# Law Society of Singapore v Tan Chwee Wan Allan
# [2007] SGHC 156

**Case Number** : OS 630/2007

**Decision Date** : 20 September 2007

**Tribunal/Court** : High Court

**Coram** : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

**Counsel Name(s)** : Pavan Kumar Ratty (P K Ratty & Partners) for the applicant; Chandra Mohan K Nair (Tan Rajah & Cheah) for the respondent

**Parties** : Law Society of Singapore — Tan Chwee Wan Allan

*Legal Profession – Duties – Supervision of employees and staff – Lawyer delegating files and administrative matters to staff without exercising adequate supervision – Rule 8(1) Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed)*

*Legal Profession – Show cause action – Lawyer's secretary erroneously depositing client's moneys into office account resulting in lawyer wrongfully withdrawing other clients' moneys from client account – Mistake not corrected until bookkeeper raised matter at directors' meeting – Appropriate sentence when lawyer not acting dishonestly and making one-off mistake – Sections 83(2)(b), 83(2)(j) Legal Profession Act (Cap 161, 2001 Rev Ed) – Rules 3(1), 7(1)(a) Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed)*

20 September 2007

V K Rajah JA (delivering the grounds of decision of the court):

1 This was an application by the Law Society of Singapore ("the Law Society") pursuant to s 94(1) read with s 98 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("LPA") for Mr Allan Tan Chwee Wan ("the respondent") to make absolute an order to show cause. After hearing the submissions of the respective parties, we granted the Law Society's application and ordered that the respondent be censured for breaches of rr 3(1) and 7(1)(*a*) of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed) ("the SA Rules"). We now give the reasons for our decision.

**Factual background**

2 The respondent was called to the Singapore Bar on 14 March 1990. He joined JHT Law Corporation ("JHT") as a director on 2 January 2004. Until he voluntarily ceased practice in March 2005, the respondent was an advocate and solicitor of the Supreme Court of the Republic of Singapore of about 15 years' standing.

3 JHT comprised of five directors, including the respondent. The firm was in effect a set of sole proprietors running separate accounts under the name and style of JHT. Each director was responsible for the management of his or her accounts and kept separate office and client accounts. The bookkeeper, Mr Teo Cher Ern ("Mr Teo"), was engaged by the firm to assist the directors to operate their separate accounts and he would attend at the office, usually spending two days or more each week to maintain the accounts. Clients' moneys were deposited into the relevant client account depending on which director handled the file. All bills were paid into a common office account ("the Common Account") and each of the directors' respective staff salaries were paid from the Common Account. After taking into account overheads, the directors' drawings were issued from the Common

Account and paid into that respective director's office account, from which he would then draw his own income.

4 Sometime in early March 2004, the respondent acted for two clients in the purchase and mortgage of a Housing and Development Board ("HDB") flat at Block 650B Jurong West Street 61, #07-250, Singapore 642650. In addition, the respondent also acted for one of these two clients in the preparation of a power of attorney. On or about 23 March 2004, the respondent received a cheque for $33,190 from the client as client's moneys for the commitment deposit and the anticipated costs of preparing the power of attorney. However, instead of depositing the moneys into the respondent's client account ("the Client Account"), the respondent's secretary, Ms Low Siew Boon ("Ms Moon Low"), erroneously deposited the sum into the respondent's office account ("the Office Account"). This was contrary to r 3(1) of the SA Rules.

5 On or about 12 April 2004, the respondent caused to be drawn from the Client Account the sum of $30,920, for payment to HDB. This amount represented the commitment deposit required for the purchase and mortgage of the HDB flat in question. However, as this client's deposit of $33,190 had not been earlier deposited into the Client Account, the respondent had thereby caused a withdrawal from the Client Account of clients' moneys belonging to other clients. This contravened r 7(1)(*a*) of the SA Rules.

6 In May 2004, Mr Teo discovered the error in the accounts. He promptly instructed Ms Moon Low to deposit the client's moneys into the Client Account. Mr Teo ensured that a cheque was prepared ("rectification cheque") and a payment voucher was raised for the respondent's signature. Accordingly, a reversal book entry was made on 20 July 2004 to transfer $33,190 from the Office Account to the Client Account. However, the rectification cheque was not presented for payment, and consequently, the client's moneys were not repaid into the Client Account. Mr Teo eventually decided to bring the matter to the attention of the other directors in the course of a directors' meeting on 2 December 2004.

