

**DISCIPLINARY TRIBUNAL SECRETARIAT**

**1 SUPREME COURT LANE, SINGAPORE 178879  
TEL: 6332 4040, 6332 4060, FAX: 6332 4061**

DT/SEC/01/2019

18 February 2020

Director, Conduct Department  
The Law Society of Singapore  
28 Maxwell Road  
#01-03 Maxwell Chambers Suite  
Singapore 069120



Dear Sir

**PROCEEDINGS OF THE DISCIPLINARY TRIBUNAL  
IN THE MATTER OF LEE SUET FERN (LIM SUET FERN)  
AN ADVOCATE & SOLICITOR**

Pursuant to section 93(4)(a) of the Legal Profession Act (Cap 161, 2009 Rev Ed),  
I submit a copy of the Report of the Disciplinary Tribunal in respect of Mrs Lee Suet  
Fern.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'Edwin San'.

EDWIN SAN  
SECRETARY  
DISCIPLINARY TRIBUNAL

C:DT/01/2019.(18D) - ES/AC

## **DISCIPLINARY TRIBUNAL**

**DT/1/2019**

In the Matter of **LEE SUET FERN (LIM  
SUET FERN)**, an Advocate and  
Solicitor

And

In the Matter of the Legal Profession  
Act (Chapter 161, 2009 Rev ED)

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### **REPORT**

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**Coram:**

**Mr Sarjit Singh Gill, SC  
Mr Yee Kee Shian Leon**

**Solicitors for the Applicant**

**M/s WongPartnership LLP  
Mr Tan Chee Meng, SC  
Ms Koh Swee Yen  
Mr Eugene Oh Jiayi**

**Solicitors for the Respondent**

**M/s Providence Law LLC  
Mr Tan Wee Kheng Kenneth  
Michael, SC  
Mr Walter Woon, SC  
Mr Abraham Vergis  
Ms Asiyah Arif  
Ms Soh Wei Chi**

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## **I. Introduction**

1. These proceedings concern charges (collectively the "Charges") of professional misconduct brought by the Law Society of Singapore (the "Law Society"), against Mrs Lee Suet Fern (Ms Lim Suet Fern) (the "Respondent").
2. The Charges relate to the Respondent's involvement in the preparation and execution of the last will (the "Last Will") of Mr Lee Kuan Yew ("Mr Lee") on or around 16 and 17 December 2013. The Respondent is Mr Lee's daughter-in-law, and she is married to the youngest of Mr Lee's three children, Mr Lee Hsien Yang ("Mr LHY"). The Last Will increased Mr LHY's share in Mr Lee's estate (the "Estate"), as compared with Mr Lee's immediate preceding will.
3. The Respondent is an advocate and solicitor of 37 years' standing. She is the founder of Stamford Law Corporation ("Stamford Law"), now Morgan Lewis Stamford LLC ("MLS"), and was its Senior Director at the material time. She is currently a director of MLS.
4. On 13 February 2019, the Honourable Chief Justice appointed this Disciplinary Tribunal (the "Tribunal") to hear and investigate the matter.

## **II. The Charges against the Respondent**

5. The Law Society preferred two primary charges against the Respondent. These are brought on the ground of grossly improper conduct under section 83(2)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed) (the "LPA"), read with the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2010 Rev Ed) (the "PCR"). Alternative and further alternative charges were also

formulated, for each of the two primary charges (collectively the "Charges"). The Charges are:

**First Charge**

That you, Mrs Lee Suet Fern (Lim Suet Fern), are charged that, sometime between 16 and 17 December 2013, during the course of your retainer for your client, Mr Lee Kuan Yew, breached Rule 25(a) and/or Rule 25(b) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2010 Rev Ed) in that you failed to advance your client's interest unaffected by your interest and/or the interest of your husband, Mr Lee Hsien Yang, by preparing and arranging for the execution of your client's will where a one-third share in your client's estate was to be given to your husband, Mr Lee Hsien Yang, such act amounting to grossly improper conduct in the discharge of your professional duty within the meaning of s 83(2)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed).

**("Charge 1")**

*OR, IN THE ALTERNATIVE*

That you, Mrs Lee Suet Fern (Lim Suet Fern), are charged that, sometime between 16 and 17 December 2013, during the course of your retainer for your client, Mr Lee Kuan Yew, breached Rule 25(a) and/or Rule 25(b) of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2010 Rev Ed) in that you failed to advance your client's interest unaffected by your interest and/or the interest of your husband, Mr Lee Hsien Yang, by preparing and arranging for the execution of your client's will where a one-third share in your client's estate was to be given to your husband, Mr Lee Hsien Yang, such act amounting to improper conduct or practice as an advocate and solicitor within the meaning of s 83(2)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed).

**("Charge 1A")**

*OR, IN THE FURTHER ALTERNATIVE*

That you, Mrs Lee Suet Fern (Lim Suet Fern), are charged that, sometime between 16 and 17 December 2013, you failed to advance Mr Lee Kuan Yew's interest unaffected by your interest and/or the interest of your husband, Mr Lee Hsien Yang, by preparing and arranging for the execution of Mr Lee Kuan Yew's will where a one-third share in Mr Lee Kuan Yew's estate was to be given to your husband, Mr Lee Hsien Yang, such act amounting to 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 s 83(2)(h) of the Legal Profession Act (Cap. 161, 2009 Rev Ed).

**("Charge 1B")**

**Second Charge**

That you, Mrs Lee Suet Fern (Lim Suet Fern), are charged that, sometime between 16 and 17 December 2013, during the course of your retainer for your client, Mr Lee Kuan Yew, breached Rule 46 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2010 Rev Ed) by acting in respect of a significant gift (a one-third share in your client's estate) that your client intended to give by will to your husband, Mr Lee Hsien Yang, and failing to advise your client to be independently advised in respect of this significant gift, such acts amounting to grossly improper conduct in the discharge of your professional duty within the meaning of s 83(2)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed).

**("Charge 2")**

*OR, IN THE ALTERNATIVE*

That you, Mrs Lee Suet Fern (Lim Suet Fern), are charged that, sometime between 16 and 17 December 2013, during the course of your retainer for your client, Mr Lee Kuan Yew, breached Rule 46 of the Legal Profession (Professional Conduct) Rules (Cap. 161, R1, 2010 Rev Ed) by acting in respect of a significant gift (a one-third share in your client's estate) that your client intended to give by will to your husband, Mr Lee Hsien Yang, and failing to advise your client to be independently advised in respect of this significant gift, such act amounting to improper conduct or practice as an advocate and solicitor within the meaning of s 83(2)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed).

**("Charge 2A")**

*OR, IN THE FURTHER ALTERNATIVE*

That you, Mrs Lee Suet Fern (Lim Suet Fern), are charged that, sometime between 16 and 17 December 2013, by acting in respect of a significant gift (a one-third share in Mr Lee Kuan Yew's estate) that Mr Lee Kuan Yew intended to give by will to your husband, Mr Lee Hsien Yang, and failing to advise Mr Lee Kuan Yew to be independently advised in respect of this significant gift, such act amounting to 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 s 83(2)(h) of the Legal Profession Act (Cap. 161, 2009 Rev Ed).

**("Charge 2B")**

6. The Respondent has defined the first primary Charge as "Charge 1", and the alternative first Charge and further alternative first Charge as "Charge 1A" and "Charge 1B" respectively. Similarly, the second primary Charge has been defined as "Charge 2", and the alternative second Charge and further alternative second Charge as "Charge 2A"



and “Charge 2B” respectively. The Tribunal will adopt these definitions.

7. As would be apparent, each of the alternative and further alternative Charges are premised on the same conduct, as their corresponding primary Charges. However:

(a) The primary Charges (Charges 1 and 2) are premised on the conduct in question being grossly improper conduct, as defined in section 83(2)(b) of the LPA.

(b) The alternative Charges (Charges 1A and 2A) are brought on the alternative ground in section 83(2)(b) of the LPA (“improper conduct or practice as an advocate and solicitor”).

(c) The further alternative Charges (Charges 1B and 2B) are unlike their respective primary and alternative Charges, in that (i) they are not premised on the existence of a retainer between the Respondent and Mr Lee, and (ii) they are brought under section 83(2)(h) of the LPA (“misconduct unbefitting an advocate and solicitor”).

8. The Respondent pleaded not guilty to all the Charges. Proceedings before the Disciplinary Tribunals are quasi-criminal in nature. This means that the Law Society has to prove its case against the Respondent beyond reasonable doubt.

### **III. Background**

9. We will first set out briefly the undisputed background facts. We will, where necessary, also refer to emails and other documents. The respective parties’ evidence and positions will be considered, as appropriate, when we set out our views.

**(A) The relevant parties**

10. Mr Lee was the first Prime Minister of Singapore, and served in that role from 1959 to 1990. Subsequently, he served as Senior Minister, and thereafter Minister Mentor.
11. Other than Mr LHY, Mr Lee's two other children (in order of age) are Mr Lee Hsien Loong ("Mr LHL") and Dr Lee Wei Ling ("Dr LWL").
12. Mr Lee's wife, Mdm Kwa Geok Choo, passed away in October 2010. Thereafter, and before the Last Will in December 2013, Mr Lee executed six other wills (the "First Will" to the "Sixth Will" or "Penultimate Will"). Ms Kwa Kim Li ("Ms KKL"), a partner in the law firm Lee & Lee, prepared all these six Wills for Mr Lee.
13. Mr Lee was 90 years old when he signed the Last Will in December 2013. He passed away in March 2015.

**(B) Mr Lee's First to Sixth Wills**

14. Mr Lee's First to Sixth Wills were executed on the following dates:
  - (a) First Will – 20 August 2011;
  - (b) Second Will – 21 December 2011;
  - (c) Third Will – 6 September 2012;
  - (d) Fourth Will – 20 September 2012;
  - (e) Fifth Will – 4 October 2012; and

(f) Sixth (or Penultimate) Will – 2 November 2012.

15. Ms KKL retained the originals of all six Wills<sup>1</sup>.

**(C) Mr Lee's First Will**

16. Mr Lee executed his First Will on 20 August 2011. It is not in dispute that this First Will was drafted by Ms KKL. It is also not in dispute that the Respondent made some drafting suggestions to Ms KKL, with Mr Lee's approval, on the First Will. At the time, there had been discussions between Mr Lee and his three children, Mr LHL, Dr LWL and Mr LHY, regarding the future of Mr Lee's residence at 38 Oxley Road ("38 Oxley"). These discussions sometimes included Mr Lee's daughters-in-law, namely the Respondent and Ms Ho Ching.

17. On 17 August 2011, the Respondent emailed Mr Lee, with Mr LHY and Dr LWL in copy, with a draft of a passage to be included in Mr Lee's First Will<sup>2</sup>. Mr Lee then instructed Ms KKL to include the portion drafted by the Respondent in his First Will<sup>3</sup>.

18. On 19 August 2011, at 11.06pm, the Respondent emailed Mr Lee and Ms KKL, attaching a document titled "WILL-LKY – Draft of 19 August 2011 – v3.DOC"<sup>4</sup>. The document contained additional edits that the Respondent had made to the draft. The changes made to the draft document were marked up. This was the final draft of the First Will, which Mr Lee executed the following day, on 20 August 2011<sup>5</sup>.

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<sup>1</sup> See paragraph 256 of this Decision.

<sup>2</sup> Law Society's Bundle of Documents ("LSS BOD"), Vol 1, p 91, email from the Respondent to Mr Lee, Mr LHY and Dr LWL dated 17 August 2011, 11.21pm.

<sup>3</sup> LSS BOD, Vol 1, p 91, email from Mr Lee to the Respondent, Ms KKL, Mr LHY and Dr LWL dated 17 August 2011, 11.23pm.

<sup>4</sup> LSS BOD, Vol 1, p 101 – 106, email from the Respondent to Ms KKL and Mr Lee dated 19 August 2011, 11:06pm, with the attachment "WILL-LKY – Draft of 19 August 2011 – v3.DOC".

<sup>5</sup> LSS BOD, Vol 1, p 107 – 112, First Will executed by Mr Lee on 20 August 2011.

**(D) Mr Lee's subsequent changes to his Wills**

19. Subsequently, Mr Lee executed five further wills before the Last Will. Some of the differences between Mr Lee's First to Sixth Wills concerned the following areas:

- (a) What shares in the Estate each child would receive;
- (b) Whether the Will contained a Demolition Clause (setting out Mr Lee's wishes for his residence at 38 Oxley to be demolished after his passing) and, if so, which of two versions of the Demolition Clause; and
- (c) Whether Dr LWL was to be given a right to reside at 38 Oxley after Mr Lee's passing and, if so:
  - (i) Whether Dr LWL's right to reside at 38 Oxley was (A) stated to be free of rent; and/or (B) subject to Mr LHL's consent; and
  - (ii) Whether Mr LHL was to pay for the upkeep of 38 Oxley, for as long as Dr LWL stayed there.

A table setting out these differences is at Annex A<sup>6</sup>.

20. Some of the changes in the Wills were as follows:

- (a) In the Second Will, the clause granting Dr LWL a right to reside in 38 Oxley was removed;

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<sup>6</sup> The Wills are in LSS BOD, Vol 1, p 264 – 289.

- (b) In the Third Will, Dr LWL was granted a life interest in the Estate in place of the one-third share she had been given in the First and Second Wills;
  - (c) In the Fourth Will, the distribution of the Estate in equal shares was restored;
  - (d) In the Fifth Will, a right to reside at 38 Oxley was granted again to Dr LWL. The Demolition Clause (relating to the demolition of 38 Oxley) was removed; and
  - (e) In the Sixth (or Penultimate) Will, the shares that Mr Lee's children would receive upon his death were amended, such that there was a total of seven shares. Mr LHL and Mr LHY each received two shares, whilst Dr LWL received three shares (one share more than each of her brothers).
21. All of Mr Lee's First to Sixth Wills contained a gift-over clause, which made provision for the scenarios where any of Mr Lee's children predeceased him. The same gift-over clause was included in all of these wills, save for the Third Will (which granted Dr LWL only a life interest in the Estate), wherein the gift-over clause was amended to provide that if Dr LWL pre-deceased Mr Lee, her share in the Estate would lapse. (See Annex A.)

**(E) Mr Lee's Sixth (or Penultimate) Will**

22. As stated above, Mr Lee's Sixth (or Penultimate) Will, which was signed slightly over a year before the Last Will, gave Dr LWL an extra share in the Estate.
23. This appears to be the only difference between the Fifth and Sixth Wills. Like Mr Lee's Fifth Will, the Sixth Will did not contain any

Demolition Clause, and Dr LWL's right to reside at 38 Oxley was made subject to Mr LHL's consent.

24. Thus, the position as of the Sixth Will was that (a) Mr Lee did not want to include the Demolition Clause for 38 Oxley, and (b) Dr LWL's right to reside at 38 Oxley was made subject to Mr LHL's consent.
25. On Mr Lee's instructions, both the Fifth and Sixth Wills also expressly stated that Dr LWL's right to reside at 38 Oxley did not give Dr LWL a life interest in the property.
26. The Last Will made significant changes to the Sixth Will in respect of the shares that each child would receive. A Demolition Clause was added. There were also other changes (these will be dealt with later).

**(F) Events preceding the Last Will**

27. In 2013, Mr Lee's health deteriorated. Between September and October 2013, Mr Lee was hospitalised for an extended period, over several weeks, due to a number of different medical issues. These included pneumonia, atrial fibrillation, and transient ischemic attack (or mini strokes)<sup>7</sup>.
28. The documentary evidence, and in particular, the email correspondence between Ms KKL and Mr Lee, shows that sometime around 30 November 2013 (17 days prior to Mr Lee signing his Last Will), Mr Lee had asked Ms KKL about his Sixth (or Penultimate) Will. It is apparent that Ms KKL envisaged that Mr Lee would make

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<sup>7</sup> It was the Respondent's own case before the Tribunal that Mr Lee had been in and out of the hospital in September and October 2013.

See Mr LHY's AEIC (11 June 2019) at paras 23, 24; Respondent's Closing Submissions (16 August 2019) at para 11; Counsel for the Law Society confirmed that they were not challenging Mr LHY's evidence on the issue. See Transcripts, 4 July 2019, Page 147 line 1 to line 5 (hereinafter the notation used will be: "Transcripts (4 July 2019), 147:1-5").

amendments or changes to the Sixth Will. Mrs KKL sent an email of 30 November 2013<sup>8</sup> and the final line of her email to Mr Lee read: *"Please let me know your thoughts, and I can make the appropriate changes to the Will"*. The last email exchange between Mr Lee and Ms KKL, on his will, during this period was on 13 December 2013<sup>9</sup>.

29. The upshot of the discussions between Mr Lee and Ms KKL was that, as of 13 December 2013, Mr Lee instructed Ms KKL to make two changes, through a codicil, to the Sixth (or Penultimate) Will: (a) first, to give his three children equal shares in his Estate; and (b) second, to bequeath two carpets (one silk and the other wool) to Mr LHY. Thus, as of four days before the Last Will was signed on 17 December 2013, Mr Lee's decision was to keep to the terms of his Penultimate Will, with the above two changes to be made, and these changes were to be made through a codicil.

**(G) The Last Will**

30. In the evening of 16 December 2013, at 7.08pm, the Respondent sent Mr Lee a draft of what eventually became the Last Will. The circumstances in which the Respondent came to send this draft to Mr Lee are discussed in Section VIII(B) below. The Respondent's position<sup>10</sup> is that Mr Lee independently decided that he would make the Last Will, the terms of which were substantially different from what he had discussed with Ms KKL, three days earlier (see paragraphs 28 - 29 above).

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<sup>8</sup> LSS BOD, Vol 1, p 162 – 163, email from Ms KKL to Mr Lee dated 30 November 2013, 11.25am.

<sup>9</sup> LSS BOD, Vol 1, 169, email from Mr Lee to Ms KKL dated 13 December 2013, 10.50pm.

<sup>10</sup> Respondent's Closing Submissions (16 August 2019) at para 76.

31. It is not disputed that both the Respondent and Mr LHY were aware, when the Respondent's email was sent, that Ms KKL was likely to be travelling, and might not respond<sup>11</sup>.
32. The Respondent's email of 7.08pm on 16 December 2013 stated as follows<sup>12</sup>:

*"Dear Pa Pa*

*This was the original agreed Will which ensures that all 3 children receive equal shares, taking into account the relative valuations (as at the date of demise) of the properties each receives.*

*Kim Li*

*Grateful if you could please engross.*

*Kind regards  
Fern"*

33. Parties are agreed that the Respondent intended, by the phrase "*original agreed Will*", to refer Mr Lee's First Will (signed in August 2011), and that the phrase would have been understood by Mr Lee as such.
34. However, the draft which the Respondent attached was not the First Will. The draft which the Respondent sent to Mr Lee differed from the First Will in the following main respects:

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<sup>11</sup> Transcript (3 July 2019), 86:7-11; Transcript (4 July 2019), 132:31 – 133:31; Transcript (5 July 2019), 1:20-32.

<sup>12</sup> LSS BOD, Vol 1, p 174, email from the Respondent to Mr Lee, Mr LHY and Ms KKL dated 16 December 2013, 7.08pm.



- (a) First, the First Will contained a gift-over clause. This was missing from the draft.
- (b) Second, the First Will made provision for Mr LHL to pay for the upkeep of 38 Oxley while Dr LWL was in occupation. This was also missing from the draft.

(See Annex B for a detailed comparison.)

35. It is not in dispute that what the Respondent told Mr Lee ("*This was the original agreed Will...*") is not accurate<sup>13</sup>. It is also not in dispute that Mr Lee was entitled to, and would have relied on, what the Respondent had told him<sup>14</sup>. The draft which the Respondent sent to Mr Lee (in addition to being different from the First Will) was also different from the Sixth (or Penultimate) Will in the following ways:

- (a) As the Respondent's email indicated, the draft gave Mr Lee's three children equal shares in his estate. The Penultimate Will had given Dr LWL an extra share, compared to her two brothers.
- (b) In addition, the draft reinserted a version of the Demolition Clause. This was not in the Penultimate Will.
- (c) The draft also gave Dr LWL an *unfettered* right to stay at 38 Oxley. In the Penultimate Will, this was *conditional* upon Mr LHL's consent.
- (d) Finally, the draft removed the gift-over clause which was in the Penultimate Will (and which was also in Mr Lee's First to Fifth Wills (see paragraph 21 above)).

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<sup>13</sup> Transcript (3 July 2019), 20:8-12; 28:1-4; see also Annex B.

<sup>14</sup> Transcript (3 July 2019), 30:30 – 31:8.

(See Annex C for a detailed comparison.)

36. The Last Will, signed on 17 December 2013, was in the same terms as the draft that the Respondent sent to Mr Lee on 16 December 2013. It is not in dispute that other than the change in shares, the differences between the Penultimate Will and the Last Will were not brought to Mr Lee's attention (see also paragraphs 534 - 544 below). It is also not in dispute that the Last Will did not incorporate the second change that Mr Lee had wanted to make to his Penultimate Will (see paragraph 29 above), which he had discussed with Ms KKL.
37. Thus, the Last Will was substantially different from what Mr Lee had wanted, when he had last discussed and agreed (with Ms KKL) on amendments to his Penultimate Will, four days earlier on 13 December 2013 (see paragraphs 28 and 29 above)<sup>15</sup>. Mr Lee had then decided, as of 13 December 2013, to keep his Penultimate Will intact, with only the two changes (see paragraphs 28 and 29 above) to be made by way of a codicil.
38. The Respondent then spoke to Mr Bernard Lui ("Mr BL"), a partner from her law firm (Stamford Law), to brief him about the Last Will, and request his assistance with its engrossment and witnessing<sup>16</sup>.

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<sup>15</sup> The final email exchange between Mr Lee and Ms KKL was on 13 December 2013 (see paragraphs 28 and 29 of this Decision). The Respondent sent the draft Last Will to Mr Lee on 16 December 2013 (which was 3 days after 13 December 2013), and Mr Lee signed it (the Last Will) on 17 December 2013 (which was four days after 13 December 2013). The Tribunal will refer to the events of 16 and 17 December 2013 as taking place three to four days after the discussions between Mr Lee and Ms KKL (on 13 December 2013), as appropriate.

<sup>16</sup> Mr LHY's AEIC (11 June 2019) at paras 41-43; the Respondent's AEIC (17 June 2019) at para 19.

39. At 7.31pm, after the Respondent spoke to Mr BL, Mr LHY replied to the email the Respondent had sent. Mr LHY's email was addressed to Mr Lee, and read<sup>17</sup>:

*"Pa*

*I couldn't get in touch with Kim Li. I believe she is away. I don't think it is wise to wait till she is back. I think all you need is a witness to sign the will. Fern can get one of her partners to come round with an engrossed copy of the will to execute and witness. They can coordinate it with Lin Hoe for a convenient time.*

*Yang"*

The "Lin Hoe" referred to above is Ms Wong Lin Hoe ("Ms WLH"), who was then Mr Lee's personal assistant, in his office.

Mr LHY removed Ms KKL from this email<sup>18</sup>. (Apart from Mr Lee and Mr LHY, only the Respondent and Ms WLH were copied.) Thereafter, Ms KKL was not copied on subsequent email exchanges leading up to the execution of the Last Will.

40. The Respondent emailed Ms WLH, Mr LHY and Mr BL at 8.12pm<sup>19</sup>. The Respondent said that she introduced Mr BL to Mr LHY and Ms WLH through this email<sup>20</sup>. She instructed Ms WLH to contact Mr BL, regarding the execution of the Last Will. She said to Ms WLH that Mr

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<sup>17</sup> LSS BOD, Vol 1, p 177, email from Mr LHY to the Respondent, Mr Lee and Ms WLH dated 16 December 2013, 7.31pm.

<sup>18</sup> LSS BOD, Vol 1, p 177, email from Mr LHY to the Respondent, Mr Lee and Ms WLH dated 16 December 2013, 7.31pm.

<sup>19</sup> LSS BOD, Vol 1, p 179, email from the Respondent to Ms WLH, Mr LHY and Mr BL dated 16 December 2013, 8.12pm.

<sup>20</sup> The Respondent's AEIC (17 June 2019) at para 20.

BL had the Last Will “ready for execution” and told Ms WLH to contact Mr BL “to make arrangements”.

41. In response to Mr LHY’s email of 7.31pm (see paragraph 39), Mr Lee replied to Mr LHY and the Respondent, at 9.42pm, saying<sup>21</sup>:

*“Ok. Do not wait for Kim Li.*

*Engross and I will sign it before a solicitor in Fern’s office, or from any other office.”*

42. Various emails were then exchanged, regarding Mr Lee’s execution of the Last Will. The parties to these emails included the Respondent, Mr LHY, Ms WLH and/or Mr BL.

