Ang Pek San Lawrence *v* Singapore Medical Council
[2015] SGHC 58

Case Number	: Originating Summons No 1219 of 2013
Decision Date	: 05 March 2015
Tribunal/Court	: High Court
Coram	: Sundaresh Menon CJ; Andrew Phang Boon Leong JA; Judith Prakash J
Counsel Name(s)	: Lek Siang Pheng, Mar Seow Hwei, Lim Yew Kuan Calvin and Aw Jansen (Rodyk & Davidson LLP) for the appellant; Ho Pei Shien Melanie, Chang Man Phing Jenny and Ng Shu Ping (WongPartnership LLP) for the respondent.
Parties	: Ang Pek San Lawrence — Singapore Medical Council

Civil Procedure – Costs – Principles

5 March 2015 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 Originating Summons No 1219 of 2013 was an appeal brought by Dr Ang Pek San Lawrence ("the appellant") against the decision of a Disciplinary Committee constituted by the Singapore Medical Council ("the respondent") convicting him of professional misconduct under s 45 of the Medical Registration Act (Cap 174, 2004 Rev Ed) ("the MRA"). In its decision, the Disciplinary Committee also rendered an adverse costs order against the appellant.

2 On 19 November 2014, we gave judgment in favour of the appellant and allowed the appeal. In allowing the appeal, we set aside the appellant's conviction and all other orders made by the Disciplinary Committee, including the costs order. Our reasons for allowing the appeal are detailed in *Ang Pek San Lawrence v Singapore Medical Council* [2015] 1 SLR 436 ("the main judgment"). In the main judgment, we also ordered that the appellant was to have his costs of the appeal as well as of the proceedings before the Disciplinary Committee (which, for ease of reference, we refer to as "the Inquiry").

3 The respondent subsequently wrote to us stating that it should not be subjected to an adverse costs order in relation either to the appeal or the Inquiry. It submitted that an adverse costs order *cannot*, in law, be made against it in relation to the Inquiry because the Disciplinary Committee itself was not permitted to make such an order under the MRA. It further contended that an adverse costs order in relation both to the appeal and the Inquiry *should not* be made against it because its participation in the appeal and in the Inquiry was necessitated by its fulfilment or carrying out of its public regulatory function.

4 We invited both parties to tender further written submissions on these matters, which were received in due course. We also asked the parties if they wished to make oral submissions on these issues and both of them indicated that they did not. Having considered further the submissions made by the parties on these issues, we now deliver our judgment in respect of costs.

Background

5 The background to this judgment on costs has been set out in sufficient detail in the main judgment (at [2]–[30]) and this judgment should be read together with the main judgment. In the circumstances, we only set out here those facts and findings in the main judgment that are of particular importance to this judgment.

6 The appellant, a registered medical practitioner, was the subject of a complaint filed by one of his patients, the complainant. This complaint related to the management of the complainant's labour and delivery of her child by the appellant. The complaint was reviewed by the respondent's Complaints Committee pursuant to s 40 of the MRA. The Complaints Committee comprised three members, including one Professor Quak Seng Hock who was a Professor of Paediatrics at the National University of Singapore and Senior Consultant Paediatrician at National University Hospital. Various materials were also placed before the Complaints Committee including contemporaneous evidence in the form of medical records and written submissions provided by the complainant and the appellant, as well as the expert opinion of Professor Sabaratnam Arulkumaran, a highly respected medical professional who was then the Head of Obstetrics and Gynaecology at St George's Hospital, London. The Complaints Committee also decided to obtain an independent medical report which it assessed together with the evidence adduced by the complainant and the appellant before reaching its determination. The Complaints Committee concluded that no formal inquiry was required and dismissed the complaint. It gave its reasons for doing so in brief terms in a letter to the appellant dated 29 April 2011 in which it stated as follows:

> …
>
> 2. The Complaints Committee (CC) has carefully reviewed all the circumstances of the complaint and the Information submitted.
>
> 3. The CC noted and accepted the expert opinion from Prof S Arulkumaran … that the poor outcome of the baby's birth was likely due to intrauterine pneumonia and intrauterine sepsis as suggested by the Apgar scores of 7 at both 1 min and 5 mins and that ruled out intrauterine hypoxia as a cause. The baby passing out light to moderate meconium did not warrant an emergency Caesarean Section (CS). The actions taken by you based on the obstetric clinical observations and the Cardiotocograph (CTG) were appropriate.
>
> 4. However, due to some discrepancies in the Newborn Infant record, the CC decided to obtain an Independent medical report to clarify the baby's actual Apgar score at 1 min and 5 mins. The medical report had confirmed that the Apgar scores were 7 at 1 min and 7 at 5 mins and were consistent with the Thomson Medical Centre's medical records. The CC felt that the Apgar scores of 7 were satisfactory, and you had delivered the baby in time but it was unfortunate that the baby deteriorated due to intrauterine infection and sepsis and had to be transferred to KKH Neonatal ICU. The CC also considered whether the Apgar scores could have been improved if the CS had been done earlier but no difference would be made if the poor outcome was due to an intrauterine pneumonia and sepsis.
>
> 5. The CC noted that you were next door attending to another patient and was [*sic*] readily contactable, however, the CC felt that the responsibility to call the doctor for review should not lie with the patient. Delivery would also be a stressful time for the mother and she might not have remembered or brought your number with her during the admission. The CC noted that you were eventually called but had thought that the CTG changes were due to maternal pyrexia from the epidural.
>
> 6. The CC also considered whether a neonatologist standby was necessary but neonatologist

coverage was not routine unless there were indications prior to delivery to warrant so.

7. The CC decided that no formal Inquiry is necessary as there was no evidence of professional misconduct. The CC, however, noted that the actions taken based on the obstetric clinical observations and the CTG were appropriate. …

7 We make some brief observations on the principal findings of the Complaints Committee in coming to the decision that there was no basis for taking any further action against the appellant:

(a) the deterioration of the condition of the baby was due to an intrauterine infection and not because of intrauterine hypoxia, which was ruled out;

(b) in all the circumstances, having regard to the cardiotocograph and the indications, the appellant's actions were appropriate;

(c) an earlier intervention by surgical delivery would not have made any difference; and

(d) the available indications did not suggest that it was necessary to have a neonatologist to be on standby during the delivery.

