Law Society of Singapore *v* Jasmine Gowrimani d/o Daniel
[2010] SGHC 143

Case Number	: Originating Summons No 1450 of 2009
Decision Date	: 07 May 2010
Tribunal/Court	: High Court
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Francis Xavier SC and Chou Tzu (Rajah & Tann LLP) for the applicant; Vinodh Coomaraswamy SC, Kenneth Choo (Shook Lin & Bok LLP) and N Sreenivasan (Straits Law Practice LLC) for the respondent.
Parties	: Law Society of Singapore — Jasmine Gowrimani d/o Daniel

Legal Profession

Words and Phrases

7 May 2010

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 This application to show cause arose from a complaint to the Law Society of Singapore ("the Law Society") against the respondent, an advocate and solicitor of some 16 years' standing ("the Respondent"), by one Mdm Sumathi d/o S Ramachandran ("the Complainant"). According to the Complainant, a teacher at a Singapore primary school ("the School"), the Respondent had threatened and abused her verbally during a private meeting at the School ("the Meeting"). The Meeting had been specifically convened to resolve certain issues relating to the Respondent's younger sister, a pupil at the School.

2 After a two-day hearing in September, the Disciplinary Tribunal rendered its report on 30 November 2009 ("the Report"). In it, the Disciplinary Tribunal stated that the Respondent's conduct, although not occurring in her professional capacity, nonetheless constituted cause of sufficient gravity pursuant to s 93(1)(*c*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the Act") so as to warrant a reference to this court. The Disciplinary Tribunal further stated in its Report (at [38]) that it did not possess the discretion to *refrain* from referring matters to the court of three Judges, once all the elements of a disciplinary charge had been made out.

3 We were not concerned with the substantive merits of the Law Society's case against the Respondent. Instead, on a preliminary issue, we agreed with the views of both the Law Society and the Respondent that the Disciplinary Tribunal had misdirected itself in fettering its own discretion to deal with the Respondent's misconduct. Indeed, for the reasons set out below, this application was misconceived and, in fact, referred inappropriately by the Disciplinary Tribunal to this court. Before we proceed to consider these reasons, however, a brief summary of the procedural history of the case would be in order.

Procedural history

4 On 4 September 2008, the Complainant lodged a complaint with the Law Society in respect of the Respondent's alleged misconduct at the Meeting. Subsequently, the Law Society preferred the following charge ("the Charge") against the Respondent:

> Charge
>
> You, Jasmine Gowrimani d/o Daniel, Admission No. 250/1994 are charged that you, being an Advocate and Solicitor of the Supreme Court of the Republic of Singapore, had conducted yourself in a manner that amounts to misconduct unbefitting of an Advocate and Solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Chapter 161), to wit, by threatening to ensure that [the Complainant] "will not be in the teaching profession anymore"; by banging your fist on the table and the door of the meeting room; and by uttering the following abusive words to [the Complainant], during a meeting at [the School] on 15 July 2008:-
>
> a. "She is such a swine" (shouted twice);
>
> b. "I don't know how many husbands you have but our own family ladies doesn't (*sic*) roll round with men" (at least once); and
>
> c. "This woman cannot have one father; she must have several fathers".

5 On 18 May 2009, the Disciplinary Tribunal was appointed to hear and investigate the complaint against the Respondent. After a two-day hearing on 22 and 23 September 2009, the Disciplinary Tribunal submitted the Report on 30 November 2009.

6 Apart from making certain findings of fact that this court is presently not concerned with, the Disciplinary Tribunal also pronounced on the issue of its own discretion to refer – or *not* to refer – cases to the court of three Judges. The Disciplinary Tribunal stated (at [38] of the Report) as follows:

> There is an intriguing discussion in the article "*Show Cause Proceedings Before the Court of Three Judges: Some Procedural Questions*" (2008) 20 SAcLJ 801 (at [37]-[47]) by Goh Yihan, concerning whether a Disciplinary Committee [presently known as the Disciplinary Tribunal] can determine that there is no cause of sufficient gravity *despite* finding the respondent guilty of all the ingredients of "due cause" under s 83(2) of the Act. According to the learned author, *Disciplinary Committees have in the past taken the view that although all the ingredients of the charge under s 83(2) of the Act are fulfilled, they nonetheless have the power to take into account mitigating factors so as to find that no cause of sufficient gravity existed. He says that this is a "prevalent practice"*. We would have adopted this practice and invoked s 93(1)(b) of the Act in the present case. Whilst we have taken a dim view of the Respondent's conduct in relation to the Meeting, it may be said that the conduct was not of such gravity or seriousness as to necessitate referring it to the Court of Three Judges and that a stern reprimand or an appropriate penalty seems apt. For sure, the conduct is quite removed from that end of the spectrum of human frailties where dishonesty and moral turpitude reside. *However, we are persuaded by the contention in the article that, as provided in s 83 of the Act, all advocates and solicitors are ultimately subject to the control of the court and that when a charge under s 83(2) of the Act is made out (that is, "due cause" is established), a finding of cause of sufficient gravity for disciplinary action is mandated under s 93(1) of the Act and the Disciplinary Tribunal has no power or discretion to nevertheless find that no such cause exists*. Nevertheless, we agree with the learned author that the position should be clarified by the Court of Three Judges. [emphasis

added]