43. At the time of these exchanges, the Respondent and Mr LHY were respectively en route to, or in Paris and Australia.

44. At 4.53am on 17 December 2013, Mr LHY replied to Mr Lee’s email (see paragraph 41 above)<sup>22</sup>. He informed Mr Lee:

*“We will get someone to come to execute it either in Oxley Road or at your office at your convenience. Lin Hoe has the contacts and will arrange it. One of the partners at Stamford Law who is a notary publics.”*

45. At 10:06pm on 16 December 2019, Dr LWL emailed Mr LHY stating *“To get a notary public not from Lee n Lee to witness his signature n*

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<sup>21</sup> LSS BOD, Vol 1, p 177, email from Mr Lee dated 16 December 2013, 9.42pm.

<sup>22</sup> LSS BOD, Vol 1, p 177, email from Mr LHY to Mr Lee, Ms WLH and the Respondent dated 17 December 2013, 4.53am.

that settles it"<sup>23</sup>. At 4.54am, Mr LHY replied to Dr LWL's email with the subject "*Re: Papa says go back to 2011 will*". He wrote<sup>24</sup>:

*"Will arrange. Lin Hoe has contacts. Will get person to come to Oxley Road or Istana whichever is more convenient."*

46. Subsequently, at 5.32am, Mr LHY emailed Mr BL<sup>25</sup>, forwarding the Respondent's email to Ms WLH (see paragraph 40 above). Mr LHY requested that Mr BL engross a copy of the will, as Mr Lee wished to have it executed. He asked that Mr BL be available, when Ms WLH got in touch. Mr BL acknowledged and replied to Mr LHY, with the Respondent in copy, at 9.02am<sup>26</sup>.

47. At 9.22am, the Respondent emailed Mr BL<sup>27</sup> with the message "*please be ready and accessible at short notice. Ready to go. Impt that we get this done asap please*"<sup>28</sup>. From the email chain exhibited by Mr BL in his Affidavit of Evidence in Chief ("Mr BL's Affidavit"), it appears that the Respondent had replied to Mr BL's email to Mr LHY at 9.02am (see paragraph 46 above). However, Mr LHY appears not to have been copied in this email from the Respondent. Mr BL acknowledged and replied to the Respondent at 9.23am<sup>29</sup>.

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<sup>23</sup> LSS BOD, Vol 1, p 189, email from Dr LWL dated 16 December 2013, 10.06pm.

<sup>24</sup> LSS BOD, Vol 1, p 189, email from Mr LHY to Dr LWL, the Respondent, Ms WLH dated 17 December 2013, 4.54am.

<sup>25</sup> LSS BOD, Vol 1, p 190, email from Mr LHY to Mr BL and the Respondent dated 17 December 2013, 5.32am.

<sup>26</sup> LSS BOD, Vol 1, p 192, email from Mr BL to Mr LHY and the Respondent dated 17 December 2013, 9.02am.

<sup>27</sup> Law Society's Supplementary Bundle of Documents ("LSS SBOD"), p 10, email from the Respondent to Mr BL dated 17 December 2013, 9.22am.

<sup>28</sup> Mr. BL's AEIC (1 July 2019) at para 16.

<sup>29</sup> LSS SBOD, p 9, email from Mr BL to the Respondent dated 17 December 2013, 9.23am.

48. At 9.23am as well, Ms WLH emailed the Respondent<sup>30</sup> (in reply to the Respondent's email of 16 December 2013 at 8.12pm (see paragraph 40 above)) informing the Respondent that she would coordinate with Mr BL in relation to making an appointment with Mr Lee. Mr LHY and Mr BL were copied on this email.

49. At 9.24am, the Respondent emailed Mr BL again, on the email chain, stating the following:

*"be good to run. Are engrossments ready?"*<sup>31</sup>

Mr BL responded to the Respondent at 10.13am, stating:

*"Preparing. 11am. EK will be with me. I keep the Will?"*<sup>32</sup>

50. It appears that by 10.13am, Ms WLH had been told to fix, or was in the process of fixing, an appointment with Mr Lee, at 11am that morning. This is borne out by the fact that Ms WLH emailed Mr Lee at 10.17am<sup>33</sup> (with the Respondent, Mr LHY and Dr LWL being copied), to inform Mr Lee that Mr BL and Ms Elizabeth Kong ("Ms EK") (another lawyer from the Respondent's law firm, Stamford Law), would be seeing Mr Lee at his residence at 11am. Text messages exchanged between Mr BL and Ms WLH, exhibited in Mr BL's Affidavit, also show that Mr BL had sent a text message to Ms WLH at around 10.03am, with Ms EK's details<sup>34</sup>.

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<sup>30</sup> LSS BOD, Vol 1, p 194, email from Ms WLH to the Respondent, Mr LHY and Mr BL dated 17 December 2013, 9.23am.

<sup>31</sup> LSS SBOD, p 9, email from the Respondent to Mr BL dated 17 December 2013, 9.24am.

<sup>32</sup> LSS SBOD, p 9, email from Mr BL to the Respondent dated 17 December 2013, 10.13am.

<sup>33</sup> Respondent's Bundle of Documents ("RBOD"), p 42, email from Ms WLH to Mr Lee, the Respondent, Mr LHY and Dr LWL dated 17 December 2013, 10.17am.

<sup>34</sup> Mr BL's AEIC (1 July 2019) at p 31, see also LSS SBOD, p 16, text message from Mr BL to Ms WLH dated 17 December 2013, 10.03am.

51. At 10.35am, Mr BL sent the Respondent another email, following from his email at 10.13am (see paragraph 49 above), where he informed the Respondent:

*"Date of will is 2011 – I put today's date"*<sup>35</sup>

52. The Police Station Diary maintained for 38 Oxley shows that Mr BL and Ms EK arrived at 38 Oxley, at or about 11.05am, and left at 11.20am<sup>36</sup>. During this time (15 minutes), they had met with Mr Lee, and the Last Will had been executed.

53. At 11.22am, Mr BL wrote to the Respondent stating:

*"Done. Liz and I witnessed. 2 copies. One each for Yang and Wei Ling."*<sup>37</sup>

The Respondent replied at 12.01pm, stating that she was thankful, and that it was a *"huge relief to everyone"*<sup>38</sup>. The Respondent then posed the following queries to Mr BL:

*"Is there not a copy for LKY himself?  
Where was this witnessed? Istana or home?  
How did it go?"*

54. Mr BL replied to the Respondent at 12.07pm<sup>39</sup>:

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<sup>35</sup> LSS SBOD, p 8, email from Mr BL to the Respondent dated 17 December 2013, 10.35am.

<sup>36</sup> LSS SBOD, p 24, Police Station Diary maintained for 38 Oxley Road, 16-17 December 2013.

<sup>37</sup> LSS SBOD, p 8, email from Mr BL to the Respondent dated 17 December 2013, 11.22am.

<sup>38</sup> LSS SBOD, p 8, email from the Respondent to Mr BL dated 17 December 2013, 12.01pm.

<sup>39</sup> LSS SBOD, p 7, email from Mr BL to the Respondent dated 17 December 2013, 12.07pm.

*"Home. It went fine. He didn't say much as it seemed he just got up.  
He went through the Will.*

*One copy is faxed to him (coordinated with Lin Hoe)*

*The 2 originals are in your room.*

*Clara came back to help out."*

55. The Respondent wrote again at 12.10pm<sup>40</sup>, to express her thanks. In this email, she included in copy, Ms EK and one Ms Clara Ng, the Respondent's secretary.

56. At 12.13pm, the Respondent wrote to Mr LHY, to inform him that the Last Will had been executed<sup>41</sup>. She wrote:

*"I think you know it was signed uneventfully already. Bernard and Elizabeth went down. He read it carefully and then signed and witnessed. Lin Hoe has a faxed copy and the 2 original are sitting in my office.*

*What would you like to do with the 2 originals? Bernard's suggestion is that you are (sic) Ling keep a copy each? Or you give one to Lin Hoe and I keep the other original in my office safe?"*

57. Between 12.18pm and 12.21pm, the Respondent and Ms EK exchanged two emails regarding the execution of the Last Will<sup>42</sup>. Once again, the Respondent expressed her thanks.

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<sup>40</sup> LSS SBOD, p 7, email from the Respondent to Mr BL, Ms EK and Ms Clara Ng dated 17 December 2013, 12.10pm.

<sup>41</sup> LSS BOD, Vol 1, p 200, email from the Respondent to Mr LHY dated 17 December 2013, 12.13pm.

<sup>42</sup> LSS SBOD, p 6 – 7, email from Ms EK to the Respondent, Mr BL and Ms Clara Ng dated 17 December 2013, 12.18pm, and email from the Respondent to Ms EK dated 17 December 2013, 12.21pm.



58. Mr LHY replied to the Respondent's queries (in the email referred to at paragraph 56 above), by email at 12.21pm<sup>43</sup>. Mr LHY told the Respondent to keep one of the two original Last Wills in her office safe, and give the other to Ms WLH.

59. At 12.25pm, Ms EK replied again to the Respondent (see paragraph 57 above), setting out certain details of the execution that day<sup>44</sup>:

*"Yes, I could see that he is getting very frail. He was slurring in his speech so it was very difficult to understand what he was saying.*

*But he is definitely still very lucid – he asked Bernard who drafted the will, twice... and Bernard wasn't entirely sure but mentioned it was primarily you and Ms Kwa from Lee & Lee.*

*LKY read through every single line and was comfortable to sign."*

60. At 12.26pm, the Respondent emailed Mr BL, Ms Clara Ng, and one Ms Joyce Han, also from Stamford Law, with Ms EK in copy<sup>45</sup>. The Respondent gave instructions on what was to be done with the two originals of the Last Will. She instructed that a copy be made for her (the Respondent) to retain, that one original be given to Ms WLH, and the other original to be kept in the safe at her office (Stamford Law). Subsequently, at 12.45pm, the Respondent emailed Ms WLH, to inform her that the Respondent's office would be arranging to send one original of the Last Will to Ms WLH for safekeeping, and the second original would be kept in her (the Respondent's) office safe<sup>46</sup>.

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<sup>43</sup> LSS BOD, Vol 1, p 201, email from Mr LHY to the Respondent dated 17 December 2013, 12.21pm.

<sup>44</sup> LSS SBOD, p 6, email from Ms EK to the Respondent dated 17 December 2013, 12.25pm.

<sup>45</sup> LSS SBOD, p 14 – 15, email from the Respondent to Mr BL, Ms Joyce Han, Ms Clara Ng and Ms EK dated 17 December 2013, 12.26pm.

<sup>46</sup> LSS BOD, Vol 1, p 203 – 204, email from the Respondent to Ms WLH, Mr LHY, Mr BL dated 17 December 2013, 12.45pm.

61. Later, at 1.16pm on 17 December 2013, the Respondent emailed Ms KKL<sup>47</sup> stating: *"just a quick note to say this has been dealt with already"*, in reference to the execution of the Last Will. The Respondent's email of 1.16pm went back to the email chain where she had sent an email to Mr Lee, copying Ms KKL, of 16 December 2013, at 7.08pm, and where she had asked Ms KKL to engross the draft of the Last Will (referred to at paragraph 32 above). (The subsequent emails, after that email of 16 December 2013, 7.08pm, had left Ms KKL out. Ms KKL had been removed from the address list.)

62. Ms KKL replied at 2.59pm to say<sup>48</sup>:

*"... I don't seem to have received your first mail of 16 dec 7.08pm asking me to engross.*

*With reference to your email of 17 dec, does this mean that he has signed a new will yesterday, in which case the former will which is on my record, is revoked? If so, I will update my file record."*

63. The Respondent replied by email at 3.10pm to say<sup>49</sup>:

*"Yes, he has signed already. In fact this is just going back to his 2011 will so it supercedes all. He read it extremely carefully before signing.*

*..."*

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<sup>47</sup> LSS BOD, Vol 1, p 208, email from the Respondent to Ms KKL dated 17 December 2013, 1.16pm.

<sup>48</sup> LSS BOD, Vol 1, p 208, email from Ms KKL to the Respondent dated 17 December 2013, 2.59pm.

<sup>49</sup> LSS BOD, Vol 1, p 208, email from the Respondent to Ms KKL dated 17 December 2013, 3.10pm.

That is the correspondence (presented to us), involving Ms KKL, as of 17 December 2013.

64. At 3.10pm on 17 December 2013, Mr BL emailed the Respondent, Ms Joyce Han and Ms Clara Ng, with Ms EK in copy, to inform the Respondent that he had spoken to Ms WLH, and arrangements would be made for one of the originals of the Last Will to be delivered to the Istana, after 11am the next day<sup>50</sup>.
65. Ms WLH sent an email to Mr Lee at 4.29pm, to inform him that the Respondent was arranging for one of the originals ("Original A") to be sent to Mr Lee's office for safekeeping, while the other original ("Original B") was being kept in the Respondent's office safe<sup>51</sup>. Ms WLH enquired whether Mr Lee would like to keep Original A in his office safe, or pass it to Ms KKL for safekeeping. Ms WLH also highlighted to Mr Lee that Ms KKL was keeping all the originals of the *"title deeds of all the properties, including 38 Oxley Road"*.
66. Mr Lee replied at 6.38pm, saying simply: *"Yes, Kwa Kim Li"*<sup>52</sup>. Ms WLH replied to Mr Lee at 7.01pm, noting his instructions, and informing Mr Lee that she would arrange for the original of the Last Will (Original A), to be passed to Ms KKL<sup>53</sup>. At 10.27pm, Mr Lee emailed Ms WLH again, to instruct her to keep the original in his office, and to provide Ms KKL with a copy of the Last Will<sup>54</sup>.

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<sup>50</sup> LSS SBOD, p 14, email from Mr BL to the Respondent, Ms Joyce Han, Ms Clara Ng and Ms EK dated 17 December 2013, 3.10pm.

<sup>51</sup> LSS BOD, Vol 1, p 211, email from Ms WLH to Mr Lee and Ms Lilian Ho dated 17 December 2013, 4.29pm.

<sup>52</sup> LSS BOD, Vol 1, p 211, email from Mr Lee to Ms WLH dated 17 December 2013, 6.38pm.

<sup>53</sup> LSS BOD, Vol 1, p 211, email from Ms WLH to Mr Lee, Mr LHY, the Respondent and Dr LWL dated 17 December 2013, 7.01pm.

<sup>54</sup> LSS BOD, Vol 1, p 210 – 211, email from Mr Lee to Ms WLH dated 17 December 2013, 10.27pm.

67. At 11.02pm, the Respondent emailed her colleagues, in response to Mr BL's email of 3.10pm (referred to at paragraph 64 above)<sup>55</sup>. She informed Mr BL that *"the suggestion is that [Stamford Law] pass other copy to Kim Li and [Lee & Lee]"*. She instructed Mr BL to check with Ms WLH, and commented: *"Could save some trouble"*<sup>56</sup>.
68. The Respondent kept one original of the Last Will (Original B) in her office safe. The other original (Original A) was kept in Mr Lee's office.
69. There is also an email on 17 December 2013<sup>57</sup>, from Ms EK to Mr BL, with an attendance note (the "EK Attendance Note"), from the execution of the Last Will. This was sent to Mr BL at 4.32pm. The EK Attendance Note was as follows<sup>58</sup>:

*"1. We arrived and met with LKY today (17 Dec) at his residence, 38 Oxley Road S238629, at approximately 11.10AM.*

*2. We were ushered into his room by his assistant, who was present with us and LKY throughout our meeting with LKY.*

*3. You introduced the both of us to LKY and explained the purpose of our presence – to witness the execution of his will.*

*4. LKY appeared frail and his speech was slurred, but his mind was certainly lucid – he asked us who drafted the will and specifically instructed us to date the will today.*

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<sup>55</sup> LSS SBOD, p 14, email from Mr BL to the Respondent, Ms Joyce Han, Ms Clara Ng and Ms EK dated 17 December 2013, 3.10pm.

<sup>56</sup> LSS SBOD, p 14, email from the Respondent to Mr BL, Ms Joyce Han, Ms Clara Ng and Ms EK dated 17 December 2013, 11.02pm.

<sup>57</sup> LSS SBOD, p 20, email from Ms EK to Mr BL dated 17 December 2013, 4.32pm.

<sup>58</sup> LSS SBOD, p 20, Attendance note as set out in the email from Ms EK to Mr BL dated 17 December 2013, 4.32pm.

*5. LKY read through every line of the will and was comfortable to sign and initial at every page, which he did in our presence.*

*6. We then confirmed that we witnessed LKY's signature by placing our own signatures at the relevant execution blocks respectively.*

*7. We took our leave shortly after.*

*A copy of the duly executed will by LKY is attached."*

70. As stated previously, the substantive provisions of the Last Will, that was signed by Mr Lee on 17 December 2013, were identical to the draft that the Respondent had sent to Mr Lee the previous evening (16 December 2013), by way of her email of 7.08pm (see paragraph 32 above).

***(H) Mr Lee's Codicil***

71. On 2 January 2014, Mr Lee prepared and executed a codicil to the Last Will (the "Codicil")<sup>59</sup>. The Codicil bequeathed two carpets (one silk and the other wool) to Mr LHY. This was in accordance with what Mr Lee had previously discussed with Ms KKL (see paragraphs 28 and 29 above).

72. The next day, Ms WLH emailed the Respondent, attaching a copy of the Codicil<sup>60</sup>. Ms WLH's email was sent as a follow-on, to an earlier chain of emails on 16 and 17 December 2013, regarding the Last Will.

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<sup>59</sup> LSS BOD, Vol 1, p 229, Codicil executed by Mr Lee on 2 January 2014.

<sup>60</sup> LSS BOD, Vol 1, p 230, email from Ms WLH to the Respondent, Mr Lee, Mr LHL, Mr LHY, Dr LWL, Ms Ho Ching and Ms KKL dated 3 January 2014, 10.30am.

73. Ms WLH's email stated as follows:

*"Dear Mrs Lee,*

*Further to our emails below, attached is a copy of Mr Lee's  
codicil for your information.*

*As instructed by Mr Lee, we will retain the original copy of Mr  
Lee's last Will & Testament and the Codicil in my office for  
safekeeping, and send a copy to Ms Kwa Kim Li for her record.*

*Thank you.*

*Regards*

*Lin Hoe"*

74. Mr Lee, Mr LHL and his spouse (Ms Ho Ching), Dr LWL, Mr LHY, and Ms KKL, were also copied in Ms WLH's email.

**(I) Mr Lee's passing**

75. Mr Lee passed away on 23 March 2015. Mr LHY and Dr LWL (collectively, the "Executors") were appointed the executors of the Estate, in accordance with the terms of his Last Will.

**IV. Procedural History**

**(A) AGC referral**

76. The disciplinary process was commenced following a complaint filed by Deputy Attorney-General, on 4 December 2018 (the "AGC Complaint"). The Deputy Attorney-General stated that the

Respondent may have "*potentially breached Rules 25 and 46*" of the PCR in force at the material time<sup>61</sup>. The Complaint (hereafter referred to as the "AGC Complaint") was made pursuant to section 85(3) of the LPA, and contained a request that the Council of the Law Society (the "Council") refer the matter to a Disciplinary Tribunal. Section 85(3) of the LPA obliged the Council to do so.

77. The Law Society filed its Statement of Case on 1 February 2019. The Disciplinary Tribunal Secretariat (the "Secretariat") served the Respondent the Notice of Disciplinary Tribunal Proceedings, along with the AGC Complaint and the Statement of Case, on 19 February 2019. The Defence was filed on 10 April 2019. A Pre-Hearing Conference was first fixed on 8 May 2019.
78. The Law Society wrote on 16 April 2019, seeking for directions from the Tribunal. By way of its Submissions on 23 April 2019, the Law Society sought: (a) further discovery of documents from the Respondent; and (b) directions from the Tribunal on the question of confidentiality of the proceedings. The latter aspect of the Law Society's application arose from various Facebook posts that were made by Mr LHY and Dr LWL, about the proceedings before this Tribunal.
79. Mr LHY and Dr LWL had made Facebook posts, relating to these proceedings, and referring to documents which were filed in these proceedings<sup>62</sup> (see also paragraphs 486 – 496 below). They appear to have been given documents from these proceedings, and were making public statements about them. These proceedings are (by law) confidential until the matter is disposed of. The Respondent filed Written Submissions on these issues, on 26 April 2019<sup>63</sup>. After

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<sup>61</sup> LSS BOD, Vol 2, p 803, AGC Complaint.

<sup>62</sup> LSS BOD, Vol 2, p 1336 – 1341.

<sup>63</sup> Respondent's Skeletal Written Submissions dated 26 April 2019.

hearing Counsel for both parties, the Tribunal made no order in relation to the Law Society's application for further discovery of documents. While we considered the documents to be relevant, we made no order because it was not clear to us that a Disciplinary Tribunal had the powers to order discovery. We told the Law Society that it had other means to seek production of the documents. On the question of confidentiality, parties were directed to desist from disclosing details and/or documents related to the proceedings, except to the relevant witnesses, and that there should be no public statements. The Tribunal also fixed the timetable for parties to file their respective Affidavits of Evidence-in-Chief ("AEIC"s), and fixed a 5-day evidentiary hearing ("Hearing") from 1 to 5 July 2019.

80. Parties had been directed to exchange their AEICs on 10 June 2019. The Law Society filed and exchanged the AEIC of Mr K Gopalan ("Mr Gopalan's Affidavit"). The Respondent filed and exchanged the Respondent's AEIC (the "Respondent's Affidavit") and Mr LHY's AEIC ("Mr LHY's Affidavit").
81. Mr Gopalan's Affidavit enclosed various documents. The Respondent took objections to the documents being in evidence. The Tribunal directed parties to state their position by letter, and received the following letters: (a) a letter dated 11 June 2019 from solicitors for the Respondent, Providence Law Asia LLC ("Providence Law"); (b) a letter dated 12 June 2019 from solicitors for the Law Society ("WongPartnership"); (c) a letter dated 13 June 2019 from Providence Law; and (d) a letter dated 17 June 2019 from WongPartnership.
82. Having considered the parties' positions, the Tribunal directed that it would allow the Law Society to rely on Mr Gopalan's Affidavit at the Hearing. The Tribunal also indicated that the parties would be at liberty to make any submission(s), in Closing (including on admissibility), on the evidence adduced by the other party.



83. On 24 June 2019, the Law Society informed the Tribunal and the Respondent, that it had issued a subpoena for Mr BL, to give evidence before the Tribunal. Mr BL was the Respondent's colleague at MLS, and (as stated earlier) was her colleague at Stamford Law, at the time the Last Will was executed. Mr BL had attended the execution of the Last Will, and had signed as a witness to the same.
84. After the subpoena was issued, Mr BL's Affidavit, giving his evidence on the material events, was filed. Documents were produced by Mr BL (the "BL Documents"), and annexed to Mr BL's Affidavit, and put in evidence. This was done on 1 July 2019, about three weeks after the parties had (on 10 June 2019), exchanged AEICs.

***(B) Originating Summons 639 of 2019 ("OS 639")***

85. On 17 May 2019, an application was brought in the High Court by the Estate by way of OS 639. The Executors of the Estate (as stated earlier) were Mr LHY and Dr LWL. The documents which were the subject of OS 639 were the First to Sixth Wills, the Last Will and the Codicil thereto, and all drafts of these wills (see also paragraph 143 below). These were the documents numbered 1, 2, 3, 4, 5, 6, 7, 8 and 9 in the Law Society's Notice to Admit Hearsay Evidence, dated 24 June 2019 ("LSS Hearsay Notice").
86. The Estate sought, in the main, an injunction against the use of these documents in the disciplinary proceeding. The basis of the Estate's application was that the documents in question were confidential, and protected by legal professional privilege.<sup>64</sup>

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<sup>64</sup> LSS Closing Submissions (20 September 2019) at paras 186 – 190 sets out what happened in OS 639 and how the Executors' position evolved. The Executors started with a broad objection. But at the hearing before Justice Hoo, they offered to disclose the Last Will and narrowed their claims of confidentiality.

87. The Law Society accepted that the documents were confidential. Justice Hoo, who heard OS 639, noted that the documents were already in the Law Society's possession. The Estate was not asserting privilege to withhold disclosure and the question was admissibility of evidence.
88. Justice Hoo held that the Revoked Wills and the draft Last Will were protected by legal advice privilege, and were also confidential. The Last Will and Codicil, on the other hand, were no longer protected by legal advice privilege, having been proven in probate. However, the Last Will and Codicil remained confidential, save for paragraph 7 of the Last Will, the Demolition Clause, which expressly provided that the clause could be publicly disclosed.
89. Justice Hoo however declined to grant injunctive relief that the Estate sought, on the basis that the interests of justice in disclosure of a third party's iniquity prevail over the privilege of a client. Justice Hoo held that *"where a sufficient connection can be drawn between the privileged material and the inquiry before the DT, the [Law Society] should not be unduly constrained in how it conducts its prosecution of the DT proceedings"*. The argument based on confidentiality also did not succeed. Justice Hoo accordingly dismissed the Estate's application for an injunction restraining the use of Mr Lee's wills and drafts thereof. The Law Society was thus not prevented from relying on the documents.