8 Dissatisfied with the decision of the Complaints Committee, the complainant appealed to the Minister for Health ("the Minister") pursuant to s 41(7) of the MRA for the appointment of a Disciplinary Committee to hear and investigate the complaint despite its having been dismissed by the Complaints Committee. The Minister acceded to her appeal and the Disciplinary Committee was constituted. In this regard, we observed in the main judgment (at [10]) that no explanation or reasons were given for acceding to the appeal and for directing the continuation of the proceedings against the complaint despite the complaint having been considered and dismissed by the Complaints Committee.

9 Four charges were subsequently brought by the respondent against the appellant for the purposes of the Inquiry. At the conclusion of the Inquiry, the Disciplinary Committee acquitted the appellant of all but the fourth charge. In respect of the fourth charge, the Disciplinary Committee ordered that the appellant's registration as a medical practitioner be suspended for a period of three months. The Disciplinary Committee also ordered the appellant to pay 60% of the costs of the proceedings, including the cost of counsel for the respondent and the legal assessor, and 75% of the disbursements.

10 The appellant appealed against his conviction, the suspension order and the costs order. We allowed the appeal in full. As seen from the main judgment (at [34]), we concluded that the Disciplinary Committee had made a number of errors in finding the appellant guilty in relation to the fourth charge. Among them, we found that:

(a) the Disciplinary Committee had failed to determine the requisite standard of conduct which the appellant should be held to or to consider whether any alleged departure from such a standard by the appellant could be said to be sufficiently serious to amount to professional misconduct; and

(b) the Disciplinary Committee had taken into account facts that it should not have considered in convicting the appellant.

11 In relation to the first of the grounds mentioned above, we observed that it was unclear which

of the two types of professional misconduct described in *Low Cze Hong v Singapore Medical Council* [2008] 3 SLR(R) 612 ("*Low Cze Hong*") (at [37]) the Disciplinary Committee had applied its mind to. We observed in the main judgment (at [39]) that the respondent had, in fact, failed to specify the type of professional misconduct alleged in any of the four charges brought against the appellant. This lack of specificity in the charges meant that there had been a lack of clarity as to the case that the respondent was mounting or that the appellant had to meet. Given the way the case had been presented, it was perhaps unsurprising that the Disciplinary Committee failed to determine and then consider the requisite standard of conduct that it should have taken reference from in evaluating the appellant's conduct (see [59]–[61] of the main judgment).

12 In light of this, we emphasised in the main judgment (at [40]) the need for the respondent to assist future Disciplinary Committees by drafting the charges it brings with sufficient precision and particularity including by making clear which type of professional misconduct described in *Low Cze Hong* it is alleging.

13 In relation to the second of the grounds mentioned above, we noted that a number of the facts relied on by the Disciplinary Committee fell outside the ambit of the facts that had been particularised in the fourth charge. This arose because the respondent had not sufficiently particularised the fourth charge to encompass the facts that it wished to rely on (see [85]–[88] of the main judgment), though it nevertheless did rely on such facts in its submissions to the Disciplinary Committee. An example will elucidate the point. In convicting the appellant of the fourth charge, the Disciplinary Committee had relied on the fact that the appellant was unaware of the identity of the person who would be assisting him in the delivery (see [101] of the main judgment). This had not been included in the particulars of the fourth charge but had nonetheless been relied on by the respondent in the proceedings below. [note: 1] We make these points because tribunals can be led into error by the unsatisfactory way in which a case is presented and at least in some important respects, it was evident that this had in fact transpired in this case.

14 Against this background, we are left to deal with the appropriate costs order that should be made in relation to these proceedings.

The issues

15 Had this case concerned a normal civil appeal, the appellant's success on appeal would have been reason enough to order the costs of the appeal against the respondent. This is referred to as the principle that the costs will generally follow the event, the event in this context meaning the appellant's success in the appeal. That the respondent bore a measure of the responsibility for the errors made by the lower tribunal would have provided further reason to make an adverse costs order against the respondent. However, as these proceedings concern disciplinary proceedings commenced by the respondent in the exercise of its public function pursuant to the MRA, the question as to costs is more nuanced. We are thus required to consider the following issues:

(a) Whether the High Court hearing an appeal against the decision of the Disciplinary Committee can make an adverse costs order against the respondent in respect of:

(i) the costs of the inquiry before the Disciplinary Committee; and

(ii) the costs of the appeal ("the First Issue");

(b) If the answer to either or both these situations is in the affirmative, whether there are any principles governing the exercise of such power, and if so what those principles might be ("the

Second Issue"); and

(c) Whether, in applying the principles identified in (b) above, we should order costs against the respondent in relation to the Inquiry and/or the appeal ("the Third Issue").

16 These issues require us to deal with specific provisions in the MRA. We note that the version of the MRA referred to in this case is that in force as at 23 September 2009, that being the date of the events giving rise to the complaint against the appellant. A newer version of the MRA has since come into force. However, nothing ultimately turns on this because there have been no significant changes made to the provisions of the MRA that are relevant to this case. In the circumstances, we consider that the general principles enunciated below would apply equally to the current version of the MRA that has been in force since 31 December 2014.

The First Issue

The power of the High Court to order costs against the respondent

17 We first consider whether we have the power to order the costs of the Inquiry against the respondent. The respondent's contention that the High Court does not have the power to make such an order is premised on the view that the High Court's powers in relation to costs are subject to the provisions of the MRA. The respondent argues that the MRA permits only the Disciplinary Committee to order costs against the appellant upon a conviction. It does not empower the Disciplinary Committee to order costs against the respondent under any circumstances. From here, the respondent extrapolates that if the Disciplinary Committee lacks the power to make an adverse costs order against the respondent, then neither can the High Court sitting on appeal from the Disciplinary Committee have such a power. We therefore begin by considering whether the MRA allows a Disciplinary Committee to make an adverse costs order against the respondent in the proceedings below.