7 Put simply, it appears that the Disciplinary Tribunal decided that, based on the arguments advanced by Goh Yihan ("Goh") in his article (as cited by the Disciplinary Tribunal in the Report (see the preceding paragraph)), "Show Cause Proceedings Before the Court of Three Judges: Some Procedural Questions" (2008) 20 SAcLJ 801 ("the Article") (at paras 37–47), it had no choice but to refer the matter of the Respondent's misconduct to the court of three Judges once the elements of the Charge had been made out. From the Disciplinary Tribunal's perspective, pursuant to ss 93(1)(*c*) and 94(1) of the Act, once "due cause" had been made out – in this case under s 83(2)(*h*) of the Act – it would have *no* discretion *not* to transmit the Respondent's case upwards.

8 The rationale for Goh's view is set out primarily at paras 40–41, 45 and 47 of the Article, as follows:

> 40 The issue here is whether there is a difference between the expressions "no cause of sufficient gravity" and "due cause", such that while the solicitor concerned is found to be guilty of all the ingredients of a "due cause" under s 83, he nonetheless can escape the disciplinary powers of the Court of Three Judges should the [Disciplinary Tribunal] decide that there was "no cause of sufficient gravity". The distinction is further borne out by provisions such as ss 93(1)(b) and 94(3), which appear to distinguish the meanings between "due cause" and "no cause of sufficient gravity". Put another way, these sections seem to suggest that while there may well be a "cause", this can either be "not of sufficient gravity" or ***"of sufficient gravity", in which case it is a "due cause"*** . The question must then be asked: Is this a conceptually sustainable distinction bearing in mind the framework (quite apart from the *literal* sense) of the statute?
>
> 4 1 *Prima facie*, it is submitted that this interpretation (*ie*, the distinction outlined) *cannot* be conceptually supported. In the first place, s 83(1) of the LPA states expressly that all advocates and solicitors "*shall be subject to the control of the Supreme Court*". It does not say that all advocates and solicitors are subject to the self-regulatory disciplinary framework of their peers, *ie*, the [Disciplinary Tribunal]. By not referring an advocate and solicitor who has been found guilty of a charge formulated pursuant to s 83(2) of the LPA, the [Disciplinary Tribunal] is in effect *usurping* the disciplinary powers of the Court of Three Judges. Taken to its logical conclusion, a solicitor guilty of a grievous "due cause" (for which the Court of Three Judges will surely impose a heavy sentence) can escape the consequences of his actions if the [Disciplinary Tribunal] nonetheless decides that "no cause of sufficient gravity" exists. This cannot be the case since the purpose of the Court of Three Judges is to "vest ultimate control of the discipline of advocates and solicitors in the court in order to provide a measure of independence and impartiality".
>
> …
>
> 45 [I]t is submitted that the [Disciplinary Tribunal], upon finding that the respondent is ***guilty*** of the charge against her, which encompasses *all the ingredients* of a "due cause" under s 83(2)(e), should have proceeded to refer the case to the Court of Three Judges, without more. In other words, the words "no cause of sufficient gravity" only apply to cases where there is no "due cause", and this is when the objective ingredients of the specified due causes under s 83(2) are not made out. There is no middle ground wherein the [Disciplinary Tribunal] can find that there is ***a "due cause" (or rather, that the ingredients of a "due cause" are made out)*** but yet, in its *subjective* determination, decide that this is "not of sufficient gravity". It is further submitted that the [Disciplinary Tribunal] should not determine that there was "no cause of sufficient gravity" when "due cause" was clearly shown to exist under s 83(2)(e), bearing in mind

that it is the Court of Three Judges in which ultimate disciplinary powers are emplaced. If anything, it is for the Court of Three Judges to decide whether the respondent's conduct, *while falling within one of the "due causes"*, merits lesser punishment. The residual powers for the [Disciplinary Tribunal] to award lesser punishment under provisions such as ss 93(1)(b) and 94(3), it is submitted, apply only when there is no "due cause" and yet the [Disciplinary Tribunal] is of the opinion that the respondent's conduct is nonetheless reprehensible and is deserving of some sanction.

…

47 The problem, it seems, is that certain [Disciplinary Tribunals] have taken the view that although the elements of a charge formulated under instances of "due cause" in s 83(2) are fulfilled, they nonetheless have the power to take into account mitigating factors so as to find that "no cause of sufficient gravity" existed. With respect, this may not be correct. ***Surely it is the Court of Three Judges which determines how those mitigating factors come into play? The task of the [Disciplinary Tribunal], when it has found that a charge under s 83(2) is made out, and hence "due cause" shown, must surely be to defer to the Court of Three Judges to decide on the proper sanction to be meted out on the errant solicitor*** . It should not take it upon its own hands and take the matter out of the hands of the Court of Three Judges.

