Law Society of Singapore *v* Chong Wai Yen Michael and others [2012] SGHC 9

Case Number	: Originating Summons No 364 of 2011
Decision Date	: 16 January 2012
Tribunal/Court	: High Court
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Chandra Mohan Rethnam/Hauw Hui Ying Gillian (Rajah & Tann LLP) for the applicant; Wong Siew Hong (Infinitus Law Corporation) for the first and second respondents; Wong Hin Pkin Wendell/Kueh Xiu Ying (Drew & Napier LLC) for the third respondent; Yeo Hock Cheong/Joseph Tan Chin Aik (Hock Cheong & Co) for the fourth respondent
Parties	: Law Society of Singapore — Chong Wai Yen Michael and others

Legal Profession

16 January 2012

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

Introduction

1 Originating Summons No 364 of 2011 was an application by the Law Society of Singapore ("the Law Society") pursuant to s 94(1) read with s 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the Act") to this court for orders that Michael Chong Wai Yen, Kenneth Tan Chong Peng, Yap Kok Kiong and Siow Jit Thong ("the first respondent", "the second respondent", "the third respondent" and "the fourth respondent" respectively or "the four respondents" collectively, as the case may be) be sanctioned under s 83(1) of the Act. Having heard submissions from all parties, we granted the application and ordered that thethird respondent be struck off the roll, and that each of the remaining respondents be suspended for a period of thirty months. We further ordered that the costs of the proceedings before us be borne by all the four respondents, with the costs of proceedings below pertaining to the fourth respondent to be taxed if not agreed and to be borne by him. We now give our reasons.

The factual background

2 These proceedings emanated from investigations by the Corrupt Practices Investigation Bureau ("CPIB") into five law firms for having purportedly given gratifications to a company named Asprez Loans Connections Pte Ltd ("Asprez") in consideration for Asprez referring conveyancing related matters to them. The investigations revealed that Asprez was set up by a former business development manager of thethird respondent named Tan Sinn Aeng Ben ("Ben Tan"). On the instruction of thethird respondent, Ben Tan registered Asprez on 7 June 2004. At all material times, Asprez effectively operated under the stewardship of thethird respondent. The main function of Asprez was to procure conveyancing business by promise of payment of referral fees to real estate agents. In return, the real estate agents were expected to refer clients to Asprez. Upon engaging the services of Asprez, real estate agents would select a lawyer from Asprez's panel of lawyers to attend to the conveyancing aspects of each transaction so referred by them. The firms of the four

respondents were, at different periods, on Asprez's panel of lawyers. At the end of its investigation, CPIB, on 15 October 2008, referred the matter to the Law Society.

3 Charges were subsequently preferred by the Law Society against the four respondents for making payments to Asprez in consideration of the latter's referrals of conveyancing work. A Disciplinary Tribunal ("DT") was appointed on 7 July 2010 to conduct formal investigations and to hear the charges brought against them. Save for the fourth respondent, the other respondents admitted to the charges preferred against them. Having heard the guilty pleas of the first, second and third respondents and after a full hearing in respect of the fourth respondent, the DT found that causes of sufficient gravity for disciplinary action existed under s 83 of the Act against the four respondents pursuant to s 93(1)(c) of the Act.

4 Pursuant to the findings of the DT, the Law Society instituted the present show cause proceedings against the four respondents. At the hearing before us, the fourth respondent maintained his position taken before the DT that the charges preferred against him had not been proven. We rejected this argument which we will now explain.

The case against the fourth respondent

The charges against the fourth respondent

5 The fourth respondent faced two charges, *viz*, one under s 83(2)(*e*) and another under s 83(2)(*b*) of the Act, and two alternative charges under s 83(2)(*h*) of the Act (although nothing turned on the alternative charges). The charges on which the fourth respondent was found guilty by the DT were as follows:

> **First charge**
>
> That you, **Siow Jit Thong**, an Advocate and Solicitor of the Supreme Court of Singapore, are guilty of procuring employment for yourself and/or your firm of conveyancing legal work between the period February 2006 to (*sic*) August 2006 through Asprez Loans Connections Pte Ltd, to whom remuneration amounting to a total sum of approximately S$33,850.00 was paid by you and/or your firm for obtaining such employment within the meaning of section 83(2)(e) of the Legal Profession Act.
>
> ...
>
> **Second charge**
>
> That you, **Siow Jit Thong**, an Advocate and Solicitor of the Supreme Court of Singapore, are guilty of improper conduct and practice within the meaning of section 83(2)(b) of the Legal Profession Act, by breaching Rule 11A(2)(b) of the Legal Profession (Professional Conduct) Rules, being a rule of conduct made by Council under the Legal Profession Act, to wit, by rewarding Asprez Loans Connections Pte Ltd, who referred clients to you and/or your firm with a sum of approximately S$33,850.00 between the period February 2006 to (sic) August 2006.
>
> [emphasis in original]

The relationship between the fourth respondent and Asprez

6 The relationship between the fourth respondent and Asprez ("the two parties") commenced on

or before 3 January 2006 when the two parties entered into an agreement ("the Agreement") which read as follows:

THIS AGREEMENT is made on the 3rd day of January 2006

BETWEEN

Asprez Loan Connections Pte Ltd (the "Referror"); and

David Siow Chua & Tan LLC, a law corporation incorporated in Singapore whose registered office is at xxx (the "Firm");

WHEREAS:

The Referror is desirous of providing consultancy, training and referrals of conveyancing services to the Firm, subject to the fulfilment of conditions below as required under the Legal Profession (Professional Conduct) Rules and the Legal Profession (Publicity) Rules.

IT IS HEREBY AGREED as follows:

1. EFFECTIVE DATE

The commencement date of this agreement shall be 3rd January 2006 and continue thereafter for a period of one (1) year.

2. COMPLIANCE OF RULES

2.1 The Referror shall at all times comply with the Rules and the Legal Profession (Publicity) Rules (a copy of the said Rules is attached herewith together with this Agreement);

2.2 In the event of publicity, the Referror shall not suggest the followings:-

2.2.1 that the conveyancing service of Firm is free;

2.2.2 that different charges for the conveyancing services would be made according to whether or not the Firm has been instructed by the client;

2.2.3 that the availability or price of the other services offered by the Referror or any party related to the Referror are conditional on the client instructing the Firm and

2.3 that the Referror must not do anything to impair the client's right not to appoint the Firm.

3 CONSULTANCY AND TRAINING

3.1 From time to time, the Referror shall provide consultancy and training on conveyancing related matters and shall render invoices for such services to the Firm.

4. TERMINATION

4.1 Either the Referror and the Firm shall have the right to terminate this Agreement should there be any breach of term and condition and the Firm may continue to act in matters which are

instructed prior to termination but should not accept any further referrals from the Referror.

5 GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of Singapore.

IN WITNESS WHEREOF this Agreement has been entered into the day and year first above written.