The power of the Disciplinary Committee to order the costs of the Inquiry against the respondent

18 The respondent points out correctly that the Disciplinary Committee is expressly empowered under the MRA to order costs against a medical practitioner in the event of a conviction. The relevant provisions are ss 45(1), 45(2) and 45(4). Section 45(1) provides that "the Disciplinary Committee may exercise one or more of the powers referred to in [s 45(2)]" upon a finding of guilt on the part of the medical practitioner. On its terms, s 45(1) constrains the power of the Disciplinary Committee to make the orders set out in s 45(2) such that those powers can only be exercised in the event there is a finding of guilt against the medical practitioner. Section 45(2) then lists down the various powers referred to in s 45(1). Although the power to order costs is not provided for in s 45(2), s 45(4) states that:

> A Disciplinary Committee may under subsection (2) order the registered medical practitioner concerned to pay to the Medical Council such sums as it thinks fit in respect of costs and expenses of and incidental to any proceedings before the Disciplinary Committee and, where applicable, an Interim Orders Committee.

19 The respondent also points out, correctly, that while the MRA specifically provides for the Disciplinary Committee's power to order costs against the medical practitioner, it is conspicuously silent as to the costs orders that the Disciplinary Committee may make in the event that it acquits the medical practitioner. Section 46(16), the only provision that deals with the scenario where there is an acquittal, simply provides as follows:

Where a registered medical practitioner is not found or judged by a Disciplinary Committee to have been convicted or guilty of any matter referred to in section 45(1), the Disciplinary Committee shall dismiss the complaint or matter.

20 The respondent accordingly contends that:

(a) a Disciplinary Committee can only order costs against a medical practitioner in the event of a conviction as provided for in s 45(2) of the MRA; and

(b) a Disciplinary Committee cannot order costs against any party in the event of an acquittal as the MRA is silent on this.

If both these propositions are to be accepted, then the necessary conclusion to be reached would be that a Disciplinary Committee can never order costs against the respondent. In our judgment, the first proposition is correct; however, the second proposition is incorrect.

21 In our judgment, s 45(1) *limits* the powers exercisable by a Disciplinary Committee against the medical practitioner in two ways. First, it can only exercise the powers contained in s 45(2) (and by extension in s 45(4)) upon a finding of guilt against the medical practitioner. Hence, the Disciplinary Committee could not, without a finding of guilt, make an adverse costs order against a medical practitioner on account of, for instance, the manner in which the defence has been conducted even if this may have prolonged the proceedings unnecessarily. Second, upon a finding of guilt, the *only* powers exercisable by the Disciplinary Committee are those provided for in s 45(2).

22 In contrast to the limits placed on the powers exercisable by a Disciplinary Committee against a medical practitioner upon a finding of guilt, no such *express* limits are placed in relation to the powers exercisable by a Disciplinary Committee upon an acquittal. The respondent interprets this silence as a circumscription of the powers of a Disciplinary Committee which prevents it from making any adverse costs orders. We disagree. Silence as to the powers of the Disciplinary Committee in the event of an acquittal should not be interpreted as amounting to a limitation or exclusion of any powers that otherwise would exist. In particular, the respondent fails to take into account the fact that an adjudicative body such as the Disciplinary Committee will have a number of implied ancillary powers, save to the extent where these are expressly limited or extended.

23 Whether the Disciplinary Committee has an implied ancillary power to order costs against the respondent upon an acquittal is a matter of statutory interpretation. A power may be legitimately implied when it is "proper" to do so: Oliver Jones, *Bennion on Statutory Interpretation* (LexisNexis, 6th Ed, 2013) at p 465. Ancillary powers should be implied when they "may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorized": *The Attorney-General & Ephraim Hutchings (Relator) v The Directors of the Great Eastern Railway Company* (1880) 5 App Cas 473 at 478. In light of this, the Disciplinary Committee must possess powers to make consequential orders upon the acquittal of a medical practitioner pursuant to s 46(16) of the MRA at the conclusion of proceedings that are litigious in nature. It cannot be the case that the silence of the MRA in this respect means the Disciplinary Committee has no power to make consequential orders, including the power to make costs orders at the dismissal of the case. In our judgment, the power to decide on matters relating to costs is an important ancillary power that would fairly and ordinarily be regarded as incidental to the power to conduct and determine an adjudicatory process. Although the Disciplinary Committee is constrained by the MRA from ordering costs against a medical practitioner in certain circumstances as we have noted above, there is no similar constraint or prohibition in the MRA in relation to the making of other costs orders. In our judgment, the Disciplinary Committee is vested with the implied ancillary power to make any costs order upon an acquittal save that by reason of the

express statutory provision to this effect, it cannot make an adverse costs order against the medical practitioner except in the circumstances identified above (at [21]). We consider that such an implication is only proper and we are reinforced in this view by the following observations.

24 In the absence of any discussion in the relevant parliamentary debates on the power to award costs under the MRA, we find it difficult to imagine that Parliament intended that the respondent be immune from adverse costs orders. It is true that the respondent is exercising a public statutory function. But this alone cannot be a sufficient basis for concluding that there is such immunity, especially having regard to the position of other agencies exercising similar public functions. The most notable of these is the Public Prosecutor, who in fact exercises a public *constitutional* function (see Art 35(8) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint)). Yet the Public Prosecutor is not immune from adverse costs orders. The courts, in appropriate, albeit limited, circumstances, may award costs against the Public Prosecutor in relation to criminal matters (see ss 355(2) and 356(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed)). The rationale for *limiting* the power to make adverse cost orders in criminal proceeding was recently explained in *Arun Kaliamurthy and others v Public Prosecutor and another matter* [2014] 3 SLR 1023 ("*Kaliamurthy*") (at [18]):

> The reason behind limiting ground[s] for the award of costs in criminal proceedings is the public interest element in criminal litigation. Criminal proceedings are not initiated for the purpose of advancing private interests. Proceedings are brought by the Prosecution in exercise of its largely unfettered and lightly regulated prosecutorial responsibility, acting in the public interest and for the sake of the maintenance of law and order. It would, thus, not be right to expose prosecutors to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful unless there is dishonesty or malice. Conversely, the Defence acting honestly and reasonably must be encouraged to advance the cause of justice without fear of financial prejudice. Both the Prosecution and the Defence are discharging public functions in the interests of justice by securing convictions and acquittals of criminals and innocents respectively. Neither should be deterred from performing such public functions out of fear of a likely adverse costs order. As a result, adverse costs orders are only provided for in limited circumstances.