[original emphasis in italics; emphasis added in bold italics]

9 Goh's view, which the Disciplinary Tribunal accepted, is that a finding of "due cause" under s 83 would *necessarily* imply (indeed, entail) a "cause of sufficient gravity for disciplinary action" under ss 93 and 94. In other words, Goh has *equated* the two expressions (see the Article at paras 40–41, excerpted at [8] above). Accordingly, as the Disciplinary Tribunal had, in the present proceedings, found that the elements of the Charge against the Respondent had been made out pursuant to s 83(2)(*h*) of the Act, it had no choice but to refer the Respondent's matter onwards to this court. This was *despite* the Disciplinary Tribunal's *own conclusion* that "the [Respondent's] conduct … was not of such gravity or seriousness as to necessitate referring it to the Court of Three Judges" (see the Report at [38]).

10 With respect, the approach adopted by both Goh and the Disciplinary Tribunal should *not* be adopted.

The issue

11 Broadly speaking, the issue we are concerned with here is whether the Disciplinary Tribunal has a *discretion* to refer cases to the court of three Judges, having found that the conduct of the advocate and solicitor concerned falls within one or more of the limbs in s 83(2) (in other words, the elements of the charge against the advocate and solicitor have been made out). In our view, it is clear that this issue turns, to a large extent, on whether there is a distinction between the phrase "cause of sufficient gravity for disciplinary action exists under [s 83]" in ss 93 and 94 of the Act on the one hand and the phrase "due cause" in s 83 of the Act on the other. It would also turn on whether a finding that the conduct of the advocate and solicitor concerned falls within one or more of the limbs in s 83(2) automatically amounts to a finding of "due cause" under s 83, as well as the roles played by the court of three Judges and the Disciplinary Tribunal, respectively.

The relevant provisions

12 Given the very nature of the issue itself and the fact that it would, to a large extent, turn on the question of distinction between the two phrases referred to in the preceding paragraph, it would be appropriate, at this juncture, to set out the material provisions in order to obtain an understanding of the context in which each phrase occurs.

13 The material parts of ss 93 and 94 read as follows:

Findings of Disciplinary Tribunal

93. —(1) After hearing and investigating any matter referred to it, a Disciplinary Tribunal shall record its findings in relation to the facts of the case and according to those facts *shall determine* that —

(*a*) ***no* cause of sufficient gravity for disciplinary action exists under section 83** ;

(*b*) *while* ***no cause of sufficient gravity for disciplinary action exists under that section*** *, the advocate and solicitor should be reprimanded or ordered to pay a penalty sufficient and appropriate to the misconduct committed;* or

(*c*) ***cause of sufficient gravity for disciplinary action exists under that section*** .

…

(2) Where a Disciplinary Tribunal makes a determination under subsection (1)(*b*) or (*c*), the Disciplinary Tribunal may make an order for payment by any party of costs, and may, in such order, specify the amount of those costs or direct that the amount be taxed by the Registrar.

…

Society to apply to court if cause of sufficient gravity exists

94. —(1) If the determination of the Disciplinary Tribunal under section 93 is that cause of sufficient gravity for disciplinary action exists under section 83, the Society shall without further direction make an application under section 98 within one month from the date of the determination of the Disciplinary Tribunal.

(2) If the determination of the Disciplinary Tribunal under section 93 is that no cause of sufficient gravity for disciplinary action exists under section 83, it shall not be necessary for the Society to take any further action in the matter unless so directed by the court.

(3) *If the determination of the Disciplinary Tribunal under section 93 is that, while no cause of sufficient gravity for disciplinary action exists under section 83, the advocate and solicitor should be reprimanded or ordered to pay a penalty, the Council shall —*

(*a*) *if it agrees with the determination, reprimand the advocate and solicitor or order him to pay a penalty of not more than $20,000, as the case may be; or*

(*b*) *if it disagrees with the determination, without further direction make an application under section 98 within one month from the date of the determination of the Disciplinary Tribunal*.

…

[emphasis added in italics, bold italics and underlined bold italics]

14 The material parts of s 83 read as follows:

Power to strike off roll, etc.

83. —(1) All advocates and solicitors shall be subject to the control of the Supreme Court *and shall be* ***liable on due cause shown*** —

(*a*) to be struck off the roll;

(*b*) to be suspended from practice for a period not exceeding 5 years;

(*c*) to pay a penalty of not more than $100,000;

(*d*) to be censured; or

(*e*) to suffer the punishment referred to in paragraph (*c*) in addition to the punishment referred to in paragraph (*b*) or (*d*).