7 During the directors' meeting, the respondent was queried by the other directors about the wrongful deposit and withdrawal of clients' moneys. They demanded that he resign from JHT immediately. The respondent claimed that the incident was the result of inadvertence and immediately refunded the sum of $33,190 to the Client Account the next day, *ie*, 3 December 2004. However, on 6 December 2004, the firm sent a letter to the Law Society informing them of the respondent's breaches of the SA Rules.

8 The respondent was later prosecuted under ss 83(2)(*b*) and 83(2)(*j*) of the LPA for breaches of rr 3(1) and 7(1)(*a*) of the SA Rules, one for the wrongful deposit into the Office Account and the other for the improper withdrawal of moneys from the Client Account.

9 In the interest of completeness, rr 3(1) and 7(1)(*a*) of the SA Rules are set out as follows:

> **Client accounts**
>
> **3.**—(1) Subject to rule 9, every solicitor who holds or receives client's money, or money which under rule 4 he is permitted and elects to pay into a client account, shall without delay pay such money into a client account.
>
> …
>
> **Moneys which may be drawn from client account**

**7.**—(1) There may be drawn from a client account —

(*a*) in the case of client's money —

(i) money properly required for a payment to or on behalf of the client;

(ii) money properly required in full or partial reimbursement of money expended by the solicitor on behalf of the client;

(iii) money drawn on the client's authority;

(iv) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs; and

(v) money to be transferred to another client account;

…

10 We were mindful that the respondent was only charged for breaching rr 3(1) and 7(1)(*a*) of the SA Rules. He was not charged for failing to properly supervise his employees and other staff contrary to r 8 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) ("the Professional Conduct Rules"). We wish to point out that had the respondent been charged under r 8 of the Professional Conduct Rules, the sentence meted out might have been entirely different.

**The proceedings before the disciplinary committee**

11 The hearing before the disciplinary committee appointed by the Law Society ("the DC") lasted five days and a total of six witnesses gave evidence. The main bone of contention between the parties was about the timing as to when the respondent actually came to know of the wrongful deposit. According to the respondent, he did not learn of the wrongful deposit until the directors' meeting on 2 December 2004. On the other hand, it was the Law Society's case that the respondent knew about it *well before* 2 December 2004.

12 The Law Society's principal witness was JHT's bookkeeper, Mr Teo, while the respondent's key witnesses were Ms Moon Low and the respondent himself.

***Mr Teo's evidence***

13 Mr Teo testified that sometime in May 2004, he had verbally informed Ms Moon Low and the respondent that a sum of $33,190 had been incorrectly deposited into the Office Account, and that there had been, in turn, a payment out of the Client Account for $30,920 without any prior matching deposit of that sum into the Client Account. Mr Teo also gave evidence that in July 2004, he had informed Ms Moon Low, on a second occasion, that she had wrongly deposited the sum of $33,190 into the Office Account. Ms Moon Low was told to rectify it by preparing a rectification cheque for the moneys to be transferred from the Office Account to the Client Account.

14 However, despite this, between August 2004 and October 2004, the rectification cheque had still not been presented for payment. Mr Teo allegedly reminded the respondent about the discrepancy on at least one further occasion. He also prompted Ms Moon Low to remind the

respondent to ensure that the problem was rectified. Only when, notwithstanding all those reminders, the rectification cheque had still not been presented for payment, did Mr Teo bring the matter to the attention of the other directors.

***Ms Moon Low's evidence***

15 Ms Moon Low was one of the respondent's secretaries. According to her, she had erroneously deposited the sum of $33,190 into the Office Account in March 2004.

16 In late July 2004, Mr Teo informed her that she had incorrectly deposited the sum of $33,190 into the Office Account. She attempted to explain the mistake to the respondent when he returned to the office but he seemed to be preoccupied with other urgent matters. Ms Moon Low testified that she informed the respondent only once of the error. However, she had only "whispered" it to him as she was apprehensive about being told off by the respondent. As such, she could not confirm if the respondent had actually understood her. She received no direct response from the respondent as he was busy typing some letters.

17 Ms Moon Low testified that she intended to broach the matter again with the respondent, but neglected to do so as he was very often out of the office, attending to clients. She asserted that it was usually difficult to communicate with the respondent as he spent little time in the office.

18 As a result of her heavy workload, Ms Moon Low omitted to bring the matter up until some two weeks later. She then left a sticky-note reminder on the file and placed it on the respondent's table, together with other files, while he was out of the office. The note stated that the money had been wrongly deposited and ought to be transferred back to the Client Account. However, she did not personally follow up on the matter as she did not appreciate the urgency of the situation. According to Ms Moon Low, prior to the incident, she had not been briefed on the relevance or applicability of the SA Rules.