Signed by The Referror

Signed by The Firm

[emphasis in original]

7 After the Agreement was entered into, the fourth respondent's firm, David Siow, Chua & Tan LLC, was placed onto Asprez's panel of lawyers. During the period of 6 February 2006 to 1 August 2006, the fourth respondent made seven payments totalling $33,850 to Asprez. These payments constituted the basis of the charges against the fourth respondent. The fourth respondent did not dispute that the payments were made to Asprez. What he disputed was the *purpose* for which the payments were made. The Law Society's case was that the fourth respondent made these payments in consideration of Asprez's referrals of conveyancing work to his firm. However, the fourth respondent contended that the payments were for consultancy and training services rendered by Asprez to him or his firm. We pause, parenthetically, to observe that all three purposes, *ie*, provision of consultancy, training and referrals of conveyancing services, were listed in the preamble of the Agreement (at [6] above).

The findings of the DT against the fourth respondent

8 In finding the fourth respondent guilty of the charges, the DT relied upon two main pieces of evidence, *ie*, the Agreement and various invoices seized from the office of Asprez during a raid conducted by CPIB (collectively referred to as "the invoices"). Each of the invoices was addressed to the fourth respondent's firm. The details of the invoices were as follows:

(a) Invoice No. 06/D0201 dated 6 February 2006 for $600;

(b) Invoice No. 06/D0301 dated 2 March 2006 for $2,400;

(c) Invoice No. 06/D0401 dated 4 April 2006 for $7,800;

(d) Invoice No. 06/D0501 dated 4 May 2006 for $4,350;

(e) Revised Invoice No. 06/D0501 dated 4 May 2006 for $3,850;

(f) Invoice No. 06/D0601 dated 1 June 2006 for $6,400;

(g) Invoice No. 06/D0701 dated 1 July 2006 for $6,000; and

(h) Invoice No. 06/D0801 dated 1 August 2006 for $6,800.

9 Attached to each of the invoices (see [8] above) was a list which purportedly detailed conveyancing transactions undertaken by the fourth respondent or his firm (collectively referred to as

"the attached lists"). The contents of the attached lists tallied with theconveyancing register of files of the fourth respondent's firm. In the DT's view, the totality of the evidence was compelling to prove the charges against the fourth respondent. At [15] of the DT's report against the fourth respondent as contained in *The Law Society of Singapore v Michael Chong Wai Yen and Others* [2011] SGDT 6, the DT stated:

> To reiterate the Law Society's case, it rested on Asprez's invoices which were duly paid by the Respondent. What the payments were for was shown in the attached lists. The Respondent argued that the origin of each of the seven undated lists attached to each invoice was "shrouded in mystery". But the transactions referred to in the lists seized by CPIB corresponded that (*sic*) the transactions recorded in the Respondent's Conveyancing Register. The DT is therefore convinced that the (*sic*) each list detailed the transactions that went to the Respondent's firm for which payment per the invoice was due.

Our views on the DT's findings against the fourth respondent

10 It was held in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 ("*Phyllis Tan*") that this court would be slow to disturb findings of fact made by a DT, previously known as a disciplinary committee (see [27] of *Phyllis Tan*):

> … In this connection, we would also reiterate that the practice of this court in relation to findings of fact made by the [disciplinary committee] is the same as the practice of an appellate court in relation to findings of fact made by a lower court, *ie*, this court will not lightly disturb such findings unless the findings are clearly wrong or against the weight of the evidence: see *Law Society of Singapore v Lim Cheong Peng* [2006] 4 SLR(R) 360 at [13].

11 As the fourth respondent neither disputed having entered into the Agreement nor disputed having made the payments which formed the subject matter of the charges against him, the *purpose* for which the fourth respondent made the payments to Asprez was critical. In the present case, it was necessary for this court to reassess the DT's finding in this regard because it was premised upon hearsay evidence. At this juncture, we would observe that the Evidence Act (Cap 97, 1997 Rev Ed) applies to proceedings before a DT by virtue of rule 23(1) of the Legal Profession (Disciplinary Tribunal) Rules (Cap 161, R 2, 2010 Rev Ed):

> **Application of Evidence Act**
>
> 23.—(1) The Evidence Act (Cap. 97) shall apply to proceedings before the Disciplinary Tribunal in the same manner as it applies to civil and criminal proceedings.

12 The fourth respondent's challenge to the DT's finding was founded on the premise that the DT should not have taken cognisance of the invoices and the attached lists in arriving at its conclusion because the makers of those documents had not testified before the DT. Only two witnesses were called to testify for the Law Society, *ie*, Ben Tan and Vincent Lim (an investigator from CPIB), neither of whom was the maker of the invoices and the attached lists.

13 In our opinion, this submission of the fourth respondent had merits. The contents of the invoices and the attached lists were clearly hearsay. In Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 3rd Ed, 2010) ("*Pinsler's Evidence and the Litigation Process*"), the concept of hearsay was explained thus (at para 4.01):

> It is a fundamental principle that evidence adduced to prove a fact must be reliable. Therefore a

witness who gives oral evidence must generally testify as to what he himself directly perceived, rather than to facts in issue or relevant facts which were perceived by other persons and which were recounted to him. Similarly, a document adduced to establish the facts it refers to in the absence of direct evidence of the facts contained in it would be generally inadmissible. This principle is embodied primarily by the hearsay rule which also seeks to ensure the 'best evidence' is put before the court.

[footnotes omitted]

14 In the light of the fact that the DT had relied upon hearsay evidence in determining the fourth respondent's guilt, which it should not have, it became necessary for us to consider whether, without relying upon the invoices and the attached lists, the critical finding that the payments made by the fourth respondent to Asprez were for the specific purpose of procuring conveyancing legal work was clearly wrong or against the weight of the *admissible* evidence.

Reassessment of the admissible evidence against the fourth respondent

Law Society's prima facie case

15 Apart from the invoices and the attached lists, the other crucial pieces of evidence adduced by the Law Society were the Agreement, the fact that the fourth respondent had admitted to having made the material payments to Asprez, and a publicity flyer of Asprez aimed at enticing housing agents to use the services of Asprez ("the publicity flyer"). As the publicity flyer was an important piece of evidence, it shedding substantial light on the operations of Asprez, we set it out below:

Earning Lesser Commission From Each Transaction???

Fewer Transactions These Days???

Need More Cash???

ASPREZ is your answer!!!

At Asprez, YOU will receive

BANK REFERRAL + $500*

For each of your client's HDB* bank loan cases which you submit through Asprez

Inform Banker to submit case through Asprez & Select a lawyer to represent your client from Asprez Panel of Lawyers & Fax signed Letter of Offer (LO) to Asprez at xxx

*Asprez $500 incentive will be paid for both HDB new purchase and refinance cases.