25 In light of this, it seems implausible that Parliament intended to allow a quasi-prosecutorial body such as the respondent to act with absolute immunity from adverse costs orders in disciplinary proceedings when even the Public Prosecutor does not enjoy such absolute immunity.

26 Further, it is evident from the passage in *Kaliamurthy* that we have cited above that even a defendant medical practitioner, in mounting his defence and thus acting to ensure that there is no wrongful conviction, is also exercising a public function, albeit to a more limited degree.

27 In addition, we consider that the power to order costs is an important salutary power for courts and tribunals. The power should be exercised to incentivise appropriate conduct in litigation and, to that extent, to discourage behaviour that impedes the administration of justice. More importantly, it serves as a safeguard against unnecessary financial prejudice being inflicted on a party to the proceedings by the prosecution of unwarranted litigation. This is equally true in the context of disciplinary proceedings instituted pursuant to the MRA. Medical practitioners charged with misconduct already face the prospect of incurring substantial legal fees to defend themselves. If they are convicted, they may face an adverse costs order on the basis that the costs of having to bring such proceedings should be visited upon the practitioner in such circumstances. But there is no reason to assume that the respondent should enjoy absolute immunity from an adverse costs order. It might well be, as we note below, that the circumstances in which an adverse costs order is made against the respondent should be calibrated to take account of the fact that it is discharging a public

function. But to grant it immunity would, in our judgment, be excessive and unfounded in principle.

28 There is a further point. Under the MRA, a complaint is first assessed by the Complaints Committee. This ensures that every complaint is carefully assessed by experienced professionals. At this stage there is no question of any adverse costs order being made. If the Complaints Committee were to conclude that the matter should be investigated further, it proceeds. But if the Complaints Committee dismisses the complaint, a dissatisfied complainant may, notwithstanding that the Complaints Committee is composed of highly qualified medical professionals (see ss 38(1) and 39(5) of the MRA), appeal to the Minister against that decision. This right of appeal is provided for under s 41(7) of the MRA:

> Where the person who has made the complaint or information to the Medical Council is dissatisfied with any order of a Complaints Committee under subsection (1)(*a*), he may, within 30 days of being notified of the determination of the Complaints Committee, appeal to the Minister whose decision shall be final.

The Minister may then, pursuant to s 41(8)(*b*) of the MRA, direct that disciplinary proceedings be instituted against a medical practitioner.

29 The availability of this appeal mechanism means that a medical practitioner faces the prospect of an inquiry before the Disciplinary Committee even though the conduct in question has been assessed by fellow professionals and found not to cross even a preliminary threshold of misconduct. This is what transpired in this case. No reasons were given by the Minister for acceding to the complainant's appeal despite the conclusions of the Complaints Committee. It is not evident why or how the decision of the Complaints Committee was considered to be unsatisfactory. For the respondent to press for immunity from an adverse costs order in such circumstances seems to us to be indefensible. To put it starkly, the Inquiry in this case was not proceeded with on the basis that the experienced and highly qualified members of the Complaints Committee thought it was called for. They did not. Rather it was proceeded with because the Minister acceded to the complainant's appeal for reasons that have not been explained. Were the respondent to have absolute immunity from an adverse costs order in such circumstances, the medical practitioner would face the real risk of suffering not only professional embarrassment but also financial prejudice to defend what may eventually turn out to be an unmeritorious complaint. This is self-evidently unacceptable.

30 For all these reasons, we are satisfied that the power of a Disciplinary Committee to order costs against both parties, and not just the medical practitioner alone, is one that is well-founded and serves a useful purpose. Such a power is within the implied ancillary powers of a tribunal such as the Disciplinary Committee and it cannot easily be displaced or limited save by express provision. That power in relation to the making of an adverse costs order against the respondent was certainly not excluded here, and indeed it could not be just because the MRA is silent on the matter. We therefore find that the Disciplinary Committee does have an implied ancillary power under the MRA to order costs against the respondent if it dismisses the charges brought by the respondent.

The power of the High Court to order the costs of the Inquiry against the respondent

31 As regards the power of the High Court to order the costs of the Inquiry against the respondent, on the basis of our holding that the Disciplinary Committee has such a power, it must follow that the High Court has the same power. Such a power would be an implied ancillary power to the High Court's power to hear and determine appeals from a Disciplinary Committee under s 46(7) of the MRA.

32 But even aside from this, the court has the power to order the respondent to bear the costs of the Inquiry because such a power arises independently from the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA").

33 Section 20(*c*) of the SCJA states:

> **Appellate civil jurisdiction**
>
> **20.** The appellate civil jurisdiction of the High Court shall consist of —
>
> …
>
> (*c*) the hearing of appeals from other tribunals as may from time to time be prescribed by any written law.

Thus, when the High Court hears appeals from a Disciplinary Committee pursuant to s 46(7) of the MRA, it is properly seized of its appellate civil jurisdiction. When this is so, the High Court has the same powers as the Court of Appeal in the latter's exercise of appellate jurisdiction. This is specifically provided for under s 22 of the SCJA:

> **Powers of rehearing**
>
> **22.**—(1) All appeals to the High Court in the exercise of its appellate civil jurisdiction shall be by way of rehearing.
>
> (2) The High Court shall have the like powers and jurisdiction on the hearing of such appeals as the Court of Appeal has on the hearing of appeals from the High Court.

34 The relevant power of the Court of Appeal exercisable by the High Court in relation to costs is provided for under s 38 of the SCJA:

> **Costs of appeal**
>
> **38**. The Court of Appeal may make such order as to the whole or any part of the costs of appeal or *in the court below* as is just.
>
> [emphasis added]

We note that "court" has been defined in s 2 of the SCJA to mean "a court established by this Act". The only "courts" established under the SCJA are the High Court and the Court of Appeal. In the context of s 38 of the SCJA, however, this would have to be read as including the State Courts and "tribunals" such as the Disciplinary Committee when read with ss 20 and 22 of the SCJA. This is only sensible because the appellate jurisdiction of the High Court arises in relation to those bodies. If the word "court" was indeed interpreted strictly in accordance with s 2 of the SCJA, then this could mean that the High Court would be unable to deal with costs in relation to proceedings before the State Courts that go on appeal before the High Court. That would plainly be an untenable result. To give effect to the High Court's "like" power and jurisdiction *vis-à-vis* the Court of Appeal, we are satisfied that the word "court" in s 38 must be read more broadly when applied to the appellate jurisdiction of the High Court.