***The respondent's evidence***

19 The thrust of the respondent's evidence was that he never had the intention to commit the breaches in question. The unfortunate incidents resulted from an honest mistake made by Ms Moon Low when she erroneously deposited the sum of $33,190 into the Office Account.

20 As to his communications with Mr Teo, the respondent submitted that he was not told about the wrongful deposit until 2 December 2004. He did not receive any phone calls or e-mails from Mr Teo about it, although he did receive e-mails from Mr Teo about other matters. The respondent added that he did not see the sticky-note reminder and could not recollect ever seeing the rectification cheque.

21 The respondent also testified that he spent little time in the office. For most months he had at least 30 to 50 new matters and had to travel to the HDB Hub almost everyday, both in the mornings and afternoons. Accordingly, the respondent delegated the administration of files to his staff, believing them to be diligent and competent. The respondent acknowledged to the DC that he had perhaps "delegated too much" to his secretaries. Nonetheless, the respondent candidly accepted that while he left the administration of the files to his secretaries, the ultimate responsibility remained with him.

22 The respondent also asserted that he did not regularly examine the relevant bank statements. Occasionally he would open the letters, glance at them and promptly pass them to his secretaries.

Often, he would pass the mail to his secretaries without even opening the envelopes.

**The findings of the DC**

23 After hearing the evidence, the DC determined, under s 93(1)(*c*) of the LPA, that cause of sufficient gravity existed for disciplinary action. The DC found that the charges had been made out by the Law Society beyond reasonable doubt. The DC noted that the requirements under the SA Rules must be scrupulously adhered to and breaches of the SA Rules were not acceptable. The DC held that proof of wilful conduct was not a prerequisite for a breach of the SA Rules to occur although intention or knowledge might render the breach more egregious and thereby affect the penalty to be imposed at the show-cause stage.

24 As for the question of whether the respondent knew about the wrongful deposit before the meeting on 2 December 2004, the DC found that this had not been established beyond reasonable doubt. In essence, the DC found that Mr Teo's evidence did not satisfactorily establish that the respondent had been informed about the wrongful deposit prior to the meeting on 2 December 2004. Mr Teo's demeanour and testimony revealed that he had real difficulties recalling dates and, more importantly, the content of the conversation he had with the respondent.

25 The DC was of the view that the respondent's testimony was, on all the material points, consistent with Ms Moon Low's recollection. The respondent never denied that Ms Moon Low might have told him of the matter but he steadfastly denied having appreciated the significance of what had been communicated. As such, the DC accepted that the respondent was distracted when Ms Moon Low informed him about the wrongful deposit. The significance of the communication had not registered with him.

26 In its report, the DC accepted that the respondent had his hands full at the relevant time. From the evidence, it was also plain that he placed undue reliance on his secretaries to comply with all the practice accounting requirements, and on Mr Teo, as bookkeeper, to identify and rectify any mistakes. The respondent had been lax, careless and cavalier about staff supervision as well as in maintaining the Client and Office Accounts. The respondent's reasons as to how preoccupied he was, however, could not exonerate him from his professional responsibilities. Clients' interests had to be protected and his staff had to be strictly supervised. More staff could have been employed to cope with the workload. The DC was also of the view that the respondent should have spent more time and exercised greater effort in supervising the operation of his accounts to ensure that they were properly maintained.

27 Lastly, the DC noted that although the respondent technically benefited from the erroneous deposit, the deficit in his account could have been easily met by other sources of funds available to him. The respondent had ample financial resources and this was clearly not a case of a solicitor dipping into his clients' funds.

**The issues**

28 The two main issues before this court were:

(a) whether the respondent could show cause why he should not be punished under ss 83(2)(*b*) and 83(2)(*j*) of the LPA; and

(b) if not, what the appropriate penalty should be.

**Survey of relevant case law**

29 There is no gainsaying that the SA Rules and other relevant rules made pursuant to the LPA must be meticulously and strictly complied with in their entirety. Any breach of the SA Rules will be deemed to warrant disciplinary action. It is incumbent on a solicitor to discharge such obligations, both competently and diligently, or risk facing serious consequences. After all, solicitors have been conferred a unique privilege to hold moneys belonging to their clients and this right entails serious responsibilities. In this regard, the following observations of Prof Jeffrey Pinsler in his recent textbook, *Ethics and Professional Responsibility* (Academy Publishing, 2007) at para 28-051 are apposite:

> The proper management of accounts is critical to every law practice because the client trusts the law practice which is representing him to safeguard and properly apply his money. Even a technical breach of an accounting rule raises the very disturbing questions of whether the client's trust is misplaced and whether his money is safe or at risk. Such a breach can have extremely serious consequences including disciplinary proceedings and the loss of the responsible law practice's standing and integrity. Every person involved in the management of accounts must be fastidious in his compliance with the rules.