Private Property Loans Package – Bank Referral Only

FLY TO HONG KONG / BALI / BANGKOK BY BEING OUR TOP REFERRER

Submit the most cases through Asprez from 15 August 06 to 31 December 06 and win yourself a pair of return air tickets to Hong Kong, Bali and Bangkok for being 1st, 2nd or 3rd top referrer respectively!

Asprez Panel of Lawyers

Law Firm	Contact Person	Contact Number
..	..	...
David Siow	Stephanie	xxx

Chua & Tan

LLC

...

[emphasis in original]

16 From the publicity flyer, it was clear that Asprez was soliciting referrals of conveyancing work from housing agents through promise of financial reward. Upon such referral of conveyancing work to Asprez, housing agents were to select a lawyer from Asprez's panel of lawyers to provide legal representation. It was also abundantly clear that the scheme, as described in the publicity flyer, was to induce housing agents, by the use of monetary reward, to engage Asprez's panel of lawyers – a panel which included the fourth respondent's firm.

17 On the basis of existence of the Agreement and the publicity flyer, we were satisfied that a *prima facie* case against the fourth respondent had been made out. The Agreement listed referrals of conveyancing work to the fourth respondent and/or his firm as one of its objectives (see [6] above). After the Agreement was entered into, the publicity flyer was created and payments were effected by the fourth respondent to Asprez.

18 The effect of the Law Society having established a *prima facie* case against the fourth respondent was that the evidential burden shifted to him to disprove that payments were made to Asprez in consideration of referrals of conveyancing legal work. The concept of shifting of evidential burden (albeit in the context of a criminal case) is explained in *Pinsler's Evidence and the Litigation Process* (at para 12.08):

> Unlike the legal burden, the evidential burden can shift throughout the trial. Put another way, the state of the evidence can shift so that at one moment the prosecution's case is strong enough to satisfy the standard of proof (proof beyond a reasonable doubt) and at another, it is not. In the former situation, the evidential burden shifts to the accused in the sense that if he does not adduce evidence to bring the prosecution's case below the standard of proof (ie by creating a reasonable doubt), he would lose. As a matter of practice, the court does not consider the incidence of the evidential burden at different moments in the proceedings. The crucial time for this purpose is at the end of the prosecution's case. He must discharge the evidential burden by then in order for the accused to be called upon to enter his defence. …

Fourth respondent's rebuttal

19 We turn now to consider the fourth respondent's evidence and whether it sufficed in discharging the evidential burden. The fourth respondent denied that Asprez had ever referred conveyancing legal work to him. In addition, he denied that there was ever any agreement with Asprez that the latter would refer conveyancing legal work to him and/or his firm. This position was

maintained by the fourth respondent in his Statement of Defence (see paras 7, 8, 11 thereof) as well as during his testimony before the DT, notwithstanding the explicit wording of the Agreement.

20 In rebuttal, the fourth respondent claimed that one David Foo, a director of Asprez, provided consultancy and training services to his firm (see para 9 of his Statement of Defence). Further, the fourth respondent claimed that Asprez had expanded his network with bankers and conveyancing agents by enabling the fourth respondent to give presentations on various legal topics to such persons. It was for these services provided by Asprez that the fourth respondent claimed to have made the payments to Asprez which formed the subject matter of the charges.

21 We will now consider the fourth respondent's evidence in respect of the Agreement. He admitted to having drafted the Agreement. Therefore, it was incumbent upon him to explain why he had included the phrase "referrals of conveyancing services" as one of the objectives of the Agreement (at [6] above) when, according to him, no such services were desired or actually provided by Asprez. When cross examined on this issue by counsel for the Law Society at the hearing before the DT, thefourth respondent's answers were nebulous and evasive (see Notes of Evidence, Day 5, at pp 40 – 42): [note: 1]

> Q: You used the word "referral". This is your agreement, okay. This didn't even come from Asprez. What did you intend or what did you mean by the use of the word "referral' in the header of this agreement?
>
> A: I think I have to explain this in totality why this agreement was draft... put up by them. It's not just one word because I mentioned earlier on that when I prepared this agreement, I make reference to the Professional Conduct Rules. This is the reason why I imported the terms in the rules into this agreement.
>
> ...
>
> Q: ...Why was the word "referral" used in this agreement? Why is this called a "Referral/Consultancy and Training Agreement"?
>
> A: It's a… matter of choice of words but it doesn't end there. It has a slash consultancy and training agreement. But you must also look at the subsequent recital.
>
> Q: Let's look at the header first, Mr Siow.
>
> A: No. It… it (*sic*) all linked up together.
>
> …
>
> Q: Why is the word "referral" in the header? You see, up to now from what I understand... there has been no mention of Asprez referring any work to your firm yet. Am I correct?
>
> A: Yes.
>
> Q: Right. So why did you put the word "referral" in this agreement?
>
> A: It was not a referral agreement. But it was "Referral/Consultancy and Training Agreement".
>
> Q: All right. So if I take out the word "referral", "consultancy and training" can stand on its

own. Why did you need to put the word "referral" in front?"

A: That is you have to read together with the recital. That's what you have to look at the agreement in totality.

22 It is quite plain, from the exchanges above, that the fourth respondent simply could not provide any explanation as to why he had chosen to include the word "referral" in the preamble of the Agreement. Instead, he doggedly maintained that he had abided by the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) as amended by Legal Profession (Professional Conduct) (Amendment) Rules 2001 and Legal Profession (Professional Conduct) (Amendment) Rules 2005 ("the relevant Professional Conduct Rules") and the Legal Profession (Publicity) Rules (Cap 161, R 13, 2000 Rev Ed) ("Publicity Rules"), both sets of rules being explicitly referred to in the Agreement (see [6] above). However, as pertinently pointed out by counsel for the Law Society whilst cross examining the fourth respondent, there would have been absolutely no need to make reference to the relevant Professional Conduct Rules or the Publicity Rules if all that Asprez was providing to the fourth respondent and/or his firm was merely consultancy and training services (see Notes of Evidence, Day 5, at pp 40 – 41): [note: 2]

Q: … For somebody to provide you training and consultancy, you don't need an agreement actually in the first place. I…I can understand you wanting to formalise an agreement. Why did you need to look at the Professional Conduct Rules even if there was going to be no reference of work to your firm? Why… would you even be looking at the Professional Conduct Rules? I'm trying to understand this. If somebody is merely providing you consultancy and training, why was there a need… for you to look at the Professional Conduct Rules? Can you explain that?

A: Yes, of course. As I mentioned earlier on, this agreement is for consultancy and training. I have looked through the Professional Conduct Rules. My learned counsel mentioned that it's only relevant to referral but it doesn't confine to that because when I enter into this agreement for consultancy and training, I want to ensure that Asprez did not cause [David Siow, Chua & Tan LLC] to run foul of the rules. So I want to comply with the rules. So having a consultancy and training agreement doesn't mean that it prohibits me from using these rules to tie Asprez's hands. So I thought that would be the safest way to tie Asprez's hands.

