IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 116

Originating Summons No 5 of 2020

Between

Pang Ah San

… *Appellant*

And

Singapore Medical Council

… *Respondent*

GROUNDS OF DECISION

[Professions] — [Medical profession and practice]

TABLE OF CONTENTS

Pang Ah San
v
Singapore Medical Council

[2021] SGHC 116

General Division of the High Court — Originating Summons No 5 of 2020
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Chao Hick Tin SJ
9 March 2021

12 May 2021

Chao Hick Tin SJ (delivering the grounds of decision of the court):

1 This is an appeal by Dr Pang Ah San ("Dr Pang"), a registered medical practitioner since 1982, against his conviction by a Disciplinary Tribunal ("DT") of three charges for improper conduct which brought disrepute to the medical profession under s 53(1)(*c*) of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("MRA") and the sentence imposed by the DT. The DT's decision was published as *Singapore Medical Council v Dr Pang Ah San* [2020] SMCDT 2 ("GD").

2 Dr Pang had previously been disciplined on two occasions in relation to his use of a loop Percutaneous Endoscopic Gastronomy ("loop-PEG") tube on several patients, which procedure was found not to have been generally accepted by the medical profession. Both during and after those disciplinary proceedings, *ie*, in June 2012 to April 2013, December 2014 to November 2015, and May and September 2017, Dr Pang made numerous statements in various

emails and online blog posts complaining about the Singapore Medical Council ("SMC"), the disciplinary process before the two prior Disciplinary Committees ("DCs") and the legal proceedings he had undergone, and the people involved in those proceedings. Those statements formed the basis of the three charges on which he was convicted by the DT.

3 Having heard the parties, we were of the view that Dr Pang's appeal was without merit and accordingly dismissed it. We now provide the detailed grounds for our decision.

Facts

Charges

4 We begin with the three charges which were brought against Dr Pang ("1st Charge" to "3rd Charge" respectively), and which had been amended in the course of the DT proceedings below. We set out a truncated version of the 1st Charge here, and will discuss the framing of the charges in more detail at the appropriate juncture below. The 1st Charge (as amended) reads:

> **1st CHARGE**
>
> That you, **DR PANG AH SAN**, a registered medical practitioner under the Medical Registration Act (Cap. 174), are charged that, in the period from June 2012 to April 2013, you made derogatory statements against the Singapore Medical Council ("**SMC**") that eroded the integrity and good name of the medical profession in various emails sent to numerous recipients, including *inter alia*, members of the medical profession, Council Members of the SMC, and the Director of Medical Services / Registrar of the SMC, as extracted at **Schedule A** …
>
> [particulars omitted]
>
> and that in relation to the facts alleged, you have been guilty of such improper act or conduct which brings disrepute to the profession under section 53(1)(c) of the Medical Registration Act (Cap. 174) (Rev. Ed. 2014).

[emphasis in original]

5 The 2nd and 3rd Charges were essentially the same except that the particulars and the Schedules differed, and they related to statements made in December 2014 to November 2015, and in May and September 2017, respectively.

Background

6 Between 2007 and 2009, Dr Pang had used the loop-PEG procedure to treat four patients. In May 2009, pursuant to complaints received, a Complaints Committee was convened to consider the matter and it ordered that a formal inquiry be held before a DC. Between September 2011 and March 2012, a Disciplinary Committee ("DC1") was convened and conducted a formal inquiry.

7 After this inquiry, between 12 June and 18 July 2012, Dr Pang sent 13 emails to numerous recipients (ranging from 118 to 151 recipients per email). These emails contained part of the statements referred to in the 1st Charge. We do not propose to set out these statements in detail, given the nature of their contents and the number of statements made. It is sufficient for us to point to a sample of the statements made during this period which can be found in the GD at [13].

8 On 23 July 2012, DC1 found Dr Pang guilty of professional misconduct and issued written grounds of decision which were published as *In the matter of Pang Ah San and Dr A* [2012] SMCDC 8 ("*DC1 Decision*"). DC1 held that the loop-PEG procedure was not generally accepted by the medical profession: *DC1 Decision* at [110]. The DC1 concluded that Dr Pang "had intentionally and deliberately ignored his ethical obligations as enshrined in [cl] 4.1.4 of the SMC

Ethical Code" and found him guilty of professional misconduct: at [123]. DC1 sentenced him to a fine of $10,000 and a censure, and required him to give a written undertaking and to pay 70% of the costs of the proceedings: at [133]. Dr Pang appealed against this decision to the High Court ("the Appeal").

9 After DC1 released its decision, between 24 July and 19 November 2012, Dr Pang sent 51 emails to numerous recipients, ranging from 141 to 153 recipients per email apart from one email which was sent to only one recipient. A sample of the statements made in this period can be found in the GD at [14]. These formed part of the basis for the 1st Charge.

10 On 20 November 2012, the SMC's lawyers wrote to Dr Pang's lawyers pointing out that the emails which he sent from June to November 2012 contained defamatory statements and that it was also improper for Dr Pang to have commented on DC1's decision as the Appeal was still pending. The letter requested Dr Pang to cease sending out any further emails making defamatory statements against the SMC or passing disparaging comments on DC1 or DC1's decision. On 22 November 2012, Dr Pang's lawyers replied by letter stating that they had drawn Dr Pang's attention to the allegations in the 20 November 2012 letter from the SMC's lawyers and advised him not to send out emails containing such contents.

11 Despite this, between 22 November 2012 and 30 April 2013, Dr Pang sent a further 52 emails. These were sent to between 102 and 152 recipients per email, and also included links to blog posts and attachments. A sample of the statements made in these emails can be found at [17] and [19] of the GD. During this period, on 15 March 2013, the SMC's lawyers also sent a letter of demand to Dr Pang reiterating that the emails sent from June 2012 to March 2013 contained defamatory statements.

12 On 3 May 2013, the High Court heard the Appeal and dismissed it. Dr Pang was ordered to pay the costs of the Appeal. The grounds of decision in *Pang Ah San v Singapore Medical Council* [2014] 1 SLR 1094 ("*Pang Ah San*") were released on 29 November 2013. The High Court upheld (a) DC1's finding that the loop-PEG procedure was not generally accepted by the medical profession: at [78]; and (b) DC1's decision that the breach of cl 4.1.4 of the SMC's Ethical Code and Ethical Guidelines ("ECEG") amounted to professional misconduct under s 45(1)(*d*) of the Medical Registration Act (Cap 174, 2004 Rev Ed) ("2004 MRA").

13 On 15 May 2013, a second Complaints Committee, which was convened to inquire into further complaints arising out of Dr Pang's use of the loop-PEG procedure in relation to three other patients in the period of 2007–2009, recommended that another DC be convened to conduct a formal inquiry into these complaints.

14 On 6 November 2013, the SMC's lawyers wrote to Dr Pang giving him a final opportunity to (a) provide an absolute retraction of all defamatory statements made to date; (b) send a letter of apology to all the recipients of the emails; and (c) provide an undertaking that he would, *inter alia*, refrain from making statements to the same or similar effect concerning the SMC to any person, by 20 November 2013. If the demands were not met, the SMC stated that it would make a complaint to the Chairman of the Complaints Panel. These demands were not complied with, but no complaint to the Complaints Panel was made immediately thereafter.