Four recent decisions dealing with the breach of the SA Rules are of some relevance.

30 *Law Society of Singapore v Prem Singh* [1999] 4 SLR 157 concerned a senior practitioner of 23 years' standing. He was suspended for two years for failing to deposit his client's moneys into a client account and failing to keep proper written accounts of his dealings with his client's moneys, contrary to rr 3 and 11 of the SA Rules. The solicitor had adopted a course of action that was completely at variance with his initial plea of guilt. The breaches of r 3 of the SA Rules could not have been detected upon an audit as the client's moneys were not deposited into any account related to his practice. More importantly, the breaches of r 3 of the SA Rules were never rectified. The solicitor's allegations that he had refunded the moneys were not supported by documentary evidence.

31 In *Law Society of Singapore v Chiong Chin May Selena* [2005] 4 SLR 320 ("*Selena Chiong*"), a solicitor of eight years' standing, who was a sole proprietor, had been suffering from manic-depressive psychosis. In setting up the firm, the solicitor had been completely oblivious to the accounting requirements mandated by the LPA, *inter alia*, through the SA Rules. She had failed to prepare and maintain any financial records or documents for a period of six months and was charged with two counts of contravening rr 11(1), 11(2), and 11(4) of the SA Rules. However, there was no dishonesty involved nor were there any losses sustained by any of her clients. The solicitor was suspended for one year. In addition, an undertaking was secured from the solicitor to confirm that she would not resume practice as a sole proprietor thereafter without the leave of court.

32 *Law Society of Singapore v Tan Sok Ling* [2007] 2 SLR 945 ("*Tan Sok Ling*") concerned an advocate and solicitor of about 14 years' standing. He had pleaded guilty to 11 charges involving breaches of rr 3 and 7 of the SA Rules and was suspended from practice for one year. In determining the appropriate penalty, this court distinguished the factual matrix in *Tan Sok Ling* from prior decisions involving breaches of the SA Rules on the basis that the breaches in *Tan Sok Ling* were the consequence of sheer incompetence and gross inefficiency on the part of the solicitor. In this regard, it is instructive to refer to [25]–[27] of the judgment:

> Whilst the respondent in the present proceedings was indeed remiss in not having a proper accounting structure and committed ***the breaches of the Solicitors' Accounts Rules as a result of what, in the final analysis, was gross inefficiency, there was, in the nature of things, clearly no evidence of dishonesty on his part. Indeed, none of the respondent's clients***

***suffered any loss. The respondent also struck us as being genuinely remorseful and, indeed, he had pleaded guilty to the charges at the earliest opportunity.*** The respondent promised that he would endeavour to strengthen this particular area of his practice and explained that he had already put in place a more thorough system of checks since the year 2004.

***It was clear that in so far as the spectrum of possible breaches of the Solicitors' Accounts Rules was concerned, the breaches here were on the less culpable end of the continuum despite the large number of charges***. This is not to state that such breaches were, in principle, excusable or that the court was going soft on errant lawyers. The court takes a serious view of breaches of the Solicitors' Accounts Rules. In the same breath, it is essential to confine each case to its own factual matrix when assessing the appropriate sentence.

However, ***given the fact that these breaches arose out of sheer incompetence (which also explained why they were in fact detected by the auditor concerned), a sentence that would reflect the seriousness as well as importance of observing these Rules, whilst recognising that the respondent's actions did not constitute the grosser breaches that could have been committed, would be ideal***. Indeed, as we have already mentioned, Mr Damodara himself pointed out that the present proceedings differed (in a positive fashion) from the situations embodied in the previous case law.

[emphasis added in bold italics]

33 The most recent case involving breaches of the SA Rules is *Law Society of Singapore v Tay Eng Kwee Edwin* [2007] SGHC 114 ("*Edwin Tay*"). In that case, the solicitor was a practitioner of some 12 years' standing. He was charged with two counts of breaching of r 7 of the SA Rules. The solicitor was declared a bankrupt as a result of an unpaid debt due to a bank. The bankruptcy proceedings precipitated a chain of enquiries that in turn unearthed serious accounting breaches on the part of the solicitor. He had failed to maintain any of the books of accounts required by r 7 of the SA Rules for a period of one year. This court ordered the solicitor to be struck off the roll of solicitors. In determining the sentence, four factors were taken into account, namely:

(a) the solicitor's deliberate omission to maintain his books and accounts in disregard of the SA Rules;

(b) the solicitor's conduct in continuing to receive moneys whilst practising under such conditions;

(c) the solicitor's concealment of his transgressions until the Law Society began investigating the basis of his bankruptcy; and

(d) the solicitor's bankruptcy, which had rendered the other two penalties (*ie*, a censure and suspension) entirely meaningless.