…

(2) Such *due cause* ***may*** be shown by proof that an advocate and solicitor —

(*a*) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession;

(*b*) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as amounts to improper conduct or practice as an advocate and solicitor;

(*c*) has been adjudicated bankrupt and has been guilty of any of the acts or omissions mentioned in section 124(5)(*a*) , (*b*), (*c*), (*d*), (*e*), (*f*), (*h*), (*i*) , (*k*), (*l*) or (*m*) of the Bankruptcy Act (Cap. 20);

(*d*) has tendered or given or consented to retention, out of any fee payable to him for his services, of any gratification for having procured the employment in any legal business of himself or any other advocate and solicitor;

(*e*) has, directly or indirectly, procured or attempted to procure the employment of himself or any advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;

(*f*) has accepted employment in any legal business through a person who has been proclaimed a tout under any written law relating thereto;

(*g*) allows any clerk or other unauthorised person to undertake or carry on legal business in his name, that other person not being under such direct and immediate control of his

principal as to ensure that he does not act without proper supervision;

(h) has been guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession;

(*i*) carries on by himself or any person in his employment any trade, business or calling that detracts from the profession of law or is in any way incompatible with it, or is employed in any such trade, business or calling;

(*j*) has contravened any of the provisions of this Act in relation thereto if such contravention warrants disciplinary action; or

(*k*) has been disbarred, struck off, suspended or censured in his capacity as a legal practitioner by whatever name called in any other country.

[emphasis added in italics and bold italics]

Our analysis of the issue

Presumption that different words have different meanings

15 We commence with the two phrases mentioned at [11] and the logical and commonsensical presumption that different words have different meanings. Indeed, even the same word may have a different meaning, especially in a different context. We are here faced with two completely different phrases, *viz*, "cause of sufficient gravity exists under [s 83]" and "due cause", respectively. They occur in a piece of legislation – indeed, the same piece of legislation. We can, therefore, start with the presumption that they were intended to have different meanings. This leads us to the next point – centring on the relevant *legislative history*.

Legislative history and purpose

The position prior to *the Legal Profession (Amendment) Act 1970*

16 Prior to the Legal Profession (Amendment) Act 1970 (Act 16 of 1970) ("the 1970 Amendment Act"), there was *only one* phrase utilised in the Act, *viz*, "due cause". Indeed, this particular phrase was, in fact, the precise phrase used at the relevant points in s 93 (the then s 96) and, indeed, throughout *all* the relevant provisions reproduced above (at [13] and [14]). In particular, s 93(1) (which was then numbered as s 96(1)), in its *original* language *prior* to the 1970 Amendment Act, read as follows:

96. - (1) After hearing and investigating any matter referred to it the Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine -

(*a*) that ***due cause*** *does not exist for disciplinary action under section 87* of this Act [the present s 83 of the Act] or for a penalty under paragraph (b) of this subsection; or

(*b*) that while ***no sufficient cause*** *exists for disciplinary action under section 87* of this Act the advocate and solicitor *should be ordered to pay a penalty under section 98 of this Act*; or

(*c*) that ***due cause*** *exists for disciplinary action under section 87* of this Act.

[emphasis added in italics and bold italics]

The position after *the 1970 Amendment Act*

17 However, s 31 of the 1970 Amendment Act amended the provision set out in the preceding paragraph, which thereafter read as follows:

96. - (1) After hearing and investigating any matter referred to it the Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine -

(a) that ***no cause of sufficient gravity*** *for disciplinary action exists under section 87* of this Act [the present s 83 of the Act]; or

(b) that while ***no cause of sufficient gravity*** *for disciplinary action exists under the said section 87*, the advocate and solicitor *should be reprimanded*; or

(c) that ***cause of sufficient gravity*** *for disciplinary action exists under the said section 87*.

[emphasis added in italics and bold italics]

18 Indeed, the words – or, more accurately, the change in the words and the terminology – speak for themselves. In particular, the phrase "cause of sufficient gravity" replaced the phrase "due cause" in the then s 96(1) of the Act (which is the present s 93(1) of the Act, reproduced above at [13]). In this connection, it should be borne in mind, of course, that the phrase "cause of sufficient gravity" relates to *disciplinary action under the then s 87 of the Act* (*the present s 83 of the Act*, the material parts of which have been reproduced above at [14]). This last-mentioned point is important inasmuch as both ss 87(1)(*b*) and 88(1) of the Act *also* utilise the phrase "cause of sufficient gravity", *albeit in relation to the absence of the need for a "formal investigation" by a Disciplinary Tribunal* (see both ss 87(1)(*b*) and 88(1) where the phrase "no *cause of sufficient gravity* exists for a *formal investigation*" is employed).

19 Put simply, and returning to the issue at hand, the legislative history demonstrates – in no uncertain terms – that the phrase "cause of sufficient gravity" was not only intended to replace the phrase "due cause" in the context of proceedings before *a Disciplinary Tribunal but was also intended to carry a quite different meaning from the phrase "due cause"*. This is, in fact, an appropriate juncture at which to turn to the next (related) question: What, then, *was* the *legislative purpose* underlying this particular amendment (and the consequent substitution of phrases)?

The parliamentary materials

20 There does not appear to be any *express* delineation of the legislative purpose for the changes effected. In the *Explanatory Statement* to the Legal Profession (Amendment) Bill (Bill 6 of 1970) (which was ultimately enacted as the 1970 Amendment Act), it was stated as follows:

The Legal Profession Act, 1966, introduced a large number of novel provisions. It has been found in the light of the operation of the Act that certain amendments would be desirable for the more efficient organisation of the legal profession and also to take into account the functions of other

professions, such as public accountants. This Bill seeks to make such amendments as are necessary to give effect to such changes.