15 Between July and October 2014, a second DC ("DC2") conducted a formal inquiry into the further three complaints. On 15 October 2014, DC2 found Dr Pang guilty of professional misconduct on the three charges under

s 45(1)(*d*) of the 2004 MRA, for similarly breaching cl 4.1.4 of the ECEG, with written grounds published as *In the matter of Dr Pang Ah San* [2014] SMCDC 5 ("*DC2 Decision*"). DC2 similarly found that the loop-PEG procedure was not generally accepted by the medical profession, and held that Dr Pang had intentionally and deliberately ignored his ethical obligations and that the charges of professional misconduct were made out: *DC2 Decision* at [51], [57] and [70]. DC2 sentenced Dr Pang as follows: (a) a suspension of six months (three months per charge, with two sentences to run consecutively); (b) $10,000 fine per charge; and (c) censure. DC2 also ordered Dr Pang to give a written undertaking to the SMC and to pay the full costs and expenses of the proceedings: at [75]. Dr Pang did not appeal against *DC2 Decision*.

16 In December 2014, Dr Pang began writing blog posts which included statements that formed part of the basis of the 2nd Charge. From February 2015 to November 2015, Dr Pang sent 11 distinct emails (not counting duplicates) to between 320 to 548 recipients per email, which included links to the blog posts from December 2014 onwards. The statements in the emails, the attachments to the emails, and the posts linked to in the emails collectively constituted the basis for the 2nd Charge. A sample of these statements can be found in the GD at [22].

17 At around this time, after the costs of the various proceedings mentioned above had been taxed, the SMC brought various applications to seek payment of the costs due from Dr Pang, which amounted to $510,412.29. On 5 April 2016, the SMC commenced proceedings for examination of a judgment debtor. On 28 September 2016, Dr Pang was committed to prison for seven days for refusing to provide information required of him by an order of court made in the proceedings for examination of a judgment debtor.

18 Between 2 and 29 May 2017, Dr Pang sent four emails to the Executive Secretary of the SMC. A sample of the statements made in the emails can be found in the GD at [23]. Subsequently, between 13 and 23 September 2017, Dr Pang sent three distinct emails (not counting duplicate emails) to between 37 and 198 recipients each. A sample of the statements made in these emails is set out in the GD at [24]. The statements made in May and September 2017 formed the basis of the 3rd Charge.

Procedural history

19 On 22 March 2016, *ie*, after the statements forming the basis for the 2nd Charge were made by Dr Pang, the SMC made a complaint against him, for the statements he made up to November 2015, to the Chairman of the Complaints Panel pursuant to s 39(3)(*a*) of the MRA. On 13 September 2016, a Notice of Complaint was sent to Dr Pang pursuant to s 44 of the MRA.

20 On 12 June 2017, the SMC wrote to the Chairman of the Complaints Panel to refer additional information pertaining to the emails Dr Pang sent between 2 and 29 May 2017. On 13 October 2017, the SMC wrote to the Chairman of the Complaints Panel to refer additional information relating to the emails Dr Pang sent in September 2017. Pursuant to s 44 of the MRA, a further Notice of Complaint was issued to Dr Pang based on these two additional complaints and they formed the basis for the 3rd Charge.

21 A Complaints Committee was convened and, on 12 January 2018, it ordered the matter to be referred to a DT (we should at this juncture explain that due to statutory amendments made in 2010 the previously named "Disciplinary Committee" has been renamed as the "Disciplinary Tribunal") for a formal inquiry. On 3 December 2018, the original Notice of Inquiry was issued to Dr

Pang. On 14 March 2019, the Notice of Inquiry was amended. The DT's inquiry was conducted on 8 to 10 July, 23 to 24 October 2019, 15 January and 11 March 2020. The DT found Dr Pang guilty on all the three charges and sentenced him on 11 March 2020. On 8 April 2020, the present appeal was filed, and after the DT published the GD on 4 June 2020, the originating summons commencing the appeal was amended.

Summary of the cases below

Convictions

22 The SMC's case against Dr Pang was that his actions in making the various statements in the emails, the attachments thereto, and the posts linked to in the emails constituted "improper act[s] or conduct which … [brought] disrepute to his profession" under s 53(1)(*c*) of the MRA. The SMC identified three essential elements which it had to establish to prove its case: (a) that Dr Pang sent the emails and attachments in question; (b) that, in those communications, Dr Pang made "derogatory statements against the SMC that eroded the integrity and good name of the medical profession, by attacking the authority and integrity of the SMC and impugning the conduct" of the disciplinary processes; and (c) that Dr Pang's acts amounted to improper conduct that brought disrepute to the profession under s 53(1)(*c*) of the MRA.

23 Dr Pang did not dispute that he sent the emails. Instead, he took the following positions before the DT. First, in relation to the second element above, he argued that the SMC had to prove that the majority of recipients had an interpretation of the statements consistent with that suggested by the SMC before the DT. Second, the emails could not be said to undermine the authority of the SMC because the emails relied on the MRA (from which the SMC drew its authority) to criticise the *misuse* by the SMC of its authority. Further, the

emails could not be said to attack the integrity of the SMC as the emails criticised the SMC for its lack of integrity. In addition, the SMC's disciplinary processes had been criticised publicly before, by the courts as well as in Parliament, and in public by other individuals. He claimed that his criticism would have benefitted the SMC and there was no evidence that the criticisms had affected the SMC's functions. In any case, his criticism was only targeted at the people concerned with those earlier disciplinary proceedings brought against him. Third, the SMC had not proved that the medical profession was, as a result of those statements, brought into disrepute. Dr Pang spent a significant part of his closing submissions discussing the loop-PEG procedure, and argued that his emails were sent to protect the best interests of the medical profession, and that his conduct was "obligatory, explanatory and had made a positive contribution".

Sentence

24 The SMC sought the following orders from the DT: (a) that Dr Pang be suspended for a period of at least 15 months; (b) that Dr Pang be fined $10,000; (c) that Dr Pang be censured; (d) that Dr Pang be ordered to remove, within seven days of the DT's decision, all Facebook posts that contained derogatory statements against the SMC which eroded the integrity and good name of the medical profession; and (e) that Dr Pang, within seven days of the DT's decision, give a written undertaking not to make, send, publish and/or disseminate any further derogatory statements against the SMC that would erode the integrity and good name of the medical profession, whether by way of email, blog posts, Facebook posts or otherwise.

25 On the other hand, Dr Pang argued that no penalty should be imposed on him for what he had written. First, the derogatory statements caused no harm

to the public. Second, he had made the statements as DC1's findings posed a risk to the reputation of Singapore's medical profession. Further, the loop-PEG was a better procedure and would benefit "thousands" of patients. Third, there was no need for a deterrent sentence to be imposed on him as he had spent many years serving people. For example, he had volunteered to assist in the evacuation of Singaporeans from Wuhan, China during the COVID-19 pandemic. Fourth, there was a significant delay in the prosecution of these three charges. Fifth, he did not gain financially from making the statements.

DT's decision

26 The DT convicted Dr Pang on all three charges. The DT found that the emails contained statements that were "highly derogatory": GD at [43]. The DT further found that Dr Pang's repeated acts of sending out these emails to numerous recipients constituted a course of conduct that was improper and brought disrepute to the medical profession: GD at [44]–[50].

27 The DT rejected the various points raised by Dr Pang in his defence. First, the DT considered that it was not appropriate for Dr Pang to seek to reopen the issue of the merits of the use of the loop-PEG tube and to invite the DT to reconsider whether Dr Pang had been wrongly convicted of misconduct by DC1 and DC2: GD at [52]. Second, the burden of proving that his statements were "fair criticism" (in the DT's words) lay on Dr Pang and he had not discharged this burden. Furthermore, his language "cast more heat than light" and could not be considered "explanatory" as Dr Pang asserted. His conduct was also not "obligatory" as there was no basis for him to use the language which he did to criticise other members of the profession or individuals. What he wrote could not be said to be contributory to the medical profession: GD at [53]. Third, while there was a place for constructive criticism of the SMC and its processes, Dr

Pang's language was "wholly unacceptable and outside the bounds of fair criticism": GD at [54]. Fourth, the emails could not properly be characterised as "private communications": GD at [55]. Fifth, the DT rejected Dr Pang's claim that his conduct was heroic and in the interests of the medical profession: GD at [56]. The DT noted the legal test enunciated in *Low Chai Ling v Singapore Medical Council* [2013] 1 SLR 83 ("*Low Chai Ling*") at [72] and found that this test was satisfied in relation to the three charges: GD at [58]. Therefore, the three charges were proved beyond reasonable doubt and Dr Pang was found guilty and convicted: GD at [59].

