in relation to the two Estates was in any sense complex. Accordingly, the Respondents were found guilty of both the 1st and 2nd charges (see [2] above) preferred by the Law Society against each of them. The Respondents were also made to bear the costs of the Law Society.

The parties' submissions before us

24 Before us, counsel for the Law Society argued that the DT's findings that there was gross overcharging, and that such gross overcharging amounted to grossly improper conduct, should be affirmed. On the question of the appropriate punishment, counsel for the Law Society while noting that recently in *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184 ("*Andre Arul*") this court had held (at [36]) that "the starting point in imposing a proportionate penalty for overcharging amounting to grossly improper conduct should be a fine in the first instance", argued that there are aggravating circumstances in the present case which warranted the imposition of a more severe form of punishment. In that regard, it highlighted the extent and manner of the Respondents' overcharging, their deceptive practices, their failure to inform the client of taxation, their cavalier attitude in the preparation of bills, *etc*. While counsel for the Law Society acknowledged that the Respondents had made restitution, he submitted that fact was not sufficient to change the overall picture of the misconduct which merited a suspension.

25 The Respondents' submissions, on the other hand, rested very much on the oral fee agreements and may be reduced to the following:

(a) a fee agreement such as those entered into by the Respondents with the two Estates is allowed under s 109(1) and (3) of the LPA;

(b) the fee agreement provided a valid and complete defence to any claim of overcharging, and in any event the charges invoiced were fair and reasonable;

(c) when there is a fee agreement, there is no additional obligation on the part of a Solicitor, at the time of rendering an invoice, to consider if the fees charged are in fact excessive and disproportionate, so long as the fees charged are in line with the fee agreement; [note: 19]

(d) the results of the taxation proceedings are irrelevant, especially since the taxation proceedings were on the basis of "work done". [note: 20] In any event, the Respondents had issued their invoices based on the fee agreements; and

(e) given that the Respondents had merely charged for what they reasonably believed they were entitled to under the fee agreements, their conduct cannot be said to be "grossly improper conduct" or "conduct unbefitting an advocate and solicitor" (*ie*, the 1st and 2nd alternative charges).

Issues before this court

26 In the light of the submissions of the parties, the issues which require the consideration of this court are as follows:

(a) whether s 109 of the LPA permits a Solicitor in relation to a non-contentious matter to charge for his professional services by way of a percentage of the value of the subject matter without regard to the time spent on the matter;

(b) if the answer to (a) is in the affirmative, whether such an agreement provide an absolute cover to an invoice raised by a Solicitor so long as it is in accordance with the terms of the agreement;

(c) As s 109(4) of the LPA requires that such an agreement as to fees for non-contentious matters "shall be in writing and signed" by the client or his agent, what is the effect of such an agreement which is only orally entered into;

(d) Whether the invoices rendered by the Respondents in the present case amounted to overcharging and whether such overcharging would constitute grossly improper conduct; and

(e) If the answer to (d) is in the affirmative, what would be the appropriate sanctions to be imposed on the Respondents.

Our analysis

Whether s 109 permits a fee agreement based on a percentage and whether it provides an absolute cover to a Solicitor who raises a bill in accordance therewith

27 We will consider the first three issues set out in [26] above together as they are closely linked.

As the third issue is rather straightforward, we will address it first. It is not in dispute that the two fee agreements here relate to non-contentious matters and are governed by s 109(3) of the LPA. However, s 109(4) of the LPA requires that:

> **Agreements with respect to remuneration for non-contentious business**
>
> **109.** – ...
>
> (4) The agreement shall be in writing and signed by the person to be bound thereby or his agent in that behalf.

28 It is also not in dispute that the two fee agreements entered into by the Respondents with the respective executors and trustees of the two Estates do not satisfy the requisite formalities prescribed in s 109(4), *ie*, there is no signed written agreement. At this juncture, we will swiftly dispose of the tenuous argument made by the Respondents that the requirement of a signed written agreement was satisfied here because the clients had signed cheques and had received letters and bills making reference to the fee arrangement. We cannot see how the aforesaid documents could constitute the signed written agreement which s 109(4) required. The written agreement must bear the signature of the client or his agent. As noted by the DT, it is evident that the purpose of requiring a signed written agreement is not only to ensure clarity but certainty in such fee arrangements, in order to safeguard the interests of the client. To allow the formal requirements to be constructively satisfied by reference to a signature on a cheque and/or bills making reference to the fee arrangement would defeat the object of s 109(4).