34 This court distinguished *Selena Chiong* ([31] *supra*) and *Tan Sok Ling* ([32] *supra*) on the basis that the errant solicitors' indiscretions in these two earlier cases were "caused purely as a result of illness or human frailty and not by reason of an apparent character defect or deficiency" (at [21]). It also explained that although the solicitors in *Selena Chiong* and *Tan Sok Ling* faced more charges as compared to the solicitor in *Edwin Tay*, "the sheer number of charges is not in itself a true reflection of the actual extent of a solicitor's blameworthiness or culpability" (at [21]).

35 From these precedents, it is apparent that whilst it is settled law that a breach of accounting

rules made pursuant to statutes governing the legal profession imposes strict if not absolute liability on solicitors, the penalty meted out in each case rests on its own set of facts. In this regard, it is again helpful to refer to what this court observed in *Selena Chiong* at [20]:

> Any breach of the [SA] Rules will be deemed to warrant disciplinary attention. Having said that, it is only right to acknowledge that there is a wide spectrum of breaches, ranging from trivial or technical infractions to more substantive or even heinous ones. Each case will have to be resolved on its merits. It seems neither possible nor practical to catalogue the various consequences for breaches of these obligations.

36 Accordingly, the question that arose for us to determine was on which side of the divide the circumstances of the present case lay. What was the appropriate penalty to be imposed on the respondent pursuant to s 83(1) of the LPA?

**Supervision of employees and other staff**

37 Before we clarify the basis for our sentencing decision, we wish to stress the importance of solicitors ensuring that their practice is adequately supervised and managed at all times. In Singapore, r 8 of the Professional Conduct Rules imposes a general duty on solicitors to properly supervise the activities of all employed staff. Rule 8(1) of the Professional Conduct Rules reads:

> **Supervision of employees and staff**
>
> **8.**—(1) An advocate and solicitor shall exercise proper supervision over his employees and other staff.

38 Proper supervision is vital for the protection of the public. As correctly noted by Prof Jeffrey Pinsler, supervision can only have meaning if the employees and staff have been properly instructed on their responsibilities within the law practice so that they are absolutely clear about what is expected of them (see: *Ethics and Professional Responsibility* ([29] *supra*) at para 28-035). The lack of adequate supervision may have serious professional repercussions for practising solicitors. Effective supervision in relation to the maintenance of solicitors' accounts, in particular, cannot be compromised. In this regard, it will be beneficial to refer to the following enlightening observations made in , *Cordery on Solicitors* (Lexis Nexis Butterworths, 9th Ed, Issue 25: November 2004 release) Division G (Allan Gore & Andrew Hopper eds) at paras 207 and 208:

> It is an express requirement in conduct that solicitors exercise proper supervision over both solicitor and non-solicitor employees. … It follows that if the actions of an unadmitted clerk fall below accepted standards, the employing solicitor, usually the principal or partner most directly responsible for supervision of that employee, may be liable to disciplinary action. Where, for example, there has been serious delay in the conduct of a client's affairs on the part of the clerk, disciplinary action against the supervising partner may follow if there was inadequate supervision, and if, had there been adequate supervision, the delay would have been identified and corrected. *This does not mean that a solicitor is vicariously responsible for misconduct; a solicitor has a liability in conduct to ensure that the staff for whom he is responsible maintain adequate standards*.
>
> This principle is particularly important in the context of the care of clients' money and compliance with the Solicitors' Accounts Rules, because accounts functions are in all but the smallest offices delegated to non-qualified accounts staff. Nevertheless, a principal or the partners are strictly liable for breaches of the Accounts Rules, and effective supervision must therefore be maintained.

[emphasis added]

39 In the English decision of *In the Matter of David George Houldcroft* No. 9354-2005, the UK Solicitors Disciplinary Tribunal ("the Tribunal") found, *inter alia*, that the solicitor concerned had breached the Solicitors' Accounts Rules 1998 by failing to maintain in proper order his books of accounts and had thereby breached Practice Rule 13 of the Solicitors' Practice Rules 1990 in failing to exercise adequate supervision of his staff. The complaints made against the solicitor broadly related to the failure by the solicitor's firm to complete post-completion work in conveyancing matters. The solicitor had left the handling of the conveyancing work to a trainee solicitor and a secretary who had not been trained as a conveyancer. Neither of these persons was appropriately qualified or trained to be placed in charge of the firm's conveyancing work. The Tribunal ordered the solicitor to pay a fine. In this regard, the findings of the Tribunal (at paras 67 and 69) are instructive:

> Client care … is a fundamental part of practice as a solicitor. A solicitor is required to exercise full proper and complete supervision over his employees to ensure that they are carrying out work properly. This is fundamental in meeting the requirement that a solicitor always puts first the best interest of his client.
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> …
>
> *[There] had been no suggestion that the Respondent had behaved dishonestly but he cannot escape responsibility as a sole principal in a firm for the serious breaches that occurred there*. Clients of the firm have been caused great anxiety and inconvenience and it might yet transpire that they have suffered loss as the result of the firm's negligence.
>
> [emphasis added]

40 In *Re a Solicitor* (UK Queen's Bench Division (Crown Office List), 23 November 1999), a solicitor was charged with having improperly misappropriated clients' funds for his own purposes, as well as failing to properly supervise his staff. The Law Society of England and Wales inspected the books and accounts of the solicitor's firm and found that the solicitor had improperly transferred over £72,000 from his client account to his office account during a period of *five* years. However, the solicitor subsequently rectified all improper transactions. As such, no loss had been caused to any client. Although the Tribunal concluded that there had been no dishonesty on the part of the solicitor and that no client had suffered loss, the majority of the Tribunal members (the chairman of the Tribunal dissenting) were of the view that the solicitor's behaviour and attitude had been such that their duty to protect the public and good reputation of the profession required the imposition of the ultimate sanction upon him. Accordingly, the solicitor was struck off the roll of solicitors. On appeal, the High Court allowed the appeal and substituted an order that the solicitor be suspended from practice for a period of 15 months. In reaching his decision, Lord Bingham CJ made some pertinent observations:

> It is I think important to note that the case was presented against Mr Talbot on the basis that there was no dishonest intention on his part to help himself to clients monies. Furthermore the finding against him is not one, as announced by the chairman at the end of the hearing, of serious, conscious impropriety. If that had been the finding, and if there were facts to support it, it would be very difficult to challenge the striking-off order. But *the finding to which all three members of the Tribunal subscribed was one of an unacceptable, laissez-faire, trust-to-luck approach to Mr Talbots* [*sic*] *responsibilities both in relation to the accounts rules and the supervision of staff. That is of course a serious matter because the Solicitors Accounts Rules exist to protect clients monies against the risk of misapplication and the duty of supervision is imposed for the protection of the public.* A deliberate breach of those rules necessarily involves a

violation of a very important regulatory safeguard which is intended to protect clients. *A breach is inevitably serious, but not so serious if it occurs because of oversight rather than deliberate or conscious neglect*. [emphasis added]

41 In this aspect of professional responsibility, the Australian position is consistent with the English authorities cited above in that a failure by a principal to exercise supervision over his staff is fully attributable to him. In *Law Society of New South Wales v Foreman* (1991) 24 NSWLR 238, the Court of Appeal of the Supreme Court of New South Wales upheld the decision of the Statutory Committee to impose a fine and a suspension of 18 months against a solicitor who had, *inter alia*, failed to supervise the work of his clerk. The Court of Appeal found that a failure by a solicitor to supervise the activities of an unqualified clerk in his employ, in circumstances in which he failed to understand the nature and extent of his obligation to supervise the clerk, could constitute professional misconduct. Notably, Mahoney JA (at 250) discussed five factors to be taken into account in determining the nature and extent of a solicitor's obligation to supervise a clerk in his employ. We find it most helpful to reproduce the relevant portions of Mahoney JA's illuminating judgment (at 249–252):

**1. Failure to supervise:**

… [T]he responsibilities of a solicitor for the proper conduct of the practice of which he is a part extend beyond his own actions and the work that he does. The obligations placed upon a solicitor by the regulatory legislation to which he is subject involve that he, to a proper extent, take steps to ensure that the statutory obligations in respect, to take one example, of the maintenance of a trust account, are complied with. … [A] solicitor has also responsibilities in respect of staff employed by him or his practice in the conduct of legal matters.