28 Turning to the sentence to be imposed, the DT cited *Wong Meng Hang v Singapore Medical Council and other matters* [2019] 3 SLR 526 ("*Wong Meng Hang*") at [23] for the key sentencing considerations: GD at [70]. The DT then analysed Dr Pang's culpability and the harm caused. It found that Dr Pang's culpability was high, given the language used, the prolonged period of activity, his recalcitrance, and his persistence despite the finality of the prior disciplinary proceedings: GD at [72]. As to the harm caused, the DT observed that the false allegations could severely undermine the SMC's reputation and integrity and its ability to perform its statutory functions under the MRA, and could bring the disciplinary process into disrepute. The DT concluded that the harm "would be significant": GD at [73].

29 The DT then considered the aggravating and mitigating factors. The DT placed "little weight" on Dr Pang's antecedents arising from the proceedings before DC1 and DC2 as the professional misconduct was not similar: GD at [75]. The DT held, however, that there were no mitigating factors: GD at [76]. As for the allegation of delay on the part of the SMC, any such delay was not significant as there were a large number of emails and attachments that required

investigation, and there were further statements made after the first Notice of Complaint that needed to be considered: GD at [77].

30 In terms of sentencing precedents, the DT found that there were no precedents directly relevant to the facts of this case: GD at [79]. The DT considered the precedents cited by the SMC in relation to the legal profession, *Re Gopalan Nair* [1992] 2 SLR(R) 969 ("*Re Gopalan Nair*") (where the lawyer was suspended for two years) and *Law Society of Singapore v Eugene Singarajah Thuraisingam* [2018] SGDT 8 ("*Thuraisingam*") (where the lawyer was fined $5,000): GD at [80]–[81].

31 The DT agreed with the SMC's submission that the penalty of suspension was warranted in this case. The DT found that specific deterrence was called for and the imposition of a financial penalty or censure alone would be insufficient: GD at [82]–[83]. Given the high culpability and the significant potential harm, a period higher than the minimum of three months was warranted, and the DT ordered a suspension of ten months: GD at [84]. The DT also ordered a penalty of $10,000 as Dr Pang had sent out many of his emails to solicit donations and he had received donations from at least 44 donors: GD at [85]. Censure and the requirement to make an undertaking were also appropriate as there was no justification for his actions which were "improper and completely unacceptable": GD at [87].

32 The DT therefore ordered that: (a) Dr Pang be suspended for a period of ten months; (b) Dr Pang pay a penalty of $10,000; (c) Dr Pang be censured; (d) Dr Pang give a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct; and (e) Dr Pang, within seven days, remove all posts on Facebook or any other social media that contained derogatory statements against the SMC and persons appointed by the SMC in

connection with its past and pending disciplinary processes. The DT also ordered Dr Pang to pay the costs and expenses of and incidental to the proceedings before it, including the costs of the solicitors for the SMC (GD at [88]).

Parties' cases on appeal

33 Dr Pang appealed against both his conviction and sentence. Before us, counsel for Dr Pang, Mr Too Xing Ji ("Mr Too"), advanced five arguments on conviction and one argument on sentence. The five primary arguments on conviction were as follows. First, the present disciplinary proceedings were an abuse of process as they were initiated to litigate the SMC's own claim for defamation. Second, the charges were legally defective as the conduct charged for did not constitute improper conduct under s 53(1)(*c*) of the MRA, having regard to the test articulated in *Low Chai Ling*. Third, on the evidence, the charges were not proven beyond reasonable doubt. Fourth, the DT erred in inviting the SMC to amend the charges to refer to "derogatory" statements instead of "defamatory" statements. Fifth, the convictions were unconstitutional in the light of the protection of free speech enshrined in Art 14 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("Constitution"). In addition, in written submissions, Dr Pang also argued that the DT had erred in refusing Dr Pang's application for the SMC's counsel to recuse herself and that the DT had interfered excessively in Dr Pang's cross-examination of the SMC's witness. On the issue of sentence, it was argued that the sentence was manifestly excessive.

34 Before us, the SMC sought to uphold the DT's findings and sentence on essentially the same grounds as those relied upon by the DT.

Issues before this court

35 Based on the parties' cases, the following issues arose for consideration in this appeal:

(a) Were the DT proceedings an abuse of process?

(b) Were the charges legally defective?

(c) Did the DT err in finding that the charges were proved beyond reasonable doubt?

(d) Were there procedural irregularities in the DT proceedings?

(e) Were Dr Pang's convictions unconstitutional as infringements of his freedom of speech?

(f) If Dr Pang's convictions are upheld, was the sentence imposed manifestly excessive?

We will deal with each of these in turn. As will be seen, we found that none of the complaints raised by Dr Pang had merit and accordingly answered each of these questions in the negative.

Conviction

Were the DT proceedings an abuse of process?

36 Dr Pang's first contention was that the SMC's decision to bring the present disciplinary proceedings on the three charges was an abuse of process as it was resorted to for the ulterior purpose of litigating the SMC's own claim in defamation. Mr Too pointed us to the various letters that had been sent by the SMC's lawyers to Dr Pang and his lawyers on 20 November 2012, 15 March

2013 and 6 November 2013, which made express reference to "defamation" and "defamatory statements". It was only in the letter dated 6 November 2013 that the SMC made any reference to potential disciplinary proceedings. Mr Too therefore submitted that the true purpose of the present DT proceedings was to prosecute a claim of defamation against Dr Pang.

37 Whether a party's conduct constitutes an abuse of process is a very fact specific inquiry. That concept is applicable in an infinite set of circumstances. It is constantly evolving and it would be unwise to attempt any exhaustive definition. Its aim, very often, is to prevent abusive litigation or to uphold finality of litigation. As an illustration, where a claim had been struck out for failure to provide security for costs pursuant to an unless order, it would be an abuse of process for the claimant to institute a new proceeding for much the same claim: see *Harbour Castle Ltd v David Wilson Homes Ltd* [2019] EWCA Civ 505. It could even apply to a person, subject to certain strict constraints, who was not involved in the earlier proceedings: see *Lim Geok Lin Andy v Yap Jin Meng Brian and another appeal* [2017] 2 SLR 760. Another aspect of abuse of process is the commencement of proceedings for a collateral purpose, *ie*, "for the predominant purpose of achieving something other than what the legal process was designed to achieve": *Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No 301* [2018] 2 SLR 866 at [136]. In the context of criminal proceedings, similarly, one aspect of this doctrine was defined in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at [147] to mean "the use of that process for a purpose for which it is not intended, *ie*, to prosecute an offender for some other ulterior motive and not to punish him for an offence which he has committed". We consider that this is a helpful definition in the quasi-criminal context of disciplinary proceedings as well.

38 With that definition in mind, we were unable to find any abuse of process in this case. First, a fundamental problem with Mr Too's submission was that it assumed that there was a binary choice between a defamation suit or disciplinary proceedings, or between the tort of defamation or misconduct that would give rise to disciplinary sanction. We did not think that any such dichotomy existed as a matter of law or logic. Indeed, this contention is wholly irrational. The mere fact that the SMC had referred to defamation in its letters to Dr Pang could not be taken to mean that Dr Pang's actions could not otherwise be treated as misconduct warranting disciplinary action. Hence, the decision to pursue disciplinary action where the statements were also potentially defamatory could not, in and of itself, be considered an abuse of process.