29 What then is the effect of an oral agreement entered into by a client (and here the Complainant admitted that he had entered into such an agreement with the Respondents) [note: 21] where he agreed that the Solicitor could charge on a percentage basis in a non-contentious matter? Would the Respondents be able to rely on the oral fee agreements as a defence to a disciplinary charge of gross overcharging? In the context of s 111 of the LPA (governing fee agreements on contentious matters), this court in *Law Society of Singapore v Tay Choon Leng John* [2012] 3 SLR 150 ("*John Tay*") recently held (at [29]) that there is nothing to suggest that an oral fee agreement is invalid, as the absence of formalities (*viz*, in writing and signature) goes towards enforceability rather than validity. We cannot see any basis to say that the position ought to be different under s 109 of the LPA, since both provisions have the same objective, even though they govern two different areas of legal practice, *ie*, contentious and non-contentious matters. The Respondents here are not seeking to enforce the fee agreements but are only relying on them to show that the invoices for those fees which they have raised were not excessive and, in turn, that they could not be guilty of the charges of overcharging which have been brought against them. In principle, we see no reason why this court should not have regard to the oral agreements, which existence is not in dispute, to assess if they in fact provide the Respondents with a defence against the charges brought against them.

Percentage fee agreements for non-contentious matters

30 At [85] to [87] of its report, the DT stated that fee agreements, such as the ones entered into by the Respondents with the two Estates, do not accord with Rule 2(2)(c) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("PCR"), which lays down that Solicitors should "charge fairly for work done". In particular, the DT opined that this specific manner of charging by a percentage of the *realised value* of the two Estates was more a gamble than a determination of fair compensation for work done (see [21] above).

31 It is clear that under s 109(3) of the LPA, there is nothing wrong with a Solicitor entering into an agreement on fees in relation to a non-contentious matter based on a percentage of the estate. While the DT itself acknowledged (at [88] of its report) that its opinion on the issue was not critical to establishing the charges against the Respondents, it is important to clarify the legal position concerning percentage fee agreements in non-contentious matters. We do not see anything inherently objectionable to such an arrangement *per se*. Indeed s 109(3) expressly contemplates such a fee arrangement and it reads:

> **Agreements with respect to remuneration for non-contentious business**
>
> 109. – ...
>
> (3) The agreement may provide for the remuneration of the solicitor or law corporation or limited liability law partnership by *a gross sum, or by commission or percentage*, or by salary, or otherwise, and it may be made on the terms that the amount of the remuneration therein stipulated for either shall or shall not include all or any disbursements made by the solicitor or law corporation or limited liability law partnership in respect of searches, plans, travelling, stamps, fees or other matters. [emphasis added]

32 It would be noted that what this subsection provides is that the agreed fee could be by way of a gross sum or by a percentage or in any other manner. However, this should in no way be construed to mean that so long as the client agrees, a Solicitor can charge for any amount or at whatever percentage of the subject matter and that fee arrangement will still be in order. That proposition needs only to be stated to be rejected. It is absurd to suggest that so long as there is an agreement (even assuming it is in proper form, *ie*, in writing and signed), the Solicitor could rightfully charge that amount. We have at [30] above alluded to rule 2(2) of the PCR which prescribes that a Solicitor should charge fairly for work done. That is really the overriding consideration which must be met in every case. Section 109(3), read with s 109(1) of the LPA, is purely facilitative and should not be read as sanctioning overcharging. For small and medium estates in particular (perhaps even for big estates when it is unclear at the outset how much legal work is expected or where the size of the estate itself is in doubt), it may conduce towards greater certainty and efficiency if a percentage fee agreement is entered into.

33 In this regard, it is pertinent to note s 109(5) and (6) of the LPA which read:

> **Agreements with respect to remuneration for non-contentious business**
>
> **109**. – ...
>
> (5) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of a solicitor or law corporation or limited liability law partnership.
>
> (6) If on any taxation of costs the agreement is relied on by the solicitor or law corporation or limited liability law partnership and objected to by the client as unfair or unreasonable, the taxing officer may enquire into the facts and certify them to the court, and if on that certificate it appears just to the court that the agreement should be cancelled, or the amount payable thereunder reduced, the court may order the agreement to be cancelled, or the amount payable thereunder to be reduced, and may give such consequential directions as the court thinks fit.

34 The existence of these provisions is most significant as they envisage that an agreement by a

Solicitor with his client as to fees is not final (and cannot be final) and is always subject to review by the court to ensure that the fees to be paid by the client is always fair or reasonable relative to the work done. Of course such a fee agreement can also be set aside on some other general grounds relating to contract. The rationale behind s 109(6) is clear – it is only the Solicitor, and not the client, who fully appreciates the nature and extent of the work to be undertaken on the matter. The Solicitor thus enjoys an advantage and it would be unfair to the client to be straitjacketed, without any available recourse, to the fee agreement. Understandably therefore, this provision permits the client to have the agreement reviewed by an independent person, *ie*, the taxing officer of the court. In every instance, the Solicitor must satisfy the test of fairness or reasonableness of the amount charged in relation to the services rendered.