It is not necessary or desirable that the court attempt to formulate in detail the principles on which such obligations rest or the application of them, in general terms, to the practice of law. The kinds of practices now carried on vary considerably and the managerial and other structures within legal practices vary and will, no doubt, vary further to meet the needs of a changing profession. … It is therefore proper to confine what is said in this case to the responsibilities of a sole practitioner in respect of a non-qualified person who has been given the duty of conducting matters involving the application of the law and requiring the observance of proper standards of conduct. …

…

What will be required for the discharge of a solicitor's responsibilities in a case such as the present must, even within such confines, be affected by the circumstances of the case. It will, for example, be affected by the solicitor's knowledge on a continuing basis of the competence and integrity of the clerk. It will be affected also by the nature of the transactions taking place or apt to take place within the clerk's scope of activities. *But, without seeking to be definitive or exhaustive, it will be of assistance to see as involved in the conduct of a solicitor's practice, inter alia, five things: (1) a knowledge of the law to be applied; (2) the proper application of the law to the individual transactions carried out by the clerk; (3) the efficient and effective processing of those transactions from their commencement to the completion of them; (4) the observance of the statutory and other requirements in respect of the dealing with moneys received into the practice; and (5) the observance of the general obligations of those involved in the conduct of a legal practice, relating to, for example, conflict of interest, the conduct of fiduciaries, and the general ethics and etiquette of lawyers and those associated with them*.

…

> I do not mean by this that a solicitor must himself scrutinise every step of such transactions or that in every case he must be concerned with all such transactions. He may be in a position from past knowledge and experience of the clerk to exercise a more general rather than a particularised supervision of such matters. But he must give attention to the extent of supervision necessary in each case and maintain a sufficiently close oversight of cases in which principles of the kind to which I have referred are apt to come into operation.
>
> [emphasis added]

We emphatically agree with these observations.

42 And in Queensland, Moynihan J (delivering the judgment of the Legal Practice Tribunal) in *Legal Services Commissioner v Michael Vincent Baker* [2005] LPT 002, made the following incisive remarks with respect to a solicitor's obligation to supervise his employees (at [42]):

> A practitioner should properly supervise all legal professional work carried out on their [*sic*] behalf. Vicarious liability aside, a practitioner's legal and fiduciary duties to a client are not avoided or reduced by delivering that client into the care of an employee, whether or not that employee is legally qualified. The supervision required however varies according to the employee's experience, qualifications and role and with the type and complexity of the work.

43 In summary, the duties under the SA Rules are not capable of being abdicated from and/or delegated to employees regardless of whether they are secretaries, accountants or legal assistants. Instead, it is the solicitor's unyielding responsibility to ensure that his employees are properly instructed and supervised. There are many dimensions and aspects involved in such a responsibility and it behoves all solicitors to exercise sound judgment in assessing what the appropriate level of supervision and instruction required for their practices, in general, and each client matter, in particular, is. In our judgment, the respondent had not been proactive in the supervision and instruction of the staff employed by him. He also failed to stress to his staff the significance of punctiliously complying with the SA Rules. The breaches of the SA Rules would not have occurred, and been left unattended, if the respondent's practice had been adequately supervised. Having failed to adequately supervise his employees, the respondent surely cannot shelter himself behind the failures and/or omissions of his staff. In fairness, however, it is pertinent to note that he did not attempt to shirk from his responsibility for the errors committed by his staff.

**The appropriate sentence**

44 We now turn to the issue of the appropriate sentence to be meted out. While disciplinary action had to be taken against the respondent for his transgressions, it was important that the punishment be proportionate to the degree of culpability and blameworthiness on his part. Pursuant to s 83(1) of the LPA, the respondent could have been stuck off the roll or suspended from practice for a period of up to five years or censured. Section 83(1) of the LPA reads:

> **Power to strike off roll or suspend or censure**
>
> **83.**—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding 5 years or censured.

45 The four factors that ought to be taken into consideration when assessing the appropriate penalty were reiterated in *Edwin Tay* ([33] *supra*) at [19]:

(a) protection of the public;

(b) safeguarding the collective interest[s and standing] of the legal profession;

(c) the punishment of the offender; and

(d) the notion of deterrence …

46 We pause to make one further observation. The respondent was not initially present in court. On noticing this, we stood down the matter and directed the respondent's counsel to procure his presence immediately. When the hearing resumed, the respondent apologised for not being initially present. We wish to take this opportunity to emphasise that in all future DC cases, the respondents' solicitors are to ensure that their clients are present.

47 We now turn back to the facts. The essence of the respondent's blameworthiness was his carelessness and inadvertence in the supervision of the subject accounts. Unlike *Edwin Tay*, the respondent did not patently and deliberately disregard the SA Rules. Neither did he harbour any surreptitious desire or improper motive to profit from his secretary's mistake. There was no question of dishonesty or breach of trust.