39 Second, we were unable to understand why the SMC would have wished to take the route of disciplinary proceedings under the MRA rather than pursue a claim in defamation, if indeed the latter was its true intention. Mr Too first submitted that the SMC wished to maintain confidentiality given that DT proceedings are heard in private while a suit would be heard in open court. With respect, we did not see how that could have motivated the SMC. The SMC's case was that Dr Pang had made numerous derogatory statements to a significant number of persons, and if it had pursued the matter in defamation, the burden would have been on Dr Pang to justify what he alleged in those offensive statements. A civil suit would have enabled the SMC to vindicate itself publicly. In any event, we would observe that although the DT proceedings are heard in private, a DT's decision could be published (as it was in relation to DC1 and DC2 as well as in this case) and any appeal, as in the present proceedings, would not be heard in private. Mr Too then suggested that the SMC might have realised that as a statutory board or body corporate under the MRA, it might not have been able to sustain a claim for defamation. Even

assuming that contention was correct as a matter of law (on which we make no decision), that would have suggested that the SMC *had no choice but* to commence the disciplinary proceedings, since it could not have pursued a civil action. It seemed to us that in the absence of any identifiable advantage which the SMC would have been able to obtain by the pursuit of disciplinary proceedings, it was difficult on the present facts to infer any abuse of process. In our opinion, the argument that the DT proceedings were brought in abuse of process was wholly without merit.

Were the charges legally defective?

40 Section 53(1)(*c*) of the MRA reads:

> **53.**—(1) Where a registered medical practitioner is found by a Disciplinary Tribunal —
>
> …
>
> (*c*) to have been guilty of such improper act or conduct which, in the opinion of the Disciplinary Tribunal, brings disrepute to his profession;
>
> …
>
> the Disciplinary Tribunal may exercise one or more of the powers referred to in subsection (2).

41 Dr Pang's case was that s 53(1)(*c*) of the MRA only addresses "shameful conduct" and does not cover the "content of critical speech". By focusing on Dr Pang's speech, the charges were legally defective. Mr Too referred us to para (j) of the particulars of the 1st Charge, which read:

> … In the period March 2013 to April 2013, after you received the 15 March 2013 demand letter and pending the hearing of the Appeal, you continued to make derogatory statements against the SMC that eroded the integrity and good name of the medical profession, *by attacking the authority and integrity of the SMC, and impugning the conduct of the 1st CC Investigation and the 1st DC Inquiry* … [emphasis added]

The alleged erosion of the integrity and good name of the medical profession came from the *contents* of the emails, which Mr Too argued was not the test prescribed in *Low Chai Ling*. Instead, *Low Chai Ling* required the DT or court to ask if the conduct was, in Mr Too's words, "so objectively atrocious that it would shame the entire medical profession by association". The charges, by focusing on the content of Dr Pang's statements as opposed to his conduct bringing shame to the profession by association, were legally defective. Mr Too emphasised before us that the charges contemplated direct attacks by Dr Pang against the SMC's reputation, and that was not what s 53(1)(*c*) of the MRA was directed at.

42 With respect to Mr Too, we were unable to agree with the way in which he sought to interpret s 53(1)(*c*). In our view, any conduct, whether by actions or words, which would bring disrepute to the profession would come within the ambit of the provision. In so far as Mr Too was relying on a distinction between action and speech, we could not see how this distinction was sustainable bearing in mind the clear wording of the provision. To suggest that words alone cannot cause or bring disrepute to the profession needs only to be stated to be rejected. Moreover, in our opinion, Mr Too's interpretation of the charges focused too narrowly on the allegation that Dr Pang had attacked the authority and integrity of the SMC. That allegation had to be seen in context. In the *chapeau* of the charges it was expressly stated that what Dr Pang had alleged in his communications would erode "the integrity and good name of the medical profession". In particulars (d), (g) and (j) of the 1st Charge (and there were similar particulars in the 2nd and 3rd Charges too), this very effect was stated to flow from Dr Pang's statements where he attacked the authority and integrity of the SMC and impugned the propriety of the earlier disciplinary proceedings as well as the people who were involved in those proceedings.

43 Accordingly, the charges in fact addressed the very gravamen of s 53(1)(*c*) of the MRA which was identified by this court in *Low Chai Ling* as follows at [72]:

> … *[T]he primary concern underlying the disreputable conduct offence is the protection of the medical profession's integrity and good name.* Would public confidence in the medical profession be damaged by the offending conduct? What message would such conduct send to the public at large about doctors? This is an objective inquiry, which relates to how a reasonable layperson would perceive the offending doctor's conduct and, hence, the entire medical profession as a result. The High Court in *Wong Kok Chin v Singapore Society of Accountants* [1989] 2 SLR(R) 633 at [17] also relied on this standard (albeit in the context of accountants):
>
> > A practical test could have been if reasonable people, on hearing about what [the errant accountant] had done, would have said without hesitation that as an accountant he should not have done it.
>
> [emphasis added]

The charges all directed the DT's attention to the erosion of the integrity and good name of the medical profession. Obviously, the medical profession's integrity and good name could be eroded in countless ways. It would be wrong to set a limit as to what could cause disrepute to the medical profession. In each case, the factual circumstances will be determinative. The fact that the conduct under scrutiny in this case was Dr Pang's acts of making derogatory statements concerning the SMC and the people who were involved in DC1 and DC2 in emails which he addressed to numerous other individuals could not render the charges legally defective in relation to s 53(1)(*c*) of the MRA or the test as enunciated in *Low Chai Ling*. Furthermore, we could not see how *Low Chai Ling* could be interpreted to exclude what Mr Too termed "direct attacks" on the SMC from the scope of s 53(1)(*c*) of the MRA. We recognised that not all wrongful acts on the part of the doctor would bring disrepute to the medical

profession, but that is a determination that can only be made on all the facts of each case.

44 In the present case, the alleged conduct would fall within the scope of s 53(1)(*c*) of the MRA. The medical profession is regulated and the body that has been charged, and indeed entrusted, with the regulation of the profession is the SMC. The SMC's reputation is inextricably tied to the reputation of the medical profession, since the public's confidence in the medical profession as a whole would inevitably and necessarily be affected by its confidence in the body regulating the members of that profession. It therefore could not be said that the charges were defective simply because they identified Dr Pang's attacks on the SMC as the conduct by which the integrity and good name of the medical profession was eroded. That was neither outside the scope of s 53(1)(*c*) of the MRA nor impossible as a matter of logic and common sense.

45 In so far as Mr Too's submission was that the statements made *in this case* did not erode the integrity and good name of the medical profession, that would be a question of whether the charges were proved and it is to that question that we now turn.

Were the charges proved beyond a reasonable doubt?

46 It was not disputed before the DT, nor before us, that Dr Pang did make the relevant statements. His case on appeal to us centred on a number of complaints about the DT's reasoning, which we will now deal with in turn.

47 First, Dr Pang contended that the DT had misdirected itself in law by holding that he had to prove the truth of the assertions that he was making. Instead, since the charges stated that he had made the derogatory statements, it was the SMC's burden to prove the falsity of the statements. We accept that the

legal burden was on the SMC throughout to prove its case. That said, some statements are by their very nature derogatory and no further proof is required and it is for the maker to show that he is justified in uttering those statements of another person. This is plain common sense and logic. In law this is referred to as the evidential burden to which the Court of Appeal recently had the occasion to touch on in *Beh Chew Boo v Public Prosecutor* [2020] 2 SLR 1375 at [63]:

> It is well established that while the legal burden remains on one party throughout, the evidential burden can shift to the opposing party once it has been discharged by the proponent. The opposing party must then call evidence or take the consequences, which may or may not be adverse: *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 at [132].