35 It follows from this that the combined effect of ss 22 and 38 of the SCJA is to empower the

High Court to make an adverse costs order against the respondent in relation to the Inquiry. This is quite apart from the power of the Disciplinary Committee to make an adverse costs order against the respondent. We also note that there is no express prohibition against this court making an adverse costs order against the respondent in relation to the Inquiry below in the MRA. The observations of the High Court of Australia in *Electric Light & Power Supply Corporation Ltd v Electricity Commission of New South Wales* (1956) 94 CLR 554 at 560 are germane to our inquiry:

> … When the legislature finds that a specific question of a judicial nature arises but that there is at hand an established court to the determination of which the question may be appropriately submitted, it may be supposed that if the legislature does not mean to take the court as it finds it with all its incidents including the liability to appeal, it will say so. *In the absence of express words to the contrary or of reasonably plain intendment the inference may safely be made that it takes it as it finds it with all its incidents* and the inference will accord with reality. … [emphasis added]

36 Lastly, we note that this conclusion does not conflict with past decisions of the High Court regarding appeals heard pursuant to s 46(7) of the MRA. Although the High Court in those appeals decided not to order the respondent to bear the costs of the inquiry, the underlying premise for those decisions was not the lack of power on the part of the High Court. For example, in *Gobinathan Devathasan v Singapore Medical Council* [2010] 2 SLR 926 ("*Gobinathan Devathasan*"), the court stated (at [76]) that, "[w]ith regard to the costs of the proceedings before the [Disciplinary Committee] and this court", it "will not order the [Singapore Medical Council] to pay the costs of the proceedings" because it took the view that the charges were brought "in good faith and in the public interest" to stop what it believed was "inappropriate treatment". Similarly, in *Low Chai Ling v Singapore Medical Council* [2013] 1 SLR 83 ("*Low Chai Ling*"), the court directed (at [78]) that "there be no order as to costs here as well as for the proceedings before the [Disciplinary Committee]" as the respondent was "discharging its statutory role". None of those cases proceeded on the premise that the High Court did not have the power to deal with the costs of the inquiry. Otherwise, there would have been no occasion to justify on other grounds the refusal to make an adverse costs order against the respondent in relation to the below.

The power of the High Court to order the costs of the appeal against the respondent

37 There is no dispute as to the power of the High Court to order the costs of the *appeal* against either party. This similarly flows from the combined effect of ss 22 and 38 of the SCJA which empowers this court to order either party to bear the costs of the appeal. We accordingly turn to consider the principles applicable in making such costs orders.

The Second Issue

The applicable principles

38 The parties agree that if there is power vested in the High Court to order costs against the respondent in relation to the Inquiry, the applicable principle on which the exercise of such a power is to be determined is that laid down in *Baxendale-Walker v Law Society* [2008] 1 WLR 426 ("*Baxendale-Walker*"). This in turn was applied by the Court of Appeal in relation to disciplinary proceedings brought in the context of the legal profession in *Law Society of Singapore v Top Ten Entertainment Pte Ltd* [2011] 2 SLR 1279 ("*Top Ten*").

39 The parties however disagree as to the applicable principles in dealing with the costs of the *appeal*. The respondent argues that the decision in *Baxendale-Walker* should apply with equal force

and seeks in this connection to rely on certain pronouncements made in *Top Ten*. The appellant, however, contends that in relation to the appeal the general rule, namely that costs should follow the event, as is provided for in O 59 r 3(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court"), should apply.

40 We begin by reviewing *Baxendale-Walker* and other relevant English decisions. It will also be helpful in the overall analysis to review the decision of the Court of Appeal in *Top Ten* and the two previous High Court decisions (*Gobinathan Devathasan* and *Low Chai Ling*) that we have touched on above (at [36]) that dealt with the issue of ordering costs against the respondent.

The English position

41 Prior to the decision of the English Court of Appeal in *Baxendale-Walker*, there is the pronouncement of Lord Bingham of Cornhill CJ (as he then was) in *City of Bradford Metropolitan Borough Council v Booth* [2000] COD 338 ("*Booth's* case"). There, the Divisional Court of England was concerned with a costs order made by the Magistrates' Court after it allowed an appeal against the decision of the local authority not to renew a private hire operator's licence. The Magistrates' Court, after considering s 64(1) of the Magistrates' Courts Act 1980 (c 43) (UK) which granted it the discretion to make an order as to costs "as it thinks just and reasonable", decided that costs should follow the event and awarded the successful appellant the costs of the appeal. After considering the authorities, Lord Bingham concluded that the Magistrates' Court had erred in principle. He considered that instead of applying the general principle that costs should follow the event, it was incumbent on the Magistrates' Court to consider a variety of other factors which were summarised at [24]–[26] of his judgment and which we now reproduce:

> 24 Section 64(1) confers a discretion on a magistrates' court to make such order as to costs as it thinks just and reasonable. ...
>
> 25 What the court will think just and reasonable will depend on all the relevant facts and circumstances of the case before the court. The court may think it just and reasonable that costs should follow the event, but need not think so in all cases covered by the subsection.
>
> 26 Where a complainant has successfully challenged before justices an administrative decision made by a police or regulatory authority acting honestly, reasonably, properly and on grounds that reasonably appeared to be sound, in exercise of its public duty, the court should consider, in addition to any other relevant fact or circumstances, both (i) the financial prejudice to the particular complainant in the particular circumstances if an order for costs is not made in his favour; and (ii) the need to encourage public authorities to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged.

42 In short, Lord Bingham considered that in matters concerning the exercise of a public regulatory function, costs decisions will involve a balancing of various factors. Undoubtedly, the fact that a public regulatory function is being exercised would be weighty (even if not a conclusive) consideration provided the entity exercising that function was "acting honestly, reasonably, properly and *on grounds that reasonably appeared to be sound*" [emphasis added]. The ultimate consideration is whether an adverse costs order against such an entity would be just and reasonable in all the circumstances of the case.