Quite simply, this answer of the fourth respondent to the question posed by counsel for the Law Society is a *non sequiter*.

23 Thefourth respondent further testified that he had expressly referred to Rule 11B which was introduced *vide s* 410/2001, *viz*, Legal Profession (Professional Conduct) (Amendment) Rules 2001 ("Rule 11B")) whilst drafting the Agreement in order not to fall foul of the relevant Professional Conduct Rules. We will now see in what way Rule 11B was germane. It reads:

Agreement for referrals

11B. —(1) In addition to rule 11A, when an advocate and solicitor or a law practice enters into agreements for referrals of conveyancing services, the advocate and solicitor or law practice, as the case may be, shall ensure that the agreement is made in writing and contains the following terms:

(a) the referror undertakes in such an agreement to comply with these Rules and the Legal Profession (Publicity) Rules (R 13);

(b) the advocate and solicitor or law practice shall be entitled to terminate the agreement forthwith if there is reason to believe that the referror is in breach of any of the terms of the agreement;

(c) any publicity of the referror (whether written or otherwise), which makes reference to any service that may be provided by the advocate and solicitor or law practice, must not suggest any of the following:

(i) that the conveyancing service is free;

(ii) that different charges for the conveyancing services would be made according to whether or not the client instructs the particular advocate and solicitor or law practice; or

(iii) that the availability or price of other services offered by the referror or any party related to the referror are conditional on the client instructing the advocate and solicitor or law practice; and

(d) the referror must not do anything to impair the right of the client not to appoint the advocate and solicitor or law practice or in any way influence the right of the client to appoint the advocate and solicitor or law practice of his choice.

(2) The advocate and solicitor or law practice, as the case may be, must forthwith terminate the agreement if the referror is in breach of any term referred to in paragraph (1) or if there is reason to believe that the advocate and solicitor or law practice is in breach of such term.

(3) Where the advocate and solicitor or law practice has terminated an agreement under paragraph (2), the advocate and solicitor or law practice, as the case may be, may continue to act in matters the advocate and solicitor or law practice was instructed prior to the termination but should not accept any further referrals from the referror.

24 Clearly, Rule 11B deals solely with agreements for referrals of conveyancing services. Given thefourth respondent's position that the Agreement only pertained to training and consultancy services, it was incumbent upon him to explain why Rule 11B was incorporated into the Agreement which he had drafted. When pressed by counsel for the Law Society as to why Rule 11B was even referred to when, according to him the Agreement had nothing to do with the referral of conveyancing services, the fourth respondent was again evasive and gave a wholly incoherent answer (see Notes of Evidence, Day 5, at pp 47 – 48): [note: 3]

Q: Right. So why were you looking at rule 11B if at that point in time you had no discussion between yourselves and Asprez for referral of conveyancing files or conveyancing work? Why was this rule even relevant? This is a relevant rule only for agreements for referrals.

A: I think I have answered this question. I have entered into an agreement of consultancy and training. But as I mentioned, I want to tie Asprez's hands. I do not want Asprez to cause my firm, [David Siow, Chua & Tan LLC], to run fouls [sic] of the rules. I want to comply with the rules. This is the reason why I made reference to 11B and to import the terms in the rules into this agreement.

25 From the matters referred to in [21] – [24] above, we were satisfied that the fourth respondent was either less than truthful or he just could not provide any credible answer. His attempted replies to those very pertinent questions simply did not make sense. Thus, the inevitable conclusion was that

the fourth respondent and Asprez had entered into an agreement for referral of conveyancing work from the latter to the former.

26 While from the foregoing it was plain that the fourth respondent intended to receive referrals of conveyancing work from Asprez by entering into the Agreement, the fourth respondent could still disprove the charges by showing that the payments made to Asprez were not in consideration for having received such referrals. We will now turn to consider his explanations for having made the payments to Asprez. In this regard, the fourth respondent claimed to have been accorded opportunities to deliver presentations to bankers and property agents, as well as mingle with such persons, at events organised by Asprez. It was for such business opportunities which were made available by Asprez to the fourth respondent that the payments were effected to Asprez. However, he was unable to furnish any evidence, other than his bare assertions, which showed that Asprez had in fact organised such events or activities (see Notes of Evidence, Day 6, at p 6): [note: 4]

> Q: So, Mr. Siow, is it your evidence that everything was oral and there's not one single piece of written communication or email between Asprez and your company informing you of any single networking event?
>
> ...
>
> A: ... But there are no correspondence (*sic*) between Asprez. There's no need for correspondence.

27 In respect of the alleged presentations made by him at events purportedly coordinated by Asprez, the fourth respondent – while claiming to have used materials whilst making such presentations – was not able to furnish any evidence of those materials which he had used to make the presentations. This was conceded during cross examination (see Notes of Evidence, Day 6, at p 8): [note: 5]

> Q: ... Did you… have something in writing that you presented or you just went there and talk again?
>
> A: No, we have materials, yes, of course.
>
> Q: ... have you exhibited any of these materials?
>
> A: Exhibited not in the affidavit…

28 The fourth respondent further claimed that some of the payments made were in respect of logistical and administrative expenses incurred by Asprez for arranging the events and yet he was unable to state exactly what he was paying for. He simply did not know how much he would be billed by Asprez in respect of such expenses as could be seen from his answers in cross-examination (see Notes of Evidence, Day 5, at pp 30 – 31): [note: 6]

> Q: What was the discussion on payment with Mr David? Did Mr David Foo tell you... how much you had to pay?
>
> A: As I mentioned, all the… logistical and administrative expenses were incurred by Asprez, and it will be substantial expenses. So… I am agreeable to pay a reasonable sum to chip in into the portion of these expenses.

…

Q: Did you know how much you were going to be billed?

A: I will not be able to know.

Q: Then how can you enter into an arrangement when you don't know how much you're going to be billed?

...

A: It depends on the number of events that I've lined up. It depends on the number of talks, number of seminars and the events… for the month. That's the reason why I will need to know estimated cost at the beginning of the month for what are the events that's lined up for me.

The fourth respondent's evidence in respect of the alleged services rendered by Asprez to him and/or his firm lacked credibility. He not only failed to adduce any documentary evidence to prove that he had indeed made presentations at the purported business gatherings, he also could not provide any reasonable account for the sums of monies paid to Asprez. At the hearing of the show cause proceedings before us, in order to give him a further opportunity to prove what he alleged, we enquired if the fourth respondent had diary entries pertaining to his attendance at the events purportedly organised by Asprez. His counsel answered in the negative.