21 More *specifically*, the *Explanatory Statement* also elaborated on cl 31 of this Bill (which was ultimately enacted as s 31 of the 1970 Amendment Act, which amended the then s 96(1) of the Act (the present s 93(1)) (see [17] above)), as follows:

> The Bill also enlarges the powers of the Disciplinary Committee and the Inquiry Committee. *As a result of these amendments the Disciplinary Committee can reprimand an advocate and solicitor when the case against him is not of sufficient gravity but it cannot in such cases order payment of a penalty (clause 31)*. [emphasis added]

22 Hence, the focus of s 31 of the 1970 Amendment Act was, as just noted in the preceding paragraph, on enlarging the power of the (then) Disciplinary Committee inasmuch as it could reprimand an advocate and solicitor (but not order the payment of a penalty), despite finding that no cause of sufficient gravity for disciplinary action existed.

23 The more interesting *consequential* amendments in the context of the present proceedings lie in the fact that the phrase "sufficient *cause*" in s 96(1)(*b*) (the present s 93(1)(*b*)) was *replaced by* the phrase "cause of sufficient *gravity*". Further, the phrase "*due cause*" in s 96(1)(*a*) *and* (*c*) (the present s 93(1)(*a*) and (*c*), respectively) was *replaced by* the phrase "cause of sufficient gravity" (see [17] above). *However*, there appears to be *no* explanation in either the *Explanatory Statement* to the Bill concerned or in the relevant Parliament Debates (see generally *Singapore Parliamentary Debates, Official Report* (30 March 1970) vol 29 at cols 1271–1273 (Mr E W Barker, Minister for Law and National Development)) as to *why* these *consequential* amendments were made. The only clear fact is the change of the phrases themselves. Henceforth, the Disciplinary Committee (now Disciplinary Tribunal) would be concerned with whether or not there has been "*cause of sufficient gravity*" *for disciplinary action against the advocate and solicitor concerned pursuant to s 83* – as opposed to "*due cause*" (which constituted the previous position (*prior to* the 1970 Amendment Act)).

The roles played by the court of three Judges and the Disciplinary Tribunal

The court of three Judges bears the ultimate responsibility for deciding on the most serious cases of misconduct

24 It would, in the circumstances, therefore be useful to commence our analysis from first principles. And one such principle is that *the Supreme Court* in general and the court of three Judges in particular (see s 98(7) of the Act) bear the ultimate responsibility for deciding on the most serious cases of misconduct by advocates and solicitors. Indeed, this is embodied in s 83(1) of the Act. Although that provision has already been reproduced above (at [14]), it is worth reproducing again: "All advocates and solicitors shall be subject to the control of the Supreme Court …" (reference may also be made to s 82A(2) of the Act, which relates to the equivalent provision in the context of disciplinary proceedings against legal service officers and non-practising solicitors). The starting point, therefore, is that the Supreme Court (in the form of the court of three Judges) is the *ultimate* tribunal having control over all advocates and solicitors. However, it should be appreciated that it does *not* follow from *this* fact *per se* that the court of three Judges *must* necessarily hear *all* cases where the Disciplinary Tribunal finds that the advocate and solicitor's conduct falls within one or more of the limbs of s 83(2) of the Act (*cf* para 41 of the Article, excerpted at [8] above). In our view, it is only the *most serious cases* that must be heard by the court of three Judges. That the Supreme Court (in the form of the court of three Judges) is the *ultimate (and only)* tribunal for deciding on the *most*

serious cases is borne out by the fact that it is also accorded (in s 83(1) of the Act (reproduced above at [14])) the power to administer the *most serious sanctions* against an errant advocate and solicitor. This power includes administering the most severe sanction of striking such an advocate and solicitor off the roll of advocates and solicitors of the Supreme Court. It is also important to note that there is *no further appeal* from such a decision (see s 98(7) of the Act).

25 At this juncture, it should be further noted that it is *for the court of three Judges to decide and it must decide on whether or not "due cause" has been proved in the first instance*; in other words, *the mere reference* of a case to the court of three Judges is *not* a *fait accompli* in so far as the *liability* of the advocate and solicitor is concerned. This is an important point, to which we shall return below.

The role of the Disciplinary Tribunal

(1) The Disciplinary Tribunal is not responsible for deciding upon the most serious cases

26 The upshot of what has just been discussed in the preceding section is that *the Disciplinary Tribunal* does *not* possess powers to decide upon the *most serious cases*, *let alone* administer the *most serious sanctions*. As we have seen, this is the task of the court of three Judges. Put simply, it is *not* the *ultimate* disciplinary tribunal. What, then, *is* the *function* of *the Disciplinary Tribunal* pursuant to s 93 (reproduced above at [13])? *This is, in fact, one of the most crucial questions to be answered in the context of the present proceedings*.