**(C) The Hearing & submissions**

90. The Tribunal heard the Law Society's case on 1 and 2 July 2019. After the Law Society's Opening Statement, the Law Society called four witnesses, namely, Mr K Gopalan, and three other witnesses who had been issued with subpoenas. They were: (a) DSP Lim Seng Chuan, the Commanding Officer of VIP Protection Unit 3 of the Police

Security Command (pursuant to the subpoena issued to Police Security Command); (b) Mr BL; and (c) Mr Manoj Pillay. Mr Manoj Pillay was an agent of MLS, who was subpoenaed by the Law Society, for emails from the firm's email accounts.

91. At the close of the Law Society's case on 2 July 2019, the Respondent made a submission of no case to answer. The Tribunal received the following written submissions: the Respondent's Skeletal Submissions for No Case to Answer dated 2 July 2019 ("Respondent's No Case Submissions"), and the Close of Law Society's Case dated 3 July 2019 ("Law Society's Close of Case Submissions").
92. In addition, the Tribunal heard Oral Submissions from Counsel for both parties on 3 July 2019. Having read the Parties' Written Submissions, and having heard oral arguments from the Parties' Counsel, the Tribunal found that the Law Society had established a *prima facie* case against the Respondent, and rejected the submission of no case to answer. The Respondent then called two witnesses in her Defence, namely, herself, and Mr LHY.
93. At the end of the 5-day Hearing, on 5 July 2019, the Tribunal directed parties to provide the Tribunal with Written Closing Submissions. The Respondent was directed to file her Closing Submission on 2 August 2019 and the Law Society was directed to file its Closing Submission four weeks later (on 30 August 2019). The Respondent subsequently asked for an extension of time, which was granted. The Respondent filed her Closing Submissions on 16 August 2019 ("Respondent's Closing Submissions"). The Law Society also asked for an extension of time to file its Closing Submission by 20 September 2019. That request was also granted. The Law Society filed its Closing Submissions on 20 September 2019 ("Law Society's Closing Submissions"). At the Respondent's

request, the Tribunal also fixed a half-day hearing for Oral Closing Submissions, on 7 October 2019. The Respondent and the Law Society prepared Skeletal Submissions, to assist the Tribunal at this Hearing, namely the Respondent's Skeletal Submissions dated 27 September 2019 ("Respondent's Closing Skeletals"), and the Law Society's Skeletal Submissions dated 5 October 2019 ("Law Society's Closing Skeletals").

## **V. Preliminary Issues**

94. Before dealing with the legal and factual issues that arise from the Charges, we will first address three Preliminary Issues that were raised by the Respondent.

### **(A) Jurisdiction**

95. The Respondent submitted that the Tribunal does not have the jurisdiction to hear Charges 1B and 2B. She contended that these Charges fall beyond the remit of the AGC Complaint, which is premised on the existence of a retainer between the Respondent and Mr Lee. She advanced this position in her Defence, her No Case Submissions, and her Closing Submissions.
96. In support of this argument, the Respondent relies on the cases of *Re Seah Pong Tshai* [1991] 2 SLR(R) 744 ("*Seah Pong Tshai*") and *Re Lim Chor Pee* [1990] 2 SLR(R) 117 ("*Lim Chor Pee*").
97. Having considered these cases, we are unable to agree that they support the Respondent's position – either by reason of their facts, or as a matter of law.

98. *Seah Pong Tshai* and *Lim Chor Pee* involved complaints which were referred to an Inquiry Committee, and thereafter culminated in formal investigations by a Disciplinary Committee (the predecessor of Disciplinary Tribunals under the current LPA). In both these cases, the charges were found to be defective because they: (a) went beyond the scope of the complaint, and (b) were not considered by the Inquiry Committee, and therefore fell outside the scope of notice given by the Inquiry Committee to the lawyer (see *Lim Chor Pee* at [35] and *Seah Pong Tshai* at [14]).

99. In our view, neither of these objections applied on the facts before us.

### **The Gravamen of the AGC Complaint**

100. On the former, the cases establish that the charges must reflect the “gravamen” of the complaint (*Seah Pong Tshai* at [9]); the “subject matter” of the charges must accord with the complaint (*Lim Chor Pee* at [35]). In other words, if the charge framed is different from the complaint “both in form and in substance”, it will be found to be defective (*Seah Pong Tshai* at [9]).

101. We note that this position has been affirmed more recently, by the High Court, in *Law Society of Singapore v Yeo Khim Hai Alvin* [2020] SGHC 3 (“*Yeo Khim Hai*”). The Court held (at [66]) that:

“In my judgment, the following propositions emerge from *Seah Pong Tshai* and the case law which I discuss in turn below:

- (a) First, the “matter” that has to be heard and investigated by the DT is the complaint, and in a typical case, it is assumed that the matter would be the complaint as properly framed by the Law Society in the charge. Put another way, it is assumed that the substance of the complaint will be reflected in the charge, and that

constitutes the matter to be heard and investigated. Where the Law Society has erred in framing the charge, then the DT's determination is liable to be set aside, as it was in *Seah Pong Tshai*.

- (b) Second, the DT has a duty to hear and investigate the complaint. The DT also has a duty to hear and investigate the charges. The two duties are not mutually exclusive and in fact are complementary to one another, in that the expectation must be that the charges reflect the gravamen of the complaint and fall within the scope of the complaint."

[Emphasis added.]

102. The corollary to these propositions is that a complaint is not and should not itself be regarded as a charging document; the two are distinct, albeit related. It is for the Law Society (and not a complainant) to determine what charges should be brought against a respondent lawyer, taking into account the essence of the complaint that has been made; this reflects the principle of self-regulation set out in the LPA (see also *Yeo Khim Hai* at [80]). As the cases set out, what is required is not a complete identity between the complaint and the charges, but that the charges encapsulate the substance, or essence of the complaint.

103. In *Seah Pong Tshai*, the complaint was that the respondent lawyer refused to refund his client a sum of \$1,000 which he had overcharged. The charge against him was defective, because it accused him of something entirely different – that he “falsely denied the receipt of the said sum of \$1,000”.

104. In *Lim Chor Pee*, the first charge against the respondent lawyer was that he had wrongfully evaded tax in respect of a sum of \$85,000.

This went beyond the scope of the complaint, which had not made any specific allegation in respect of this sum of \$85,000.

105. In *Yeo Khim Hai*, two of the charges against the respondent lawyer were found to be “wholly outside the scope of the [c]omplaint” (at [92]). These charges alleged overcharging, whereas the gravamen of the complaint related to the adequacy of steps that the lawyer had taken to ascertain his client’s mental capacity.

106. The circumstances before us are quite clearly different. Charges 1B and 2B are premised on the same conduct that Charges 1 and 1A, and 2 and 2A respectively, are premised on. Charges 1B and 2B are based on the same information in the AGC Complaint, as the other charges. The gravamen (or subject matter) is the same for all the Charges – namely, that the Respondent was guilty of misconduct because of her involvement in the preparation and execution of Mr Lee’s Last Will.

107. The conduct complained of in Charges 1B and 2B is the same conduct which is the subject of Charges 1 and 1A, and 2 and 2A, respectively. For instance, Charge 1 reads:

*“you failed to advance your client’s interest unaffected by your interest and/or the interest of your husband, Mr Lee Hsien Yang, by preparing and arranging for the execution of your client’s will where a one-third share in your client’s estate was to be given to your husband, Ms Lee Hsien Yang, such act amounting to grossly improper conduct in the discharge of your professional duty within the meaning of s 83(2)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed).”;*

while Charge 1B reads:

*"you failed to advance Mr Lee Kuan Yew's interest unaffected by your interest and/or the interest of your husband, Mr Lee Hsien Yang, by preparing and arranging for the execution of Mr Lee Kuan Yew's will where a one-third share in Mr Lee Kuan Yew's estate was to be given to your husband, Mr Lee Hsien Yang, such act amounting to 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 s 83(2)(h) of the Legal Profession Act (Cap. 161, 2009 Rev Ed)."*

108. The Respondent accepts that the conduct complained of in Charges 1B and 2B is the same as the conduct complained of in Charges 1 and 1A, and 2 and 2A respectively<sup>65</sup>. Charges 1B and 2B are premised on information in the AGC Complaint, like Charges 1, 1A, 2 and 2A. The substance of all these Charges is the same, and reflects that of the AGC Complaint.

109. For completeness, we should also address a related point which the Respondent raised - that because the inquiry stage had been bypassed, and the Deputy Attorney-General's complaint was referred directly to this Tribunal, the scope of the complaint therefore had to be construed even more carefully.

110. She submitted that the power of direct referral under section 85(3)(b) of the LPA is a power that should be exercised "*only in cases where the Respondent would undoubtedly be guilty of grossly improper conduct if the evidence supports his specific complaint*". and therefore, where this power was exercised, the Law Society does not

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<sup>65</sup> Respondent's Skeletal Submissions for No Case to Answer (2 July 2019) at paras 65 – 66.



have the power to change the “*basis on which the Respondent is tried before the Tribunal*”<sup>66</sup>.

111. The Tribunal is unable to accept this Submission. The exercise of the power under section 85(3)(b) of the LPA, to request that a complaint be escalated directly to a Disciplinary Tribunal, does not change the nature of the Law Society’s role and duty, in framing the charges arising from the complaint. In *Yeo Khirn Hai*, Justice Thean accepted that the Law Society’s responsibility in framing charges was the same whether the complainant was a lay complainant or a complainant under section 85(3) of the LPA (see *Yeo Khirn Hai*, at [82]).

### **Adequate Notice of the Charges**

112. The second ground relied upon in the *Seah Pong Tshai* line of cases, namely that notice of the relevant charges was not given to the respondent at the Inquiry Committee stage (see paragraph 98 above), is also quite clearly inapplicable here.

113. To begin with, no Inquiry Committee was convened in this case. The adequacy of notice arising from this phase of proceedings therefore does not arise.

114. More fundamentally, the Tribunal is also guided by the decision of the Court of Three Judges in *Law Society of Singapore v Wong Kai Kit* [1993] 3 SLR(R) 721 (“*Wong Kai Kit*”). In *Wong Kai Kit*, the Court rejected the proposition that, based on *Seah Pong Tshai* and *Lim Chor Pee*, matters outside an original complaint can never form the subject matter of disciplinary proceedings commenced, as a result of that complaint. What was crucial, the Court opined, was that the

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<sup>66</sup> Respondent’s Closing Submissions (16 August 2019) at paras 49 – 50.

advocate and solicitor against whom disciplinary proceedings had been brought, had notice of the charges against him.

115. The Court in *Wong Kai Kit* held (at [18] and [31]) that:

"It is plain from these [LPA] provisions that the primary concern of the Legislature was that an advocate and solicitor whose conduct is being investigated by an Inquiry Committee should be given a reasonable opportunity to present his case... Nowhere in the legislation is the leap made from this to the suggestion that matters outside an original complaint can never form the subject matter of disciplinary proceedings commenced as a result of that complaint...

... The fact that a charge was not contained in the information referred by the AG to the Law Society is not by reason of this passage [in *Lim Chor Pee* at [36]] sufficient to render such charge invalid or improper if notice of it was in fact given by the Inquiry Committee as statutorily required."

[Emphasis added.]

116. In the present case, the charges brought against the Respondent by the Law Society have remained consistent throughout these proceedings. The Respondent was not taken by surprise.

117. We should also highlight that this aspect of the Courts' findings in *Seah Pong Tshai* and *Lim Chor Pee* pre-dated amendments to the LPA, which broadened the scope of Disciplinary Tribunals' jurisdiction to consider additional charges.

118. The Legal Profession (Amendment) Act 1993 introduced a new provision (section 89(4) of the LPA), that provided as follows:

*"Where, in the course of its investigation of any matter against an advocate and solicitor referred to it under subsection (1) or (3), a Disciplinary Committee receives information touching on or evidence of the conduct of the advocate and solicitor which may give rise to proceedings under this Part, the Disciplinary Committee may, on the application of the Council, prefer such additional charge against the advocate and solicitor as it thinks fit with respect to such misconduct and, after giving notice to him, hear and investigate such charge and section 93 shall apply to such charge accordingly."*

[See section 19 of the Legal Profession (Amendment) Act 1993 (No. 41/93)]

[Emphasis added.]

119. As the Explanatory Statement to the Amendment Bill set out, the aim of this amendment was to *"enable a Disciplinary Committee to prefer other charges against an advocate and solicitor in certain circumstances"*. In other words, a Disciplinary Committee (and now, a Disciplinary Tribunal) is endowed with the statutory jurisdiction to extend its investigation to "fresh matters", and even to prefer "fresh charges", once adequate notice of its intention to do so is given to the respondent lawyer (see *Law Society of Singapore v Tan Phuay Kiang* [2007] SGHC 83 ("*Tan Phuay Kiang*"), at [58]).

120. As stated above, the Respondent had ample notice of all the Charges against her. She was given sufficient time to respond, and did in fact do so, substantively, for all the Charges (including Charges 1B and 2B).

121. This Tribunal finds that it has jurisdiction to hear Charges 1B and 2B.

**(B) Admissibility of evidence**

122. The Second Preliminary Point raised by the Respondent relates to admissibility of documents into evidence (to prove the truth of the underlying facts). The Respondent says that the documents in Mr Gopalan's Affidavit are inadmissible.

123. First, the Respondent argues that the Evidence Act (Cap. 97, 1997 Rev Ed) ("Evidence Act") requires that only direct evidence may be given of any fact. Mr Gopalan was not the maker of any of the statements in the documents exhibited in his Affidavit. Therefore, the Respondent submits, *"save for a limited number of documents which may be admissible as exceptions to the hearsay rule,"* all the documents exhibited in Mr Gopalan's Affidavit are inadmissible.

124. The Respondent relies on *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447, for the proposition that only direct evidence may be given of any fact.

125. Section 62 of the Evidence Act relates to oral evidence. The other provisions in the Evidence Act, which deal with documentary evidence, are more relevant to the exhibits to Mr Gopalan's Affidavit.

126. Section 67A of the Evidence Act provides:

*"Where in any proceedings a statement in a document is admissible in evidence by virtue of section 32(1), it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part of it, authenticated in a manner approved by the court."*

127. Section 32(1) of the Evidence Act, in turn, provides for the admissibility of the type of evidence, which, at common law, would be

referred to as hearsay evidence. Both parties have filed notices to admit hearsay evidence, and this issue will be dealt with, later.

128. The effect of section 67A of the Evidence Act, read with section 32(1) of the Evidence Act, has been summarised by Justice Woo Bih Li, in *Columbia Asia Healthcare Sdn Bhd and another v Hong Hin Kit Edward and another* [2016] 5 SLR 735, at [23] to [25]:

"23 Section 32(1)(b) [of the Evidence Act] deals with the exceptions to the hearsay rule. Moreover, s 66 must be read subject to s 67A of the EA which states that where a statement in a document is admissible in evidence by virtue of s 32(1) it may be proved by the production of that document (ie, the original) or a copy.

24 In summary, in so far as the Hong submitted that the maker of the document must be called to give evidence, s 32(1)(b)(iv) states that this is not necessary under certain circumstances.

25 In so far as the Hong submitted that the original must be produced, s 66 must be read subject to s 67A which provides that where s 32(1) applies, a copy may be produced."

[Emphasis added.]

129. This question of admissibility of the documents exhibited to Mr Gopalan's Affidavit (to prove the truth of the statements therein) will have to be determined by whether these documents are admissible, by virtue of section 32(1) of the Evidence Act.

130. We will therefore consider whether the documents relied on by the Law Society are admissible, with reference to the LSS Hearsay

Notice<sup>67</sup>. Both the Law Society and the Respondent have relied on section 32 of the Evidence Act for admissibility of various documents into evidence.

131. Insofar as hearsay evidence is adduced in relation to statements made by Mr Lee, we find these documents admissible pursuant to section 32(1)(i)(i) of the Evidence Act, read with section 67A of the Evidence Act, on the ground that the maker of the statements, Mr Lee, has passed away.

132. This will include documents numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 15, 16, 18, 19, 20, 21, 22 in the LSS Hearsay Notice. In addition, we also find that these documents are admissible pursuant to section 32(1)(b)(iv) of the Evidence Act, being documents forming part of a record kept by Ms KKL, in the course of her profession as Mr Lee's lawyer (see also paragraph 135 below).

133. The Respondent also objected to various documents in Mr Gopalan's Affidavit, which related to correspondence between Mr LHY and Dr LWL, and the Ministerial Committee (the "MC")<sup>68</sup>; as well as correspondence between various family members and Mr Lee. The authenticity of these documents is not in dispute. They are admissible to show what had been said by the various parties. In so far as these documents originated from Mr LHY and/or the Respondent, both of them gave evidence and were cross-examined. The Tribunal received direct evidence on some of the documents and is able to

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<sup>67</sup> LSS Hearsay Notice dated 24 June 2019.

<sup>68</sup> On 1 June 2016, a Ministerial Committee ("MC") had been formed by the Singapore Cabinet to consider the options for 38 Oxley Road and the implications of those options [Report of the MC on 38 Oxley Road, dated 2 April 2018 ([https://www.pmo.gov.sg/-/media/PMO/Newsroom/Files/Media-Release/MC\\_Report\\_38\\_Oxley\\_Road.pdf](https://www.pmo.gov.sg/-/media/PMO/Newsroom/Files/Media-Release/MC_Report_38_Oxley_Road.pdf))]. These included looking into various aspects, including the historical and heritage significance of 38 Oxley Road, as well as to consider Mr Lee's thinking and wishes in relation to 38 Oxley in the Last Will (see paras 7 – 30 of the Report). The MC stated that it had engaged in correspondence with Mr LHL, Mr LHY and Dr LWL, to obtain as full a picture as possible on Mr Lee's thinking on 38 Oxley Road (see para 24 of the Report). Some of the questions raised, related to the Last Will (See paras 4 and 9 of Annex C to the Report: [https://www.pmo.gov.sg/-/media/PMO/Newsroom/Files/Media-Release/MC\\_Report\\_38\\_Oxley\\_Road\\_Annex\\_C.pdf](https://www.pmo.gov.sg/-/media/PMO/Newsroom/Files/Media-Release/MC_Report_38_Oxley_Road_Annex_C.pdf)).

form views on the matters set out in the documents, in the context of the evidence given. The same goes for documents that Mr LHY sent to the MC.

134. Next we consider the documents relating to statements made by Ms KKL, which are documents numbered 10, 11, 14, 17, and 23 in the LSS Hearsay Notice. It appears from the LSS Hearsay Notice that the Law Society relies on two grounds for the admission of these documents:

- (a) First, the Law Society states in the LLS Hearsay Notice, that these documents are emails sent by Ms KKL, and therefore, form part of *"a document constituting, or forming part of, the records (whether past or present) of a trade, business, profession or other occupation that are recorded, owned or kept by any person, body or organisation carrying out the trade, business, profession or other occupation"*, pursuant to section 32(1)(b)(iv) of the Evidence Act.
- (b) Second, the Law Society states that these documents are admissible pursuant to section 32(1)(j)(iv) of the Evidence Act, as statements made by a person who *"being competent but not compellable to give evidence on behalf of the party desiring to give the statement in evidence, he refuses to do so"*.

135. First, in relation to section 32(1)(b)(iv) of the Evidence Act, this Tribunal finds that the documents numbered 10, 11, 14, 17, and 23 in the LSS Hearsay Notice are admissible pursuant to that provision. These documents form a record, or part of a record, kept by Ms KKL, as a lawyer in the ordinary course of business.

136. In relation to section 32(1)(j)(iv) of the Evidence Act, it appears that Ms KKL has said that she will not give evidence.

137. The Tribunal was informed that Ms KKL had refused to participate in *"any meeting and/or discussion with the Law Society regarding the documents referred to in your email and any information or documents pertaining to my engagement as Mr Lee's solicitor"*<sup>69</sup>. Counsel for the Law Society informed this Tribunal that the Law Society was *"told in no uncertain terms that she is not allowed and the estate [of Mr Lee] has asserted privilege"*. The Executors of Mr Lee's Estate (namely, Mr LHY and Dr LWL) had taken this position<sup>70</sup>. The Law Society stated that it did not subpoena Ms KKL, *inter alia*, because *"a subpoena to her will not waive privilege if she maintains that privilege"*<sup>71</sup> (see also paragraph 153 below).

138. The documents will be admissible, under section 32(1)(j)(iv) of the Evidence Act if Ms KKL (as a solicitor to Mr Lee) was not "compellable". There is no direct case law precedent on the compellability of a solicitor, though there is some learning which has been referred to us by the parties. We do not see the need to decide on the question of whether Ms KKL was compellable, (and thus whether the documents are admissible under section 32(1)(j)(iv) of the Evidence Act), since we have stated (above), that the documents 10, 11, 14, 17 and 23, are admissible under section 32(1)(b)(vi) of the Evidence Act.

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<sup>69</sup> Transcripts (5 July), 60:31 – 61:2.

<sup>70</sup> Transcripts (5 July), 60:27– 63:14.

<sup>71</sup> Transcripts (5 July), 63:8-10.



## **Exclusionary Discretion**

139. The Respondent submits that even if the evidence is admissible, this Tribunal should exercise its discretion to exclude the evidence, which she says was obtained by the Law Society in breach of legal privilege. Save for documents numbered 1 and 2, which are the Last Will and the Codicil to the same, the Respondent submits that all the other documents ought to be inadmissible on this ground<sup>72</sup>.

140. The Court of Appeal in *Mykytowych, Pamela Jane v VIP Hotel* [2016] 4 SLR 829 ("*Pamela Jane*") has cautioned (at [57]) that the "concepts of admissibility, privilege and confidentiality should not be confused". The Court of Appeal, considering the admissibility of a report by one Dr Tay opined, at [58] – [59]:

"58 Privilege allows a party to withhold the disclosure of information which would otherwise be compulsory to disclose. Admissibility, on the other hand, relates to the question of whether a particular piece of evidence may be received by the court, and is governed by whether that piece of evidence is relevant to the matters in issue (see *Kuruma, Son of Kaniu v The Queen* [1955] 2 WLR 223 at 226–227 as cited in *Wee Shuo Woon* at [19]). Where the document in respect of which privilege is being asserted – such as Dr Tay's medical report in the present case – is already in the possession of the other party, the issue is no longer one of withholding disclosure, and the question becomes one of admissibility rather than privilege.

59 The question of whether Dr Tay's medical report is protected by litigation privilege is, strictly speaking, irrelevant to the issue of whether it is admissible as evidence. It may, however, have a bearing on whether the report should be admitted. This arises from the fact that equity may, through the grant of injunctions, intervene to prevent the unauthorised use in court proceedings of information

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<sup>72</sup> Respondent's No Case Submissions (2 July 2019) at paras 26 – 27.

contained in privileged material, which would, in most instances, be of a confidential nature (see *Lord Ashburton v Pape* [1913] 2 Ch 469 (“*Lord Ashburton*”), *Goddard v Nationwide Building Society* [1986] 3 WLR 734 (“*Goddard*”), *Tentat Singapore Pte Ltd v Multiple Granite Pte Ltd* [2009] 1 SLR(R) 42 (“*Tentat*”) and *Wee Shuo Woon* at [22]). The court’s equitable jurisdiction to restrain breaches of confidence is invoked in these instances.”

141. The Respondent’s position, in summary, is that the documents in question (being the Wills and other documents) were privileged between Mr Lee and Ms KKL. The Estate of Mr Lee now has the benefit of that privilege, and thus, she says, the documents cannot be relied upon in these proceedings.

142. The first point to note is that the Respondent has no privilege in respect of the documents. It is for the Estate, which is not a party to these proceedings, to assert any legal privilege. This is a basic point, which the Respondent accepted<sup>73</sup>. Second, that the documents may be protected by privilege is in itself insufficient to affect their admissibility. The question for the Tribunal is, if these documents are indeed protected by privilege, nonetheless (and if such privilege is asserted by the Estate), should the Tribunal exercise its discretion to exclude this evidence? The Tribunal has the discretion to exclude otherwise admissible evidence<sup>74</sup>.

143. This question was in substance dealt with by the High Court in OS 639 (see paragraphs 85 – 89 above). In OS 639, the Estate (acting through Mr LHY and Dr LWL) made an application to the High Court seeking an injunction against the Law Society. The Estate wanted to restrain the Law Society from relying on all of Mr Lee’s wills and the Codicil, and all drafts of these Wills, in these Disciplinary

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<sup>73</sup> Transcript (3 July 2019), 94:18-21.

<sup>74</sup> See *Muhammad bin Kadar v PP* [2011] 3 SLR 1205.

proceedings. This included the Last Will, the Codicil, the First to Sixth Wills, and all drafts of these wills<sup>75</sup>. In relation to the Last Will, the Codicil, the First to Sixth Wills, and the drafts thereof, the Estate claimed that these documents were confidential and protected by legal privilege.

144. As stated earlier (see paragraph 89 above), Justice Hoo declined to grant the injunction against the Law Society. The attempt to prevent the Law Society from relying on these documents was rejected. This Tribunal notes that the documents which were the subject of OS 639, were the documents numbered 1, 2, 3, 4, 5, 6, 7, 8 and 9 in the LSS Hearsay Notice. In coming to her decision, Justice Hoo applied the principles set out by the Court of Appeal in *Pamela Jane*.