43 This portion of Lord Bingham's decision in *Booth's* case was considered by the English Court of Appeal in *Baxendale-Walker*. There, the Law Society of England instituted disciplinary proceedings

before a tribunal against a solicitor. Two charges were brought against the solicitor. The solicitor was acquitted of the first charge but convicted of the second charge. However, in considering the fact that more costs had been incurred in defending the first charge than the second charge, the tribunal ordered the Law Society to pay 30% of the solicitor's costs of the proceedings. Such a costs order was expressly permitted pursuant to s 47(2) of the Solicitors Act 1974 (c 47) (UK) which vested the tribunal with a very wide discretion as to the costs orders it could make. The Law Society appealed against the costs order and the Divisional Court allowed the Law Society's appeal. The Divisional Court instead ordered the solicitor to pay 60% of the Law Society's costs of the disciplinary proceedings. The solicitor appealed against this order and the Court of Appeal dismissed his appeal. In dismissing the solicitor's appeal, Sir Igor Judge P (as he then was), delivering the judgment of the Court of Appeal, made the following observations (at [39]) in consideration of Lord Bingham's observations that we have referred to above:

> … identical, or virtually identical, considerations apply when the Law Society is advancing the public interest and ensuring that cases of possible professional misconduct are properly investigated and, if appropriate, made the subject of formal complaint before the tribunal. Unless the complaint is improperly brought, or, for example, proceeds … as a "shambles from start to finish", when the Law Society is discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs follow the event. The "event" is simply one factor for consideration. It is not a starting point. There is no assumption that an order for costs in favour of a solicitor who has successfully defeated an allegation of professional misconduct will automatically follow. *One crucial feature which should inform the tribunal's costs decision is that the proceedings were brought by the Law Society in exercise of its regulatory responsibility, in the public interest and the maintenance of proper professional standards. For the Law Society to be exposed to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful might have a chilling effect on the exercise of its regulatory obligations, to the public disadvantage*. … [emphasis added]

44 This passage has been regarded as reflecting the so-called "*Baxendale-Walker* principle". In our judgment, however, excessive emphasis should not be placed on the consideration that a public or regulatory function is being exercised by the unsuccessful party in pursuing the litigation. That is undoubtedly a relevant and weighty consideration and in some cases it may be overwhelmingly so, at least so long as the particular exercise of the regulatory function may be seen to be manifestly reasonable in all the circumstances. But it remains one of a variety of factors, just as the "event" is itself expressly recognised as being another relevant factor. This multi-factorial approach is entirely consistent with Lord Bingham's approach in *Booth's* case which preceded, and was applied in, *Baxendale-Walker*. To avoid overstating any single aspect of the principle in *Booth's* case, we would reiterate that the regulatory role of an entity is an important but not a conclusive factor to be considered when deciding on the appropriate costs order to make. The decision of Sir Igor Judge P in *Baxendale-Walker* certainly cautions against the making of an adverse costs order against a regulatory body *on the sole basis* that it was unsuccessful in the proceedings. That does not, however, end the inquiry and one must then proceed to consider the other relevant circumstances of the case, as stated in *Booth's* case, to arrive at a just and reasonable costs order. In our judgment, rather than relying on the decision in *Baxendale-Walker*, reference should instead be made to the principle in *Booth's* case, which was applied in *Baxendale-Walker* itself, so that one does not lose sight of the multi-factorial approach.

45 The decisions in *Baxendale-Walker* and *Booth's* case were subsequently considered by the English Court of Appeal in *Regina (Perinpanathan) v City of Westminster Magistrates' Court and another* [2010] 1 WLR 1508 ("*Perinpanathan*") in a different context. There, the police had applied for cash seized to be forfeited on the basis that there were reasonable grounds to suspect that it was

intended by the claimant for use in unlawful conduct. The magistrate dismissed the application but refused to make an order for costs against the police. The claimant, dissatisfied with the eventual costs order, sought judicial review of the magistrate's decision to make no order as to costs. The Divisional Court dismissed the claim for judicial review. On appeal, Stanley Burnton LJ reviewed the case law on this issue in great detail, including *Baxendale-Walker* and *Booth's* case, and concluded that the following propositions could be derived from them (at [40]):

> … (1) As a result of the decision of the Court of Appeal in [*Baxendale-Walker*], the principle in [*Booth's* case] is binding on this court. Quite apart from authority, however, for the reasons given by Lord Bingham CJ I would respectfully endorse its application in licensing proceedings in the magistrates' court and the Crown Court. (2) For the same reasons, the principle is applicable to disciplinary proceedings before tribunals at first instance brought by public authorities acting in the public interest: see [*Baxendale-Walker*]. (3) Whether the principle should be applied in other contexts will depend on the substantive legislative framework and the applicable procedural provisions. (4) The principle does not apply in proceedings to which the CPR apply. (5) Where the principle applies, and the party opposing the order sought by the public authority has been successful, in relation to costs the starting point and default position is that no order should be made. (6) A successful private party to proceedings to which the principle applies may none the less be awarded all or part of his costs if the conduct of the public authority in question justifies it. (7) Other facts relevant to the exercise of the discretion conferred by the applicable procedural rules may also justify an order for costs. It would not be sensible to try exhaustively to define such matters, and I do not propose to do so.