27 The *function* (or rather, functions) of *the Disciplinary Tribunal* may be gleaned from the relevant provisions of the Act itself.

(2) The Disciplinary Tribunal as a "filter"

28 One main function of the Disciplinary Tribunal is *to serve as a "filter" of sorts, thereby ensuring that only the most serious complaints are referred to the court of three Judges*. This is, in fact, clear from the provisions of s 93 itself (reproduced above at [13]). It is of the first importance to reiterate that the Disciplinary Tribunal does *not decide* on the most serious cases. If it decides that a particular complaint is sufficiently serious *and* that there is a *prima facie* case against the advocate and solicitor concerned after hearing the relevant evidence, the Disciplinary Tribunal must *refer* the case *for decision by the court of three Judges*. On the other hand, it is both logical as well as commonsensical that the court of three Judges *not* be "clogged up" with hearing cases of a trivial (and, *a fortiori*, frivolous) nature. Indeed, the same approach with a view to avoiding unnecessary logjams was, in fact, adopted at a *lower* level *via* s 17 of the Legal Profession (Amendment) Act 2001 (Act 35 of 2001) which amended s 85 "to enable the Chairman of the Inquiry Panel to constitute one or more *Review Committees* (comprising an advocate and solicitor and a legal officer) to review complaints or information against advocates and solicitors and to dismiss any complaint if the Review Committee is of the unanimous opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance" [emphasis added] (see the *Explanatory Statement* to the Legal Profession (Amendment) Bill (Bill 39 of 2001)). Indeed, the following observations by the Minister for Law, Prof S Jayakumar, during the second reading of this Bill, bear quotation (see *Singapore Parliamentary Debates, Official Report* (5 October 2001) vol 83 at cols 2195–2196):

> Prior to 1986, the Council could only refer to the Chairman of the Inquiry Panel those complaints relating to the conduct of a lawyer in his professional capacity. The Council therefore weeded out those complaints which did not relate to a lawyer's professional conduct. In 1986, the Act was amended to allow any complaints relating to any conduct of a lawyer, not just conduct in his

professional capacity. This was because, sometimes, misconduct by a lawyer, even in his private capacity, may be sufficient to render him unfit to continue being a member of the honourable profession. The Council thereafter acted on the assumption that they should continue to play a sifting role in the post-1986 regime. However, *the Court of Appeal ruled earlier this year that the Council should not be performing such a sifting function, but should simply forward all complaints to be dealt with by the Inquiry Committees*.

Sir, this is not practical and has resulted in some difficulties. The Law Society receives more than 100 complaints a year. More than half of them are without substance and are sifted out by the Council, while the remainder goes to an Inquiry Committee for a full inquiry. *If the Council is not to sift, the caseload on the Inquiry Committees will more than double*. Each Inquiry Committee is made up of two lawyers of at least 12 years' standing, a Legal Service Officer of at least 10 years' experience as well as a lay person. Doubling the caseload of the Inquiry Committees will create a serious strain on scarce resources and slow down the disciplinary process. Therefore a new machinery known as the Review Committee will be set up to act as a sifting mechanism.

[emphasis added]

There is, in our view, no reason in *principle* why similar reasoning ought not to apply to the situation in the present proceedings (which relates to the "sifting" function of the Disciplinary Tribunal instead).

(3) Conceptual and practical difficulties arising under the statutory language in the then s 96 prior to the 1970 Amendment Act

29 As we have seen, the relevant provision *prior to the 1970 Amendment Act* was the former s 96(1) (reproduced above at [16]). The Disciplinary Committee (now known as the Disciplinary Tribunal) was tasked *then* with determining that "*due cause*" did not exist for disciplinary action pursuant to what is now s 83 *or* that while no "*sufficient cause*" existed for such disciplinary action the advocate and solicitor concerned should be ordered to pay a penalty *or* that "*due cause*" for disciplinary action pursuant to what is now s 83 *did exist*. In this last-mentioned of the three possible determinations that could have been arrived at by the Disciplinary Committee, the Disciplinary Committee would then *refer* the case *to the court of three Judges* for *its decision*.

30 *However*, the *previous terminology* (of "*due cause*") in the then s 96 of the Act (the present s 93 (which, of course, contains quite different terminology)) could – conceptually, if not practically – raise unnecessary question marks *vis-à-vis* the role and function of the Disciplinary Committee. If the determination of the Disciplinary Committee (now known as the Disciplinary Tribunal) was, indeed, *a finding of "due cause"* (pursuant to the terminology under the then s 96(1)(*c*) of the Act (reproduced above at [16])), then *the Disciplinary Committee would have usurped the function of the court of three Judges as only the latter could make* a *decision* as to whether or not there was "*due cause*" pursuant to the then s 87 of the Act (the present s 83 of the Act) and, on arriving at such a decision, *administer the appropriate sanction* under the then s 87(1) of the Act (the present s 83(1)).