35 We would further add that even under common law, a Solicitor is expected to charge fairly. A rather interesting case is *Jemma Trust Co Ltd v Liptrott and others* [2004] 1 WLR 646 ("*Jemma Trust*"), where solicitors were instructed by the executors of an estate to undertake the administration of the estate. While there was no express agreement as to fees, the solicitors rendered to the estate bills claiming two sets of charges, one based on time spent administering the estate, and the other on the value of the estate. The English Court of Appeal held (at [28] of *Jemma Trust*) that in principle, it was open to solicitors to charge by reference to the value of the estate, provided that the overall remuneration is fair and reasonable. While there was no fee agreement in *Jemma Trust* itself, the reasoning of the court could be said to encompass percentage fee agreements entered into prior to work done. Indeed, the Court of Appeal noted (at [33] of *Jemma Trust*) that it would be "best practice" for a solicitor to obtain such a prior agreement as to the basis of his charges.

36 The court's decision in *Jemma Trust* was influenced by the fact that charging by reference to the estate value could, in certain instances, provide an element of comparative certainty which was absent when billing was made by the hour. For instance, at [27], the court (per Longmore and Peter Gibson LJJ) noted:

> By contrast, solicitors rendering bills to personal representatives over a period of time are not in the same position. When in the process of performing non-contentious business, they may find it impossible to forecast what amount of time will have to be spent on the business. It may assist the client or other entitled person to have the certainty of a charge embracing a separate value element (even if in monetary terms the appropriate charge by reference to value is small compared with the overall charge), since they will then know that the further charges for time will depend on the hours spent on the business and that such further charges will exclude any element based on value. ...

37 Similarly, Mance LJ observed at [39]:

> ... In some circumstances, the certainty of a charge based *purely* on a percentage of value could well have advantages for clients. Some legal systems (eg the German, absent written agreement to the contrary: Bundesgebührenordnung für Anwälte, 26 July 1957) fix lawyers' fees on the basis of the value of the subject matter even in contentious cases. One feature of hourly charging, for which even the most skilled costs judge may, I imagine, find it difficult to allow, is its propensity to reward "plodding" work or-and this is, I suspect, as, if not more, relevant-its propensity to encourage and reward excessive diligence, whether by an individual or in the form of excessive deployment of man-or woman-power. I can therefore see why it might be appropriate for solicitors to be able to charge on a pure percentage of value basis, even without agreement. ...

38 What these two statements sought to convey was that in some circumstances, a fee based on

a percentage has the advantage of being certain from the client's perspective and that charging by the hour or time has its downside (*eg*, rewarding a plodder or an excessively diligent solicitor). *But nothing in these two statements suggest that a fee based on a percentage need not be fair*. Indeed, in *Jemma Trust*, while the court sanctioned solicitors' fees to be charged based on the value of the estate, it was quick to emphasise that at the conclusion of the business, the overall remuneration ought to be fair and reasonable (see [28]). In addition, it is noteworthy that as part of its guidance to solicitors, the court stated at [33] that when charging based on the value of the estate, it should usually be on a regressive scale; and that when part or the whole of the bill is based on the value of the estate, it is important to calculate the number of hours that would notionally be taken to achieve the charge based on estate value, as it would help to determine whether the overall remuneration claimed is fair and reasonable.

39 Locally, in the case of *Re Abdul Rahim Rajudin* [1988] 2 SLR(R) 359 ("*Re Abdul*"), the respondent acted for one Chaw in the purchase of a property. As Chaw was keen to sell the property soon after the purchase, the respondent introduced Chaw to his friend Mah, who found a buyer for the property. Prior to the sale of the property by Chaw, it was agreed that Chaw would pay Mah a commission at the rate of $0.50 per square foot as "finder's fee" ("the note"). Out of this commission, Mah agreed in writing by endorsement on the note to give the respondent a share of the commission under the note. A subsequent agreement was entered into between Chaw and the respondent under which it was agreed that Chaw would pay the respondent a further "finder's fee" of $119,223.75. This agreement ("the commission agreement") was a separate agreement from the note.

40 The Court of Three Judges found that while the note was neither unconscionable nor a gross overcharge, the commission agreement was. In coming to its conclusion, the court had regard to the fact that the commission agreement was entered into by Chaw at a time when his financial situation had taken a turn for the worst (see [26] of *Re Abdul*) and the sale of the property had run into some difficulties (see [4] of *Re Abdul*). The respondent had taken advantage of the situation by charging Chaw, under the commission agreement, five times the amount payable under the note (see [30] of *Re Abdul*). In the light of the circumstances, the commission agreement could not be said to be fair or reasonable and the court found the respondent to have acted in a grossly improper manner in the discharge of his professional duty *vis-à-vis* the commission agreement.