145. In relation to the documents numbered 1, 2, 3, 4, 5, 6, 7, 8 and 9 in the LSS Hearsay Notice, this Tribunal finds that if the Court did not deem fit to exercise its equitable discretion, to restrain the Law Society from using these documents in these proceedings, then there is no reason for this Tribunal to exclude the same. The Estate tried but failed, to prevent the documents from being in evidence in the proceedings.

146. In relation to the documents in the LSS Hearsay Notice, which are email communications between Ms KKL and Mr Lee, in relation to Mr Lee's Wills, (the documents numbered 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 ("LKY-KKL Emails")), this Tribunal is of the view that these documents would ordinarily be protected by legal privilege. However, this privilege is for the Estate to claim, not the Respondent. This is accepted by the Respondent<sup>76</sup>. The Tribunal notes that the Estate did not seek to restrain the Law Society from using the LKY-KKL Emails, in OS 639. Further, the High Court's reasoning in OS

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<sup>75</sup> See paragraph 86 and fn 64 of this Decision.

<sup>76</sup> Transcripts (3 July), 94:13-21.

639 applies equally to the LKY-KKL Emails. This Tribunal will not exclude the documents.

147. Excluding these documents will mean, *inter alia*, that the Tribunal will be precluded from considering the differences between the different Wills, and understanding the positions taken by Mr Lee.

#### Respondent's Hearsay Notice

148. We highlight that the Respondent too had filed a Notice to Admit Documentary Hearsay Evidence ("Respondent's Hearsay Notice"), dated 24 June 2019. The Respondent relies on the same sections, viz, section 32(1)(b) of the Evidence Act and section 32(1)(j)(i) of the Evidence Act. The Law Society has not objected to the admissibility of the evidence listed in the Respondent's Hearsay Notice. The evidence listed in the Respondent's Hearsay Notice is admissible.

#### **(C) Unfair Conduct**

149. We will now consider the Third Preliminary Point. In the Respondent's Closing Submissions, the Respondent submitted that the Law Society acted unfairly to the Respondent. At Annex C of the Respondent's Closing Submissions (the "RAC"), the Respondent has set out a list of instances where she alleges she was treated unfairly. The Law Society, in its Closing Submissions, has responded to the instances of alleged unfairness, also in table form. The Tribunal will briefly address these submissions, with reference to the serial number assigned to these instances in the RAC.

150. Items 1 and 2 of the RAC state (a) that the charges did not conform to the AGC Complaint, and (b) that the Law Society used documents which were disclosed in breach of confidentiality and legal

professional privilege. These points have been dealt with earlier (see Sections V(A) and V(B) above).

151. Items 3 and 4 of the RAC relate to procedural matters before the trial stage of the hearings before the Tribunal. The Respondent submitted that the Law Society failed to inform the Respondent why an urgent Pre-Hearing Conference ("PHC") was required, when the Law Society requested for one on 16 April 2019 (Item 3), and that the Law Society made an illegitimate demand for immediate disclosure of all copies of documents in the Respondent's list of documents (Item 4). In relation to the request for an urgent Pre-Hearing Conference, the Tribunal had addressed the same in its directions to parties. No urgent PHC was fixed, and the Law Society was directed to address the issues it wished to bring to the Tribunal's attention (by way of the urgent PHC) in written submissions. The Respondent was given an opportunity to provide submissions in reply, and both parties were heard during the PHC on 8 May 2019. In relation to the request for copies of documents (and the Tribunal fails to see how such a request can be illegitimate), the Tribunal directed that the inspection and furnishing of documents be done in accordance with Rule 9 of the Legal Profession (Disciplinary Proceedings) Rules. Leaving aside the fact that the Respondent did not suffer any prejudice procedurally, the Tribunal does not see any force in the argument that the Respondent was treated unfairly. The Law Society sought directions. The Tribunal, having considered the Law Society's requests for directions, declined to grant the directions sought for the urgent PHC, and in respect of inspection and furnishing of documents, directed that this be done in accordance with the Rules.

152. Items 5 and 6 of the RAC relate to the Law Society's failure to call Ms KKL as a witness, and the "*delayed decision*" to call Mr BL as a witness. The Law Society had indicated in its list of witnesses,

provided on 27 May 2019<sup>77</sup>, that it would be calling Ms KKL as a witness. The Law Society's position is that its list of witnesses, provided on 27 May 2019 was "*tentative and subject to change*"<sup>78</sup>.

153. The Law Society said that it eventually decided not to call Ms KKL because Ms KKL had declined to participate in "*any meeting and/or discussion with the Law Society regarding the documents referred to in [the Law Society's] email and any information or documents pertaining to [Ms KKL's] engagement as Mr Lee's solicitor*"<sup>79</sup> (see also paragraph 137 above), and that her evidence was not necessary because the Law Society was able to rely on various documents which had become available<sup>80</sup>. Ms KKL's position was based on the objections raised by the Executors of the Estate. We do not find any merit in the points made in the RAC about Ms KKL not being called as a witness. It is for each party to decide, at the Hearing, which witnesses are called. The Tribunal is entitled to also draw the appropriate inferences when a witness is not called, and regardless of whether a witness is called or not called, the burden of proof (to prove the case beyond reasonable doubt) lay on the Law Society. We also note that the Respondent's husband, Mr LHY, as Executor, had asserted legal privilege, *vis-à-vis* Ms KKL (see paragraphs 423 – 434 below).

154. In relation to the Law Society's decision to subpoena Mr BL as a witness, the Tribunal does not find any unfairness. The evidence he gave and the documents he produced were within the Respondent's knowledge. The Respondent also had the opportunity to cross-examine Mr BL. We have made some further observations below on

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<sup>77</sup> Email from the Law Society to the Respondent and the Tribunal, setting out the list of its witnesses, dated 27 May 2019.

<sup>78</sup> LSS Closing Submissions (20 September 2019) at p 123, Item 5.

<sup>79</sup> Transcripts (5 July 2019), 60:31 – 61:2.

<sup>80</sup> Transcripts (1 July 2019), 5:28 – 6:18.

this objection, in relation to Mr BL being called to give evidence (see paragraphs 182 – 193 below).

155. Items 7 and 8 of the RAC relate to the subpoena issued against MLS for documents. The Law Society informed the Tribunal on 2 July 2019, the second day of the Hearing, that the Law Society was considering issuing a subpoena against MLS. The Respondent submitted that issuing the subpoena, after the close of the Law Society's case, resulted in unfairness to her. The Tribunal notes that the witness from MLS, Mr Manoj Pillay, simply confirmed that MLS had not been able to retrieve any document responsive to the subpoena. The Tribunal fails to see how this (the fact that the Respondent's law firm did not produce any documents) caused any unfairness, to the Respondent. The Respondent was put on notice on the second day of the Hearing that the Law Society may issue a subpoena against MLS. The subpoena was in relation to the specific email(s) on the question of from whom Mr BL had received the draft document, which was executed to become the Last Will. This issue arose as a consequence of the evidence given by Mr BL.

156. The Respondent also alleges that Mr LHY was subject to unfair allegations in cross-examination (Item 9 of the RAC). The Tribunal does not see any merit in this submission, or how this amounts to unfairness. In the Tribunal's view, cross-examination of Mr LHY by Counsel for the Law Society was in accordance with the rules and principles governing evidence and cross-examination. Counsel for the Respondent did not raise any objection in this regard during Mr LHY's cross-examination.

157. Lastly, at Item 10 of the RAC, the Respondent submits that the reading of an email received by the Law Society's solicitors, WongPartnership, from Ms KKL, was unfair as the Estate did not have an opportunity to respond. The Respondent claims that the

allegation by the Law Society that the Estate had refused to allow Ms KKL to testify in these proceedings was based on this email. We do not see any merit in this argument. The Respondent did not raise any objections at the hearing. Second, the Respondent had the opportunity to object at the oral hearing on 7 October 2019, but did not do so. We have also dealt with this matter at paragraphs 431 – 434 below.

158. There was no unfairness to either party in respect of these matters. Many of the objections relate to procedures which are normal and routine in hearings: calling / not calling of witnesses, seeking directions from the Tribunal, cross-examination, issue of subpoenas, production of documents, and so on.

## **VI. Summary of the Parties' Positions on the Charges**

159. We will now set out a short summary of the parties' positions in relation to the Charges<sup>81</sup>.

### **(A) The Law Society's Case**

160. The Law Society's case was that there was an Implied Retainer between the Respondent and Mr Lee. The Law Society said that the Respondent acted as Mr Lee's solicitor. She prepared the draft Last Will and advised Mr Lee on it. Mr LHY, the Respondent's husband, was a beneficiary under the Last Will. The Law Society argues that Respondent's conduct is in breach of Rules 25 and 46 of the PCR.

161. The Law Society argued that the Respondent had failed to advance Mr Lee's interests unaffected by her interests and/or those of her husband, Mr LHY. The Law Society's case is that there were material

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<sup>81</sup> We will only set out brief details here. The points made by the parties are dealt with in greater detail, hereafter.



differences between the draft sent by the Respondent, which was executed to become the Last Will, and the First Will (contrary to her representation that the draft Last Will was in the same terms as the First Will). Mr Lee was also not advised in detail on the draft Last Will, on the various clauses in the Last Will (which Mr Lee had earlier decided to drop), and how the Last Will was different from the Penultimate Will. The Law Society also points to the fact that Mr Lee's usual lawyer, Ms KKL, was absent from the matters surrounding the preparation and execution of the Last Will and that the Respondent rushed the execution of the Last Will, contrary to Mr Lee's interests.

162. As regards the differences between the draft Last Will (which the Respondent sent Mr Lee on 16 December 2013, and which was executed to become the Last Will), and the First Will, the Law Society points to the following in particular:

- (a) The Last Will omitted (*inter alia*) the Gift-over Clause, which had been present in the First Will.
- (b) The Last Will also included various clauses, including the Demolition Clause, which, while present in the First Will, had been removed by Mr Lee in later wills, including the Sixth Will, which immediately preceded the Last Will.

The Law Society argued that the Respondent, by not advising Mr Lee (amongst other things) on these differences or changes, had failed in her duties to Mr Lee as his solicitor.

163. In addition, the Law Society also argues that Charges 1B and 2B can be maintained even if the Tribunal were to find that there was no Implied Retainer between Mr Lee and the Respondent.

**(B) The Respondent's Case**

164. The Respondent said that she was not Mr Lee's lawyer in relation to the Last Will, and that there was no Implied Retainer. The Respondent's position is that she was helping as a family member, and as Mr Lee's daughter-in-law<sup>82</sup>; she did not give or take instructions from Mr Lee<sup>83</sup>, and Mr Lee had access to his own lawyer at all times<sup>84</sup>. (See also paragraph 265 below.)

165. The Respondent also said that there was no conflict of interest as she was unaware of the circumstances giving rise to the conflict. It is the Respondent's case that both she and Mr LHY were unaware of the terms of the Sixth Will, and in particular, that it provided for distribution which gave Mr Lee's daughter, Dr LWL, a larger share than Mr Lee's sons, Mr LHL and Mr LHY. If the Respondent was indeed in a position of conflict, the Respondent argued that Mr Lee was fully aware of the Respondent's involvement and consciously chose to proceed<sup>85</sup>.

**VII. Issues for determination**

166. The main issues that arise for our determination, in respect of the Charges, are as follows:

**(A) Implied Retainer**

Was the Respondent Mr Lee's lawyer, for the Last Will, by way of an Implied Retainer?

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<sup>82</sup> Respondent's Closing Submissions (16 August 2019) at para 141.

<sup>83</sup> Respondent's Closing Submissions (16 August 2019) at para 149.

<sup>84</sup> Respondent's Closing Submissions (16 August 2019) at para 159.

<sup>85</sup> Respondent's Closing Submissions (16 August 2019) at para 192.

***(B) Breach of duties/Misconduct***

If an Implied Retainer is made out:

- (a) Did the Respondent breach the professional duties, under Rule 25 and/or 46 of the PCR?
- (b) If so, did this amount to:
  - (i) grossly improper conduct (pursuant to the primary Charges (Charges 1 and 2)); or
  - (ii) improper conduct, or practice, as an advocate and solicitor, (pursuant to the alternative Charges (Charges 1A and 2A)),  
  
under section 83(2)(b) of the LPA?
- (c) Aside from the question of Implied Retainer: Was the Respondent nevertheless guilty of misconduct unbefitting an advocate and solicitor, under section 83(2)(h) of the LPA, (pursuant to the further alternative Charges (Charges 1B and 2B))?

***(C) Cause for disciplinary action***

If there was an Implied Retainer, and if there were breaches of duties, nevertheless, is there cause of sufficient gravity, for disciplinary action under section 83 of the LPA?

167. We will consider each of the issues separately.

168. The Written Submissions from the parties in this matter ran to 237 pages and the Annexes totalled another 42 pages. The transcript of the Hearing ran to 627 pages. The parties covered fairly extensive ground, both on procedures, preliminary issues and on the substantive issues.

169. We have considered the points made. We will deal with the points raised, in respect of the three issues set out at paragraph 166 above. We will also deal with several other points raised, even though some of them were not strictly necessary for our decision. This has resulted in some repetition of the facts and reasoning, as we have tried to deal with many of the points and arguments raised.

#### **VIII. Retainer**

170. Parties are agreed that there was no Express Retainer between the Respondent and Mr Lee. The issue is whether there was an Implied Retainer between the Respondent and Mr Lee, in respect of the Last Will.

171. We will set out:

- (A) The applicable legal principles, on the question of Implied Retainer.
- (B) The relevant questions to be considered, on the question of Implied Retainer, the evidence that was presented, and our views.
- (C) Our conclusions, on the question of Implied Retainer.
- (D) The positions that the parties had taken previously, in respect of some of the questions that arose before us.

**(A) The applicable principles**

172. No legal formalities are required for a retainer to exist (*Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] SGHC 143 (“*Ahmad Khalis*”) at [64]).

173. The assessment turns on whether, on “an objective consideration of all the circumstances”, a contractual relationship of lawyer and client “ought fairly and properly to be imputed to all the parties” (see *Ahmad Khalis* at [66]). [Emphasis added.]

174. To that end, an objective analysis is applied, from both perspectives – that of the lawyer, and of the putative client (*Ahmad Khalis* at [66]). A tribunal must undertake “the objective inquiry” of considering –

- (a) whether the putative client reasonably considered that the lawyer was acting for him, and
- (b) whether the lawyer ought to have reasonably known that he was acting for the putative client

(see *BOM v BOK* [2019] 1 SLR 349 (“*BOM*”) at [109]).

The parties’ subjective perspectives, are “by no means conclusive”. They must be consistent with the objective facts, and reasonable, when construed against that context (*Ahmad Khalis* at [66]).

175. The final assessment rests on a “holistic and careful consideration of the factual matrix” (*BOM* at [109]). Factors that will be considered include:

- (a) Whether the lawyer gave advice to the putative client on the relevant document (see *Anwar Patrick Adrian and another v*

*Ng Chong & Hue LLC and another* [2014] SGCA 34 at [52];  
*BOM* at [109]);

- (b) Whether there was another lawyer acting for the putative client (*Ahmad Khalis* at [67]);
- (c) Whether the lawyer asked the putative client to seek independent advice (*BOM* at [109]); and
- (d) Whether the lawyer and the putative client are spouses, in a marital relationship (*BOM* at [112]).

**(B) The relevant questions to be considered on the question of Implied Retainer, the evidence that was presented and our views**

176. The questions we will consider on the issue of Implied Retainer are as follows:

- (a) Did Mr Lee and the Respondent proceed on the basis that the Respondent was his lawyer, for the Last Will;
- (b) The actual nature and extent of the Respondent's role, in the Last Will; and
- (c) The nature and extent of Ms KKL's involvement (Mr Lee's usual lawyer), in the Last Will.

177. Before we deal with the above three questions, we will refer briefly to some of the important evidence that was put before us, and the manner in which some of it came before us.

## **Production of Relevant Evidence**

178. The documentary evidence which was put before us provides a fairly comprehensive record of what transpired, in the period leading up to, during, and immediately after Mr Lee signed the Last Will. This is primarily contained in the form of email correspondence.

179. This evidence was particularly relevant, given its contemporaneity and being a written record.

180. In this regard, as more than five years have lapsed between the Last Will and these proceedings, the Court of Appeal's observations in *Sandz Solutions (Singapore) Pte Ltd v Strategic Worldwide Assets Ltd* [2014] 3 SLR 562 ("*Sandz*") are instructive. In *Sandz*, the events in question took place nearly five years before the trial (see *Sandz* at [77]). The Court of Appeal said (*Sandz* at [50] and [77]):

"... As a rule of thumb, the longer the lapse of time between the happening of the event or matter being recollected and the witness's appearance on the witness stand, the less the reliance that should be placed on pure oral evidence and the more searching the court ought to be in assessing and testing that evidence...

...As we observed above...even the recollections of the most truthful of witnesses would be tested by the lapse of time. In the premises, we think it preferable in these proceedings to place more reliance on the objective documentary evidence before us as well as the actual conduct of the parties, as opposed to their hazy recollections of past events on the witness stand."

[Emphasis added.]

181. We found the documentary evidence inherently more reliable than the witness testimony, for the reasons set out by the Court of Appeal, and also because of the nature of some of the oral testimony that was given.

182. The key factual witnesses before us were Mr BL, on behalf of the Law Society, and the Respondent and her husband, Mr LHY, on behalf of the Respondent. Mr BL's evidence was largely unchallenged by the Respondent, save for one point, on what the Respondent told him about the contents of the Last Will (we will refer to this later (see paragraph 514(b) below)).

183. The other witnesses before us, (namely, Mr Gopalan, Mr Lim Seng Chuan, and Mr Manoj Pillay (see paragraph 90 above)), gave evidence of a more formal nature, relating to documents.

184. We had referred earlier (at paragraphs 83 - 84) to the BL Documents which were produced by Mr BL, a few days before the Hearing (pursuant to a subpoena issued by the Law Society).

185. The BL Documents contained, *inter alia*:

- (a) Emails before the Last Will was signed, which showed the Respondent giving Mr BL instructions, on the preparation and execution of the Last Will (see paragraphs 47 – 49 and 51 above);
- (b) Emails after the Last Will was signed, which showed the Respondent giving Mr BL and her other colleagues at Stamford Law instructions on how to follow-up (see paragraphs 53 – 55, 57, 59 – 60, 64 and 67 above); and



- (c) Ms EK's Attendance Note (see paragraph 69 above), which showed what transpired when Mr Lee signed the Last Will, and her email exchange with the Respondent, which recounted Mr Lee's queries on who drafted the Last Will.

Some significant parts of the facts set out in Section III(G) were based on the BL Documents. (See also paragraph 370 below.)

186. We will consider these BL Documents, in detail, later.

187. The BL Documents (and Mr BL's Affidavit) deal with issues and matters that are also dealt with by the Respondent in her Affidavit.

- (a) The Respondent stated in her Affidavit<sup>86</sup> that her involvement in the Last Will was limited to forwarding the draft of the Last Will and the introducing of Mr BL to Ms WLH. Mr LHY described these tasks as "*administrative tasks*"<sup>87</sup>. The Respondent said that she ceased involvement in the Last Will, after introducing Mr BL to Ms WLH and Mr LHY, in the evening of 16 December 2013 (see paragraph 40 above).

The BL Documents and Mr BL's evidence showed that the Respondent remained closely involved throughout, and continued to exchange multiple emails with Mr BL and others, regarding the Last Will, until after the Last Will was signed (we deal with this later (see paragraphs 367 – 394)).

- (b) The Respondent stated in her Affidavit<sup>88</sup> that there was no reason for Mr Lee to have believed that she was his lawyer.

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<sup>86</sup> The Respondent's AEIC (17 June 2019) at paras 27 and 29.

<sup>87</sup> Transcript (4 July 2019), 127:28; see also Mr LHY's AEIC (11 June 2019) at paras 36 and 56.

<sup>88</sup> The Respondent's AEIC (17 June 2019) at para 28.

The BL Documents and Mr BL's evidence showed that just before he signed the Last Will, Mr Lee asked Mr BL, more than once, who drafted the Last Will. The BL Documents state that Mr Lee was told that the Respondent was the primary lawyer who drafted the Last Will. The Respondent knew that Mr Lee was told this, and had not objected (we deal with this later (see paragraphs 200 – 221)).

- (c) The Respondent also said, on Affidavit<sup>89</sup>, that Mr LHY and Dr LWL had never sought her inputs on their correspondence with the MC (which, *inter alia*, dealt with the Last Will). The BL Documents showed that the Respondent was kept informed of Mr LHY and Dr LWL's correspondence with the MC, and helped them gather information for their responses (we deal with this later (see paragraphs 459 - 471)).

188. The Respondent knew about the BL Documents (many of them were correspondence sent to or sent by her), and what Mr BL's evidence was. She had possession of several of the BL Documents. Mr LHY was also aware of them:

- (a) In December 2016, the Respondent received the EK Attendance Note (see paragraph 69) from Ms EK, when she wrote to Ms EK, to gather information on Mr LHY and Dr LWL's behalf, to prepare responses to the MC<sup>90</sup>.
- (b) In late 2018, after AGC first wrote to the Respondent, the Respondent had spoken with Mr BL, who recounted to her his

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<sup>89</sup> The Respondent's AEIC (17 June 2019) at para 35.

<sup>90</sup> LSS SBOD, p 18, email from Ms EK to Mr BL and the Respondent dated 19 December 2016, 10.49am.

recollection of what happened in December 2013. Mr BL gave evidence on this and this was not disputed<sup>91</sup>.

- (c) More recently, during the discovery phase of the current proceedings, the Respondent's lawyers also met with Mr BL to check what documents were in his possession<sup>92</sup>.

189. The Respondent did not give discovery of the BL Documents. She said that she chose not to disclose or refer to the BL Documents, as she "*didn't think that they were relevant at all*"<sup>93</sup>.

190. In our view, the BL Documents go to important issues before us (as will be seen hereafter). The questions we have to deal with include: whether the Respondent acted as Mr Lee's lawyer, for the purposes of the Last Will. The BL Documents provide relevant evidence, *inter alia*, on the nature and extent of the Respondent's involvement in the Last Will, that Mr Lee wanted to know who had drafted the Last Will, and that he was told that the Respondent had (primarily) drafted the Last Will.

191. We will also deal briefly with how the parties dealt with discovery, in respect of some documents.

192. As part of the discovery process, the Law Society sought specific discovery, *inter alia*, of: (a) all correspondence between the Respondent, Mr BL and Ms EK, on the Last Will, and (b) the Attendance Note for Mr Lee's signing of the Last Will.

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<sup>91</sup> Transcript (3 July 2019), 46:23-28.

<sup>92</sup> Transcript (3 July 2019), 47:10-19.

<sup>93</sup> Transcript (3 July 2019), 47:30 – 48:12, 49:11-14.

193. As regards the Law Society's request for the former category of documents, the Respondent took the position that the Law Society's request was "*unnecessary*" because she had already listed "*various correspondences between herself or [Mr LHY] with [Mr BL] and [Ms EK] in her list of documents*". The Respondent thus gave the impression that the correspondence disclosed in her List of Documents reflected the entirety of her exchanges with Ms EK and Mr BL<sup>94</sup>. The Respondent's List of Documents however, made no mention of the BL Documents.

194. As regards the Law Society's request for the latter category of documents, the Respondent refused to disclose the EK Attendance Note, on the basis that it was "*wholly irrelevant to these proceedings*"<sup>95</sup>. The EK Attendance Note, *inter alia*, set out Mr Lee's queries on who prepared the Last Will. In our view, that is relevant to the issue of whether the Respondent (or someone else) acted as Mr Lee's lawyer, in drafting the Last Will.

195. Both the Respondent and Mr LHY were in possession of the EK Attendance Note. Mr LHY said that he may have been given a copy of the same by the Respondent in December 2016, or he may have received it earlier<sup>96</sup> (see also paragraphs 465 - 466, 493 - 495 below).

196. We will now deal with the three questions set out at paragraph 176 above, to determine whether there was an Implied Retainer, by reason of the circumstances, including the Respondent's conduct.

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<sup>94</sup> Respondent's Skeletal Written Submissions (26 April 2019) at para 28.

<sup>95</sup> Respondent's Skeletal Written Submissions (26 April 2019) at para 42.

<sup>96</sup> Transcript (4 July 2019), 11:11-18, 22:22 – 23:11, 43:18 – 44:5, 112:25-30.

**(1) Did Mr Lee and the Respondent proceed on the basis that the Respondent was his lawyer for the Last Will?**

197. We will now deal with the first of the three questions set out in paragraph 176 above. The Law Society argued that Mr Lee regarded the Respondent as his lawyer for the Last Will. The Respondent and Mr LHY took the position that Mr Lee regarded Ms KKL, and not the Respondent, as his lawyer for the Last Will. They said that there was no reason for Mr Lee to have regarded the Respondent as his lawyer<sup>97</sup>. They said that Mr Lee never spoke with the Respondent about the Last Will, and gave his instructions to execute the Last Will only to Mr LHY<sup>98</sup>.