48 In the present case, the very language and content of the statements made clearly gave rise to a *prima facie* case that the statements were derogatory and had attacked the authority and actions of the SMC in such a manner as would erode the integrity and good name of the medical profession. This much is clear from a simple reading of the emails. In our judgment, the evidential burden had shifted to Dr Pang to show why the statements should not be treated as derogatory or, in the alternative, that he was justified in making those attacks. Having regard to the manner in which he had run his defence, it seemed clear to us that he would have had to show that the statements were true and justified. He had failed to do that. The DT did not misdirect itself as to the application of the evidential burden and we could see no reason to disturb the DT's findings on this.

49 Second, Dr Pang argued that the DT had improperly taken into account the tone of his criticisms and the language used. He argued that he had not been charged with being rude to fellow medical professionals, and if the only complaint was that the integrity and good name of the medical profession was eroded, then the tone did not matter. Therefore, the finding that the tone was

unacceptable was irrelevant and, in any event, wrong as a matter of fact. We respectfully disagreed and would say that this line of argument was bizarre to say the least. We struggled to understand the logic. As a matter of fact, it was clear to us that the language used in some of the statements was in fact vulgar and obscene, and far exceeded the bounds of acceptable criticism. The DT was very conscious of the distinction between honest critical comments and scurrilous attacks. It acknowledged that merely making criticisms of the SMC and its disciplinary processes would not be improper conduct. It was the tone and nature of the criticisms which could turn criticism into improper conduct. It cannot be disputed that these two aspects often expose the true motive or intention of the maker of such statements, and reveal whether what was said was *bona fide* criticism or a scurrilous attack. The tone and language in a statement are invariably elements which go towards demonstrating the true nature of the statement. Viewed in this light, and bearing in mind the tens or hundreds of recipients to which the emails were copied to, Dr Pang was clearly on a crusade to cause maximum harm to the SMC and those people who were involved in scrutinising the complaints or were members of the DCs.

50 Third, Dr Pang criticised the DT's finding that the emails were essentially public. The emails were sent to a limited set of recipients, and while there were references to blog posts, the DT should not have referred to those as Dr Pang was not separately charged for publishing links to those posts. We found no merit in this criticism. It was not clear to us what the distinction between "public" and "private" added to Dr Pang's case, since that was certainly not a condition which is pertinent under s 53(1)(*c*) of the MRA. In any event, the fact remained that the emails were sent to many recipients, usually numbering upwards of a hundred, including members of the press and government agencies (see GD at [47]), and this was consistently done over

prolonged periods. Furthermore, Dr Pang had even requested the recipients of some of the emails to "spread the word" (see GD at [55]). Dr Pang wanted his emails to be read by as wide a section of the public as possible (see GD at [47]). As for the blog posts, the DT's reliance on them could not be criticised – they were linked to in Dr Pang's emails and were clearly meant to be read by the recipients, and were referred to specifically in the Schedules to the charges.

51 Fourth, Dr Pang argued that the SMC had failed to lead evidence to show that his emails had in fact lowered the public's estimation of the medical profession, and that it, at the very least, ought to have called some of the recipients of the emails to give evidence about the impact receiving those emails had on their impression of the medical profession. We do not think this was necessary. As we pointed out to Mr Too at the hearing, the test applied in *Low Chai Ling* at [72] was clearly an objective one. The determination of whether or not what was done would undermine the integrity and good name of the profession was an objective inquiry. It was open to the DT to look at the nature of the criticisms and decide if the criticisms would have that effect, based on how a reasonable person would react. The test was necessarily objective, too, as members of the profession had to be held to an objective standard of conduct. It followed that the SMC was not required to call evidence to establish the impact of the statements to prove its case. We must point out that this approach is also supported by the language of s 53(1)(*c*) of the MRA, which refers to "improper act or conduct which, *in the opinion of the Disciplinary Tribunal*, brings disrepute to his profession" [emphasis added]. The statute therefore places decisive weight on the DT's opinion as to whether the profession has been brought into disrepute.

52 Finally, Dr Pang claimed that the test in *Low Chai Ling* had been applied incorrectly. He argued that a layperson who heard of what he had done would

not have concluded unhesitatingly that he ought not to have acted in the way he did, if that layperson knew what he had been through. Specifically, Dr Pang pointed to the facts that (a) he was subject to two disciplinary proceedings that could have been prosecuted at the same time; (b) his reputation was destroyed, his licence suspended, he had been committed to prison, bankrupted, and made to pay costs to the SMC; (c) he sincerely believed that the decisions of the earlier proceedings had caused harm to the medical profession; and (d) he felt that justice and the public interest had not been served. In our judgment, there was again no merit to this contention. The DT was entitled to conclude, based on the language and nature of the statements made, that a reasonable person would conclude that Dr Pang ought not to have done what he did. A reasonable person might not have concluded that Dr Pang should have refrained from criticising the SMC and its processes at all, but would certainly take issue with the criticisms that were so abusive of the SMC and the individuals involved in the earlier disciplinary proceedings and which were sent to a large number of recipients. Indeed, such wild accusations of corruption and dishonesty as Dr Pang had made against those individuals would certainly not just undermine the public's confidence in the medical profession's scheme of self-regulation, but would also be treated as wholly inappropriate conduct for a professional. This was even more so where the contents of the statements showed that the professional in question (*ie*, Dr Pang) not only refused to submit to the outcome of two prior disciplinary proceedings but had been abusive of the members of the two DCs, who were tasked to regulate the conduct of the members of the profession. There was no basis for disturbing the DT's finding that the test in *Low Chai Ling* was satisfied and that the three charges were made out. There is simply no room for self-righteousness to prevail in any system of professional discipline. Otherwise chaos will be the order.

53 Having rejected the various grounds of criticism raised, we found, therefore, that the DT did not err in finding on the evidence that the charges were made out beyond reasonable doubt.

Were there procedural irregularities in the DT proceedings?

54 The primary procedural irregularity alleged by Mr Too in the hearing before us related to the DT's invitation to the SMC to amend the charges to refer to "derogatory" instead of "defamatory" statements. In his submission, this invitation was unfair to Dr Pang because it gave rise to an impression of apparent bias on the part of the DT. Furthermore, the SMC would not have been able to succeed if it had proceeded with "defamatory" statements as no court had previously decided that the statements were defamatory. By inviting the SMC to amend the charges, the DT enabled the SMC to succeed where it otherwise would have failed.

55 The relevant exchange between the DT and the SMC's counsel took place during the Pre-Inquiry Conference on 23 January 2019. Counsel for the SMC, Ms Chang Man Phing Jenny ("Ms Chang"), who also appeared for the SMC before us, had clarified in response to the DT's question that they were not proceeding on the civil law concept of defamation, but on the basis that the statements were derogatory and eroded the good name and integrity of the profession. Given that clarification, the DT invited the SMC to consider if the charges should be amended to avoid the impression that the legal concept of defamation, as a tort, was being imported into these proceedings.