The Respondents' overriding duty to charge fairly dictates that the final bill must not be grossly disproportionate to the time spent on the matter

41 In the result, we cannot see how the Respondents' arguments that they were given *carte blanche*, by virtue of the fee agreements, to render a bill grossly disproportionate to the time spent on the matter, can be sustained. At para 30 of their written submissions, the Respondents argued that "the charges against the Respondents have nothing to do with whether the agreements on costs were 'unfair or unreasonable'". Taking the argument one step further they contended that the DT had exceeded its mandate and erred in law in determining whether the fee agreements were fair and reasonable (also at para 30 of the Respondent's written submissions), as only the High Court can decide whether the agreements on costs were "fair and reasonable" pursuant to an application under s 109(5) of the LPA.

42 This shows a basic misconception on the part of the Respondents that just because they had the oral agreements, the fees they billed pursuant to those agreements cannot be wrong. For the reasons set out above (see, in particular, [34]), such an agreement is always subject to the test of reasonableness. Indeed in *Wong Foong Chai v Lin Kuo Hao* [2005] 3 SLR(R) 74 ("*Wong Foong Chai*") at [31], the High Court held that:

... no agreement for the payment of costs between client and solicitor is sacrosanct in the sense that it is conclusive and immune to, as well as impervious from, any investigation by the court itself. That such agreements can in fact be - and are - subject to the court's scrutiny, particularly from the perspective of reasonableness and fairness, is established in both local as well as English case law...

43 In *Wong Foong Chai*, the issue arose in relation to the taxation of a Solicitor's bill where the Solicitor had in his taxation review at the High Court relied on an earlier agreement reached with the client to argue that the taxed costs allowed by the Assistant Registrar was too low. While we recognise that the proceedings in *Wong Foong Chai* are different from the present proceedings, we do not think that this difference matters. The High Court's observation that the status of the earlier agreement is not sacrosanct (see [42] above) applies to this present case.

44 The Respondents further argued at para 31 of their written submissions that they were deprived of a fair hearing as they were not afforded the opportunity to rebut the allegations that the fee agreements were unfair or unreasonable before the DT. It should be noted that under the disciplinary process of the LPA, before a charge against a Solicitor can come before the Court of Three Judges, the alleged errant Solicitor has first to be brought before a DT and it is only when the DT finds the charge established, and that sufficient cause of gravity exists, will the matter proceed to the High Court where the Solicitor will have to show cause. It is, with respect, absurd to suggest that the DT could not examine the reasonableness of the fee arrangements under the two oral agreements and that only the High Court could do so.

45 We further do not quite understand the argument of the Respondents that the DT has no mandate to rule on whether the oral agreements were "unfair or unreasonable", as that is a matter only the court has the jurisdiction to rule on. It is true that under s 109(5) of the LPA (see [34] above), the court could set aside an agreement on fee based on general law. However, we do not see how that precluded the DT from examining the reasonableness of the fee arrangements under the two oral agreements when the Respondents themselves had relied on the two agreements as a defence to the charges brought against them. The considerations in determining whether to set aside an agreement under general law are obviously different from those in determining the reasonableness of its terms. Having raised the fee agreements as a defence, the DT was clearly entitled to examine whether the fee agreements were fair and reasonable.

46 We have earlier (at [32] above) referred to rule 2(2)(c) of the PCR which states that a Solicitor has an obligation "to act in the best interests of his client and to charge fairly for work done." What is a "fair" charge must necessarily depend on all the circumstances of the case. Order 2 of the Legal Profession (Solicitors' Remuneration) Order (Cap 161, O 1, 2010 Rev Ed) sets out the criteria for fairness and reasonableness in charging for non-contentious work. The following circumstances, in particular, are germane to deciding what is "fair and reasonable":

(a) the importance of the matter to the client;

(b) the skill, labour, specialised knowledge and responsibility involved on the part of the Solicitor;

(c) the complexity of the matter and the difficulty or novelty of the question raised;

(d) where money or property is involved, the amount or value thereof;

(e) the time expended by the Solicitor;

(f) the number and importance of the documents prepared or perused, without regard to length; and

(g) the place where, and the circumstances under which, the services or business or any part thereof are rendered or transacted.

47 It will, accordingly, be appreciated that in construing whether fees charged for a non-contentious matter is fair and reasonable, factors such as the complexity of the matter; time expended; number and importance of documents prepared or perused, *etc*, must all be taken into consideration.

Whether the invoices rendered by the Respondents amount to gross overcharging

48 In the earlier case of *Law Society v Low Yong Sen* [2009] 1 SLR(R) 802 ("*Low Yong Sen*") at [38], the court said that the test of overcharging is an objective one, "having regard to the nature of the work done (contentious or otherwise) and any prior agreement between the parties." The presence of a fee agreement does not end the inquiry: it is but one factor, together with the nature of work done, that ought to be taken into consideration in determining whether there is overcharging.