198. We have considered these points, and the evidence carefully. The evidence shows that Mr Lee regarded the Respondent as, and believed her to be, his lawyer for the Last Will. The Respondent also proceeded on that basis. We will refer to three points:

- (a) Just before he signed the Last Will, Mr Lee asked, twice, who prepared the Last Will. He was told that the Respondent was the primary lawyer for the Last Will. Mr Lee accepted this and signed the Last Will on this basis. The Respondent knew what Mr Lee was told, and did not contradict what Mr Lee was told (see paragraphs 200 – 222);
- (b) The Respondent took instructions directly from Mr Lee, on the Last Will (see paragraphs 223 – 249); and

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<sup>97</sup> The Respondent's AEIC (17 June 2019) at paras 23, 27 and 28; Mr LHY's AEIC (11 June 2019) at paras 56 and 84(a); Transcript (3 July 2019), 31:15-17; (4 July 2019), 51:4-5, 71:11-12. See also Defence at paras 49, 50 and 64(b).

<sup>98</sup> Respondent's Closing Submissions (16 August 2019) at para 156; Transcript (3 July 2019), 102:1-4; Transcript (4 July 2019), 56:2-4, 66:27, 67:9-11, 97:4-7, 98:13-18.

- (c) After the Last Will was signed, Mr Lee kept one of the two originals, and allowed the Respondent to keep the other original. Ms KKL was sent a copy. Mr Lee also made sure that the Respondent was informed, when he signed the Codicil to the Last Will, the following month (see paragraphs 250 – 263).

199. We will set out the evidence in respect of these three points.

(a) **Mr Lee was told that the Respondent prepared the Last Will**

200. Mr Lee was told that the Last Will was primarily prepared by the Respondent. This took place immediately before he signed the Last Will, when Mr BL and Ms EK were at 38 Oxley for its execution.

201. The Respondent was also informed of Mr Lee's and Mr BL's exchange later that day.

202. Slightly over an hour after Mr Lee signed the Last Will (on 17 December 2013), Ms EK told the Respondent in an email (see paragraph 59 above) that<sup>99</sup>:

*"...he [Mr Lee] is definitely still very lucid – he asked Bernard who drafted the will, twice... and Bernard wasn't entirely sure but mentioned it was primarily you and Ms Kwa from Lee & Lee".*

[Emphasis added.]

203. The contemporaneous attendance note prepared by Ms EK later that afternoon (namely, the EK Attendance Note (see paragraph 69 above)), also states that "*he [Mr Lee] asked us who drafted the will*"<sup>100</sup>.

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<sup>99</sup> LSS SBOD, p 6, email from Ms EK to the Respondent dated 17 December 2013, 12.25pm.

<sup>100</sup> LSS SBOD, p 20, Attendance note contained in the email from Ms EK to Mr BL dated 17 December 2013, 4.32pm.

204. These accounts were corroborated by Mr BL's evidence. In his Affidavit, Mr BL said that:

(a) Before Mr Lee signed the Last Will, he asked Mr BL, who drafted the Last Will. Mr BL told Mr Lee that the Respondent had drafted the Last Will<sup>101</sup>.

(b) Mr Lee then asked Mr BL again (i.e. a second time), who drafted the Last Will. On this second occasion, Mr BL told Mr Lee that it was the Respondent, and Ms KKL<sup>102</sup>.

205. The Respondent did not challenge Mr BL's evidence in cross-examination on this aspect.

206. We consider this exchange between Mr Lee and Mr BL significant, for a number of reasons.

207. First, Mr Lee's questions to Mr BL show that it was important to Mr Lee to have a lawyer prepare the Last Will. It was the only question that Mr Lee asked (and he asked it twice), before he signed the Last Will. We note that Mr Lee had also wanted even the witnesses to the Last Will to be lawyers. He gave express instructions to get "*a solicitor*" (or a "*notary public*") to witness the signing of the Last Will (see paragraphs 41 and Mr LHY's response, set out at paragraph 44 above).

208. Second, in response to Mr Lee's queries, Mr BL said to Mr Lee, both times, that the Respondent was the lawyer for the Last Will. On the

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<sup>101</sup> Mr BL's AEIC (1 July 2019) at para 25.

<sup>102</sup> Mr BL's AEIC (1 July 2019) at para 25.

second occasion he also referred to Ms KKL. Mr BL was mistaken in this and Ms KKL had no role in drafting the Last Will (see Section VIII(B)(3) below). Mr Lee was given the impression that the Respondent had primarily drafted the Last Will. Mr Lee proceeded to sign the Last Will after being told this.

209. Third, the Respondent's own reaction to what transpired is also material. The Respondent replied to other aspects of Ms EK's email<sup>103</sup>. But she did not object to Mr BL saying that she drafted the Last Will. She knew that she was held out as the lawyer, who had primarily prepared Mr Lee's Last Will, and was content to leave Mr Lee with that belief.

210. As will be apparent from the email correspondence, set out earlier (see Section III(G) above, and Section VIII(B)(3) below), Ms KKL was not involved in the drafting of the Last Will. She was left out of the relevant emails. Thus, in fact, the Respondent was the only lawyer who drafted the Last Will. But the inaccurate statement made to Mr Lee, that Ms KKL was also involved in drafting the Last Will, was also not corrected.

211. The Respondent said to us that Mr Lee "*never trusted [the Respondent] as a lawyer*" <sup>104</sup>, and therefore could not have regarded her as his lawyer for the Last Will. Both Mr Lee and the Respondent's own acceptance of the representation, that she drafted the Last Will, contradicted this assertion. Mr Lee had also (for example) agreed to the Respondent helping Ms KKL draft aspects of the First Will (see, for example, paragraphs 16 - 18 above).

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<sup>103</sup> LSS SBOD, p 6, email from the Respondent to Ms EK dated 17 December 2013, 12.31pm.

<sup>104</sup> Transcript (3 July 2019), 31:12-18.



212. As mentioned earlier (see paragraphs 83 – 84 and 182 – 193 above), the evidence of Mr Lee's exchange with Mr BL came to light just before the Hearing.

213. The Respondent's Affidavit was filed on 10 June 2019, before the BL Documents and Mr BL's Affidavit were produced. When she filed her Affidavit, the Respondent would have had no reason to believe that the BL Documents and Mr BL's Affidavit would be produced before the Tribunal. Her Affidavit gave a very different picture from that shown by the BL Documents and Mr BL's Affidavit. Her evidence was contradicted by the BL Documents and Mr BL's evidence.

214. The Respondent said in her Affidavit that<sup>105</sup>:

"I simply did not consider Papa as a client *nor did I contemplate even for a moment that Papa would be relying on me for any legal advice. It was clear to me and indeed to all of us that KKL was his lawyer...*

As for Papa, he did not consider me as his lawyer or rely on me for legal advice... *In fact, as far as I am aware, Papa never intended or expected that I would be involved in making arrangements for the execution of [the Last Will].*"

[Emphasis added.]

215. This is untrue. As set out earlier, the evidence is that Mr Lee was expressly told, twice, that the Respondent had prepared the Last Will. Mr Lee accepted this. The Respondent also knew that this was what Mr Lee had been told. Despite knowing that, she said the direct opposite in her Affidavit.

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<sup>105</sup> Respondent's AEIC (17 June 2019) at paras 27 – 28.

216. The Respondent's Submissions on No Case to Answer, and Written Closing Submissions (made after the BL Documents had been produced), were silent on the BL Documents, and the variance with her Affidavit evidence.

217. In Oral Closing, Counsel for the Respondent submitted that this was an "*irrelevant*" point, and a "*fruitless*" line of enquiry<sup>106</sup>. In their Closing Submissions, Counsel for the Respondent said that: (a) first, Mr Lee's exchange with Mr BL related to who had drafted the First Will, and not the Last Will. It was therefore not surprising that the Respondent did not object to what Mr BL said, since she had assisted "*in the tiny bit on the demolition clause*" for the First Will<sup>107</sup>; and (b) second, Counsel said there was no reason to ascribe significance to what Mr BL had said, because he had, in his evidence, admitted that he was unsure who had drafted the Last Will<sup>108</sup>.

218. We are unable to accept the above submissions from Counsel for the Respondent. The unchallenged evidence is that Mr Lee's exchange with Mr BL was directed to the Last Will, which Mr Lee was about to sign, and not the First Will (which Mr Lee would have known was prepared by Ms KKL). This is confirmed by Mr BL's Affidavit, which the Respondent did not challenge. His Affidavit expressly stated that "*Mr Lee...asked me who drafted the Last Will...Mr Lee asked me again who drafted the Last Will*"<sup>109</sup>. [Emphasis added.]

219. In our view, it is quite clear that the Respondent was represented to Mr Lee as the lawyer responsible for the Last (and not the First) Will.

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<sup>106</sup> Transcript (7 October 2019), 24:14-16.

<sup>107</sup> Transcript (7 October 2019), 24:5-16.

<sup>108</sup> Transcript (7 October 2019), 23:28 – 24:4.

<sup>109</sup> Mr BL's AEIC (1 July 2019) at para 25.

220. Further, the Respondent's position is that her role in the First Will related to only a "*tiny bit*". If that is true, then it does not explain why she did not take issue with Mr BL's representation, that she was the lawyer, even if she understood Mr BL to be referring to the First Will.

221. We also do not regard it as relevant, as the Respondent suggests, that Mr BL may not have known, what the full facts were. What is material is that the Respondent knew that Mr BL told Mr Lee that she drafted the Last Will. If that was untrue, she could and should have told Mr Lee what she considered to be the truth. But she accepted what Mr BL told Mr Lee. She accepted it because as the evidence shows, she did prepare the Last Will. In fact, she was the only lawyer who had responsibility for the Last Will. Mr BL's error was in referring to Ms KKL, in addition to the Respondent (see paragraph 204(b) above).

222. The Respondent's answers in cross-examination on several points, were quite unsatisfactory. She often refused to answer questions, and was evasive. On Mr Lee asking twice about who drafted the Last Will, this was her evidence<sup>110</sup>:

Mr Tan CM: *Does it not show that in Mr Lee's mindset, mind, at all times the fact that either you or Kwa Kim Li was involved in the preparation of the will that he was to sign was important?*

Respondent: *I think what was important to him was that he had decided to go back to the original agreed will and he---*

Mr Tan CM: *Sorry. You have not answered my question.*

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<sup>110</sup> Transcript (4 July 2019), 49:12 – 50:18.

...  
Mr Tan CM: *And the assurance he wanted was that either you or Kim Li had been involved.*

Respondent: *If it had been any---well, I think in his mind, that was the will that Kim Li had done with my input.*

President: *Answer the question, please. It's a very simple question.*

Respondent: *Could you repeat the question, please?*

Mr Tan CM: *And the assurance he wanted was that either you or Kim Li had been involved. That was the reason why he asked twice.*

Respondent: *I don't know.*

Mr Tan CM: *I put it to you that if Mr Lee had not been told of either you, yours or Ms Kwa Kim Li's involvement, it is likely that he would want some assurance that the will is what he wanted to sign.*

Respondent: *I'm not sure. Papa was very familiar with the 2011 will.*

Mr Tan CM: *I suggest to you---*

Respondent: *The August 2011 will, he knew very well. It was a landmark will for him. So I'm not sure.*

Mr Tan CM: *You have told us that even if you had sighted the draft which Bernard had, you would not have been able to know that there were changes from the first will.*

Respondent: *I genuinely believed it was. I would---*

Mr Tan CM: *Sorry, sorry.*

Respondent: *No, no.*

Mr Tan CM: *That's not---*

Respondent: *Okay, I'll try and answer your question.*

Mr Tan CM: *I'm not talking about your genuine belief.*

Respondent: *Yes---no, no. Okay. Let me get your question.*

Mr Tan CM: *You---I am just re---*

Respondent: Yes."

*[Emphasis added.]*

223. We will now refer to the second point referred to at paragraph 198, on the question of whether Mr Lee and the Respondent proceeded on the basis that the Respondent was his lawyer for the Last Will.

**(b) Mr Lee gave instructions to the Respondent**

224. In a letter sent jointly with Dr LWL dated 28 February 2017 to the MC<sup>111</sup>, Mr LHY said that Mr Lee had given the Respondent instructions on the Last Will, before the draft Last Will was sent over to Mr Lee.

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<sup>111</sup> LSS BOD, Vol 1, p 408 – 422, Letter from Dr LWL and Mr LHY to Mr Lawrence Wong, Minister for National Development, dated 28 February 2017.

225. The relevant paragraphs in Mr LHY and Dr LWL's letter of 28 February 2017 state<sup>112</sup>:

- (a) *"When Mr. Lee gave instructions to Mrs Lee Suet Fern for the [Last Will] to be engrossed, she relied on what she believed was the final version of the will Mr. Lee wanted and was not aware of any later version including a gift-over clause."*
- (b) *"[The Last Will] was engrossed on the basis of Mr. Lee's express instruction to revert to his first will from 2011. We have explained above that on the basis of this instruction, Mrs Lee Suet Fern obtained what she understood to be the final version of the first will from 2011..."*

[Emphasis added.]

226. The Respondent adopted Mr LHY's account of events in her correspondence with AGC in December 2018. Her letter of 21 December 2018 stated that<sup>113</sup>:

*"Matters relating to any involvement I had in assisting my family in December 2013 were addressed by Dr Lee Wei Ling and Mr Lee Hsien Yang in detailed correspondence to the Committee, in particular in their letters of 28 February 2017 and 14 June 2017."*

[Emphasis added.]

227. The Respondent admitted that the plain meaning of what Mr LHY said was that Mr Lee had instructed her directly on the Last Will<sup>114</sup>.

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<sup>112</sup> LSS BOD, Vol 1, p 417 at para 53 and p 419 at para 62.

<sup>113</sup> LSS BOD, Vol 2, p 1329, Letter from the Respondent to the AGC dated 21 December 2018 at para 10.

<sup>114</sup> Transcript (4 July 2019), 53:3-23, 58:7-10.



228. Both the Respondent and Mr LHY sought to resile from this account of events, in their testimony before us. They said that Mr Lee had *never* spoken with the Respondent about the Last Will, and that Mr Lee had given instructions, exclusively, to Mr LHY throughout, and not to the Respondent.

229. This directly contradicted what Mr LHY had said previously, to the MC, and what the Respondent had said to AGC.

230. Neither the Respondent nor Mr LHY provided any coherent explanation, as to why Mr LHY had said to the MC that Mr Lee had instructed the Respondent, if that statement was incorrect.

231. The Respondent said that Mr LHY's statement ("*Mr Lee gave instructions to Mrs Lee Suet Fern*") was always incorrect and simply his "*typical...way*" to "*shortcut...his statements*"<sup>115</sup>. This does not make any sense. To adopt an analogy that the Respondent used, this was not a case where Mr LHY "*jumped*" steps by going "*from A to D and misse[d] the B, C D in between*"<sup>116</sup>. This was a case where Mr LHY said the exact opposite or something quite different from what he purportedly meant to say. If Mr LHY meant to say that "*Mr Lee [never] gave instructions to Mrs Lee Suet Fern*"; or alternatively, that "*Mr Lee gave instructions to me, [Mr LHY],*" then it is surprising that, to convey the view, Mr LHY would in fact say "*Mr. Lee gave instructions to Mrs Lee Suet Fern*". We find it difficult to accept that this is a form of "*shorthand*"<sup>117</sup>, intended to convey the very opposite/ a meaning quite different, from what the words suggest.

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<sup>115</sup> Transcript (4 July 2019), 18:32 – 19:2, 25:17-23, 26:12-14, 53:23, 109:29 – 110:1; see also Transcript (4 July 2019), 109:31-32, 110:31 – 111:2.

<sup>116</sup> Transcript (4 July 2019), 25:17-23; see also Transcript (4 July 2019), 109:31-32.

<sup>117</sup> Transcript (4 July 2019), 18:32 – 19:2.



232. Second, the Respondent and Mr LHY characterised this as one of the “*little exceptions and details*” that had been omitted in the correspondence with the MC<sup>118</sup>.

233. They both drew distinctions between statements to the MC on the one hand, and court documents on the other and in the case of Mr LHY, he went further and made a further distinction with IPO documents<sup>119</sup>. They said that different standards of care and precision apply between the two, because the former are merely in the nature of “*optional explanations*”<sup>120</sup>. This was said by reference to both public and private statements made by Mr LHY. In plain language, the effect of what they said is this: Mr LHY may make untrue statements, in public and in private, whenever there is no legal penalty for telling untruths; his public and private statements cannot be relied upon to be accurate. This is a surprising statement.

234. We do not find their explanations credible.

235. These contradictions were not subtle discrepancies, or small details, that would only be apparent on close scrutiny. Mr LHY’s assertion to the MC was direct and unequivocal – “*Mr Lee gave instructions to Mrs Lee Suet Fern*”. It related to a basic fact – did Mr Lee instruct the Respondent, or did he not?

236. This was all the more so, given the significance of this particular question, in the context of the correspondence with the MC. The possibility of the Respondent having acted in conflict of interest in preparing the Last Will had been raised to the MC, including

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<sup>118</sup> Transcript (4 July 2019), 53:5-13.

<sup>119</sup> Transcript (3 July 2019), 17:22-26; see also Transcript (4 July 2019), 111:4-8.

<sup>120</sup> Transcript (4 July 2019), 18:4-11, 16-19, 111:4-7.

specifically the question: "*What was [the Respondent's] role in the preparation and execution of the Last Will?*"<sup>121</sup>. The MC brought this issue to the Executors' (including Mr LHY) attention. It was referred to as "*serious questions in relation to [the Respondent's] involvement as a lawyer*" for the Last Will<sup>122</sup>. Mr LHY accepted, under cross examination, that serious allegations had been made in respect of the Respondent and Mr LHY<sup>123</sup>. Mr LHY was responding to the questions raised by the MC, by way of the Executors' letter of 28 February 2017, in that context.

237. As such, we find it difficult to believe that Mr LHY would have unequivocally asserted that Mr Lee instructed the Respondent, if that was not the case.

238. The first attempt to correct this alleged error was made in Mr LHY's Affidavit before the Tribunal<sup>124</sup>. This was more than two years after Mr LHY's representation to the MC in February 2017. The Defence also made no mention of it. This is one of a number of assertions that were made, for the first time, in Mr LHY and the Respondent's Affidavits.

239. We also note that on 25 April 2017, the MC had written to Mr LHY and Dr LWL, posing further questions about the preparation of the

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<sup>121</sup> LSS BOD, Vol 1, p 460 at para 38(1), part of Letter from Mr. Lawrence Wong, Minister for National Development, to Mr LHY and Dr LWL dated 25 April 2017.

<sup>122</sup> LSS BOD, Vol 1, p 365 at para 10, Annex A attached to the Letter from Mr Lawrence Wong, Minister for National Development, to Mr LHY and Dr LWL dated 16 December 2016.

See also LSS BOD, Vol 1, p 377 at paras 51 and 56, part of Letter from Mr Lawrence Wong, Minister for National Development, to Mr LHY and Dr LWL dated 13 January 2017. Para 51 highlighted concerns regarding "*what appears to be a conflict of interest: LSF was involved in the preparation and/or signing of the Last Will, while LHY was a beneficiary...*". Para 56 raised, *inter alia*, "*the following serious questions*" in light of the facts set out – "*What was LSF's role in the preparation and execution of the Last Will?*".

<sup>123</sup> Transcript (4 July 2019), 105:23-26.

<sup>124</sup> Mr LHY's AEIC (11 June 2019) at para 84(a).

Last Will<sup>125</sup>. In particular, the MC expressly highlighted the Executors' earlier representations, that Mr Lee had instructed the Respondent, and asked for further details on the nature of the Respondent's involvement<sup>126</sup>.

240. Despite this, Mr LHY never corrected his purported error.

241. As stated above (see paragraph 226), the Respondent also adopted Mr LHY's representations to the MC, in her own correspondence with AGC, in December 2018. During cross-examination, the Respondent claimed that she "*did realise*" the error, but intended to "*clarify it further down*", because her letter was not "*the time or place to go through that*"<sup>127</sup>.

242. It is not credible to say that the Respondent *deliberately* left uncorrected, a critical error, which *overstated* her involvement in the Last Will. This was the Respondent's response to AGC, regarding serious allegations, that she had misconducted herself, in respect of the Last Will. The Respondent knew that her professional conduct was in question, and had been raised by AGC.

243. When cross-examined on the Estate's Letter of 28 February 2017 to the MC, and her letter to AGC, the Respondent was evasive and made numerous attempts to prevaricate. The Respondent said the position in respect of the passages in her letter dated 21 December 2018 was "*nuanced*". The Respondent said that she "*was terrified*" and "*want[ed] to go back and check*"<sup>128</sup>. Then her evidence changed,

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<sup>125</sup> LSS BOD, Vol 1, p 442 – 447, Letter from Mr. Lawrence Wong, Minister for National Development, to Mr LHY and Dr LWL dated 25 April 2017.

<sup>126</sup> LSS BOD, Vol 1, p 444 at para 6(d), Letter from Mr. Lawrence Wong, Minister for National Development, to Mr LHY and Dr LWL dated 25 April 2017.

<sup>127</sup> Transcript (4 July 2019), 58:17-19.

<sup>128</sup> Transcripts (3 July 2019), 11:8-10.

and the Respondent's position was that when she received the first letter from AGC (on 30 December 2018), she knew that it was "*foreshadowing [her] sitting here before the Tribunal*"<sup>129</sup>, which was an answer she repeated a number of times. Her responses did not answer the question posed.

244. Finally, when it was put to the Respondent that her letter, dated 21 December 2018 to AGC, adopted the position the Estate had taken in the letter of 28 February 2017, she disagreed. This was notwithstanding her admission that in writing to the AGC on 21 December 2018, she had reviewed the two letters from the Estate she made reference to<sup>130</sup>.

245. Mr LHY's and the Respondent's evidence on this issue was neither true nor honest. They changed completely their positions from what they had said previously. Their evidence is contradicted by the clear, contrary, contemporaneous evidence, including their own earlier statements. Their new position (that it was Mr LHY who had taken instructions from Mr Lee, and not the Respondent) seems to have been crafted late in the day, just prior to the Hearing, and for the specific purpose of the Hearing.

246. Our conclusion on the evidence is that, when the Estate wrote to the MC in February 2017, presenting the Respondent as having acted in a manner consistent with there having been a solicitor-client relationship, this was a reflection that the Respondent did indeed see her role as such.

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<sup>129</sup> Transcripts (3 July 2019), 11:25-26.

<sup>130</sup> Transcripts (3 July 2019), 7:31.

247. Now faced with potential disciplinary action, the Respondent has changed her position, and has instead adopted the position that her involvement was only "*peripheral*"<sup>131</sup>.

248. Mr LHY's original account, to the MC – that Mr Lee gave instructions to the Respondent – is also consistent with the Respondent's conduct, in sending the draft Last Will to Mr Lee. As discussed below (see paragraphs 274 – 281 below), the Respondent and Mr LHY gave no credible explanation as to why it was the Respondent who subsequently sent the draft Last Will to Mr Lee, if Mr Lee's instructions had been given to Mr LHY.

249. The giving and taking of instructions is one of the important hallmarks of a solicitor-client relationship.

250. We will now deal with the third point referred to at paragraph 198, relating to whether Mr Lee and the Respondent proceeded on the basis that the Respondent was his lawyer, for the Last Will.

**(c) Mr Lee's conduct following the execution of the Last Will**

251. The Respondent and Mr LHY said that Mr Lee's decision to send Ms KKL a copy of the Last Will, and (later), the Codicil thereto, showed that he regarded Ms KKL as his lawyer for the Last Will<sup>132</sup>.

252. In our view, these events do not support such an interpretation. For the reasons set out below, Mr Lee's conduct, in the way he handled the originals and copies of both the Last Will, and the Codicil, are consistent with him regarding the Respondent as his lawyer.

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<sup>131</sup> The Respondent's AEIC (17 June 2019) at para 37.

<sup>132</sup> The Respondent's AEIC (17 June 2019) at para 31; Mr LHY's AEIC (11 June 2019) at para 54.

(i) The Last Will

253. Mr Lee signed two originals of the Last Will. After the signing, Ms WLH informed Mr Lee that the Respondent had sent one of the originals (Original A) to Mr Lee's office for safe-keeping. She told Mr Lee that the other original (Original B) would be sealed and locked in the Respondent's office safe<sup>133</sup> (see paragraph 65 above).

254. Ms WLH asked Mr Lee if he would like to keep Original A in his office safe<sup>134</sup>. Alternatively, she suggested that he could pass it to Ms KKL for safekeeping, as Ms KKL was also keeping the originals of Mr Lee's title deeds to all the properties.

255. Mr Lee initially responded: "Yes, *Kwa Kim Li*"<sup>135</sup>. However, when Ms WLH replied to confirm that she would arrange for Ms KKL to safe keep Original A<sup>136</sup>, Mr Lee responded: "*You keep original in office and send Kim Li a copy*"<sup>137</sup>. [Emphasis added.] (See paragraph 66 above.)