56 In our judgment, there was nothing objectionable about this suggestion made by the DT. Indeed, far from causing Dr Pang any prejudice, it was only fair to Dr Pang that the charges were amended. In criminal and quasi-criminal

proceedings, the principle underlying the rule that a charge must be stated clearly and with sufficient particulars is that "an accused person should know with certainty, and thus have a full opportunity to meet, the case advanced against him by the [p]rosecution": *Mui Jia Jun v Public Prosecutor* [2018] 2 SLR 1087 at [1]. In this case, the amendments to the charges, which were made *before* the inquiry commenced, did in fact clarify the SMC's case against Dr Pang and enabled him to meet the case against him directly. Indeed, Dr Pang had stated during the Pre-Inquiry Conference that he had initially thought that he would have to answer a charge based on the tort of defamation. As the DT observed in its reply to Dr Pang, this was exactly why the amendments were needed. In any event, Mr Too's submission was, with respect, based on the false premise that the DT *could not* have considered whether the statements were defamatory, in the ordinary literal sense. The word "defame" is an ordinary English word and it has an ordinary meaning. One does not need to go to a court to obtain a finding that statements were defamatory in that sense. The DT would not have been interpreting "defamatory" in the sense of a tort. These amendments were therefore not to enable the SMC to get around a fatal flaw in its case. They were needed to clarify things and to avoid unnecessary confusion with the tort. Finally, we must observe that no objection was taken by Dr Pang when the amendments were discussed. That showed that everyone viewed it as a move which would be helpful to the proceedings. That said we would also add that even if Dr Pang had objected to the amendments, the DT could not be considered to be biased against him if it had overruled his objection. Such a course of action is an everyday occurrence in a court of law or tribunal.

57 We turn next to deal briefly with two other procedural challenges raised by Dr Pang in his written submissions. Dr Pang argued that the DT ought to have allowed his application for Ms Chang to be recused, on the ground that Ms

Chang was counsel for the SMC in the previous Appeal and was the prosecuting counsel in the DC2 proceedings, and that Ms Chang and her firm were named in some of his emails and there was a risk that she would be biased against him. We did not see any basis for concluding that the DT ought to have prevented Ms Chang from acting for the SMC. As the High Court observed in *Then Khek Khoon and another v Arjun Permanand Samtani and another* [2012] 2 SLR 451 at [28], where one party applies to court to restrain counsel from acting for the other side, the court will have to consider the mischief that is to be prevented by preventing that representation from continuing. A similar principle should apply in disciplinary proceedings. Every party should *prima facie* be entitled to have a counsel of his choice. His choice should not be restricted unless for good reasons. In this case, it was not clear at all to us what mischief Dr Pang sought to prevent. Even if Ms Chang had an adverse interest against Dr Pang, that, in and of itself, would not appear to disqualify her from acting *for the other side*, unless for some reason she would thereby be acting in breach of some other rules of professional conduct. There being no basis for such a finding, this complaint could not be accepted by us.

58 Dr Pang also argued that the DT had excessively interfered with his cross-examination of one of the SMC's witnesses. The Court of Appeal recently summarised the applicable principles for excessive judicial interference to be established in *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 at [165]–[166]. Importantly, for such a complaint to succeed, it would generally be necessary to show that it was an *egregious* situation of interference. Having reviewed the record of the proceedings, we were satisfied that there was no case of excessive interference whatsoever by the DT in Dr Pang's cross-examination. As is apparent from the record, far from preventing Dr Pang from

pursuing his case, the DT was seeking to guide Dr Pang as to how he could do so effectively, given that he was not represented in those proceedings.

Were Dr Pang's convictions unconstitutional?

59 We turn now to consider the constitutional point raised by Dr Pang. Here, he relied on Article 14 of the Constitution where the relevant parts read:

> **14.**—(1) Subject to clauses (2) and (3) —
>
> (*a*) every citizen of Singapore has the right to freedom of speech and expression;
>
> …
>
> (2) Parliament may by law impose —
>
> (*a*) on the rights conferred by clause (1)(*a*), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence;
>
> …

60 Dr Pang argued that his conviction and sentence infringed his constitutional right under this Article. We rejected this contention.

61 We begin by observing that members of the medical profession enjoy a privileged position in society. As this court stated in *Lim Mey Lee Susan v Singapore Medical Council* [2013] 3 SLR 900 ("*Susan Lim*") at [41]:

> Indeed, the proposition that the spirit of public service and the existence of ethical obligations underpin all professional practice applies with equal (and, arguably, even greater) force to medical practitioners, whom we collectively entrust with our health, our well-being and, in certain instances, our lives. *In this respect, the medical profession occupies a unique societal position of both great privilege and commensurate responsibility.* In this regard, the following observations by the then Governor of the Straits Settlements, Sir John Anderson, in his speech on

> the occasion of the formal opening of the very first medical school in Singapore on 28 September 1905 are particularly apposite … :
>
> > … What I want you to remember is that the course of study you are about to enter upon is not merely a course of study which is intended to enable you to earn a living, but … *a passport to membership of a very great profession, a profession in many instances of unselfish devotion and splendid achievement, a profession with very lofty ideals and one which calls for all the best qualities, mental and moral, which a man can give.* It demands not only freshness and vigour of body, but steadiness and skill in hand and eye. It wants infinite patience and keenest sympathy, and to all these qualities there has to be added unfaltering courage. …
>
> As also articulated by this court in *Low Cze Hong v Singapore Medical Council* [2008] 3 SLR(R) 612 ("*Low Cze Hong*") at [36]:
>
> > … The importance of maintaining the highest level of professionalism and ethical conduct has been duly acknowledged by the [Singapore Medical Council] in the Introduction section of the [Singapore Medical Council] Ethical Code (at p 1):
> >
> > > The medical profession has always been held in the highest esteem by the public, who look to their doctors for the relief of suffering and ailments. In modern medical practice, patients and society at large expect doctors to be responsible both to individual patients' needs as well as to the needs of the larger community. *Much trust is therefore endowed upon doctors to do their best by both. This trust is contingent on the profession maintaining the highest standards of professional practice and conduct.*
> >
> > …
>
> [emphasis in original omitted; emphasis added in italics]

62 Given that membership of the medical profession comes with many privileges, it should also come as no surprise that the profession has to be regulated. In Singapore, under the MRA, the responsibility for regulating the profession has been placed primarily on the SMC. The regulation of medical practitioners' conduct is a necessary corollary to the privilege enjoyed by

members of that profession, as it both protects the public from abuse of that privilege and enhances the confidence that the public has in that profession: see also *Low Cze Hong v Singapore Medical Council* [2008] 3 SLR(R) 612 at [88]. Furthermore, the same privilege comes with a "commensurate responsibility" (*Susan Lim* at [41]), placed not just on the profession at large but on individual members as well. Equally significant to note is that this responsibility is not restricted to professional conduct, but, as s 53(1)(*c*) of the MRA shows, does extend to other conduct outside a doctor's professional life.

63 In that context, when a person is admitted to the privileges of membership of a profession, he or she must be taken to agree to abide by the norms and standards required by the profession. Once a person has been admitted to those privileges, it rings hollow for that person to claim that the Constitution prevents the regulatory body from regulating his or her conduct. In this regard, we endorse the observations made in *Re Gopalan Nair* at [23] where the Court of Three Judges dealt with a similar objection in relation to a lawyer's act of threatening the Attorney-General with publishing the correspondence between him and the Attorney-General if he did not receive a satisfactory reply:

> Finally, there is the point that what the respondent did was an exercise of his right under Art 14 of the Constitution, namely, freedom of speech and expression. We do not think there is anything in this point at all. Every advocate and solicitor must be subject to the discipline provided in the [Legal Profession Act]. *By becoming a member of that profession he must be deemed to have accepted the rules governing the discipline of its members. So long as he remains a member he must observe the rules of conduct that govern his profession.* … [emphasis added]

64 Furthermore, as membership in a profession is a privilege, it would also follow that it can be taken away if the conditions of membership are not met or observed. It is well within the powers of the regulatory body – subject to the procedural safeguards envisaged under principles of administrative law, which

are distinct from constitutional protections although sometimes related – to determine what conditions must be met before the privileges of membership can be bestowed on an individual, or what situations would result in the withdrawal of those privileges from that individual. Nothing in the Constitution displaces the rules by which a person can be admitted to a profession or barred from a profession, because the admission to a profession is a *privilege* that is conferred on a person.