46 It may first be noted that Stanley Burnton LJ did not regard *Baxendale-Walker* as the decision that laid down the applicable principle in that case. Rather, consistent with our observation above (at [44]), reference was made to "the principle in [*Booth's* case]", that is, the pronouncement by Lord Bingham that we have set out above (at [41]). The effect of *Perinpanathan* was to extend the application of the principle in *Booth's* case to all tribunals (including disciplinary hearings) that were regarded as first instance hearings, subject to any relevant statutes and procedural rules. We also note in this connection the views expressed by Lord Neuberger of Abbotsbury MR (as he then was) in the same case (at [73]):

> ... The effect of the reasoning [in *Baxendale-Walker*] is that, just because a disciplinary body's functions have to be carried out before a tribunal with a power to order costs, *it does not follow that there is a presumption that the tribunal ought to order the disciplinary body to pay the costs if it is unsuccessful*, and that, *when deciding what order to make, the tribunal should approach the question by reference to Lord Bingham CJ's three principles*. It is hard to see why a different approach should apply to a regulatory or similar body carrying out its functions before a court—*unless the rules of that court have any presumptive principle inconsistent with those principles, such as CPR r 44.3(2)(a). [emphasis added]*

47 *These observations cohere with our caution (at [44] above) against overstating the effect of a finding that a body is performing a regulatory function, in the court's overall analysis, when deciding on the just and reasonable costs order it should make. Against this overview of the English position, we turn to the position in Singapore.*

Local cases

(1) *Top Ten*

48 In *Top Ten*, a complaint was made against a solicitor to the Law Society of Singapore. An

Inquiry Panel was constituted to consider the complaint. The Inquiry Panel recommended to the Council of the Law Society ("the Council") that the complaint be dismissed but that the solicitor be fined $500. The Council accepted the recommendations of the Inquiry Panel. The complainant, dissatisfied with this outcome, applied for a review of the Council's decision before a judge of the High Court ("the Review Judge"). The Law Society opposed the review. At the conclusion of the hearing, the Review Judge directed that the Law Society apply to the Chief Justice to appoint a Disciplinary Tribunal to investigate two of the three matters raised by the complainant. On the question of costs, the Review Judge held that costs should follow the event. She thus ordered the Law Society to pay 50% of the complainant's costs. The Law Society appealed against the costs order on the basis that the Review Judge should have given due regard to the discharge of its function as a regulatory body and argued that the Review Judge should have had regard to the decision in *Baxendale-Walker* instead.

49 After considering the decisions in *Baxendale-Walker* and *Perinpanathan*, the Court of Appeal in *Top Ten* first found (at [24]) that the principle discussed in *Baxendale-Walker* was applicable to entities acting as regulatory bodies:

> In our view, the answer to this question is 'yes' if the Law Society is acting as a regulatory body under Pt VII of the LPA. In so doing, it would be protecting the integrity of the profession and its members which would be in the interest of the public. Disciplinary proceedings are not the same as civil proceedings, and the Law Society should not be equated with an ordinary litigant who litigates to enforce or protect his or her private interests. We agree with the reasoning so clearly articulated by Sir Igor Judge P in *Baxendale-Walker ... When performing regulatory functions which they are charged to do, public bodies should be protected from having to pay costs unless they are proved to have acted in bad faith or are guilty of gross dereliction*. In our view, *Baxendale-Walker* enunciates a salutary principle. [emphasis added]

50 The court in *Top Ten* plainly endorsed the decision in *Baxendale-Walker*. Although it made express mention of "bad faith" or "gross dereliction" as circumstances that justify an adverse costs order against a regulatory body, we do not read the court as limiting only to those, the various circumstances that may, and indeed, in our judgment, *must* be considered when deciding whether an adverse costs order may be made against a regulatory body. Consistent with this view, the court in *Top Ten* noted a little further on in its judgment (at [38]):

> … The [*Baxendale-Walker*] principle merely states that, *as a starting point*, a public body performing a regulatory [function] should not be made to pay costs. … [emphasis added]

51 There is one other matter that was touched on in *Top Ten*. The Court of Appeal held (at [33]) that the Law Society had been acting as a regulatory body when it appeared before the Review Judge and accordingly found the principle laid down in *Baxendale-Walker* to be applicable. The Court of Appeal seemed to view *Perinpanathan* as limiting that principle to first instance hearings, and saw no difficulty applying the principle to the case before it because it held (at [35]) that the hearing before the Review Judge was a first instance hearing. Nonetheless, the Court of Appeal also made the following observations (at [36]):

> In any case, we would add that even if any hearing is not a first instance hearing under ss 95, 96, 97 or 98 of the LPA, it would not matter as under ss 95–97 the judge may make such order for the payment of costs as may be just, and under s 103 of the LPA, the costs payable under ss 97, 98, 100 or 102 are in the discretion of the judge or the court. These costs provisions do not exclude the rationale of the *Baxendale-Walker* principle or prevent it from applying. The only difference between the *Baxendale-Walker* principle and the 'costs follow the event' principle in O

59 r 3(2) of the Rules of Court is that the former shifts the burden of proving the Law Society should pay costs in the proceedings to the complainant or the solicitor concerned.

52 It is this passage in *Top Ten* that the respondent relies on to suggest that the "*Baxendale-Walker* principle" (or actually the principle in *Booth's* case) should apply to appeals and not just to first instance hearings. We observe first, that *Perinpanathan* does not expressly limit the principle in *Booth's* case to first instance hearings. Both Stanley Burnton LJ and Lord Neuberger MR observed that the position, including in relation to appeals, must be consistent with the relevant statutory framework and procedural rules. In this regard, it is clear that the matters that the Court of Appeal was dealing with in *Top Ten* were all conducted within the framework of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Legal Profession Act") which provides for and governs the power of the court to award costs in those hearings. As the Court of Appeal had expressly found (at [35]) that the principle in *Booth's* case was not inconsistent with the Legal Profession Act, it was correct to then find that it would also apply outside the context of first instance hearings in relation to matters brought under the Legal Profession Act.

53 The Court of Appeal in *Top Ten* also suggested that there was ultimately no conflict between the principle in *Booth's* case and the general principle that costs should follow the event under O 59 r 3(2) of the Rules of Court. The effect of the principle in *Booth's* case, as the Court of Appeal saw it, was to shift the usual burden of persuading the court that the unsuccessful party should be subject to an adverse costs order to the successful party where that unsuccessful party was a public body exercising a regulatory or public function. In our judgment, the principle in *Booth's* case does not conflict with the ultimate exercise of the court's power to order costs under the Rules of Court. What the court seeks to do in each instance is to make an appropriate costs order that is just and reasonable in the circumstances of the case. As was noted in *Top Ten*, there may well be a difference in terms of who bears the onus of proof, but the question in the end is the same. Where a public body exercising a regulatory or public function is involved, its regulatory or public function becomes an important circumstance to be considered; but at the same time, "the event", namely the outcome in the case, also remains a factor to be considered in the overall analysis. Finally on this point, we agree that the principle in *Booth's* case equally applies to appeals save where there is an express contrary provision in the applicable legal framework.