Our findings against the fourth respondent

29 In the premises, we found that the fourth respondent failed to rebut the *prima facie* case presented by the Law Society against him. It was evident that the Agreement which the fourth respondent entered into with Asprez involved referrals of conveyancing work to the him and/or his firm, and, viewing it together with the publicity flyer (see [15] above), we had no hesitation in holding that the payments to Asprez were made pursuant to the Agreement in consideration for such referrals. In the result, we hold that the charges against the fourth respondent had been proven beyond a reasonable doubt even without having to rely on the invoices and the attached lists, which we have earlier ruled to be hearsay evidence (see [13] above).

The respective cases against thefirst, second and third respondents

The charge against the first respondent

30 We now set out in brief the case raised against each of the other three respondents. As against the first respondent, the Law Society proceeded only with one charge under s 83(2)*(h)* of the Act to which he pleaded guilty. The charge (as amended on 28 October 2010) read:

That you, **MICHAEL CHONG WAI YEN**, an Advocate and Solicitor of the Supreme Court of Singapore, are guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(*h*) of the Legal Profession Act, to wit, by paying a total sum of approximately S$157,900.00 to Asprez Loans Connections Pte Ltd between the period December 2005 to (*sic*) August 2006, in consideration of Asprez Loans Connections Pte Ltd referring clients to you and/or your firm.

[emphasis in original]

31 The first respondent was an advocate and solicitor of 11 years standing. During the material times, he was a partner at Messrs Chee & Michael Chong Partnership. In circumstances similar to that of the fourth respondent, the first respondent joined Asprez's panel of lawyers towards the end of 2005 on the understanding that Asprez would, in exchange for payment, refer conveyancing legal work to the first respondent and/or his firm. Thereafter, from December 2005 to August 2006, a period of nine months, the first respondent made payments to Asprez which totalled $157,900. The payments were in consideration of Asprez referring conveyancing legal work to the first respondent and/or his firm. The first respondent pleaded guilty to this charge.

The charge against the second respondent

32 The Law Society proceeded on one charge, under s 83(2)*(h)* of the Act, to which the second respondent pleaded guilty. The charge read:

> That you, **KENNETH TAN CHONG PENG**, an Advocate and Solicitor of the Supreme Court of Singapore, are guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(*h*) of the Legal Profession Act, to wit, by paying a total sum of approximately S$79,400.00 to Asprez Loans Connections Pte Ltd between the period December 2004 to (*sic*) February 2006, in consideration of Asprez Loans Connections Pte Ltd referring clients to you and/or your firm.
>
> [emphasis in original]

33 The second respondent was an advocate and solicitor of 22 years standing. At all material times, he was a director of Asia Law Corporation. The second respondent joined Asprez's panel of lawyers sometime in 2004 on the understanding that Asprez would, in exchange for payment, refer conveyancing legal work to the second respondent and/or his firm. Thereafter, from December 2004 to February 2006, a period of 15 months, the second respondent made payments to Asprez which totalled $79,400.

The charges against the third respondent

34 After representations, the Law Society proceeded on three charges against the third respondent under ss 83(2)(*b*) and 83(2)(*e*) of the Act. The third respondent pleaded guilty to the following three charges:

> **First charge**
>
> That you, **YAP KOK KIONG**, an Advocate and Solicitor of the Supreme Court of Singapore at all material times, are guilty of improper conduct and practice within the meaning of section 83(2)(b) of the Legal Profession Act, by breaching Rule 11A(2)(b) of the Legal Profession (Professional Conduct) Rules, being a rule of conduct made by Council under the Legal Profession Act, to wit, that you had, through Asprez Loans Connections Pte Ltd as your nominee, between June 2004 until (*sic*) August 2006, made payments to various (unidentified) real estate agents, sums of approximately $200.00 for each file and/or client referred to you and/or your firm by such real estate agents through a company which you controlled, namely Asprez Loans Connections Pte Ltd.
>
> **Second charge**
>
> That you, **YAP KOK KIONG**, an Advocate and Solicitor of the Supreme Court of Singapore at all

material times, are guilty of directly or indirectly, procuring or attempting to procure the employment for yourself and/or your firm of conveyancing legal work between the period October 2005 to (*sic*) March 2006 through Asprez Loans Connections Pte Ltd, to whom remuneration amounting to a total sum of approximately $410,000.00 was paid by you and/or your firm or agreed or promised to be paid by you and/or your firm for obtaining such employment within the meaning of section 83(2)(e) of the Legal Profession Act.

Third charge

That you, **YAP KOK KIONG**, an Advocate and Solicitor of the Supreme Court of Singapore at all material times, are guilty of improper conduct and practice within the meaning of section 83(2)(b) of the Legal Profession Act, by breaching Rule 11A(2)(b) of the Legal Profession (Professional Conduct) Rules, being a rule of conduct made by Council under the Legal Profession Act, to wit, by making arrangements to reward Asprez Loans Connections Pte Ltd, who referred clients to you and/or your firm, with a total sum of approximately $410,000.00 between the period October 2005 to (*sic*) March 2006.

[emphasis in original]

35 The third respondent was an advocate and solicitor of 17 years standing prior to him ceasing practice in January 2007. At all material times, he was the sole proprietor of KK Yap & Partners. As stated at [2] above, Asprez was set up by Ben Tan on the instruction of the third respondent with the aim of using it to obtain referral of conveyancing legal work from real estate agents for consideration

36 From June 2004 to August 2006, using funds provided by the third respondent and/or his firm, Asprez paid sums of approximately $200 to various unidentified real estate agents for each file and/or client referred to Asprez. Such work and/or client were, in turn, referred to the third respondent and/or his firm. Plainly, the payments made were referral fees provided by the third respondent and/or his firm to the said estate agents in consideration of work and/or clients referred to him and/or his law firm through Asprez.

37 Documents seized from the third respondent showed the magnitude of the dealings between the third respondent and Asprez. Between October 2005 and March 2006, Asprez issued the following invoices to the third respondent's firm:

(a) Invoice No. 05/K1001 dated 18 October 2005 for the sum of $80,000;

(b) Invoice No. 05/K1101 dated 7 November 2005 for the sum of $50,000;

(c) Invoice No. 05/K1201 dated 12 December 2005 for the sum of $50,000;

(d) Invoice No. 06/K0104 dated 4 January 2006 for the sum of $50,000;

(e) Invoice No. 06/K0201 dated 8 February 2006 for the sum of $50,000 ;

(f) Invoice No. 06/K0202 dated 24 February 2006 for the sum of $50,000; and

(g) Invoice No. 06/K0301 dated 6 March 2006 for the sum of $80,000.

38 In total, during the period October 2005 to March 2006, the third respondent and/or his firm paid Asprez a sum of $410,000 in respect of the referrals of conveyancing work.

39 As noted in [30], [32] and [34] above, the first, second and third respondents pleaded guilty to the respective charges proceeded against them. We now turn to the appropriate sanction that should be imposed on the four respondents.