256. Thus, despite Ms WLH's suggestion to send one of the originals to Ms KKL, Mr Lee ultimately opted to retain this himself, and send Ms KKL a copy instead. This was a departure from the practice for Mr Lee's First to Sixth Wills. Ms KKL, who was Mr Lee's lawyer for these previous Wills, had kept the originals for all of them<sup>138</sup>.

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<sup>133</sup> LSS BOD, Vol 1, p 215 – 216, email from Ms WLH to Mr Lee and Ms Lilian Ho dated 17 December 2013, 4.29pm.

<sup>134</sup> LSS BOD, Vol 1, p 215 – 216, email from Ms WLH to Mr Lee and Ms Lilian Ho dated 17 December 2013, 4.29pm.

<sup>135</sup> LSS BOD, Vol 1, p 215, email from Mr Lee to Ms WLH dated 17 December 2013, 6.38pm.

<sup>136</sup> LSS BOD, Vol 1, p 215, email from Ms WLH to Mr Lee, Mr LHY, the Respondent and Dr LWL dated 17 December 2013, 7.01pm.

<sup>137</sup> LSS BOD, Vol 1, p 214 – 215, email from Mr Lee to Ms WLH dated 17 December 2013, 10.27pm.

<sup>138</sup> See LSS's Opening Submissions (Transcript (1 July 2019), 24:12); see also LSS Submissions for No Case to Answer (3 July 2019) at paras 12(c), 29, LSS Closing Submissions (20 September 2019) at paras 69(g) and 83. This was not disputed by the Respondent.

257. Mr Lee also knew that the Respondent would retain the only other original of the Last Will, in her office safe. He accepted this.

258. In our view, it is material that Mr Lee chose to have the Respondent, and not Ms KKL, retain the original of his Last Will. Mr Lee's practice (in respect of the First to Sixth Wills), was to have his lawyer retain the originals of his wills. Mr Lee asking the Respondent to keep the original of his Last Will is consistent with him proceeding on the basis that the Respondent, and not Ms KKL, was his lawyer for the Last Will. As we discuss below (see paragraphs 395 - 401), the Respondent's own conduct, in deciding to keep an original of the Last Will, was equally relevant.

(ii) The Codicil

259. The Respondent and Mr LHY relied on the events surrounding the Codicil, as evidence that Mr Lee regarded Ms KKL, and not the Respondent, as his lawyer for the Last Will<sup>139</sup>. Their Affidavits variously stated that:

- (a) On 3 January 2014, Mr Lee, (through Ms WLH), *"informed his lawyer, KKL, his children, and his 2 daughters-in-law about the Codicil"*.
- (b) Mr Lee also *"instructed...that a copy [of the Codicil] be sent to his lawyer, KKL, for her records. He did not direct any copy to be sent to Stamford"*.
- (c) *"This makes it apparent that even until January 2014, Papa continued to view KKL as his lawyer in respect of his wills"*.

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<sup>139</sup> The Respondent's AEIC (17 June 2019) at paras 30 and 31; Mr LHY's AEIC (11 June 2019) at paras 57 and 58.

[Emphasis added.]

260. The suggestion that Mr Lee wanted Ms WLH to inform *"his lawyer, KKL...about the Codicil"* is not borne out by the evidence. Ms WLH's email was expressly addressed specifically to the Respondent<sup>140</sup>. Ms KKL was copied as a recipient, just as Mr Lee and the rest of his family were. Mr Lee decided that Ms WLH should update the Respondent on the Codicil. This is consistent with the evidence that he believed that the Respondent was his lawyer, for the Last Will.

261. Mr LHY said that Mr Lee *"did not direct any copy [of the Codicil] to be sent to Stamford"*<sup>141</sup>. [Emphasis added.] However, as stated above, Ms WLH's email was personally addressed to the Respondent, and attached a copy of the Codicil.

262. As regards the Codicil, the Respondent and Mr LHY accepted<sup>142</sup> that Mr Lee's Codicil gave effect to his earlier discussions with Ms KKL, to bequeath two carpets to Mr LHY (see paragraph 29 above).

263. We have dealt with the three points, in respect of the question of whether Mr Lee and the Respondent proceeded on the basis that the Respondent was his lawyer (see paragraph 198 above). That question, in turn, is the first of three questions, we consider, in deciding whether there was an Implied Retainer (see paragraph 176 above).

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<sup>140</sup> LSS BOD, Vol 1, p 230, email from Ms WLH to the Respondent, Mr Lee, Mr LHL, Mr LHY, Dr LWL, Ms Ho Ching and Ms KKL dated 3 January 2014, 10.30am.

<sup>141</sup> Mr LHY's AEIC (11 June 2019) at para 58.

<sup>142</sup> Mr LHY's AEIC (11 June 2019) at para 57; Transcript (4 July 2019), 65:22-27, 66:14-16.



264. We now turn to consider the second question to be considered on the issue of Implied Retainer (see paragraph 176 above), namely, the Respondent's involvement in the Last Will.

**(2) The actual nature and extent of the Respondent's involvement in the Last Will**

265. The Respondent and Mr LHY's evidence was that the Respondent played only a peripheral role in the preparation and execution of the Last Will. They gave evidence, *inter alia*, as follows:

- (a) Mr Lee was a brilliant lawyer who knew "*exactly what he want[ed]*"<sup>143</sup>. By 16 December 2013, he had independently decided to re-execute the First Will<sup>144</sup>, and was just "*looking for somebody to witness it*"<sup>145</sup>.
- (b) The Respondent was only "*incidentally*" involved in the Last Will, as Mr LHY's wife, because Mr LHY asked her for a "*little bit of help*" with "*his...chore for his father*"<sup>146</sup>.
- (c) Her involvement in the preparation and execution of the Last Will was confined to two "*administrative tasks*", which Mr LHY delegated to her because he was "*in a rush*"<sup>147</sup>.

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<sup>143</sup> The Respondent's AEIC (17 June 2019) at para 27; Transcript (3 July 2019), 97:27-29, 99:10-12; Transcript (4 July 2019), 23:19-20, 31:24-25, 69:1-2, 86:12-20, 98:16-20. See also Defence at para 64(f).

<sup>144</sup> Defence at para 16; Transcript (3 July 2019), 102:5-6; Transcript (4 July 2019), 96:19-97:18; Mr LHY's AEIC (11 June 2019) at para 32.

<sup>145</sup> Transcript (3 July 2019), 37:14-15, 86:18-28; Transcript (4 July 2019), 48:15-16, 51:1-2, 65:16.

<sup>146</sup> The Respondent's AEIC (17 June 2019) at para 29; Transcript (3 July 2019), 41:8, 75:17-18, 24-28; 77:8; 101:21-25; Transcript (4 July 2019), 2:7. See also Defence at paras 23, 36, 50, 54 and 64(c).

<sup>147</sup> The Respondent's AEIC (17 June 2019) at paras 27 and 29; Mr LHY's AEIC (11 June 2019) at para 56; Transcript (4 July 2019), 71:3-4, 127:28. See also Defence at para 64(c).

(i) First, the Respondent simply forwarded the draft of the Last Will, which she received from Mr LHY<sup>148</sup>, to Mr Lee and Ms KKL as Mr LHY had instructed<sup>149</sup>.

(A) Mr LHY sought the Respondent's assistance to follow-up with Mr Lee and Ms KKL, as he was flying to Brisbane that night and was unable to reach Ms KKL<sup>150</sup>.

(B) The Respondent was also flying off later that evening to Paris. As she was having a "*pre-travel departure work crisis [that] was particularly acute that day*", she only got round to dealing with Mr LHY's request later that evening<sup>151</sup>.

(C) The Respondent did not think that she even opened or looked at the attachment that Mr LHY sent her, before she forwarded it on to Mr Lee and Ms KKL<sup>152</sup>. She expected Mr Lee's lawyer, Ms KKL, who had advised him on the First Will, to deal with it<sup>153</sup>.

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<sup>148</sup> Mr LHY's AEIC (11 June 2019) at para 36; the Respondent's AEIC (17 June 2019) at paras 13 and 15.

<sup>149</sup> The Respondent's AEIC (17 June 2019) at paras 13, 16 and 27; Mr LHY's AEIC (11 June 2019) at para 36. See also Transcript (3 July 2019), 29:7, 113:27-32.

<sup>150</sup> Mr LHY's AEIC (11 June 2019) at paras 35-36 and 56; the Respondent's AEIC (17 June 2019) at para 13. See also Transcript (4 July 2019), 128:22 – 129:23.

<sup>151</sup> The Respondent's AEIC (17 June 2019) at para 14.

<sup>152</sup> The Respondent's AEIC (17 June 2019) at para 16; Transcript (3 July 2019), 42:7-8, 73:11-74:8, 75:15-26.

<sup>153</sup> Transcript (3 July 2019), 29:8-11, 31:10-11, 33:26-32, 75:10-23, 76:27-32, 79:11-12, 86:5-6, 114:5-7; Transcript (4 July 2019), 85:7-23, 137:23-25.

- (ii) Second, the Respondent found someone from her law firm, Mr BL, to witness the execution of the Last Will<sup>154</sup>.
  - (A) After the Respondent sent the draft to Mr Lee and Ms KKL, Mr LHY chastised her for having taken so long to follow up. He told her again that Ms KKL was uncontactable, and asked her to arrange for someone from her firm to “standby” to witness the execution<sup>155</sup>.
  - (B) The Respondent suggested Mr BL. Mr LHY told her that he would make arrangements directly with Mr BL once she sounded him out, and Mr LHY eventually sent him the draft Last Will<sup>156</sup>.
  - (C) The Respondent consequently approached Mr BL to brief him on the Last Will, and sent his contact details to Ms WLH and Mr LHY<sup>157</sup>.
- (d) After introducing Mr BL to Ms WLH and Mr LHY, the Respondent had “*no further involvement in the preparation or execution of [the Last Will]*”<sup>158</sup>.
  - (i) The Respondent’s involvement in the arrangement for the execution of the Last Will ended at that point.

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<sup>154</sup> Transcript (3 July 2019), 40:8-19, 52:7-12, 99:17; Transcript (4 July 2019), 67:16-17, 69:7-8.

<sup>155</sup> The Respondent’s AEIC (17 June 2019) at para 18; Mr LHY’s AEIC (11 June 2019) at para 41; Transcript (3 July 2019), 34:16-18, 41:11-25, 77:13-22, 78:8-14, 110:3-12.

<sup>156</sup> The Respondent’s AEIC (17 June 2019) at para 18; Mr LHY’s AEIC (11 June 2019) at paras 41-43.

<sup>157</sup> The Respondent’s AEIC (17 June 2019) at paras 19 and 20; see also Transcript (3 July 2019), 41:18-25.

<sup>158</sup> The Respondent’s AEIC (17 June 2019) at para 27; Transcript (3 July 2019), 52:30-53:9.

Thereafter, Mr LHY and Ms WLH co-ordinated the arrangements directly with Mr BL<sup>159</sup>.

- (ii) The Respondent left for Paris that night, and attended back-to-back meetings in Paris for three days *"immediately from the time of... arrival"*<sup>160</sup>.

266. A fair part of the above evidence was set out in the Respondent's and Mr LHY's Affidavits, which were tendered when the BL Documents and Mr BL's Affidavit were not in evidence (and when there was no reason for the Respondent to believe that the BL Documents, and Mr BL's Affidavit, would be placed before the Tribunal) (see also paragraph 213 above). The BL Documents showed that much of the evidence given by the Respondent and Mr LHY (set out in paragraph 265 above) was not true. We will consider the evidence, and set out our views on the nature and extent of the Respondent's involvement in the Last Will, by reference to the following points:

- (a) The Respondent sent the Last Will to Mr Lee and represented that it was ready for engrossment.
- (b) Ms KKL was excluded from being involved in the Last Will.
- (c) The basis on which Mr Lee decided to execute the Last Will.
- (d) The Respondent's role, in expediting the execution of the Last Will.
- (e) The Respondent's involvement, in the lead-up to the execution of the Last Will.

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<sup>159</sup> The Respondent's AEIC (17 June 2019) at para 20; Transcript (3 July 2019), 38: 31-32, 39:31, 53:6.

<sup>160</sup> The Respondent's AEIC (17 June 2019) at para 21.

- (f) The Respondent's involvement, after the execution of the Last Will.

**(a) The Respondent sent Mr Lee the draft Last Will**

267. The Respondent provided Mr Lee with the draft Last Will in the evening of 16 December 2013 (at 7.08pm)<sup>161</sup> (see paragraph 30 above). Mr Lee signed the Last Will, which was in the same terms as the draft, the next morning, without any substantive amendment.

268. The Respondent's email (see paragraph 32 above) represented to Mr Lee that the document which she attached to her email: (a) was the "*original agreed Will*" (i.e. the First Will); and (b) it "*ensures that all 3 children received equal shares*".

269. The Respondent admitted that Mr Lee would have relied on what she told him, and Mr Lee would have assumed what she told him would be true<sup>162</sup>.

270. The Respondent said:

- (a) First, that her act of sending the draft Last Will was administrative<sup>163</sup>.
- (b) Second, that as a matter of law, her email to Mr Lee could not amount to the giving of "*advice*" for purposes of an implied retainer.

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<sup>161</sup> LSS BOD, Vol 1, p 174, email from the Respondent to Mr Lee, Mr LHY and Ms KKL dated 16 December 2013, 7.08pm.

<sup>162</sup> Transcript (3 July 2019), 30:30 – 31:8.

<sup>163</sup> Mr LHY's AEIC (11 June 2019) at para 56; The Respondent's AEIC (17 June 2019) at para 29; Transcript (3 July 2019), 75:24-28; Transcript (4 July 2019), 2:7, 127:28).

271. We consider each of these points in turn.

**(i) Was the Respondent merely performing an administrative task?**

272. The Respondent and Mr LHY said that on 16 December 2013, the Respondent was told to “send [the draft Last Will] along” as an administrative act (after she had received it from Mr LHY), so that Ms KKL could follow up with Mr Lee<sup>164</sup>. We find this difficult to accept.

273. First, the Respondent and Mr LHY’s claim is contradicted by the Respondent’s email of 7.08pm.

- (a) The Respondent’s email to Mr Lee advised him on the contents and effect of the draft. It went beyond the simple act of forwarding<sup>165</sup> a draft for Ms KKL to follow up (see paragraphs 32 and 268 above, and paragraphs 291 – 302 below).
- (b) The Respondent’s email was addressed primarily to Mr Lee; Ms KKL was copied in the email, with the request to engross coming as an endnote. *Prima facie*, the email would indicate to Mr Lee and Ms KKL, that the Respondent had done all that was necessary, to carry out Mr Lee’s instructions, and all that was left, was for Ms KKL to engross the Last Will.

274. Second, Mr LHY was unable to explain why he needed the Respondent to send the draft to Mr Lee and Ms KKL, if it was simply

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<sup>164</sup> Transcript (3 July 2019), 29:7, 75:10-28, 73:30-32, 76:30-32, 79:11-12, 86:5-6, 88:10, 108:22-23, 113:27-32; Transcript (4 July 2019), 2:4-19, 62:16-31, 85:7-23.

<sup>165</sup> On the Respondent and Mr LHY’s evidence that he had forwarded the draft to her (see paragraphs 303 – 322 of this Decision), the issue of who surfaced the draft is secondary – what is more relevant is what transpired after the Respondent obtained the draft (be it herself, or from Mr LHY), when she sent it to Mr Lee, and how she explained its contents to him.

and administrative act of forwarding it on to Mr Lee. Mr LHY also removed Ms KKL, from the emails, shortly thereafter (see paragraph 39 above).

275. One example from Mr LHY's cross-examination is as follows<sup>166</sup>:

“Mr Tan CM:     *So my question is: if you had --- could forward a draft to your wife, why don't you directly forward the draft or message to Kwa Kim Li with instructions for her to engross?*

Mr LHY:           *Because sometimes my wife helps me with these administrative tasks.*

Mr Tan CM:       *Again, that doesn't seem to answer my question. Why go through your wife when a simple email to Kwa Kim Li with wife in copy will ensure that this is taken care of once and for all?*

Mr LHY:           *I didn't do it.*

Mr Tan CM:       *That's incredible, right? Because you knew at all times Kwa Kim Li was the lawyer's --- your father's lawyer on wills.*

Mr LHY:           *(No audible answer)*

Mr Tan CM:       *You can agree or disagree.*

Mr LHY:           *I disagree.*

Mr Tan CM:       *I think your evidence is unbelievable.*

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<sup>166</sup> Transcript (4 July 2019), 127:25-128:7.

Mr LHY: *I disagree."*

[Emphasis added.]

276. Mr LHY was frequently evasive, refusing to answer questions put to him.

277. Mr LHY said:

- (a) Mr Lee was very impatient and wanted the Last Will finalised quickly;
- (b) Mr Lee spoke to Mr LHY, and asked him to arrange for the First Will to be engrossed;
- (c) The draft, circulated on 16 December 2013, also came from Mr LHY, who sent it to the Respondent<sup>167</sup>; and
- (d) However, because the Respondent was very busy at work, hours passed, before she eventually sent it on to Mr Lee, and Ms KKL<sup>168</sup>.

278. If this was true, Mr LHY could himself have sent the draft Last Will directly to Mr Lee and KKL. This was especially so if, as he said, he was the one who found the draft. It would have been much faster, easier, and the best way for Mr LHY to execute Mr Lee's instructions. (As to whether it was Mr LHY who found the draft and sent it to the Respondent, see paragraphs 303 - 322 below.)

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<sup>167</sup> On the Respondent and Mr LHY's evidence that he had forwarded the draft Last Will to her, see paragraphs 303 – 322 of this Decision.

<sup>168</sup> Mr LHY's AEIC (11 June 2019) at paras 40 and 41; The Respondent's AEIC (17 June 2019) at paras 14 and 18; Transcript (4 July 2019), 135:12-14; Transcript (5 July 2019), 51:28-29, 54:16-17.



279. Mr LHY admitted, several times, that he could have gone straight to Ms KKL, instead of involving the Respondent<sup>169</sup>. But he said that he wanted to "*pass the buck*" to the Respondent, to help him with the chore<sup>170</sup>. We found his explanations contrived. They were not credible:

- (a) Mr LHY said that he was travelling that night. But the Respondent was also travelling that night. He claimed that the Respondent was "*leaving much later*" than him<sup>171</sup>. But their flights were only three hours apart<sup>172</sup>. In addition, the Respondent had stated that she was in the midst of a bad "*pre-travel departure work crisis*", because it was her last day in the office for the year<sup>173</sup>. There was no credible explanation as to why she was given this additional task.
- (b) Even after Mr LHY says he asked the Respondent to help send the draft to Mr Lee and Ms KKL, the Respondent and Mr LHY continued to send emails and make phone calls about the Last Will<sup>174</sup>, throughout the day, and early the next morning<sup>175</sup> (see facts set out in Section III(G) above).

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<sup>169</sup> Transcript (4 July 2019), 130:11-22, 134:10-21, 138:15-22.

<sup>170</sup> Transcript (5 July 2019), 58: 19-23, see also Mr LHY's AEIC (11 June 2019) at para 36.

<sup>171</sup> Transcript (4 July 2019), 130:15.

<sup>172</sup> Mr LHY's AEIC (11 June 2019) at para 40; the Respondent's AEIC (17 June 2019) at para 21; See also Transcript (4 July 2019), 138:15-22.

<sup>173</sup> The Respondent's AEIC (17 June 2019) at para 14; Transcript (3 July 2019), 72:20-22; Transcript (4 July 2019), 86:6-7.

<sup>174</sup> Mr LHY's AEIC (11 June 2019) at paras 36-45; LSS BOD, Vol 1, p 177, email from Mr LHY to Mr Lee, Ms WLH and the Respondent dated 17 December 2013, 4.53am; LSS BOD, Vol 1, p 189; email from Mr LHY to Dr LWL, the Respondent, Ms WLH dated 17 December 2013, 4.54am; LSS BOD, Vol 1, p 197, email from Mr LHY to Ms WLH, the Respondent and Mr BL dated 17 December 2013, 11.25am. See paragraphs 39 - 44 of this Decision where the different email correspondence is referred to.

<sup>175</sup> During cross-examination, the Respondent said that Mr LHY had only "*passed the buck*" to her "*during the day when he was at work*", whereas his exchanges with Mr BL took place in the evening. (See Transcript (3 July 2019), 110:22-25.) This was inherently incredible – that Mr LHY would have

(c) In particular, Mr LHY made various calls and emailed a number of parties that evening, before he flew off (see Section III(G) above). For example:

- (i) Mr LHY called the Respondent, to ask her to arrange for a witness<sup>176</sup>;
- (ii) He claims to have called Mr BL, and to have emailed Mr BL the draft Last Will<sup>177</sup>; and
- (iii) He sent an email to Mr Lee, the Respondent and Ms WLH<sup>178</sup> (see paragraph 39 above).

280. Mr LHY said that he did all these things. But he specifically required the Respondent's assistance to send the one email, enclosing the draft Last Will, to Mr Lee. This must have been to involve the Respondent as a lawyer. This is on the assumption that Mr LHY's evidence that it was he who found the draft and sent it to the Respondent is true. However, we do not believe that to be the case (see paragraphs 303 - 322 below). We have concluded that Mr LHY's evidence is untrue, and that it was the Respondent who found the draft and sent it to Mr Lee. In any event, it does not matter whether it was the Respondent or Mr LHY who found the draft, for the purposes of deciding whether there is an Implied Retainer (see paragraph 304 below).

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delegated tasks to her during the day, but stepped up his involvement in the hours and minutes just before he flew off.

<sup>176</sup> Mr LHY's AEIC (11 June 2019) at para 41.

<sup>177</sup> Mr LHY's AEIC (11 June 2019) at para 42.

<sup>178</sup> LSS BOD, Vol 1, p 177, email from Mr LHY to Mr Lee, Ms WLH and the Respondent dated 17 December 2013, 4.53am.

281. Mr LHY also suggested that he had not wanted to contact Ms KKL, because he thought very poorly of Ms KKL, and disliked her<sup>179</sup>. But Mr LHY had no issues dealing with Ms KKL on Mr Lee's previous Wills<sup>180</sup>. He was also prepared to call Ms KKL on that day (16 December 2013), to try to speak with her<sup>181</sup>. It is unclear why an email would have been any more unpleasant.

282. In addition, if the Respondent and Mr LHY's intention was to have Ms KKL follow-up with the execution, why was the draft Last Will attached? Ms KKL would have the final version of all Mr Lee's Wills.

283. Mr LHY's explanation on this shifted in the course of his evidence.

284. Initially, during cross-examination, Mr LHY accepted that there was no need to have attached the draft; he agreed that he could have sent a simple email, and left Ms KKL to follow-up directly with Mr Lee<sup>182</sup>. Mr LHY said, at that point, that he had forwarded the draft not for KKL's benefit, but for Mr Lee, so that Mr Lee could see the document<sup>183</sup>.

285. However, during re-examination, Mr LHY changed his position quite substantially. He said that *he had also wanted Ms KKL to see the draft*, because he thought very poorly of her, and was afraid she might use the wrong will from 2011<sup>184</sup>.

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<sup>179</sup> Transcript (4 July 2019), 127:14; Transcript (5 July 2019), 51:22-26, 55:14-21.

<sup>180</sup> Mr LHY's AEIC (11 June 2019) at paras 19 and 21.

<sup>181</sup> Mr LHY's AEIC (11 June 2019) at para 35.

<sup>182</sup> Transcript (4 July 2019), 131:1-9.

<sup>183</sup> Transcript (4 July 2019), 130:27-32; Transcript (5 July 2019), 55:3-13.

<sup>184</sup> Transcript (5 July 2019), 57:21-58:14.

286. We do not find this explanation by Mr LHY to be credible either. If this was true, there is no reason why he could not have said so, when first asked. Further, Mr LHY knew that there had been different drafts of the First Will “floating back and forth” in 2011<sup>185</sup>, and he had never seen the executed version of the First Will<sup>186</sup>. That militates against believing that he would have known better than Ms KKL, which was the correct draft.

287. The Respondent's email of 7.08pm must also be seen together with the other events that took place that evening.

288. On Mr LHY and the Respondent's evidence, they knew before the Respondent sent her email, that Ms KKL could not be reached and was possibly out of town<sup>187</sup>. They sent the email to see if she “*might be contactable on email*”<sup>188</sup>. They were therefore alive to the possibility that Ms KKL might remain uncontactable, or be unable to assist with the Last Will. In Mr LHY's own words, “*if Kim Li responded and was able to, she could. If she can't, she can't.*”<sup>189</sup>

289. They also took other steps, shortly after the Respondent sent Mr Lee the draft Last Will, to arrange for the Last Will to be engrossed and witnessed by another lawyer (Mr BL), without Ms KKL (see paragraph 328 below)<sup>190</sup>. All this happened without any further attempts to contact Ms KKL<sup>191</sup>, and without waiting for Mr Lee's agreement to proceed without her.

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<sup>185</sup> Transcript (4 July 2019), 121:11-14.

<sup>186</sup> Mr LHY's AEIC (11 June 2019) at para 22.