(4) The conceptual and practical difficulties removed by the 1970 Amendment Act

31 *Put simply, a determination or finding of "due cause" as such was not – and is not – within the purview of the Disciplinary Tribunal*. This is why, in our view, the amendment effected by the 1970 Amendment Act (see above at [17]) was necessary. It will be recalled that the 1970 Amendment Act *substituted* the phrase "due cause" wherever it appeared in the then s 96 of

the Act (the present s 93 (as amended)) *with the phrase "cause of sufficient gravity"*. In other words, the phrase "*cause of sufficient gravity*" was intended, in our view, to represent *a determination by the Disciplinary Committee (now known as the Disciplinary Tribunal) that there was a* prima facie *case on the relevant evidence that "due cause" might be present and that, in the circumstances, the case ought to be referred to the court of three Judges*. In other words, a finding that "cause of sufficient gravity" exists was *not* a *determination or finding of "due cause" as such*; rather, the Disciplinary Tribunal (as the Disciplinary Committee is now known) would be performing a "*filtering*" or "*sifting*" function *in order to ensure that less serious (and*, a fortiori, *trivial or frivolous) cases* are *not* referred to the court of three Judges. Indeed, such cases would fall, instead, within the ambit of s 93(1)(*a*) *or* (*b*) (reproduced above at [13]).

32 The *first* provision referred to at the end of the preceding paragraph, *viz*, s 93(1)(*a*), relates to a situation in which the Disciplinary Tribunal has determined there is *no (potential or* prima facie*) merit in the sense described above, and should therefore proceed no further*. A clear example of such a case would be one where the conduct of the advocate and solicitor does *not fall within any* of the limbs in s 83(2) to begin with. Indeed, we would think that this would, *practically speaking*, be the *main (if not the only)* situation because, if the conduct of the advocate and solicitor falls within one or more of the limbs in s 83(2), we should think that there should be *some sanction* administered to that advocate and solicitor. This is, as we shall see in the following paragraph, precisely what s 93(1)*(b)* envisages.

33 Following from the analysis in the preceding paragraph, the *second* provision, *viz*, s 93(1)(*b*), relates to a situation in which the Disciplinary Tribunal, whilst of the view that there is *no (potential or* prima facie*) merit in the sense described above* (*ie*, that "due cause" might be found by a court of three Judges), is *nevertheless* of the view that *some (lesser) sanction* should be administered against the advocate and solicitor concerned. One clear situation in which the Disciplinary Tribunal can administer such a (lesser) sanction relates to a situation where the conduct of the advocate and solicitor concerned is found to come within one or more of the limbs in s 83(2) (in our view, such conduct is more likely than not to fall within s 83(2)(*h*) (given its nature as a "catch-all provision" (see *Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466 at [40] and *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 at [79])), as is, indeed, the case here) but falls short of a *prima facie* case of "due cause" that ought to be referred to a court of three Judges for decision. Whether or not the Disciplinary Tribunal can administer a similar sanction in relation to a situation which does not come within one or more of the limbs in s 83(2) was not an issue before us and we therefore do not make any pronouncement on it, although it would appear that *the Council of the Law Society* has the power to administer a sanction in such a situation pursuant to the power conferred upon it under s 88 of the Act where "no cause of sufficient gravity exists for a formal investigation" by a Disciplinary Tribunal (see Tan Yock Lin, *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998) at pp 778–779 (citing *Hilborne v Law Society of Singapore* [1977–1978] SLR(R) 342)).

34 As we have already seen, however, there is yet a *third* situation (under s 93(1)(*c*)) in which the Disciplinary Tribunal determines that there *is (potential or* prima facie*) merit in the complaint and that the case should therefore be referred to the court of three Judges*.

A summary of our findings and views above

35 A point already mentioned (above at [31]) is of such fundamental importance to these proceedings that it bears repeating: *It is of the first importance to note that a finding by the Disciplinary Tribunal that the conduct of the advocate and solicitor concerned falls within one or more of the limbs in s 83(2) does not*, ipso facto*, entail a finding of "due cause"*. Put simply, a

determination that the advocate and solicitor's conduct falls within one or more of the limbs in s 83(2) is *a necessary – but not sufficient – condition for a finding of "due cause"*. This interpretation is consistent with the use of the word "*may*" in s 83(2) itself. Whether or not there *is, in fact*, "*due cause*" (meriting a *sanction* pursuant to s 83(1)) will (as already mentioned above) be determined by *the court of three Judges, having regard to all the facts and surrounding circumstances in the application before it – of which a threshold finding that the conduct of the advocate and solicitor concerned falls within one or more of the limbs in s 83(2) is necessary*. Indeed, as we have also noted, the court of three Judges might even find – contrary to the finding of the Disciplinary Tribunal – that the facts of the application before it do *not* even fall within one or more of the limbs in s 83(2) to begin with (in which case no action whatsoever will be taken against the advocate and solicitor concerned). If, however, the court of three Judges determines that "due cause" *has* been shown, it can *then administer the appropriate sanction* (pursuant to s 83(1) of the Act (reproduced above at [14])).