Parties' submission on the appropriate sanctions

40 In this regard, we will first refer to the mitigating factors highlighted by counsel for each of the respondents.

The first respondent

41 His counsel underscored the fact that the first respondent was a first time offender who demonstrated contrition by pleading guilty at the first available opportunity. In addition, the first respondent submitted that he was not the perpetrator of the agreement between him and/or his law firm and Asprez. Instead, he was approached by David Foo who mooted the idea of liaising with Asprez. The first respondent also submitted that his act of terminating the agreement with Asprez was a clear demonstration of his genuine remorse.

The second respondent

42 The second respondent pointed out that he ran foul of the professional rules as a result of being solicited by Ben Tan of Asprez. In any event, he was truly remorseful for his conduct and this was evidenced by his terminating the agreement with Asprez even before CPIB commenced investigations. In support of his submission that he was of good character, the second respondent provided evidence of voluntary services rendered to several organisations.

The third respondent

43 The third respondent contended that all three charges against him were essentially based upon the same conduct complained of. As such, he submitted that this court should not enhance his punishment based on the number of charges he faced. In this regard, he argued that all three charges were really different ways of complaining about the same conduct. In support of this contention, the third respondent relied on the case of *Law Society of Hong Kong v Solicitor* [2009] HKEC 271 where the Hong Kong Court of Appeal stated at [25]:

> … Where, as here, the tribunal's disapproval is of a course of conduct over a period of time, it is inappropriate and unsatisfactory, to say the least, to frame the complaint as two separate complaints by artificially isolating the beginning and the end of that course of conduct and in making those the subject matter of two separate complaints. Rather, it should have focused on the overall course of conduct and have made that the subject matter of the complaint.

44 In this regard, we ought to mention that s 40 of the Interpretation Act (Cap 1, 2002 Rev Ed) ("Interpretation Act") which applies only to the commission of criminal offences, although not referred to by the third respondent, is nevertheless germane as disciplinary proceedings are quasi-criminal in nature which could lead to the imposition of punitive sanction(s). That section reads:

> **Provision as to offences under 2 or more laws**
>
> 40. Where any act or omission constitutes an offence under 2 or more written laws, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under any one of those written laws but shall not be liable to be punished twice for the same offence.

45 The statutory predecessor of s 40 of the Interpretation Act, *ie*, s 41 of the Interpretation Act (Cap 1, 1985 Rev Ed), was considered in the case of *Tan Khee Koon v Public Prosecutor* [1995] 3 SLR(R) 404 ("*Tan Khee Koon*"). In that case, the appellant was tried and convicted on a charge of having attempted to corruptly receive gratification of $20,000, as well as on a separate charge of having received gratification amounting to approximately $5,260. In respect of the latter charge, the evidence revealed that out of the sum of $5,260, $4,500 was actually in part payment of the sum of $20,000 which the appellant attempted to receive. The question then was whether there was "double counting" in respect of the charge for having received $4,500, and the attempt to receive $20,000. The court ruled in the affirmative. The reasoning of the court, at [104] – [109], was as follows:

> 104 The Prosecution's argument was that s 41[of the Interpretation Act (Cap 1, 1985 Rev Ed)] did not assist at all as it deals with two or more written laws. On the contrary, it must follow, *a fortiori*, that the prohibition must apply where the offences are under the same written laws. It was noted by the Prosecution correctly though that the effect of the provision is that while the same set of facts may establish liability under two or more written laws, there cannot be double punishment for the same offence.
>
> 105 The term "same offence" was dealt with in *Jamali bin Adnan v PP* [1986] 1 MLJ 162, where it was considered by Seah SCJ that whether two or more offences were the same offence entails the existence of the same essential ingredients. Regard must be had to the ingredients of attempt and commission to determine whether they are essentially the same. While it is possible to find similarities in the elements, a substantive difference is that an attempt necessarily lacks some part of the *actus reus*. It is possible then to say that attempts and commissions are separate offences. This may be construing the phrase "same offence" all too narrowly, but an alternative reasoning will be applied.
>
> 106 Though the ingredients of attempt and commission may differ and the *Jamali bin Adnan* test may not be satisfied, the charges preferred are still defective, as attempt and commission are mutually exclusive, that is that an act cannot be both an attempt as well as a commission of a particular offence.
>
> 107 No definition is given in the Act or the Penal Code of what constitutes an attempt. In the context of s 511 of the Malaysian Penal Code, *in pari materia* with s 511 of our code, it was said by Ajaib Singh J in *Thiangiah v PP* [1977] 1 MLJ 79 that:
>
> > Stephen's time-honoured definition of an attempt is valid and strong as ever today: An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts, which would constitute its actual commission if it were not interrupted.

108 From this definition, it is evident that a criminal act is no longer an attempt when it completes the commission of an offence. The same definition would apply to s 6(*a*). A single transaction cannot be both an attempt and a commission. Similarly neither could a single act be both an agreement to accept and acceptance.

109 Attempts and commissions thus cannot overlap. A person who attempts to commit murder logically cannot be charged with murder as well. Either he completed the act or he did not. There can be no intermediate state. It may be argued that provisions of the CPC actually recognise the possibility that attempts and commissions may be charged separately. Such an argument is seen to be misconceived once the provisions are examined closely.

46 An analysis of the three charges against the third respondent (at [34] above) reveals certain common elements. The gravamen of the first charge was that the third respondent made payments amounting to $200 for each file which was referred to him by real estate agents *via* Asprez in the period from June 2004 to August 2006. As for the second charge, the third respondent was charged for having procured or attempting to procure legal business through Asprez by paying a sum of $410,000 from October 2005 to March 2006, with the emphasis being on procurement of legal business through payment incentive. Finally, in respect of the third charge, the third respondent was charged with having made arrangements to reward Asprez with $410,000 for referring legal business to him or his firm from October 2005 to March 2006, with the emphasis being on making arrangements to obtain legal work through monetary incentive.

47 It would be apparent that the elements of the second and third charges are very similar, *ie*, to obtain legal work by the payment or offer of monetary incentive. The conduct of the third respondent which was the basis of the first charge against him could be regarded as the follow-up to the acts which formed the basis for the second and third charges. What the principle in *Tan Khee Koon* prohibits is the charging of a person for having arranged (or attempted) to cheat the victim *and* (emphasis added) the actual act of cheating itself. While it would appear that the second and third charges were distinct from that of the first charge, it is clear that, following the spirit of the principle enunciated in *Tan Khee Koon*, the real wrongdoing of the third respondent in respect of all three charges was in sharing legal fees earned with someone who was not entitled to enjoy any portion of the fees. Thus in determining the appropriate punishment, the number of charges brought against an advocate and solicitor in such circumstances should not be given much weight. Instead, the relevant factors would be, *inter alia*, the period during which the wrongdoing was carried out and the quantum of the fees shared with someone who was not entitled to receive those fees.