49 In support of their argument that a *laissez-faire* approach should be adopted, "in that if there is a fee agreement and the bill was rendered in accordance with it then in general there cannot be overcharging," [note: 22] the Respondents also relied on the following dicta in the case involving the medical profession of *Lim Mey Lee Susan v Singapore Medical Council* [2012] 1 SLR 701 ("*Susan Lim*") at [55] to show that there could be no misconduct:

> Be that as it may, it is necessary that *we correct any suggestion that in* Arul*, the court of 3 Judges decided that an allegation of overcharging for professional services should, in law, be viewed as a commercial dispute and not as a matter of professional ethics.* In the general context of professional services, if the service provider and the client agree on the fee payable for the services to be rendered, and if the services are rendered in accordance with the terms of the agreement, no issue of overcharging would normally arise, however high the fee may seem to another client or another service provider in the same profession. *But, as held by the court of 3 Judges in* Arul*, overcharging can still arise even where there is a fee agreement if the service provider pads his bill or does unnecessary work of a kind not specified in his fee agreement with his client. Overcharging for professional services simply means either charging, in respect of services rendered, an amount beyond what is reasonably chargeable for those kinds of services, or charging for unnecessary services or services not rendered at all.* In the last-mentioned instance, overcharging might even amount to dishonesty and/or cheating. Whether or not overcharging in a particular profession crosses the threshold of acceptable professional conduct into the realm of punishable professional misconduct is a matter for the relevant professional body to decide in the first instance, and, if there is an appeal, ultimately by a court of law, on the facts of each case. The decision of the court of 3 Judges in *Arul* is not an authority for the proposition that professionals are entitled to overcharge their clients. It actually affirms the law to the contrary. [emphasis added]

50 In our opinion, the Respondents' reliance on this passage in *Susan Lim* is misplaced. Indeed, *Susan Lim* proves the case against them. Overcharging can still occur even if there is a prior agreement on fees, and as the court stated there "overcharging for professional services simply means either charging, in respect of services rendered, an amount beyond what is reasonably chargeable for those kinds of services, or charging for unnecessary services or services not rendered at all."

51 The invoices billed to the two Estates were based solely on the fee agreements, and had absolutely no correlation to factors such as the complexity of the matter, time spent, number and importance of documents prepared or perused, *etc*. Indeed, the amounts charged by the Respondents to the Quek Estate ($359,417.17+$53,000.00= $412,417.17) and the Leong Estate ($150,640.00), were way over the amount of legal fees for work done eventually awarded after taxation (*ie*, $120,000 for the Quek Estate and $50,000 for the Leong Estate).

52 Neither did the Respondents make any effort to assess whether the quality of service rendered by them (*viz*, time spent, complexity of work, nature of documents involved, *etc)* was commensurate with the overall fee charged. In fact, the Respondents have, without reticence candidly admitted that the work done in relation to the two Estates was neither factually or legally complex. [note: 23] In our opinion, there is clearly gross overcharging by the Respondents. We would also add that we agree with the DT that, in the present instance, a fee based on the value of the assets realised smacked more of a gamble than a genuine assessment of the fee for work to be done. There is simply no justification for the Solicitor to charge more fees just because the assets of an estate have gone up in value.

Whether the Respondents' conduct amount to grossly improper conduct

53 In the light of the foregoing, it is evident that the Respondents had blatantly sought to rely on the oral fee agreements to render bills which were wholly out of proportion to the nature or the measure of the services rendered by them to the two Estates. Rule 38 of the PCR states that:

> **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.

54 While not all cases of overcharging amount to grossly improper conduct (see *Andre Arul* at [29]), the Respondents' present conduct in relation to the two Estates is redolent of dishonesty and deceit, and threatens to bring the legal profession into disrepute. Such conduct must be regarded as grossly improper.

The extent of overcharging in the present case

55 In *Re Han Ngiap Juan* [1993] 1 SLR(R) 135 ("*Re Han Ngiap Juan*") at [34], the court stated:

> ... The passages quoted from *Lau Liat Meng's* case ... indicate clearly that the extent to which a client is overcharged is a very strong factor against an advocate and solicitor accused of overcharging amounting to grossly improper conduct under s 83(2)(b) of the Legal Profession Act, and this must be so whether or not there is any allegation of dishonesty or deceit. In our view, while this may not be a conclusive factor, it is a very material one, and the more a client is overcharged, the harder it will be for the advocate and solicitor concerned to persuade the court that the explanation he gives does justify the overcharge. In short, a really egregious overcharge is not to be vindicated merely by asserting the lack of dishonesty or deceit, when the reason given in explanation of such an overcharge is patently insupportable.

56 The total fees charged by the Respondents for the two Estates are three to four times more than the total amount eventually awarded after taxation. In absolute figures, the total difference is

around $400,000. Such a huge difference in the figures can only be regarded as egregious and can hardly be justified. The fact that the executors and trustees of the two Estates agreed to such an agreement merely demonstrates that they did not understand the extent of the legal services required and what were the appropriate fees for those services. That was precisely why Parliament enacted s 109(5) and (6) of the LPA.