<sup>187</sup> Transcript (4 July 2019), 129: 8-23, 132:30-134:5; Transcript (5 July 2019), 1:22-32.

<sup>188</sup> Transcript (4 July 2019), 130:25-26, 131:12-13.

<sup>189</sup> Transcript (4 July 2019), 134:8-9.

<sup>190</sup> Transcript (3 July 2019), 33:32-34:24, 40:4-22, 41:22-25; Transcript (4 July 2019), 135:21-30.

<sup>191</sup> Transcript (4 July 2019), 63:30 – 64:1, 86:3-7, 132:1-4.

290. In the premises, we do not accept the Respondent and Mr LHY's evidence (see paragraph 272 above), that her email of 7.08pm served a purely administrative function. It is clear that the Respondent intended to send the draft Last Will to Mr Lee, as a lawyer, to advise him that it was as he had wanted, and to assure Mr Lee that it was in order. Even if it was Mr LHY who found the draft, and sent to the Respondent<sup>192</sup>, it is her sending it to Mr Lee with her advice, which is important. It is clear that the Respondent and Mr LHY contemplated the need for a lawyer, other than Ms KKL, to advise Mr Lee on the contents of the draft Last Will. The Respondent's email gave that advice.

**(ii) Did the Respondent give Mr Lee "advice"?**

291. The Respondent also argued that her conduct could not, as a matter of law, amount to "advice" because she had only described the draft to Mr Lee.

292. Her Counsel relied on the High Court decision in *CIFG Special Assets Capital I Ltd v Polimet Pte Ltd and others* [2016] 1 SLR 1382 ("*CIFG*"), at [138] as authority for the proposition that: (a) explaining the legal effect of a document, does not amount to "advice", for the purposes of an implied retainer, and (b) an implied retainer should only be found, when a solicitor has gone to the extent of providing advice, for the purposes of safeguarding or advancing the interests of the putative client.

293. Having reviewed the judgment in *CIFG*, we did not find that it supported the Respondent's position.

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<sup>192</sup> See paragraphs 305 – 322 of this Decision, where this question is dealt with.

294. In *CIFG*, an implied retainer was alleged to arise between: (a) the lawyer acting for the plaintiff, who was party to a proposed agreement, and (b) the unrepresented counterparty to the transaction, who was the defendant. The Court found that no implied retainer arose. In arriving at its decision, the Court took into account the specific duties that arise when a solicitor acts for a client, in a transaction with an unrepresented counterparty. In such cases, a solicitor must strike a balance between two competing duties:

- (i) On the one hand, the solicitor is under an obligation not to take unfair advantage of the opposing party: see Rule 53A of the PCR (see *CIFG* at [100]). He therefore owes a duty to the unrepresented counterparty to (see *CIFG* at [101]):
  - (A) explain the terms and conditions of the contract and legal consequences thereof, fully and frankly, to the unrepresented counterparty; and
  - (B) ensure that the unrepresented party understands these terms and conditions, and legal consequences, fully (see *CIFG* at [126] – [128]).
- (ii) On the other hand, the solicitor also owes a concurrent duty to his own client, not to act against the client's interests, (see *CIFG* at [132] – [137]). In particular, the solicitor is not permitted to act against his client, by giving "advice" to another party, with opposing interests: Rule 30 of the PCR.

295. The Court observed that a solicitor in this situation is placed in "an invidious position"; he owes duties, both his client, and the unrepresented party who has interests, that are opposed to his client's (see *CIFG* at [100] and [101]).

- (a) If he overreaches by providing more assistance to the counterparty that he ought to, he could find himself:
  - (i) with a new putative client, if an implied retainer is found; and/or
  - (ii) in breach of his duty, not to act against his (original) client.
- (b) However, if he provides less assistance to the unrepresented counterparty than he ought to have, he could be blamed for having taken unfair advantage of third parties.

296. In view of the balance that has to be struck, between these competing duties, the court agreed that the word "*advice*" in Rule 30 of the PCR (and, by extension, for the purposes of an implied retainer) cannot be given its natural and ordinary meaning (see *CIFG* at [134]). In particular, a solicitor's conduct, in explaining the meaning of a document to an unrepresented counterparty (as his duties under Rule 53A of the PCR require), should not, in itself, constitute "*advice*", for the purposes of Rule 30 of the PCR, and/or an implied retainer (see *CIFG* at [137] and [138]).

297. The Court's approach in *CIFG* is understandable, in the context of dealings between a solicitor, and an unrepresented counterparty to a transaction. The ordinary meaning of "*advice*" is untenable, in such cases, because of the solicitor's concurrent duty to the counterparty, if the meaning of "*advice*" is not narrowed. A solicitor will then run the risk of an implied retainer, and/or of being found in breach of Rule 30 of the PCR whenever he tries to discharge his duty under Rule 53A of the PCR, by explaining the document to the counterparty.

298. There are clear differences between the facts before us, and those in *CIFG*. In *CIFG*, the lawyer in question took care to tell the unrepresented counterparty that: (a) he was not their lawyer and did not act for them, (b) he could not advise them, and (c) they should seek independent legal advice. In addition, the lawyer never took instructions directly from the counterparty. He only explained the terms of the document to them, as he believed it was his duty to do so, to avoid any unfair advantage to his client. (See *CIFG* at [125], [142], and [150].)

299. The facts before us are quite different. First, the Respondent never told Mr Lee that she was not his lawyer. To the contrary, she allowed him to believe that she was the lawyer who had drafted the Last Will (see paragraph 209 above).

300. Second, the Respondent never told Mr Lee to seek independent legal advice. This is undisputed. Instead, the Respondent took active steps to allow the execution to proceed, without Mr Lee's usual lawyer, Ms KKL (see paragraphs 327 - 331 below).

301. Third, as set out hereafter, the Respondent's involvement in the Last Will went beyond sending Mr Lee the draft Last Will, and explaining its contents to him. She additionally assumed the responsibility of making all the preparations for Mr Lee's Last Will, which Ms KKL would ordinarily have handled.

302. Between the evening of 16 December 2013, when Mr Lee received the draft from the Respondent, and the morning of 17 December 2013, when Mr Lee signed the Last Will, no other lawyer advised Mr Lee on its contents.



**(iii) Did Mr LHY send the Respondent the draft Last Will for her to send to Mr Lee?**

303. The Respondent and Mr LHY said that it was Mr LHY who had found, amongst his emails, what he believed to be the final draft of the First Will, and that he had then forwarded this on to the Respondent, so that she could follow up with Mr Lee and Ms KKL. Thus, they say, the Respondent's role was merely administrative.

304. The issue is not, strictly speaking, material to the question of the Implied Retainer. For the reasons explained above, the Respondent adopted and assumed responsibility for the contents of the draft Last Will, *vis-à-vis* Mr Lee. Thus, even if it was Mr LHY who found the draft, and sent it to the Respondent, that does not detract from the Respondent's legal responsibility.

305. The claim that Mr LHY sent the Respondent the draft Last Will, is however, not borne out by the evidence. Neither the Respondent nor Mr LHY produced any emails to support their account.

306. We found this surprising. Mr LHY had no difficulty locating other emails from this period<sup>193</sup>, and even emails pre-dating this period, from 2011 and 2012<sup>194</sup>. However, he was unable to produce an email, showing that he had forwarded the draft Last Will to the Respondent (or Mr BL, as he also claimed (see paragraph 333 below))<sup>195</sup>.

307. Mr LHY attributed this to his policy of deleting emails with attachments<sup>196</sup>; he said that "*where documents have been executed*

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<sup>193</sup> See for example Mr LHY's AEIC (11 June 2019) – Exhibit "LHY-9", "LHY-10", "LHY-11", "LHY-12".

<sup>194</sup> See for example Mr LHY's AEIC (11 June 2019) – Exhibit "LHY-1" (Email exchange from August 2011), "LHY-3" (Email exchange from Sep 2012), "LHY-4" (Email from Oct 2013).

<sup>195</sup> Mr LHY's AEIC (11 June 2019) at paras 37 and 42.

<sup>196</sup> Mr LHY's AEIC (11 June 2019) at para 37; Transcript (4 July 2019), 125:13-31.

*and there's a hardcopy, the hardcopy becomes the determining one*<sup>197</sup>. However, if what Mr LHY said is accurate, then it is difficult to see why, in 2013, Mr LHY would have kept a draft of the First Will from 2011, when that First Will had long been executed and itself superseded by other Wills.

308. The Defence that the Respondent filed also made no mention of the fact that it was Mr LHY who surfaced the draft Last Will to the Respondent<sup>198</sup>. These claims were made, for the first time, in the Respondent's and Mr LHY's Affidavits.

309. These Affidavits were filed in June 2019, *months* after these proceedings were started, and *years* after the questions about the Last Will first arose.

310. In particular, Mr LHY's role in sending the draft Last Will to the Respondent was not referred to in Mr LHY's responses to the MC, in 2016 and 2017, despite these documents having been drafted with the assistance of lawyers from Rajah & Tan LLP<sup>199</sup>.

311. Mr LHY's explanation for not raising this earlier was inconsistent and evasive<sup>200</sup>.

312. Mr LHY initially said that his new account was *reconstructed* evidence, rather than based on his actual *recollection* (as his earlier representations to the MC had been). He suggested that these facts were omitted from his letters to the MC because at the time, he had

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<sup>197</sup> Transcript (4 July 2019), 125:29-30.

<sup>198</sup> Transcript (3 July 2019), 46:11-17, 75:29 – 76:8.

<sup>199</sup> Transcript (4 July 2019), 107:23-30.

<sup>200</sup> Transcript (4 July 2019), 118:20-31.

relied solely on his recollection. In contrast, he said that after the Tribunal was convened, he and the Respondent's legal team had put in "*an enormous amount of effort*", to do a "*very careful review of many documents, emails*" and "*based on that... to put together what was a complete picture*"<sup>201</sup>.

313. In other words, based on Mr LHY's explanation:

- (a) What he told the MC was based on his recollection and was therefore not correct; and
- (b) What he said to us, two years later, was based on reconstruction, not his recollection, and was therefore correct.

314. The High Court had cautioned in *Lim Ah Leh v Heng Fock Lin* [2018] SGHC 156 at [80]:

"Reconstructed evidence is of limited value. It is self-serving and is particularly susceptible to the influence of hindsight. It is therefore a significantly weaker form of evidence than evidence from actual recollection."

[Emphasis added.]

315. Mr LHY spoke about his extensive efforts with the Respondent's lawyers to reconstruct what happened in order to prepare the Respondent's case. He was asked why the Defence was still silent on his role in sending the draft Last Will to the Respondent. He said he had no responsibility for the document<sup>202</sup>. But that does not answer the question as to why he did not point out to the Respondent, that her Defence should set out this fact (if he had thought it relevant):

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<sup>201</sup> Transcript (4 July 2019), 116:8-19, 118:20-31.

<sup>202</sup> Transcript (4 July 2019), 117:15 – 118:15.

"Tan CM: *Why did you think it unnecessary to include in this defence [that was filed by Mrs Lee Suet Fern for this Tribunal] the fact that you were the one who forwarded a draft to Mrs Lee Suet Fern?*

Mr LHY: *I wasn't responsible for preparing this defence.*

Tan CM: *Did you not think that this was an important [fact] when you assist Mrs Lee Suet Fern in the defence?*

Mr LHY: *She's assisted by a team of lawyers.*

...

Tan CM: *So if this is an important fact, why was this not put in her defence if you had some involvement in helping her with the defence?*

Mr LHY: *I'm not her lawyer.*

Tan CM: *Alright.*

Mr. LHY: *I mean, this is not my document."*

[Emphasis added.]

316. In addition, when asked to provide the evidential basis for his new assertion (i.e. reconstruction (see paragraphs 312 and 313 above)), that he sent the draft to the Respondent, Mr LHY was unable to provide an answer. He could not point to any document which allowed

him to come to this new reconstruction. Eventually he said that his account was based on recollection<sup>203</sup>:

"Tan CM: *Alright. You've... combed through everything in 2019 for the purposes of assisting Mrs Lee Suet Fern in this defence. Is there any objective evidence that you have that will show that you were the one who forwarded the draft to her?*

Mr LHY: *My wife is incapable of finding her file by herself.*

Tan CM: *I'm not asking about your wife, I'm asking about you. You said that you --*

Mr LHY: *My recollection.*

Tan CM: *So nothing more than your recollection? No objective documents, no emails, no records, no diary?*

...

*Would you have that email?*

Mr LHY: *I've searched for it and unfortunately, I can't find it.*

Tan CM: *I suggest to you, Mr LHY, that you have not been entirely truthful because in your earlier evidence, I asked you how is it that you can now remember in... 2019 that you forwarded the draft to Mrs LSF, and your answer was you combed through all your emails.*

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<sup>203</sup> Transcript (4 July 2019), 119:1-11.

But what was it that prompted you from your emails or otherwise that this was what you did in 2013?

Mr LHY: This is based on my best reconstruction taking into account the circumstances and the emails which I could record.

Tan CM: I must suggest to you that your recollection is either faulty or worse, you had --- you are not being truthful.

Mr LHY: This is the best of my recollection and as I put it, my wife is incapable of finding her document from the past."

[Emphasis added.]

317. This version of events was then said to be based on Mr LHY's recollection (as his initial account to the MC was). But the two recollections were diametrically opposite. His latest recollection is contradicted by the documents, and is not in the Defence that the Respondent filed. The latest recollection, however, fits in with the line of defence put to us during the hearing. Having observed him on the witness stand, it was clear to us that he was not telling the truth. Mr LHY came up with this untrue explanation, for the purposes of the Hearing.

318. The Respondent also said that she did not recall opening or reading the draft before sending it to Mr Lee<sup>204</sup>.

319. Even if this is true, for reasons that have been stated earlier (see paragraphs 290, and 299 – 302 above), the fact that the Respondent

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<sup>204</sup> The Respondent's AEIC (17 June 2019) at para 16; Transcript (3 July 2019), 73:11 – 74:8, 75:10-14.

did not read the document, before sending it to Mr Lee, does not detract from her legal responsibility for the document.

320. In addition, we do not find the Respondent's evidence credible. The Respondent testified that she was "*terrified*" of Mr Lee<sup>205</sup>. In particular, she said that "*I wouldn't have dared send [the draft Last Will] if I didn't think that it was what he wanted*", because "*if I've got it wrong... I'd be shot*"<sup>206</sup>. If that was so, it is difficult to believe that she would have given Mr Lee assurance, on what the document was, and then forwarded the document on, without first reading it, to make sure that its contents were in order<sup>207</sup>.

321. The objective evidence points *against* the Respondent and Mr LHY's new account of events. There was no evidence that Mr LHY received any draft of the First Will in 2011 (which he claimed that he then sent on to the Respondent, in December 2013). The assertion in his Affidavit, that he was "*privy to some drafts*" of the First Will<sup>208</sup>, was unsupported.

322. The documentary evidence available showed the contrary – that it was the Respondent, and not Mr LHY, who had received drafts of the First Will in August 2011<sup>209</sup>. The Respondent's email, which sent the draft Last Will to Mr Lee, also made no reference to Mr LHY having sent her the draft.

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<sup>205</sup> Transcript (3 July 2019), 53:9; See also Transcript (3 July 2019), 34:19-20, 36:32 – 37:2, 57:26-27, 62:26-28.

<sup>206</sup> Transcript (3 July 2019), 89: 6; Transcript (4 July 2019), 85:16-19, 86:10-20.

<sup>207</sup> Transcript (3 July 2019), 75:24-26.

<sup>208</sup> Mr LHY's AEIC (11 June 2019) at para 19.

<sup>209</sup> LSS BOD, Vol 1, p 101, email from the Respondent to Mr Lee and Ms KKL dated 19 August 2011, 11.06pm.

323. We now turn to the second point, (b), referred to at paragraph 266 above, on the question of the role played by the Respondent in the Last Will, by reference to the exclusion of Ms KKL.

**(b) Ms KKL was excluded from being involved in the Last Will**

324. The documentary evidence shows that 23 minutes after the Respondent sent her email (of 16 December, 7.08pm), Mr LHY sent a further email to Mr Lee, asking Mr Lee to proceed without Ms KKL (see paragraph 39 above). He also removed Ms KKL from the email exchange, even though Mr Lee had not decided, at that point, to proceed without Ms KKL. This was done with the Respondent's knowledge as she was on the emails.

325. In his email, Mr LHY told Mr Lee<sup>210</sup>:

- (a) *"I couldn't get in touch with Kim Li. I believe she is away."*
- (b) *"I don't think it is wise to wait till she is back."*
- (c) *"I think all you need is a witness to sign the will."*
- (d) *"Fern can get one of her partners to come round with an engrossed copy of the will to execute and witness. They can coordinate it with Lin Hoe for a convenient time."*

[Emphasis added.]

326. Thereafter, Ms KKL was not a party to any other correspondence before the Last Will was signed. On the evidence before us, Ms KKL was not aware of any of the arrangements that the Respondent and

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<sup>210</sup> LSS BOD, Vol 1, p 177, email from Mr LHY to the Respondent, Mr Lee and Ms WLH dated 16 December 2013, 7.31pm.



Mr LHY made, for Mr Lee to sign the Last Will. Ms KKL also did not advise Mr Lee, on the draft that the Respondent sent to him, before he signed it the next morning. She found out that Mr Lee had signed the Last Will after the fact, when the Respondent informed her (see paragraph 403 below).

327. The Respondent was copied on Mr LHY's email of 7.31pm. She also excluded Ms KKL from all further correspondence relating to the Last Will, until after it was signed the next day.

328. In addition, the Respondent took immediate steps to arrange for another lawyer to engross and witness the Last Will, without waiting for Mr Lee to decide whether to proceed without Mrs KKL. This showed considerable haste.

- (a) The Respondent approached her colleague, Mr BL, to seek his assistance with the execution of the Last Will, and briefed him. She also selected the other witness for the Last Will, Ms EK, who was also a lawyer from her law firm<sup>211</sup>.

According to Mr LHY's evidence, the Respondent briefed Mr BL, on the Last Will, *before* Mr LHY emailed Mr Lee at 7.31pm to propose proceeding without Ms KKL<sup>212</sup>.

Based on Mr BL's evidence, the Respondent acknowledged that she was doing what Mr Lee's lawyer, Ms KKL, was "*supposed to do*". According to Mr BL, when the Respondent

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<sup>211</sup> Transcript (3 July 2019), 34:16-20, 36:32; Mr BL's AEIC (1 July 2019) at para 10.

<sup>212</sup> Mr LHY's AEIC (11 June 2019) at paras 41 – 43.

See also Transcript (3 July 2019), 34:15-19, 35:3-5; 40:4-22; 41:18-25, 49:31 – 50:5.

Whilst the Respondent was unable to recall the precise time that she called Mr BL, Mr LHY was clear that the Respondent had called Mr BL before Mr LHY sent his email of 7.31pm. Transcript (4 July 2019), 121:22 – 123:3; Transcript (5 July 2019), 53:3-15.

called him about the Last Will on the evening of 16 December 2013, she had “*explained that Mr Lee’s lawyer, Kwa Kim Li, was supposed to do this but she was not around*”. Mr BL’s evidence on this point was not challenged in cross-examination<sup>213</sup>.

- (b) The Respondent then put Mr BL in touch with Mr Lee’s personal secretary, Ms WLH, and Mr LHY (see paragraph 40 above)<sup>214</sup>. She emailed Ms WLH at 8.12pm, instructing her to contact Mr BL regarding the execution of the Last Will.

The Respondent informed Ms WLH that she (the Respondent) had already briefed her colleague, Mr BL, who “ha[d] the Will ready for execution”. The Respondent told Ms WLH to contact Mr BL “to make arrangements”.

[Emphasis added.]

329. The Respondent said that these were provisional arrangements, and that she had only asked Mr BL to be “*on standby*”, in case Mr Lee decided to proceed without Ms KKL<sup>215</sup>.

330. The Respondent’s evidence is contradicted by her email to Ms WLH, Mr LHY and Mr BL at 8.12pm that evening (see paragraph 40 above). There was nothing tentative about Mr BL’s involvement. The Respondent told Ms WLH that:

- (a) Mr BL had the Last Will “ready for execution”; and

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<sup>213</sup> See also Transcript (3 July 2019), 77:10-14. (The Respondent could not recall precisely what she told Mr BL, but agreed that this could be what she said).

<sup>214</sup> See also Defence at paras 19, 23 and 64(c).

<sup>215</sup> Transcript (3 July 2019), 33:25 – 34:4.

(b) Ms WLH should contact him *"to make arrangements"*.

[Emphasis added.]

331. The Respondent's evidence is additionally contradicted by Mr BL's evidence<sup>216</sup>. According to Mr BL, when the Respondent called him, she asked if he would engross and witness the Last Will, and he agreed. Mr BL made no mention of his involvement being provisional, or subject to Mr Lee's agreement not to use Ms KKL. This aspect of Mr BL's evidence was not challenged.

332. The Respondent and Mr LHY also said that it was Mr LHY, and not the Respondent, who sent Mr BL the draft Last Will to engross.

333. This assertion is unsupported by any of the contemporaneous documentary evidence. Neither Mr LHY, the Respondent, nor Mr BL, were able to produce an email from Mr LHY's forwarding the draft Last Will to Mr BL.

334. The above assertion was also was not mentioned in the Defence, or in any of Mr LHY's previous representations to the MC. It was raised for the first time in the Respondent's, and Mr LHY's Affidavits, before us.

335. The Respondent and Mr LHY's evidence is at variance with Mr BL's evidence. Whilst Mr BL could not recall whether it was the Respondent, or Mr LHY who sent him the draft Last Will<sup>217</sup>, his testimony effectively excluded Mr LHY.

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<sup>216</sup> Mr BL's AEIC (1 July 2019) at para 10. The Respondent accepted, during cross-examination, that there was nothing in Mr BL's evidence about him only being on standby: Transcript (3 July 2019), 71:15-19.

<sup>217</sup> Mr BL's AEIC (1 July 2019) at para 22.

336. Mr LHY claimed that he sent Mr BL the draft Last Will by email, on 16 December 2013<sup>218</sup>. However, Mr BL's evidence<sup>219</sup> was that he only received one email from Mr LHY (see paragraph 46 above). This was sent on 17 December 2013, and had *not* enclosed the draft Last Will.

337. The Respondent and Mr LHY's account is also contradicted by the Defence.

338. Mr LHY said that he called Mr BL, and sent Mr BL the draft *before* Mr LHY sent his email of 7.31pm to Mr Lee<sup>220</sup> (see paragraph 39 above). However, this is contrary to the Respondent's pleaded case, that she had "*introduced BL to... [Ms WLH] and her Husband via email*" – namely, through her email of 8.12pm (see paragraph 40 above). Similarly, she said in her Affidavit<sup>221</sup> that she emailed Ms WLH, and Mr LHY, at 8.12pm "*so that they could coordinate the arrangements directly with Bernard*".

339. The statement, that the Respondent's email of 8.12pm was to introduce Mr BL to Mr LHY, contradicts the suggestion that Mr LHY would have called Mr BL and sent him the draft, even before the Respondent made the relevant introductions. Conversely, if Mr LHY was already in touch with Mr BL by 7.30pm, the Respondent would not need to have sent an email at 8.12pm, so that they could "*coordinate...directly*"<sup>222</sup>.

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<sup>218</sup> Transcript (4 July 2019) at 124:12-22; Transcript (5 July 2019), 54:5-7.

<sup>219</sup> Mr BL's AEIC (1 July 2019) at para 12, 14.

<sup>220</sup> Mr LHY's AEIC (11 June 2019) at paras 42 and 43; Transcript (5 July 2019), 53:3-15; 54:5-10. See also Transcript (4 July 2019), 122:29 – 123:3.

<sup>221</sup> The Respondent's AEIC (17 June 2019) at para 20.

<sup>222</sup> The Respondent's AEIC (17 June 2019) at para 20.

340. Our view is that the Respondent and Mr LHY's latest accounts of how Mr BL received the draft Last Will are contrived, and are not honest. There are numerous points of contradictions with the contemporaneous documents and the Respondent's own pleaded case.

341. We now turn to the third point, (c), at paragraph 266 above, relating to the basis on which Mr Lee decided to execute the Last Will.

***(c) The basis on which Mr Lee decided to execute the Last Will***

342. Mr Lee acted on the Respondent's advice to him (see paragraphs 32, 273, 289 - 290, and 299 - 301 above), in deciding to proceed to execute the Last Will. There was no other solicitor who gave him advice.

343. Mr LHY then advised Mr Lee to proceed with the execution of the Last Will (see paragraph 39 above). Mr Lee agreed with what Mr LHY had proposed (see paragraph 41 above) and said:

*"Engross and I will sign it before a solicitor in Fern's office, or from any other office."*<sup>223</sup>

344. The Last Will was signed the next morning on 17 December 2013, at 11.10am.

345. We now turn to the fourth point, (d), at paragraph 266 above.

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<sup>223</sup> LSS BOD, Vol 1, p 182, email from Mr Lee to Mr LHY directing him to proceed without Ms KKL, dated 16 Dec 2013 at 9.42 pm.