65 In any event, we could not see how Art 14 of the Constitution could be relevant as between Dr Pang and the SMC. The Constitution, especially Part IV concerning fundamental liberties, is largely directed at regulating the relationship between citizens and the state. Insofar as the Constitution bestows "rights" on citizens, those are rights against the state. Indeed, the statement that the Constitution is the supreme law of the land in Art 4(1) of the Constitution is directed at emphasising that no other *law* in Singapore can derogate from the Constitution, and insofar as any law does so, it is void: see *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [59]. While the state cannot restrict a citizen's right to freedom of speech or expression except for the reasons identified in Art 14(2) of the Constitution, nothing in the Constitution prevents an individual from making his or her own arrangements with others in such a manner as would appear to restrict his or her right to free speech. In other words, the courts will not, and indeed, cannot, step in to invalidate such an arrangement on the basis of the Constitution, since the rights of the individual against the state are simply not affected. Membership in a profession, and in turn the profession's self-regulation, is essentially an arrangement between the individual and professional body in question, even though in Singapore, aspects of the regulation of the medical profession have been given grounding in statute.

Therefore, we were of the opinion that Art 14 of the Constitution did not have any application as between Dr Pang and the SMC.

66 However, for the avoidance of doubt, we need to reiterate that the above observations pertain only to the issue of how the *Constitution* relates to the SMC's regulatory role. As would be apparent from [64] above, in discharging its regulatory functions under the MRA, the SMC is expected to observe administrative law principles concerning natural justice and the proper exercise of statutory powers.

Conclusion on convictions

67 We therefore found that none of Dr Pang's complaints against his convictions have any merit and upheld his convictions on the three charges.

Sentences

68 We turn now to the sentences imposed on Dr Pang. The sentencing objectives in the context of disciplinary proceedings are well-established. As this court observed in *Wong Meng Hang* at [23]–[24]:

> 23 … Disciplinary proceedings enable the profession to enforce its standards and to underscore to its members the values and ethos which undergird its work. In such proceedings, broader public interest considerations are paramount and will commonly be at the forefront when determining the appropriate sentence that should be imposed in each case. Vital public interest considerations include the need to uphold the standing and reputation of the profession, as well as to prevent an erosion of public confidence in the trustworthiness and competence of its members. This is undoubtedly true for medical practitioners, in whom the public and, in particular, patients repose utmost trust and reliance in matters relating to personal health, including matters of life and death. As we observed in *Low Cze Hong* ([18] *supra*) at [88], the hallowed status of the medical profession is 'founded upon a bedrock of unequivocal trust and a presumption of unremitting professional competence', and failures by practitioners in the

> discharge of their duties must be visited with sanctions of appropriate gravity.
>
> 24 The primacy of these public interest considerations in the sentencing inquiry in disciplinary cases means that other considerations that might ordinarily be relevant to sentencing, such as the offender's personal mitigating circumstances and the principle of fairness to the offender, do not carry as much weight as they typically would in criminal cases; and, as we later explain, these considerations might even have to give way entirely if this is necessary in order to ensure that the interests of the public are sufficiently met: *Ang Peng Tiam v Singapore Medical Council* [2017] 5 SLR 356 ('*Ang Peng Tiam*') at [118].

69 The DT and the court will also have regard to the principles of general and specific deterrence. General deterrence, in particular, is of "considerable importance" in this context, and is a "central and operative sentencing objective in most, if not all disciplinary cases". Specific deterrence would be especially relevant for recalcitrant offenders: *Wong Meng Hang* at [25]. In this appeal, Mr Too rightly did not seek to challenge any of these principles. In our judgment, these principles clearly applied to charges under s 53(1)(*c*) of the MRA, since the objective of disciplinary proceedings for such misconduct is similarly to uphold "the standing and reputation of the profession, as well as to prevent an erosion of public confidence in the trustworthiness and competence of its members" (*Wong Meng Hang* at [23]).

70 Dr Pang's appeal against his sentence focused on the ten-month suspension and the fine of $10,000 imposed by the DT. He argued that the sentence was manifestly excessive. First, the precedents for s 53(1)(*c*) of the MRA showed that the usual punishments were a fine, and in none of the cases was a doctor suspended for such misconduct. Second, the DT had erred in relying on precedents involving the legal profession, specifically *Re Gopalan Nair* and *Thuraisingam*. Third, the DT had disregarded the mitigating factors in this case. Fourth, there was no evidence of actual harm caused. In his written

submissions, arguments on undue delay and piecemeal prosecution were also put forward. We deal first with these specific complaints before analysing the sentences imposed on Dr Pang.

71 First, in relation to the precedents for s 53(1)(*c*) of the MRA, we accepted that the precedents showed that the usual punishment for improper conduct under s 53(1)(*c*) of the MRA was a fine. However, the facts of those cases were very different. The published decisions of the DTs have dealt with advertising of services (*In the matter of Dr Goh Seng Heng and Dr Goh Ming Li Michelle* [2018] SMCDT 1), holding oneself out as associated with a non-medical product and/or non-medical company (*In the matter of Dr Tan Yew Weng David* [2014] SMCDT 11 and *In the matter of Dr Goh Yong Chiang Kelvin* [2018] SMCDT 2) or criminal convictions for mishandling specimens and samples from patients (*In the matter of Dr Wong Yoke Meng* [2015] SMCDT 3). Given the very different factual matrices, we did not think that these precedents were helpful in this case. We were of the view that this case was more serious than the normal range of cases under s 53(1)(*c*) of the MRA which had been decided thus far and called for a commensurate sentence.

72 Second, in relation to the DT's reliance on *Re Gopalan Nair* and *Thuraisingam*, we found Dr Pang's criticism to be misplaced. The DT did not rely on either *Re Gopalan Nair* or *Thuraisingam* as precedents for the specific sentences to be imposed. Further, the material parts of the DT's reasoning at [83]–[84] of the GD did not rely on the specific length of suspension ordered in *Re Gopalan Nair*. Rather, the DT's reasoning was based on the factors that were present in those cases, as indications of the approach that the DT should take. That was not objectionable.

73 Third, we found that the DT had correctly assessed the mitigating factors in this case. Mr Too's central argument before us concerned Dr Pang's act of volunteering to evacuate Singaporeans from Wuhan, China, at the onset of the COVID-19 pandemic. We agreed with the DT that this was of little mitigating value in sentencing for the present misconduct. Insofar as this factor was being advanced in mitigation, there was ample reason to conclude that his volunteering did not indicate that the sentencing objective of specific deterrence would be satisfied by a lighter sentence. His repeated acts of sending emails despite letters of advice from the SMC was clear evidence of his intention to cause maximum harm and that he would not want to be sensible. Furthermore, as general deterrence plays an important role in disciplinary proceedings, there was even less reason to give weight to Dr Pang's volunteer services in sentencing (see *Stansilas Fabian Kester v Public Prosecutor* [2017] 5 SLR 755 at [102] and *Ang Peng Tiam v Singapore Medical Council and another matter* [2017] 5 SLR 356 ("*Ang Peng Tiam*") at [101]–[104]). In so far as Mr Too sought to contend that this was evidence of a lack of malice on Dr Pang's part against the medical profession as a whole, we could not accept this argument given the nature and language of the statements made against members of the profession and the SMC. The distinction that Mr Too was presumably trying to make as between the medical profession as a whole and the people and institutions Dr Pang was criticising specifically was not one that could legitimately be drawn in the circumstances of this case.