The Respondents adamant refusal to tax the bills

57 In *Andre Arul* at [32] and [33], the court made clear that when faced with the situation where a client is aggrieved with the fees charged, a Solicitor should inform the client of the option of taxation. Indeed, the court stated at [33] that "[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".

58 Here, the Respondents never once raised the option of taxation to the clients. The Complainant testified that he was never informed of his right to seek taxation of the bills, until the new Solicitors for the two Estates came into the picture. [note: 24] This was in spite of the fact that when the Complainant, Goh and QCS met with the Respondents to discuss the Respondents' fees for the Leong Estate, they had already expressed their concern about the 5% fee arrangement.

59 What caused us further distress was the fact that even after the new solicitors for the Leong Estate (*ie*, R&T) wrote to the Respondents asking for taxation of their invoice, [note: 25] the Respondents replied, adamantly stating that "as legal costs had been agreed upon, the issue of re-negotiation of legal costs or taxation of legal costs does not arise". The Respondents took the same stand when Lee & Lee wrote to them on behalf of the Quek Estate.

Whether the Respondents' conduct of filing grossly inflated Bills of Costs smacked of dishonesty and deceit

60 Another aspect of the Respondents' behaviour which also gives us cause for concern is that the Respondents displayed a cavalier attitude towards the entire taxation process by filing grossly inflated Bills of Costs. BC Nos 171 [note: 26] and 172 (for the Quek Estate and the Leong Estate respectively) were replete with instances of the Respondents padding their work done, in an *ex post facto* attempt to justify the fees charged under their earlier invoices. We will now cite a few choice examples of the Respondents' claims:

(a) it took 30 minutes to peruse a letter from Messrs Albert Teo & Co to Ang & Lee confirming that the former had no objections to Ang & Lee taking over the conduct of the Quek Estate. [note: 27] The said letter was one-page long and contained 2 short paragraphs; [note: 28]

(b) it took 30 minutes to draft a letter saying "We forward herewith a copy of a letter dated 1 June 1999 from Messrs Albert Teo & Co for your information and necessary action"; [note: 29]

(c) it took 30 minutes to draft a letter saying "We refer to the above matter. We have arranged to take over the above matter [from] Laycock & Ong. Please let us have your cheque for $10,000 to account for costs and disbursements in the matter"; and

(d) to bill the client for a letter drafted in reply to R&T, in which the Respondents were defending themselves for overcharging the clients.

61 The cross-examination of the Respondents revealed a tendency to grossly exaggerate work

done to justify overcharging. Interestingly, the cross-examination of the 1st Respondent also revealed that much of the work referred to in the Bills of Costs, was actually performed by the chief probate clerk, Chng. [note: 30]

Whether the Respondents misled the clients into entering the fee agreements

62 In *Andre Arul* at [31], the court noted that "[g]ross overcharging will create a reaction or perception from the public that lawyers are merciless parasites, and that will produce a stain on the noble nature of legal services". The relationship between Solicitor and client is one of trust and it is understandable that a client would place much trust in his Solicitor. Thus, it is absolutely essential that this trust should not be breached. As the Complainant himself exhorted during cross-examination when asked why he did not initially raise any objection about the fees:

> No, because I do not have the fortune to handle so many estates in my life. I mean this is the first time I'm handling this thing. The first time I'm interacting with lawyers, you know, and I assume that everything is --- fixed. There's an order, there's a fixed range, there's a fixed everything. There are rules for everything. So I mean there are rules. You can't play ourselves the rule.

63 An example of how the Respondents sought to abuse this trust can be seen in how they used, and misrepresented, the Public Trustee's Guide for the Administration of Small Estates of Deceased Persons. In their letter dated 8 September 2004 to the Complainant, Goh, and QCS, [note: 31] the Respondents sought to persuade them to agree to the quoted fees for handling the Leong Estate by representing at para 2 of the letter that:

> Our legal costs quoted for acting in all estate matters is 5% of the gross value of the estate. This is taken from the Public Trustee's guide of between 2% to 6% when acting in the administration of estates.

64 However, the Respondents artfully omitted to advise the two Estates that the Public Trustee's role is limited to assisting people of lesser income who may have difficulties in paying legal fees in applying to the court for letters of administration in respect of small estates. The Public Trustee's guide of between 2% to 6% is actually meant for small estates not exceeding $50,000 in value; further, the scale is also a sliding one. [note: 32] The object behind this fee arrangement is to help keep the absolute fees payable for small estates low.