48 We pause, at this juncture, to observe that the same principle (discussed at [43] – [47] above) applies equally to the charges against the fourth respondent. The first charge against the fourth respondent was for having procured employment for himself and/or his firm through Asprez by paying $33,850 for the period February 2006 to August 2006. The second charge was for having rewarded Asprez with the same sum of money over the same period for referring clients to him and/or his firm. These two charges were based on the same wrongdoing, the difference being that each charge emphasised a different aspect of the wrongdoing. The acts of procuring legal business through paying Asprez and rewarding Asprez through payment for referrals were essentially the same acts. Thus we accepted the submission that the fourth respondent should not be punished as if he had committed two separate offences. At this juncture, we would observe that the practice of preferring multiple charges based upon the same misconduct should be eschewed.

49 In addressing the court on the appropriate sentence, the third respondent submitted that he was remorseful and highlighted the fact that he had voluntarily ceased practise since January 2007, soon after CPIB sought his assistance in its investigations. His departure from KK Yap & Partners was

premised on his desire not to compromise the reputation of the firm. He left the legal profession in January 2007 as he did not wish to enhance the "risk of embarrassing the profession" arising from the present wrongdoing. The third respondent submitted that he was really contrite and thus did not challenge the allegations at the inquiry stage before the Inquiry Committee and pleaded guilty to the charges brought against him by the Law Society before the DT. He did not file any defence either.

50 On the significance of his voluntary act of ceasing practice since January 2007, which amounted to a "four year suspension", he relied upon the case of *Law Society of Singapore v Tan Chwee Wan Allan* [2007] 4 SLR(R) 699 ("*Allan Tan*") in support of the argument that his voluntary cessation of legal practise constituted a weighty mitigating factor. In *Allan Tan*, this court stated at [51]:

> We also noted that the respondent had voluntarily left practice for over two years after he was informed of his breaches of the SA Rules [*ie*, Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 8, 1999 Rev Ed)]. This would have been an extremely lucrative and profitable period of practice for a conveyancing solicitor. According to counsel for the respondent, Mr Chandra Mohan K Nair ("Mr Mohan"), for a solicitor with a standing of about 15 years, leaving practice for two years was a drastic self-imposed punishment. Mr Mohan added that his client was extremely remorseful and that the disciplinary proceedings had taken a severe toll on the latter.

51 Lastly, the third respondent made the point that he was of good character, and that his offending conduct did not compromise his clients' interests in any way.

The fourth respondent

52 In mitigation, after this court had made its determination on the finding of guilt, counsel for the fourth respondent submitted that the latter was of good character, and that he was remorseful for having committed the offences. In addition, the fourth respondent strongly asserted that there was little public interest in imposing a suspension of a protracted period due to the shortage of lawyers in Singapore.

Sentencing precedents

53 In considering the appropriate sanctions, we would refer to two previous cases where similar wrongdoings, albeit of a wholly different magnitude, were committed, *ie, Law Society of Singapore v Tan Buck Chye Dave* [2007] 1 SLR(R) 581 ("*Tan Buck Chye Dave*") and *Phyllis Tan.*

54 In *Tan Buck Chye Dave*, the respondent, who pleaded guilty to three charges under s 83(2)(*e*) of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the LPA"), attempted to procure employment in respect of conveyancing matters by offering to pay varying sums of money to estate agents. This court, in imposing a suspension of 6 months, stated (at [31] of *Tan Buck Chye Dave*) that "there were strong mitigating factors in the present case. If they had not been present, we would have been compelled to impose an even more severe sanction on the respondent." The mitigating factors referred to by the court were the following:

> (a) None of the conveyancing transactions (tainted by payment of referral fees) were actually completed (at [19] of *Tan Buck Chye Dave*);
>
> (b) The respondent's inability to complete the conveyancing transactions was due to his own volition (at [20] of *Tan Buck Chye Dave*);

(c) The respondent pleaded guilty at the first opportunity (at [22] of *Tan Buck Chye Dave*); and

(d) There was no proven dishonesty on the part of the respondent (at [23] of *Tan Buck Chye Dave*).

55 The factor stated at (b) above warrants elaboration. The respondent there was approached by an entrapping investigative agency which sought to know what the respondent would be willing to offer the former for introducing clients to the latter. The entrapping agency and the respondent struck an agreement under which for every conveyancing business referred, the respondent would pay the entrapping agency $200 per deal. After the agreement was reached, the respondent did not follow up on the agreement at all by contacting the entrapping agent. It was through this voluntary omission on the part of the respondent that no conveyancing deals were actually done under the offending arrangement.

56 It was quite clear that *Tan Buck Chye Dave* represented a case in which the respondent was contrite soon after the arrangement was reached. He was guilty of an attempt to commit the offence and the only reason why he did not carry out what was agreed upon was his belated sense of realisation that what he had agreed to do was wrong. The conduct of the respondent in *Tan Buck Chye Dave* represented culpability at the lower end of the scale.

57 The respondent in *Phyllis Tan*, on the other hand, was preferred with one charge for professional misconduct under s 83(2)(*e*) and an alternative charge under s 83(2)(*h*) of the LPA for attempting to procure employment in respect of a conveyancing matter by offering remuneration in the form of a gift voucher worth $200 (see [2] of *Phyllis Tan*). The respondent contested the charges but was eventually found guilty of both the main and alternative charges. The respondent was suspended for a period of 15 months.

Our decision on the appropriate punishments

58 We must, at this juncture, observe that the misconduct committed by the four respondents in these proceedings involved the most severe of illicit referral agreements that have been dealt with by this court. Previous cases involving similar misconduct paled in comparison with the pecuniary magnitude of the offending conduct of the four respondents. The systematic manner in which referrals were obtained by the four respondents in the present cases, *via* Asprez, was also unprecedented and audacious, as compared to the previous cases.

59 Quite clearly, all four respondents should be punished with sanctions far exceeding those imposed in *Tan Buck Chye Dave* and *Phyllis Tan*. Save for the pleas of guilt of the first to third respondents, the mitigating factors present in *Tan Buck Chye Dave* (at [54] above]), which this court gave much weight to, were absent in respect of the four respondents. The four respondents' offending conduct emanated from pure avarice, and extended over protracted periods of time. Their misconduct was systematic, involving large number of referrals and significant sums of money, unlike that of an isolated misconduct involved in *Phyllis Tan*.

The first and second respondents

60 The culpabilities and mitigating factors of the first and second respondents were largely similar notwithstanding the differences in the period during which the offending conduct was carried out and the sums involved. The first respondent paid remuneration amounting to $157,900 over a period of approximately 9 months, whilst the second respondent paid the sum of $79,400 over a period of

approximately 15 months. Evidently, the first respondent had paid a larger sum of money over a shorter period of time as compared to the second respondent. The mitigating factors put forth by counsel (at [41] – [42] above]) for both respondents also did not differ substantially.