36 As already noted above (at [28]), the construction we have placed on ss 93 and 83 is also consistent with logic and commonsense inasmuch as the court of three Judges is not faced with a logjam of unnecessary cases of a trivial (and, *a fortiori*, frivolous) nature. Further, this construction is, as we have sought to demonstrate, wholly consistent with the legislative history as well as purpose of the provisions (in particular, that relating to the introduction of the phrase "cause of sufficient gravity" into the present s 93 by way of the 1970 Amendment Act). At this juncture, we note that whilst the Article is, in the main, a reasoned and learned one from one of Singapore's most promising young legal scholars, the particular proposition was based on a wrong *premise* inasmuch as the Article, in effect, *equated (and conflated)* "cause of sufficient gravity" with "due cause" (see also the Article at para 40, reproduced above at [8]).

37 As we have explained above, the phrase "cause of sufficient gravity" was deliberately as well as specifically introduced in order to clarify that the task of *the Disciplinary Tribunal* was to act as a "*filter*" in order to determine whether or not there was a case of "sufficient gravity" that *could*, on a finding by the court of three Judges, be ascertained (based *not only* on the case falling within one or more of the limbs of s 83(2) *but also* on the *gravity and seriousness of the conduct based on the evidence*) to constitute "*due cause*" that merited the requisite *sanction* from a range of sanctions prescribed under s 83(1). If so, then the Disciplinary Tribunal would *refer the case accordingly to a court of three Judges* pursuant to s 93(1)(*c*) of the Act. The aforementioned *equation (and conflation)* in the Article occurred because the learned author *equated the establishment of "due cause" with the establishment of the ingredients in one or more of the limbs under s 83(2) of the Act*. That this is so is clear from para 45 of the Article reproduced above (at [8]). *However*, this is, with respect, erroneous because, as we have already explained, a finding that the advocate and solicitor's conduct falls within one or more of the limbs of s 83(2) of the Act is, at most, a *threshold* requirement to the *ultimate* determination that "due cause" has been *established*. In any event, a determination by *the Disciplinary Tribunal* that the advocate and solicitor's conduct falls within one or more of the limbs of s 83(2) of the Act is *by no means conclusive as the final decision lies with the court of three Judges*. Indeed, the court of three Judges not only makes the final decision as to whether or not the advocate and solicitor's conduct falls within one or more of the limbs of s 83(2), *but also whether that conduct constitutes "due cause" for the purposes of the administering of a sanction pursuant to s 83(1) of the Act*.

38 As we have also explained, if the Disciplinary Tribunal finds – at the other extreme – that the conduct of the advocate and solicitor concerned does not even fall within any of the limbs in s 83(2) to begin with, then it would *not* take *any further action whatsoever* (see s 93(1)(*a*) of the Act as well as above at [32]).

39 In the final situation (which seems to us to be an "*intermediate*" one), the Disciplinary Tribunal may find that the conduct of the advocate and solicitor concerned *does* fall within one or more of the limbs of s 83(2) (which is more likely than not, as pointed out above at [33], to fall within s 83(2)(*h*)) *but* feels that the conduct itself, whilst *technically* within the ambit of one or more of these limbs, is nevertheless *not* one of "sufficient gravity" to merit a reference to the court of three Judges. In other words, the Disciplinary Tribunal is of the view that there is – on the facts and circumstances before it – *no prima facie* case that would result in a finding of "*due cause*" by the court of three Judges, bearing in mind (as explained above) a finding of "*due cause*" is *not*, *ipso facto*, demonstrated *merely* by a finding that the conduct of the advocate and solicitor concerned falls within one or more of the limbs of s 83(2). In this (final) situation, the Disciplinary Tribunal can administer a much less serious sanction pursuant to s 93(1)(*b*) of the Act (see also above at [33]).

Conclusion and practical considerations

40 The conclusion which we have arrived at – to the effect that the Disciplinary Tribunal *does* possess the discretion to *refrain* from referring matters to the court of three Judges even if all the ingredients of a disciplinary charge had been made out – is not only consistent with the language as well as legislative history and purpose of the relevant provisions but is also consistent with *practical* considerations as well. We have already noted the practical benefits which result from the "sifting" function exercised in this manner by the Disciplinary Tribunal. We also note – parenthetically – that a *contrary* approach (which would result in *automatic* reference of cases to the court of three Judges) would act as a disincentive to the advocate and solicitor concerned to admit his or her guilt before the Disciplinary Tribunal (even for relatively trivial charges). This would, in turn, result in a greater number of *full* hearings before Disciplinary Tribunals, thereby increasing the average time taken to dispose of complaints. Such a result would necessarily run counter to the legislative spirit of the Act itself, which (at s 93(3) of the Act) specifically tasks a Disciplinary Tribunal to "carry out its work expeditiously". It turns out that the prevalent practice of Disciplinary Tribunals – which adopts, in fact, the approach which we have endorsed – was correct all along.

Conclusion

41 For the reasons set out above, we dismissed the Law Society's application and made no order as to costs. We also remitted the matter to the same Disciplinary Tribunal for it to decide on the appropriate form of punishment for the Respondent.