65 What is also disconcerting to us was the cavalier answers given by the 2nd Respondent when he was queried about their failure to highlight this aspect of the Public Trustee guide to the clients: [note: 33]

> Q: Did you tell Mr Goh, Mr Quek Tsiu Weng, or Mr Quek Chin Soon that the purpose of the Public Trustee's guide, as you called it, is to keep fees low for estates of up to $50,000. Did you tell them?
>
> A: I did not because that---in---in fact, there was no discussion at the meeting that we held on the PT guide. There was a meeting on the 2nd of September.
>
> ...
>
> Q: So paragraph 2 was designed, really, to impress upon the client that your fees are fair,

correct? It was a statement telling them, "This is taken from the Public Trustee's guide of 2 to 6 percent." It was meant to impress upon them, "We have a very fair rate. What you're being charged is fair; the norm so to speak".

A: No, erm, I---at the time this letter was written, er, that was not the intent. Erm, I---from my recollection, erm, the intent was to inform them that you have a---you have the Public Trustee which, erm, er, which administers estate and their fees are at this rate. *Our rate is 5% and they were at liberty to do their own, er, homework*. So that was the intent. Communication of this information, er, that PT charges 2 to 5---2 to 6 percent. Er, that---that was all.

[Emphasis added]

66 That was not all. What further compounds matters is that paras 4 and 6 of the same letter of 8 September 2004 also implicitly contained misleading information:

(a) in respect of para 4 of the letter, at the time, neither of the Respondents possessed anything near to 30 years experience in the relevant area of work. Only Chng, their chief probate clerk, had that length of experience; and

(b) in respect of para 6 of the letter, it is certainly not true that "there are not many firms that have the experience in handling estates that we have. Our fees are compatible with those with the relevant experience" considering that the Respondents have themselves admitted that the handling of the two Estates was hardly complex, such a statement was clearly disingenuous.

67 All things considered, we have no doubt that the Respondents had deliberately misled the clients to think that the proposed fees (based on a percentage of the realised assets of the Estates) which the clients had agreed to were in accordance with the norm. The Respondents had misconducted themselves in raising the invoices following the terms of the agreement and in presenting BC Nos 171 and 172 for taxation. We agree that the fact that a bill has been taxed down does not necessarily mean that it would in itself amount to professional misconduct. The amount taxed off could merely be due to a *bona fide* difference of views as to the true value of work done. However, what cannot be denied is that the greater the extent to which the bill is taxed down, the greater the likelihood that there is professional misconduct. As highlighted at [56] above, the total amount taxed down is huge. That there is misconduct is not the question. The real question is whether their misconduct has crossed the line so as to constitute *grossly* improper conduct. Bearing in mind the extent of the overcharging and the misrepresentations which were made to the clients which bordered on deception, we are fully convinced that the misconduct constituted grossly improper conduct. What the Respondents have done has undoubtedly "affect the integrity of the profession" (see r 38 of the PCR). Thus we would affirm the finding of the DT that the Respondents are guilty of misconduct which constituted grossly improper conduct under s 83(2)(b) of the LPA.

The appropriate sanctions to be imposed on the Respondents

Whether the 1st Respondent should be held equally liable as the 2nd Respondent

68 We now turn to the final issue which relates to the question of the appropriate sanctions to be imposed on the Respondents. Before doing so, we need to allude briefly to a point made in the Respondents' joint affidavit filed on 10 March 2012 [note: 34] (at para 34) where it was stated that the 2nd Respondent takes primary responsibility for the matter as the clients were those of the 2nd

Respondent when they sought the services of Ang & Lee after the 2nd Respondent's previous firm, Laycock, ceased its practice; it was the 2nd Respondent who signed the invoices that are the subject matter of the Complaints; and the files were also under the primary care of the 2nd Respondent.

69 In response to this, counsel for the Law Society in his written submission at paras 104 to 111 pointed out that:

(a) the Respondents' case has always been that the 1st Respondent had been involved in the matters at all material times;

(b) the 1st Respondent had filed a short affidavit of evidence-in-chief ("AEIC") adopting the contents of the 2nd Respondent's AEIC;

(c) the 1st Respondent's own evidence under cross-examination was that he was primarily responsible for the checking of the prices of shares belonging to each Estate; [note: 35] and

(d) the 2 September 2004 invoice reflected that the 1st Respondent had done work on the matter.

70 Moreover, the 1st Respondent had always been aware of the fee agreements, and fully knew about the invoices that were sent to the clients. The 17 December 2007 letter to QCS, the Complainant, and Goh, enclosing the invoice of $100,640 charged to the Leong Estate, was signed off by the 1st Respondent together with the 2nd Respondent. Further, the 1st Respondent admitted during cross-examination that he knew about the invoices sent to the Leong Estate: [note: 36]

Q: You weren't aware that the client had been billed 3%?

A: Of course, I know.

71 Finally, the 1st Respondent also had a hand in the filing of the grossly inflated Bills of Costs for taxation, in a less than *bona fide* attempt to convince the taxing Registrar that the time spent on the matter was commensurate with the fees charged in the earlier invoices. It is all too convenient for the Respondents to now say that only the 2nd Respondent was responsible for all the wrongdoings. We do not think that is the truth.