74 Fourth, while we accepted that there was no direct evidence of actual harm caused, the harmfulness of the conduct would be something self-evident, having regard to the nature of the attacks and the language used. The harm which could arise would be obvious. There is hardly any need for proof. The test to be applied here would be an objective one, not so much what one person

or another person would say. The DT came to the conclusion that there would be *potential* harm. This is apparent from the phrases: "had the potential to undermine" and "had the potential to bring … into disrepute" (GD at [73]). These were based on inferences from the "highly derogatory nature of the emails, that they were sent to large and diverse groups of recipients numbering in the hundred, and that the emails were sent over a five-year period at frequent intervals" (GD at [73]). We could not fault these observations of the DT.

75 Fifth, in relation to Dr Pang's allegations of delay, we did not find that there was such a degree of delay which would warrant a reduction in sentence. In *Ang Peng Tiam* at [109] the following circumstances were identified to be pertinent: (a) there must have been a significant delay in prosecution; (b) the delay has not been contributed to in any way by the offender; and (c) the delay has resulted in real injustice or prejudice to the offender. We did not find that there was any significant delay in the prosecution of this case. While the SMC was already aware of Dr Pang's conduct as early as 15 March 2013 and only made a complaint on 22 March 2016, with charges brought on 3 December 2018, that had to be seen in the context of Dr Pang's continuing conduct. The timing of the complaint suggested to us that the SMC was waiting for some threshold to be crossed before it initiated disciplinary proceedings, since the complaint was made soon after the emails constituting the 2nd Charge were sent out by Dr Pang. Once the complaint was made on 22 March 2016, matters proceeded at a relatively brisk pace. Any subsequent delay was not significant and, in any event, appeared to have been contributed to by Dr Pang, due to the need for the SMC to make two additional complaints in June and October 2017 to refer additional information relating to emails that Dr Pang sent out in May and September 2017 respectively. Further, given the large number of emails involved and the work that was needed to analyse and consolidate those emails,

we did not think that the time taken to prosecute this case disclosed inordinate delay.

76 As for the complaint about piecemeal prosecution, here again, we did not think this was made out. While the first set of emails in 2012 could have been dealt with in the DC2 proceedings, the fact remained that the subsequent sets of emails could not have been addressed at those proceedings as the DC2 proceedings had concluded by the time those later emails were sent out. It followed that a further set of proceedings would have had to be instituted in any event to address the remaining emails. It was clear to us that what these objectionable emails from Dr Pang stretching over a long period showed was that he was not accepting the discipline meted out by the two earlier DCs and was determined, without any care or regard for the profession as a whole, to vent his anger on the SMC and on those people who were involved in the earlier DCs. It seemed apparent to us that over this long period during which the objectionable emails were sent out by Dr Pang, the SMC was probably hoping that Dr Pang would at some point repent and tender an apology and the matter could be closed. That never occurred, not even at the eleventh hour before the hearing of this very DT.

77 We turn, finally, to examine the sentence imposed. While the DT had not provided a breakdown of the individual sentences for each of the charges, and though this would have been helpful to this court to better understand it, it is not always necessary for a DT to do so: *Yip Man Hing Kevin v Singapore Medical Council and another matter* [2019] 5 SLR 320 at [90]. We recognise that DTs should be encouraged to provide individual sentences for each charge in most (if not all) cases, as it offers greater transparency for the individual in question, the profession as a whole, future DTs, and the court. That said, in the present case, where the misconduct in all the three charges was of the same

nature, the absence of such a breakdown did not really pose any difficulty to us in the consideration of the sentence imposed in this case.

78 In the present case, Dr Pang had made disparaging and abusive comments about the SMC and the doctors and other individuals involved in the disciplinary process on numerous occasions and which were copied to a large number of other recipients. As would be clear from a perusal of the statements made, many of them were offensive and some were even vulgar and obscene. Apart from generally bringing disrepute to the profession, Dr Pang's comments were *aimed* at reducing the standing of the SMC and the people involved. Furthermore, there was the added factor that the statements represented a continued and sustained refusal to accept the outcomes of the earlier disciplinary proceedings. In the interest of the medical profession, this persistent disrespect and disregard for the body tasked with maintaining standards in the profession must be taken very seriously. Any indication otherwise would be a slippery slope.

79 It gave us no satisfaction to also add that Dr Pang proved himself to be recalcitrant. He had been warned numerous times by the SMC's lawyers not to continue making such offensive statements. Despite receiving a first letter from the SMC's lawyers on 20 November 2012 and giving an acknowledgement through his lawyers on 22 November 2012, Dr Pang started to send offending emails again on the latter day. On 15 March 2013, the SMC's lawyers again wrote to Dr Pang, but he persisted sending such emails until April 2013. While Dr Pang ceased to send such emails for a time after April 2013 and did not send any further emails after receiving a letter from the SMC's lawyers dated 6 November 2013, he started writing the offending blog posts in December 2014 and began sending such emails again from February 2015 onwards. Indeed, there was some indication of escalating conduct. Whereas the first sets of emails

were sent to between 102 to 153 recipients, the emails sent between February and November 2015 were addressed to between 320 to 548 recipients. As a result, the SMC lodged its complaint against Dr Pang on 22 March 2016 on account of these offensive emails and the Notice of Complaint was sent to Dr Pang on 13 September 2016. Then, despite having received the Notice of Complaint, Dr Pang chose to send such emails in May and September 2017 which constituted the basis for the 3rd Charge.

80 Given these facts, especially the seriousness of the allegations made and the potential harm, as well as Dr Pang's recalcitrance, we were unable to agree that the sentence of a ten-month suspension was manifestly excessive. Dr Pang made the point that s 53(1)(*c*) of the MRA was a less serious provision than s 53(1)(*d*) of the MRA which dealt with professional misconduct, and suspension would be too harsh a sentence given that he only received a financial penalty in the DC1 proceedings and a total of six months of suspension in the DC2 proceedings for professional misconduct. We could not accept that submission. While it may be true that in the abstract, it could be said that misconduct under s 53(1)(*c*) of the MRA is less serious than professional misconduct, there are certainly instances where the particular misconduct under s 53(1)(*c*) of the MRA could be more serious than particular professional misconduct. The facts of each case must be considered and the circumstances here made the misconduct all the more aggravating. The offending acts were not isolated incidents but were a persistent and callous challenge to a disciplinary scheme prescribed by law. This should not be tolerated.

81 As regards the fine of $10,000, Dr Pang argued that there was no evidence of how much he had received as a result of his appeals for donations, and that there was no "profit" as the amounts received went towards meeting the costs he had to pay for the prior disciplinary proceedings. These arguments

missed the point of the DT's findings. The DT was entitled to infer, based on the evidence before it, that Dr Pang had received financial contributions upon sending the emails (GD at [85]). The fact is that many of the emails contained pleas for financial assistance. Whether they were "profits" strictly speaking in the overall balance of his finances was beside the point, as the DT's reasoning was simply that Dr Pang should not have made such statements and that he should not be allowed to benefit from what he had done. As the High Court observed in *Koh Jaw Hung v Public Prosecutor* [2019] 3 SLR 516 at [44], "[W]hile fines are most commonly employed as a means of punishing the offender, it is well established that a fine may also be imposed as a rough and ready method of confiscating the proceeds of crime." A similar approach was not out of place in this context. We saw no reason to depart from the DT's reasoning on this point.

82 We therefore found that there was also no merit in Dr Pang's appeal against his sentence.

Conclusion

83 For the reasons above, we dismissed the appeal. We ordered Dr Pang to pay the SMC's costs fixed at $30,000 (all-in). The usual consequential orders would apply.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Chao Hick Tin
Senior Judge

Too Xing Ji and Bachoo Mohan Singh (BMS Law LLC) for the appellant;
Chang Man Phing Jenny, Lim Xian Yong Alvin and Loh Jia Wen Dynyse (WongPartnership LLP) for the respondent.