48 In our judgment, the respondent's carelessness could be explained, to some extent, by the type of practice he had. The respondent was hardly in the office as most of his time was spent attending to matters at the HDB Hub. The respondent delegated the day-to-day handling of the files to his staff but his supervision over them and administrative matters was lax and plainly wanting. Despite entrusting the administrative matters to his secretaries, no emphasis was placed on the importance of strictly complying with the SA Rules. However, we noted that, when the wrong entry was actually and unmistakably brought to the respondent's attention during the directors' meeting on 2 December 2004, he immediately took steps to refund the moneys the next day.

49 Counsel for the Law Society, Mr Pavan Kumar Ratty ("Mr Ratty"), had initially challenged the finding of the DC that the respondent had no knowledge of the breaches prior to 2 December 2004. He did so without obtaining the Law Society's authority on whether it intended to dispute the findings of fact made by the DC. Plainly, a counsel cannot act on such an issue without his client's instructions. After we queried Mr Ratty on his mandate to challenge the DC's findings of fact, in an abrupt turn of events, Mr Ratty withdrew his submissions on the respondent's culpability and contended that the Law Society's only complaint against the respondent was that he had been lax and careless in relation to the subject accounts. Mr Ratty readily agreed with us that the respondent had taken remedial steps to rectify the wrong entry within a very short period of time of actual notification. He also accepted that the respondent's breaches ought to be placed at the lower end of the scale of culpability and deliberation.

50 We are mindful that the DC stated at para 143 of its report:

> The Committee cannot agree with Counsel for the Respondent when he said that there was no loss whatsoever to any client. The client account was a mixed fund comprising monies owned by all his clients. When the monies were deducted on 12 April 2004 for the transaction at hand, other clients' monies were being wrongly used. At any time if the balance in the office account dipped below what it otherwise would have been, these particular clients' monies were also being used wrongly. The fact that the funds were reimbursed in December 2004 can only be a mitigating factor.

Nonetheless, we are satisfied that no client had suffered any tangible financial loss as a consequence of the respondent's conduct. Any "loss" was technical. More importantly, this was a one-off incident.

51 We also noted that the respondent had voluntarily left practice for over two years after he was informed of his breaches of the SA Rules. This would have been an extremely lucrative and profitable period of practice for a conveyancing solicitor. According to counsel for the respondent, Mr Chandra Mohan K Nair ("Mr Mohan"), for a solicitor with a standing of about 15 years, leaving practice for two years is a drastic self-imposed punishment. Mr Mohan added that his client is extremely remorseful and that the disciplinary proceedings have taken a severe toll on the respondent. Mr Mohan also confirmed together with the respondent that there were no pending complaints against the respondent.

52 All things considered, we found that the facts of this case were peculiar and clearly distinguishable from the other precedents we had earlier dealt with. In terms of culpability and blameworthiness, the breaches here were plainly on the lower end of the scale. This is not to say that such breaches are, in principle, excusable and/or can be airily overlooked or brushed aside. We cannot emphasise enough that the observance of the SA Rules is a fundamental duty of all solicitors. Solicitors must be scrupulously conscientious in keeping and maintaining their clients' accounts. Clients' interests must be diligently protected and any breaches of the SA Rules will almost invariably be viewed seriously by this court. Having said that, it is also essential to assess each and every case in its proper context before the appropriate punishment is determined.

53 In the result, we considered that the appropriate sentence was to censure the respondent for his mistakes and to impose of a condition requiring the respondent to give an undertaking that he would not practise as a sole proprietor for a period of two years. The respondent promptly gave us that undertaking. Should the respondent decide to resume practice, he is expected to take proper steps to ensure that a similar error does not take place. In deciding to censure the respondent (as opposed to suspending him from practice or striking him off the roll), we took into account the following four factors:

(a) There was no suggestion that the respondent had behaved dishonestly. This was essentially a case of professional oversight as a result of the respondent's sheer carelessness and inadvertence in relation to staff supervision and the management of his clients' accounts.

(b) The respondent did not face a separate and distinct charge for having breached r 8 of the Professional Conduct Rules in relation to his dereliction of duty in staff supervision.

(c) No client had suffered any loss. The respondent had taken steps to put matters right almost immediately after actual notification.

(d) The respondent had voluntarily ceased practice after he became aware of the breaches of the SA Rules. A period of more than two years had lapsed before the matter was heard by us.

**Conclusion**

54 For all these reasons, we deemed it appropriate, in the circumstances, to censure the respondent.

55 Finally, we wish to commend Mr Ratty for tempering his submission on costs. He informed us that his involvement in this case was motivated by what he viewed as a personal obligation to uphold standards in the legal profession. He did not ask for the costs of the hearing before us. We therefore

did not make any order for costs in the present proceedings but ordered the respondent to pay to the Law Society $5,000 for costs of the disciplinary proceedings below in addition to the disbursements incurred by the Law Society.