(2) Other local cases dealing with costs against the respondent

54 The High Court in *Gobinathan Devathasan* and *Low Chai Ling* refused to order costs against the respondent primarily on account of the "public interest" (*Gobinathan Devathasan* at [76]) pursued by the respondent and its "statutory role" ("*Low Chai Ling* at [78]). This is consistent with the principle in *Booth's* case though we would reiterate our observations above as to the need to avoid overstating the effect of the fact that the respondent is performing a public regulatory function. It is significant that in both these cases, the proceedings had arisen as a result of a referral by the Complaints Committee and this would be a strong indicator that the charges brought were pursued upon a manifestly reasonable basis after the matter had been carefully considered by a group of experienced senior practitioners. Such circumstances would often, and perhaps even ordinarily, lead the court to the conclusion that an adverse costs order should not be made against the respondent.

Costs of the Inquiry

55 Against the background of the foregoing analysis above of the significant precedents in England and in Singapore, we summarise the principles to be applied when considering whether to make an adverse costs order against the respondent in relation to the Inquiry. In our judgment these cases set out the following points in particular:

(a) The ultimate objective of the court is to render a costs order that is just and reasonable.

(b) The "event" is one of the factors that may be taken into account but it is not the only one.

(c) Similarly, the regulatory function of the entity in question is also only one of the factors that may be taken into account although it will often be an important and sometimes even an overriding one.

(d) The degree of weight to be placed upon the fact that the respondent has a regulatory function will depend on various factors. In particular, the court will consider whether the decision to bring the charges was made honestly, reasonably, and *on grounds that reasonably appeared to be sound* in the exercise of its public duty.

(e) The court will also consider the financial prejudice to the doctor.

(f) Finally, the court will also consider "any other relevant fact or circumstances".

This framework must be applied holistically and with due regard to the interests of both parties. As we have observed above (at [50]), there is no need to prove egregious conduct to the level of "bad faith" or "gross dereliction", though as suggested in *Top Ten* that would undoubtedly suffice to justify the making of an adverse costs order in such circumstances.

56 We make two further points on this. First, in relation to point (d) above, namely whether the charges were brought on grounds that reasonably appeared to be sound, the determination of the Complaints Committee may be very pertinent in deciding whether to order costs against the respondent. If the Complaints Committee had, as was the case here, dismissed the complaint, and the disciplinary proceedings were instituted pursuant to an unreasoned and unexplained order made by the Minister upon an appeal by the complainant, then the respondent will often be hard pressed to demonstrate *a reasonable basis* for instituting the proceedings despite the Complaints Committee's findings. Of course the respondent is obliged by the statute to comply with the Minister's decision; but that says nothing about whether that decision was based "on grounds that reasonably appeared to be sound" (see *Booth's* case at [26]). Moreover, in such circumstances, the court may have regard to whether the reasons for ultimately dismissing the charges are, in substance, the same as the reasons upon which the Complaints Committee had dismissed the complaint in the first place. The greater the overlap in reasons for dismissal, the more unreasonable might appear the decision to pursue the matter overriding the views of the Complaints Committee and the more then might be the case for ordering costs against the respondent.

57 Second, in relation to point (e) above which relates to financial prejudice to the doctor, we echo the observation of Stanley Burnton LJ in *Perinpanathan* at [41]:

> Lord Bingham CJ stated that financial prejudice to the private party may justify an order for costs in his favour. I think it clear that the financial prejudice necessarily involved in litigation would not normally justify an order. If that were not so, an order would be made in every case in which the successful private party incurred legal costs. Lord Bingham CJ had in mind a case in which the *successful private party would suffer substantial hardship if no order for costs was made in his favour*. ... [emphasis added]

Costs of the appeal

58 As regards the costs of the appeal, in light of the reasons given above (at [53]), we consider that the principle enunciated in *Booth's* case and the framework set out above (at [55]) are largely equally applicable. Ultimately, the requirement, as we have observed, is that the costs order be just and reasonable.

59 However, due to the different nature of appeal proceedings compared to first instance hearings, we consider that certain other factors may also be considered. In particular, it would be legitimate to consider whether the errors made by the Disciplinary Committee were in any way contributed to by the way in which the case was prosecuted by the respondent.

The Third Issue

Application of the principles

60 On the basis of these principles, we turn to consider the case at hand. We can be brief here because the relevant considerations have already been noted in the course of this judgment.

61 First, no reason is available to explain the decision to require that the disciplinary proceedings be proceeded with against the appellant despite the findings of the Complaints Committee. We also consider that the Disciplinary Committee's reasons for dismissing the first three charges and our reasons for reversing the conviction of the appellant on the fourth charge are largely similar to the reasons given by the Complaints Committee in dismissing the complaint (see [6]–[7] above). In the circumstances, it could not be said on the basis of the material before us that the charges were brought against the appellant on grounds that reasonably appeared to be sound.

62 Second, as we have noted above (at [10]–[12]), at least some of the errors committed by the Disciplinary Committee in convicting the appellant (each a ground for reversing the conviction in its entirety) were largely contributed to by the respondent. The failure of the respondent to sufficiently particularise the charges and to specify which type of professional misconduct described in *Low Cze Hong* it was alleging undermined the ability of the Disciplinary Committee to properly evaluate the evidence and safely convict the appellant. Furthermore, the Disciplinary Committee's consideration of extraneous facts presumably arose from the submissions of the respondent as to those facts (see [13] above).

63 Third, the appellant, who was initially cleared by the Complaints Committee, was effectively made to endure two tranches of proceedings which he should never have been put through. In the process, he has unnecessarily had to incur significant costs. To deprive the appellant of his costs in such circumstances would certainly cause him substantial financial prejudice.

64 In the circumstances, we consider that there is ample justification in this case to order the respondent to bear the costs of both the Inquiry and the appeal.

Conclusion

65 For the reasons given above, we order that the appellant is to have his costs and disbursements of the Inquiry as well as of the appeal. These costs are to be taxed if not agreed.

[note: 1] ROP, Vol IV Part E, pp 139–142.