Whether a short period of suspension is warranted

72 In *Andre Arul* at [36], in the light of the new amendment to the LPA which allows for the imposition of a maximum fine of up to $100,000. (which was enhanced from the previous maximum cap of $10,000), this court made it clear that the starting point in imposing a proportionate penalty for grossly improper conduct by overcharging should be a fine in the first instance, and not suspension from practice. However, the court in *Andre Arul* also hastened to emphasise that a monetary penalty was appropriate only where there is no deception or dishonesty involved.

73 We note that in the present case, the Respondents stated at [33] of their joint affidavit that they had made restitution. It seems to us, however, that the Respondents' conduct in the present case is more akin to the conduct of the Solicitors in *Re Han Ngiap Juan* and *Low Yong Sen*, where the gross overcharging was redolent of cheating or deception. Here, the conduct of the Respondents in

misrepresenting the Public Trustees' guide, adamantly refusing taxation, and tendering grossly inflated Bills of Costs for taxation, is not only disturbing, but borders on dishonesty. The total amount overcharged is also huge, *ie*, $400,000.

74 In *Low Yong Sen*, the Solicitor who set up an arrangement with a third party to camouflage the fact that he was benefitting from inflated disbursement charges was punished with a suspension of six months. In *Re Lau Liat Meng* [1992] 2 SLR(R) 186, where the Solicitor had dishonestly blown up his fee note and had put up a false time sheet to support it, a three month suspension was imposed. We appreciate that at the time the acts of misconduct of overcharging were committed in the aforesaid two cases, the court had the power to impose a fine of only up to $10,000 and thus, in making comparisons with the punishments imposed in those two cases, this difference ought to be kept in mind. However, in this case, apart from the aggravating circumstances enumerated at [73] above, the Respondents have not shown any signs of remorse or contrition and sought to strenuously argue that the two oral agreements provided them with a complete cover.

Conclusion

75 Having considered the views of this court in *Andre Arul* and the considerations alluded to in the preceding paragraph, we are of the opinion that a penalty of a three-month suspension against each of the Respondents is appropriate and we so order.

76 In order to allow the Respondents time to tidy up their affairs, we direct that the suspension order to take effect only from 1 January 2013. If the Respondents require more time for that purpose, they are at liberty to address us on it.

77 The Respondents shall bear the costs of the present proceedings. In addition, the DT's order that the Respondents shall pay the Law Society's costs before the DT is also affirmed.

[note: 1] Record of Proceedings ("RP") Volume II (Part 6) at pp 61 and 95

[note: 2] RP, Vol II (Part 4) at para 52.

[note: 3] RP, Vol II (Part 3) at pp111-112

[note: 4] *Ibid* at p 113.

[note: 5] *Ibid*.

[note: 6] Applicant's Core Bundle of Documents ("CBD") at pp 165-167.

[note: 7] RP, Vol II (Part 3) at pp 107-109.

[note: 8] Respondent's CBD at p 8.

[note: 9] *Ibid* at pp 130-137.

[note: 10] Applicant's CBD at pp 176-183.

[note: 11] Applicant Core Bundle ("CB") at p 218.

[note: 12] RP, Vol IV (Part 8) at p 1951.

[note: 13] RP, Vol IV (Part 11) at p 3076.

[note: 14] Applicant's CBD at pp 186 and 193.

[note: 15] RP, Vol II(Part 2) at p 4

[note: 16] RP Vol II (Part 2) at p 152.

[note: 17] Respondents' CBD at p 36.

[note: 18] Respondents' CBD at p 39.

[note: 19] Pg 28 of the respondents' written submissions.

[note: 20] Pg 31 of the respondents' written submissions.

[note: 21] RP, Vol II (Part 6) at p 61.

[note: 22] Respondents' written submissions at para 55 (2).

[note: 23] RP, Vol II (Part 6) at pp 129-130 and 154.

[note: 24] Record of Proceedings (Volume II) Part 6 at pg 62.

[note: 25] See Applicant Core Bundle at 198.

[note: 26] Record of Proceedings (Volume II) Part 2 Pg 4-151; Record of Proceedings (Volume II) Part 2 Pg 153-201.

[note: 27] See Record of Proceedings (Volume II) Part 2 at 8.

[note: 28] See Record of Proceedings (Volume IV) Part 1 at 102.

[note: 29] See Record of Proceedings (Volume IV) Part 1 at 104.

[note: 30] RP, Vol II (Part 6) at pp 153-195.

[note: 31] Applicant's CBD at p 141.

[note: 32] RP, Vol III (Part 1) at Exhibit P-1.

[note: 33] RP, Vol II (Part 6) at pp 124-125.

[note: 34] Bundle of Originating Summons and Affidavits, Vol 9 at p 185.

[note: 35] Applicant's CB at p 66.

[note: 36] RP, Vol II (Part 6) at p 193.