61 Bearing in mind that for an isolated act of misconduct in *Phyllis Tan* a penalty of 15 months suspension was imposed, it must follow that a much more severe penalty should be imposed on the first and second respondents. In our judgment, doubling the period of suspension imposed in *Phyllis Tan* for both these two respondents would be amply warranted and we accordingly so ordered.

The third respondent

62 The Law Society recognised that the third respondent should receive a heavier sentence than the first and second respondents. In this regard, the Law Society highlighted the fact that the third respondent was the brain which hatched this scheme of paying estate agents in return for referral of conveyancing work to listed legal firms and who, for the purpose of implementing that scheme, created the entity, Asprez. Secondly, the Law Society underscored the fact that, unlike the first and second respondents, the third respondent had previously been involved in disciplinary proceedings for similar offences.

63 In *The Law Society of Singapore v Ong Poh Pway Lina and Another* [2002] SGDSC 1, the third respondent and his partner offered to refund half of the legal fees paid by the owners of a collective sale of residential units in Phoenix Mansion if such owners were to engage them to act in the purchase of a new property within 6 months from completion. The Disciplinary Committee found that no cause of sufficient gravity existed for disciplinary action. The third respondent and his partner were each reprimanded pursuant to s 93(1)(*b*) of the LPA.

64 In *The Law Society v Yap Kok Kiong* [2006] SGDSC 14, the third respondent pleaded guilty to a charge under s 83(2)(*h*) of the LPA for having "engaged in the practice of giving rewards in the form of gift vouchers to real estate agents who referred clients and business to M/S K K Yap & Partners". The Disciplinary Committee found that no cause of sufficient gravity for disciplinary action existed and the third respondent was again reprimanded by the Disciplinary Committee.

65 We agreed with the submission of counsel for the Law Society that the third respondent's culpability far exceeded that of the other three respondents. We noted that not only had he previously been reprimanded for similar misconduct, and never seemed to have learned, he had in the present case gone from bad to worse, by conjuring an illicit business model – by orchestrating the setting up of Asprez – and committing the same misconduct on a larger scale and in the process, encouraging and facilitating the other three respondents to commit the same misconduct. In short, he was the mastermind and the villain, and seemed to us to be incorrigible. In the circumstances, and in the interest of upholding the integrity of the profession, we felt that he ought to be struck off the Roll and we so ordered.

The fourth respondent

66 In determining the appropriate penalty to be imposed on the fourth respondent, we noted that unlike the other respondents, the fourth respondent did not admit to the charges but claimed trial. However, we also noted that the amount which he had paid to the estate agent was the smallest among the four respondents which would necessarily mean that he had received the least number of referrals from the estate agents. Moreover, the period of his involvement in the scheme was also the shortest among the four respondents. Notably, his challenge based on the inadmissibility of part of the Law Society's evidence (at [10] – [14] above), was not entirely without merit.

67 All considered, we felt that imposing on him a similar penalty as that imposed on the first and second respondents would not be inappropriate, because while he had (unlike the first and second respondents) claimed trial and had taken a technical objection against the Law Society's case (though as stated not without merit), this had to be balanced against the fact that he received the least number of referrals and was involved in the scheme for the shortest period.

The third respondent's argument on costs for the present proceedings

68 Finally, we will address an argument raised by the third respondent where he contended that no order on costs should be made against him in relation to the present proceedings. He submitted that the Law Society should not have referred this matter to the court of three Judges, it being superfluous, as he had given an undertaking not to practise for 5 years ("the Undertaking"). At the hearing before the DT, the third respondent stated that he was willing to furnish the Undertaking to the Law Society and the DT, as well as pay a penalty of $20,000 as evidence of his remorse. The third respondent contended that the Undertaking, if accepted, would have fulfilled the sentencing aims as advanced by the Law Society, *viz*, protection of the public, and the third respondent would also have been punished.

69 In response to this argument, the Law Society averred that, based on s 93 of the Act, the DT "simply did not have the power to accept and give effect to the third respondent's Undertaking."

70 It was abundantly clear that this argument of the third respondent is wholly without merit. It showed a lack of understanding of the disciplinary process under the Act.

The disciplinary process under the Act

71 After hearing a matter referred to it, the DT can, in conclusion, only make one of three findings as provided for in s 93 of the Act:

> **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.

72 Upon the DT's finding that cause of sufficient gravity exists pursuant to s 93(c) above, s 94 of the Act requires the Law Society to make an application under s 98 of the Act. Section 94 provides:

> **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.

[emphasis added]

73 Upon an application being made under s 98, the court of three Judges has the power to deal with the advocate and solicitor in question in accordance with s 83 of the Act :

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 —

.....

(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;

...

(e) has, directly or indirectly, procured or attempted to procure the employment of himself, of any advocate and solicitor or, in relation only to the practice of Singapore law, of any foreign lawyer registered by the Attorney-General under section 130I 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;

...

(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;

…

74 The crux of the third respondent's argument was that the DT should have accepted the Undertaking and made a finding under s 93(1)(*b*) of the Act that "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". In our opinion, this argument distorts the statutory duty of the DT under s 93(1) of the Act which requires the DT to

consider all the circumstances of the case and make a determination accordingly. The effect of the third respondent's argument amounts to saying that the DT should not have made a determination that a cause of sufficient gravity existed when the evidence clearly justified the making of such a determination and for the case to proceed further before the court of three Judges to be dealt with under s 83(1) of the Act. The third respondent's argument would subvert the disciplinary process under the Act and consequently usurp the jurisdiction of the court of three Judges to impose the appropriate punishment for the misconduct in question: see *Law Society of Singapore v Jasmine Gowrimani d/o Daniel* [2010] 3 SLR 390 ("*Jasmine Gowrimani*") at [24] and [26]. The argument is wholly without merit and seems to be premised upon the untenable assumption that this court would only impose a punishment of a 5 year suspension and a penalty of $20,000 on the third respondent.

75 We therefore rejected the argument and held that the costs of the Law Society in the present proceedings be borne by all the four respondents.

Conclusion

76 We reiterate our view in [58] above that the misconduct on the part of the four respondents was most severe in terms of scale and magnitude as compared to those which have been previously dealt with by this court. In the light of all the relevant circumstances, we ordered that the first, second and fourth respondents be suspended for a period of 30 months and that the third respondent be struck of the roll.

[note: 1] Record of Proceedings (Vol V Part H) at pp237-239

[note: 2] Record of Proceedings (Vol V Part H) at pp237-238

[note: 3] Record of Proceedings (Vol V Part H) at pp 244-245

[note: 4] Record of Proceedings (Vol V Part I) at p 12

[note: 5] Record of Proceedings (Vol V Part I) at p 14

[note: 6] Record of Proceedings (Vol V Part H) at pp 227- 228