**(d) The Respondent's role in expediting the execution of the Last Will**

346. The Respondent and Mr LHY testified that the Last Will was signed in a rush, because Mr Lee was anxious and impatient. They said that they became involved, because Ms KKL had failed to get back to Mr Lee as she had promised, and he wanted the Last Will signed urgently.

347. The considerations which the Respondent and Mr LHY cited did not show any anxiety, on Mr Lee's part.

348. First, the Respondent and Mr LHY claimed that Mr Lee was concerned about his own mortality, because he had been in poor health.

349. It is not disputed that Mr Lee was hospitalised for several weeks, from September to October 2013<sup>224</sup>.

350. After his discharge, Mr Lee had discussed the changes to his Penultimate Will with Ms KKL *over the course of several weeks* (see paragraphs 28 and 29 above). The last exchange between them was on 13 December 2013, just three days before the Respondent and Mr LHY entered the picture. There was no reasonable explanation given as to why Mr Lee would have suddenly decided, on 16 December 2013, that he wanted the Penultimate Will changed in material ways, immediately, on an urgent basis. The Respondent and Mr LHY say that Mr Lee had decided that he wanted to revert to his First Will, made in 2011<sup>225</sup>. No account has been given of any discussions which led Mr Lee to this decision. The Respondent and Mr LHY do not say that they asked Mr Lee for his reasons for this decision.

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<sup>224</sup> Transcript (4 July 2019), 147:1-5.

<sup>225</sup> The Respondent's AEIC (17 June 2019) at para 13; Mr LHY's AEIC (11 June 2019) at para 34.

351. The way the Last Will was executed is quite different from the way Mr Lee had handled the First Will and the way he handled discussions on making changes to the Penultimate Will. Mr Lee discussed the First Will with his family and worked with a lawyer (Ms KKL) (see paragraphs 16 – 18, 28, and 29 above). He also discussed changes to his Penultimate Will with Ms KKL over a period of time. The Last Will (which superseded the Penultimate Will) was however executed very quickly. The evidence shows that it was the Respondent and Mr LHY who were anxious for the Last Will to be executed quickly and rushed it.

352. These circumstances raise several serious questions.

353. Why did Mr Lee decide to go back to his First Will of 2011?; Did he have the First Will with him?; Did he remember the terms of the First Will? (The Respondent admitted that Mr Lee cannot be expected to remember the terms of his First Will (see paragraph 558 below); Did he know that the Last Will made several significant changes to the Penultimate Will (see paragraph 35 above)?; Did he remember that only three days earlier, on 13 December 2013, the position he had arrived at with Ms KKL was that he would make only two changes to the Penultimate Will and by way of codicil (one of which was to equalise the shareholding of the children) (see paragraphs 28 and 29 above)? Why did he suddenly change his position and decide to completely revoke the Penultimate Will?

354. On the Respondent's and Mr LHY's evidence, none of these questions were discussed between Mr Lee and them.

355. The relevance of some of these points are considered later, in Section IX(B), when we consider a solicitor's duties.

356. Leaving aside these questions, for the time being, we did not find anything in the evidence to support the Respondent and Mr LHY's statements that Ms KKL had failed to respond to Mr Lee in a timely fashion.

357. The Respondent and Mr LHY claimed, in this regard, that Ms KKL had "*promised*" Mr Lee to have something ready by 15 December 2013, but had failed to do so.

358. The email exchange between Ms KKL and Mr Lee shows that Ms KKL had offered, in her last email to Mr Lee on 12 December 2013, to arrange for him to sign a codicil to the Penultimate Will "*this week, or when you are ready*"<sup>226</sup>. Mr Lee did not respond to indicate that he wanted it done urgently. Nor is there any evidence of Mr Lee having attempted to make an appointment with Ms KKL (to sign either a codicil to the Penultimate Will, or a new will) between 12 December 2013 (when Ms KKL's email was sent) and 16 December 2013, when the Respondent sent her email to Mr Lee, enclosing the draft Last Will. If there were such attempts, or if Mr Lee had shown any urgency, such evidence should have been available to the Estate. The Estate, with Mr LHY as an Executor, has, where it thought necessary, made available evidence for the Respondent, in this matter.

359. Second, Mr LHY said that the timing for the execution was set by Ms WLH, who was also anxious to get the Last Will executed. In support of this, he referred to Ms WLH's use of the word "*asap*" when she replied to the Respondent's email, instructing her to make arrangements with Mr BL to execute the Last Will (see paragraph 48 above)<sup>227</sup>. Mr LHY's interpretation was that Ms WLH had herself "*the*

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<sup>226</sup> LSS BOD, Vol 1, p 167, email from Ms KKL to Mr Lee dated 12 December 2013, 12.48pm.

<sup>227</sup> LSS BOD, Vol 1, p 194, email from Ms WLH to Mr LHY, the Respondent and Mr BL dated 17 Dec 2013, 9.23am; Transcript (5 July 2019), 8:20-21.



*same sense of urgency*", *"independent of us [himself and the Respondent]"*<sup>228</sup>.

360. The suggestion that Ms WLH had acquired this sense of urgency from Mr Lee is speculative, and unsupported by any evidence. There is no evidence that Ms WLH spoke or otherwise communicated with Mr Lee on this matter, before she had sent the email at 9.23am on 17 December 2013.

361. Ms WLH received multiple emails from the Respondent and Mr LHY through the night. The Respondent had herself used the same term, "asap", in her correspondence with Mr BL, just minutes before Ms WLH sent her email.

362. When Ms KKL could not be contacted, it was Mr LHY who told Mr Lee: *"I don't think it is wise to wait..."* (see paragraph 39 above).

363. The Respondent also took steps to arrange for Mr BL to help with the execution, even before Mr LHY approached Mr Lee to suggest proceeding without Ms KKL<sup>229</sup>, and before Mr Lee agreed to proceed without Ms KKL (see paragraphs 38 – 42 above).

364. In addition, both the Respondent and Mr LHY repeatedly emphasised the need to execute the Last Will as quickly as possible, in their correspondence with Mr BL, the morning that the Last Will was signed (see paragraphs 46 - 49 above):

- (a) In Mr LHY's email of 5.32am, he told Mr BL to *"get it engrossed today"*.

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<sup>228</sup> Transcript (5 July 2019), 6:26 – 7:5, 8:19-22.

<sup>229</sup> Mr LHY's AEIC (11 June 2019) at paras 41 – 43; Transcript (5 July 2019), 53:3-11.

- (b) In the Respondent's email of 9.22am, she told Mr BL to "*be ready and accessible at short notice...Impt that we get this done asap please*".
- (c) She repeated a minute later, at 9.23am, that Mr BL should "*be good to run*".

[Emphasis added.]

365. Based on the evidence, it was the Respondent and Mr LHY who proceeded with the execution of the Last Will quickly, while knowing that Mr Lee would not be advised by any lawyer except the Respondent. The Respondent worked with Mr LHY to expedite the signing of the Last Will, with extreme haste, without any other lawyer advising Mr Lee. The Last Will was signed within 16 hours of the Respondent's first email to Mr Lee enclosing the draft Last Will.

366. We now turn to the fifth point, (e), in paragraph 266 above.

**(e) The Respondent's involvement in the lead-up to the execution of the Last Will**

367. The Respondent said in her Affidavit that she had "*no further involvement*" in the Last Will after she sent her email of 8.12pm to Mr BL, Ms WLH and Mr LHY<sup>230</sup> (see paragraph 40 above). Her evidence was shown to be untrue when Mr BL's evidence and the BL Documents were put before us by the Law Society (see paragraphs 184 - 190 above).

368. The BL Documents, and Mr BL's Affidavit, showed that the Respondent's involvement went significantly beyond the two

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<sup>230</sup> Respondent's AEIC (17 June 2019) at paras 20 and 27..

*“administrative tasks”*, of forwarding the Last Will, and introducing Mr BL.

369. After the Respondent introduced Mr BL to Ms WLH and Mr LHY at 8.12pm (see paragraph 40 above), various emails were exchanged between the Respondent, Mr LHY, Ms WLH and/or Mr BL, until the next morning, before the Last Will was signed. Many of these emails were also sent to, or by, the Respondent. They have been referred to at Section III(G) above.

370. Even after the Respondent had boarded her flight to Paris<sup>231</sup>, she continued to monitor the progress of arrangements for execution, and remained in close contact with Mr BL, who sent her regular updates.

- (a) At 9.22am on 17 December 2013, the Respondent told Mr BL to be *“ready and accessible at short notice”*; to be *“ready to go”*. She told him that it was *“Impt that we get this done asap”*<sup>232</sup>.
- (b) A minute later, Mr BL replied to the Respondent, to note her instructions<sup>233</sup>.
- (c) At the same time, Ms WLH also replied to the Respondent's email of 8.12pm the previous night, thanking the Respondent for Mr BL's contact information, and informing the Respondent that she would arrange for Mr BL to see Mr Lee, as soon as possible<sup>234</sup>.

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<sup>231</sup> Transcript (1 July 2019), 22:4-12; Transcript (3 July 2019), 59:1-3.

<sup>232</sup> LSS SBOD, p 10, email from the Respondent to Mr BL dated 17 December 2013, 9.22am.

<sup>233</sup> LSS SBOD, p 9, email from Mr BL to the Respondent dated 17 December 2013, 9.23am.

<sup>234</sup> LSS BOD, Vol 1, p 194, email from Ms WLH to the Respondent, Mr LHY and Mr BL dated 17 December 2013, 9.23am.

- (d) The very next minute, (at 9.24am), the Respondent sent another email to Mr BL, emphasising again that he must "*be good to run*". She also asked Mr BL if the engrossments were ready<sup>235</sup>.
- (e) Mr BL replied at 10.13am: "*Preparing. 11am*", and asked if he should keep the Last Will<sup>236</sup>.
- (f) Mr BL emailed the Respondent again 20 minutes later, (at 10.35am), to inform her that he would change the date of the draft to that day's date (17 December 2013)<sup>237</sup>.

371. Save for the email from Ms WLH (see paragraph 370(c) above), all these emails were part of the BL Documents, which only came to light after the Respondent had filed her Affidavit.

372. The Respondent's attempts to reconcile her Affidavit evidence with the BL Documents were unconvincing. She maintained her position that she had "*handed over*" the arrangements for execution after she introduced BL to WLH<sup>238</sup>. She gave a number of explanations for her email exchanges with Mr BL:

- (a) First, she said her exchanges with Mr BL were "*merely...seeing through a favour and that it's properly*

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<sup>235</sup> LSS SBOD, p 9, email from the Respondent to Mr BL dated 17 December 2013, 9.24am.

<sup>236</sup> LSS SBOD, p 9, email from Mr BL to the Respondent dated 17 December 2013, 10.13am.

<sup>237</sup> LSS SBOD, p 8, email from Mr BL to the Respondent dated 17 December 2013, 10.35am.

<sup>238</sup> Transcript (3 July 2019), 52:30 – 53:9, 66:26 – 67:9.

done”<sup>239</sup>; they just reflected “some anxiety” that Mr BL be ready, and did not constitute making arrangements<sup>240</sup>.

- (b) Second, she claimed that she was “*just a conduit*”, and that Mr BL was “*communicating to Yang through [her]*”<sup>241</sup>.

373. The BL Documents, and the facts set out in Section III(G) above, show that contrary to her evidence, that she had “*no involvement*” after her email of 8.12pm, the Respondent remained closely involved in preparing the Last Will for execution. She made the arrangements that a lawyer would normally make.

374. In addition, the BL Documents show that the Respondent continued this engagement even after the Last Will was signed (see paragraphs 380 - 384, and 389 - 394 below). She did so with Mr BL, and also with Ms EK, and her other colleagues in Stamford Law, who helped with the Last Will.

375. In total, the Respondent exchanged more than 15 emails with Mr BL and her other colleagues at Stamford Law. Her Affidavit made no mention that any of this had taken place.

376. We now turn to the sixth point, (f), in paragraph 266 above.

**(f) The Respondent’s involvement after the execution of the Last Will**

377. After the Last Will was executed, the Respondent assumed responsibility to coordinate the follow-up, and remained closely involved in all the arrangements. See Section III(G) above.

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<sup>239</sup> Transcript (3 July 2019), 59:28 – 60:2.

<sup>240</sup> Transcript (3 July 2019), 48:15-16, 53:6-9, 57:24-27.

<sup>241</sup> Transcript (3 July 2019), 58:2-31.

378. The Respondent coordinated the matters that required follow-up with:

- (a) Mr BL;
- (b) Mr LHY;
- (c) Ms EK, and her colleagues (in addition to Mr BL) in Stamford Law;
- (d) Ms WLH; and
- (e) Ms KKL.

379. These coordinations were done through separate threads of communication. We will consider each of them.

**(i) The Respondent's Exchanges with Mr BL**

380. Mr BL and Ms EK left 38 Oxley at 11.20am<sup>242</sup>.

381. Two minutes later, at 11.22am, Mr BL emailed the Respondent to update her that it was "*Done. Liz and I witnessed. 2 copies. One each for Yang and Wei Ling*"<sup>243</sup>.

382. The Respondent replied to Mr BL just past noon, conveying her thanks. She asked him multiple questions – whether there was a copy of the Last Will for Mr Lee; where the Last Will was witnessed (at the Istana or Oxley Road); and "*How did it go?*"<sup>244</sup>.

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<sup>242</sup> LSS SBOD, p 24, Police Station Diary maintained for 38 Oxley Road, 16-17 December 2013.

<sup>243</sup> LSS SBOD, p 8, email from Mr BL to the Respondent dated 17 December 2013, 11.22am.

<sup>244</sup> LSS SBOD, p 8, email from the Respondent to Mr BL dated 17 December 2013, 12.01pm.

383. Mr BL replied to her at 12.07pm: *"Home. It went fine.... He went through the Will. One copy is faxed to him (coordinated with Lin Hoe) The 2 originals are in your room. Clara [the Respondent's secretary, Ms Clara Ng] came back to help out"*<sup>245</sup>.

384. The Respondent then replied to Mr BL three minutes later (at 12.10pm), copying Ms EK and Ms Clara Ng, thanking them for their help. She told them *"It is a relief to all, including him it is done"*<sup>246</sup>.

## **(ii) The Respondent's Exchanges with Mr LHY**

385. Having received the update from Mr BL that the Last Will had been successfully signed, the Respondent then emailed Mr LHY (at 12.13pm) to discuss what should be done with the originals of the Last Will.

386. The Respondent told Mr LHY that Mr Lee had signed the Last Will *"uneventfully"*, and that Ms WLH had a faxed copy, whilst the two originals were *"sitting in my office"*.

387. She asked Mr LHY what he *"would...like to do with the 2 originals"*, and informed Mr LHY that Mr BL had proposed that Mr LHY and Dr LWL each keep one of the originals. However, the Respondent suggested instead that one original be given to Ms WLH, and the other be kept by her (the Respondent), *"in my office safe"*.

388. Mr LHY replied to the Respondent, agreeing that she could give Ms WLH one original, and that she should keep the other original in her office safe.

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<sup>245</sup> LSS SBOD, p 7, email from Mr BL to the Respondent dated 17 December 2013, 12.07pm.

<sup>246</sup> LSS SBOD, p 7, email from the Respondent to Mr BL, Ms EK and Ms Clara Ng dated 17 December 2013, 12.10pm.

### (iii) The Respondent's Exchanges with her Colleagues

389. To follow up on the above discussion concerning where the originals of the Last Will were to be kept, within a few minutes (at 12.26pm), the Respondent then emailed her colleagues in Stamford Law (Mr BL, Ms Clara Ng, Ms EK, and Ms Joyce Han), who had assisted with the Last Will.

390. She told them that she *"ha[d] discussed and this is the position 1. Please make me a photocopy to take home 2. Please coordinate with LKY PPS to have one original copy....3. Please keep the other original in a properly sealed and labelled envelope in our office safe...Please confirm to me when done."* [Emphasis added.]

391. Mr BL replied to the Respondent, informing her that he would arrange for the original to be delivered to the Istana, the next day.

392. In a separate email, the Respondent also thanked Ms EK, for witnessing Mr Lee's Last Will. She told Ms EK that the Last Will *"is important to him [Mr Lee] and has given him some anxiety"*<sup>247</sup>.

393. Ms EK replied, giving the Respondent more details on what happened at the signing of the Last Will (see paragraph 59 above). Amongst other things, she informed the Respondent that Mr Lee had asked twice, who drafted the Last Will, and that Mr BL had told him that *"it was primarily you [the Respondent] and Ms Kwa".* [Emphasis added.]

394. These exchanges between the Respondent, Mr BL and the Respondent's other colleagues (see also paragraphs 380 - 384), are part of the BL Documents.

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<sup>247</sup> LSS SBOD, p 6, email from the Respondent to Ms EK dated 17 December 2013, 12.21pm.



#### **(iv) The Respondent's Exchanges with Ms WLH**

395. After instructing her colleagues on how to deal with the originals of the Last Will, the Respondent then emailed Ms WLH, with Mr LHY and Mr BL in copy (at 12.45pm), informing her that *"My office will arrange to send an original to you...The second original will be sealed and locked in my office safe"*<sup>248</sup>. [Emphasis added.]

396. In our view, the Respondent's decision to retain the original of the Last Will, in her office safe, is significant.

- (a) The Respondent agreed that the retention of a will, after its execution, would be something that a solicitor would be concerned about<sup>249</sup>.
- (b) It is undisputed that:
  - (i) Ms KKL had kept the originals of all Mr Lee's other Wills, as Mr Lee's lawyer. The Last Will was the only exception.
  - (ii) The Respondent never kept the originals of any of Mr Lee's other Wills<sup>250</sup>.
  - (iii) The Respondent did not receive even a *copy* of the executed version of Mr Lee's First Will, in 2011, despite having helped to draft some parts of it<sup>251</sup>.

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<sup>248</sup> RBOD, p 42, email from the Respondent to Ms WLH, Mr LHY and Mr BL dated 17 December 2013, 12.45pm.

<sup>249</sup> Transcript (3 July 2019), 66:16-18.

<sup>250</sup> Transcript (4 July 2019), 69:18-23.

<sup>251</sup> The Respondent's AEIC (17 June 2019) at para 10; Transcript (4 July 2019), 84:4-6.

397. The Respondent communicated her decision to retain the original Last Will, to Ms WLH, without first seeking Mr Lee's concurrence (see paragraph 60 above). She also instructed her colleagues at Stamford Law to keep the original in her office safe, even *before* she informed Ms WLH of the same.

398. The Respondent claimed that she retained the original "*as a member of Mr Lee's family*"<sup>252</sup>. In their evidence, both she and Mr LHY said that she had done this on behalf of the executors, Mr LHY and Dr LWL<sup>253</sup>. We did not find this tenable, in view of the following:

- (a) The originals of all Mr Lee's previous Wills were kept by Ms KKL.
- (b) Whilst Mr BL had intended for each executor to retain one original of the Last Will, this was his own assumption, made without Mr Lee's instructions or consent<sup>254</sup>.
- (c) Despite being the executors of Mr Lee's First to Sixth Wills, Mr LHY and Dr LWL did not retain any originals or copies of those *other* executed wills. They also did not have copies of those earlier Wills, in their capacity as the Executors of the Last Will<sup>255</sup>. In addition, they did not receive even a copy of Mr Lee's Last Will<sup>256</sup>.

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<sup>252</sup> Defence at para 64(e).

<sup>253</sup> Transcript (3 July 2019), 49:3-8; 64:19-21; See also LHY's AEIC (11 June 2019) at para 51.

<sup>254</sup> Transcript (2 July 2019), 13:2-15, 26:3-8.

<sup>255</sup> Mr LHY's AEIC (11 June 2019) at para 22; Transcript (4 July 2019), 69:24-26.

<sup>256</sup> Transcript (4 July 2019), 79:1 – 80:20.

- (d) Similarly, none of Mr Lee's other family members (including Mr LHL) received a copy of the Last Will <sup>257</sup>.
- (e) The Respondent was aware of all this. There was accordingly no reason why she should believe that she was entitled to retain an original of Mr Lee's Last Will, in her personal capacity, as daughter-in-law, on Mr LHY and Dr LWL's behalf.

399. Our view, based on the evidence, is that the Respondent retained the original Will, in her *office* safe, as part of her role as Mr Lee's lawyer.

400. The Respondent tried to minimise the significance of her retention of the Last Will. She said, during cross-examination, that:

- (a) *"I had understood that your concern was arranging for the execution... This relates to keeping of the will"<sup>258</sup>.*
- (b) *"It was just safekeeping... That's not preparation of a will..."<sup>259</sup>*

[Emphasis added.]

401. We found these distinctions difficult to accept, in view of the facts set out earlier.

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<sup>257</sup> Mr LHY's AEIC (11 June 2019) at para 51; The Respondent's AEIC (17 June 2019) at paras 23 – 24. See also LSS BOD, Vol 1, p 203, email from Ms WLH to Mr Lee and Ms Lilian Ho dated 17 December 2013, 4.29pm and email from Mr Lee to Ms WLH dated 17 December 2013, 10.27pm.

<sup>258</sup> Transcript (3 July 2019), 67:5-9.

<sup>259</sup> Transcript (3 July 2019), 49:3-8.

#### (v) The Respondent's Exchanges with Ms KKL

402. After the follow-up arrangements above were dealt with, the Respondent then emailed Ms KKL, to inform her that the Last Will had been signed.

403. She emailed Ms KKL (at 1.16pm): *"just a quick note to say this has been dealt with already"*<sup>260</sup>.

404. Ms KKL replied to the Respondent (at 2.59pm), indicating that she had not received the Respondent's email of 16 December 2013, 7.08pm (see paragraph 62 above). She asked the Respondent: *"does this mean that he has signed a new will yesterday [i.e. On 16 December 2013]...?"* Ms KKL indicated that if that were the case, *"the former will which is on my record, is revoked", and "I will update my file record"*.

405. The Respondent replied, informing Ms KKL: *"Yes, he has signed already. In fact this is just going back to his 2011 will so it supercedes all. He read it extremely carefully before signing."* (see paragraph 63 above).

406. In this regard:

- (a) The Respondent's initial update to Ms KKL was perfunctory—she only told Ms KKL that the Last Will had been *"dealt with"*. After Ms KKL asked further questions, the Respondent provided some additional information.
- (b) The Respondent did not provide Ms KKL with a copy of the executed Last Will, nor did she share with Ms KKL the details

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<sup>260</sup> LSS BOD, Vol 1, p 208, email from the Respondent to Ms KKL dated 17 December, 1.16pm.

on what transpired during the signing, which Ms EK had updated her on (see paragraph 59 above).

- (c) The Respondent also did not correct Ms KKL, and explain that the Last Will was signed on 17 December 2013, not on 16 December 2013 (as Ms KKL had thought).

407. The Respondent obviously regarded herself (and not Ms KKL) as the lawyer for the Last Will, and took all the steps for the execution of the Last Will, including getting a draft, and advising Mr Lee on it. She took charge at every stage of the process, and directed the arrangements leading up to, and after the signing, of the Last Will.

408. We now consider the third point, on the issue of Implied Retainer, referred to at paragraph 176 above, relating to the nature and extent of Ms KKL's involvement in the Last Will.

**(3) What was the nature and extent of Ms KKL's involvement (Mr Lee's usual lawyer) in the Last Will?**

409. The Respondent and Mr LHY said that Ms KKL was Mr Lee's lawyer for the Last Will, as she had been for all his Wills<sup>261</sup>. They said that since Ms KKL was copied in the Respondent's initial email to Mr Lee, Ms KKL could have interjected at any time, if she thought that the draft from the Respondent was not in order<sup>262</sup>.

410. Having considered the evidence, we are unable to accept these assertions. We will reference the following points:

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<sup>261</sup> The Respondent's AEIC (17 June 2019) at para 27; Mr LHY's AEIC (11 June 2019) at paras 39 and 59; Transcript (5 July 2019), 32:1-4. See also Defence at paras 51 and 64(d).

<sup>262</sup> Transcript (3 July 2019), 29:8-9, 31:10-11, 33:27-32, 34:8-9, 79:11-21, 87:10 – 88:4, 114:5-7; Transcript (4 July 2019), 70:30-31, 138:5-7; Transcript (5 July 2019), 32:8-32.

- (a) Ms KKL did not have any role in the Last Will, and did not draft it.
- (b) Mr Lee's discussions with Ms KKL, on the Codicil to the Penultimate Will.

411. We will also refer to Mr LHY's attempts to prevent Ms KKL from giving evidence in these proceedings.

**(a) Ms KKL had no role in the Last Will and did not draft it**

412. The evidence set out earlier (see paragraphs 323 – 328 above) shows that Ms KKL had no involvement in the preparation, or execution, of the Last Will.

413. The Respondent and Mr LHY's assertions (see paragraph 409 above) are also contradicted by their own conduct at the material time.

414. The Respondent and Mr LHY excluded Ms KKL from all the correspondence<sup>263</sup>. They gave no coherent explanation as to why they excluded Ms KKL, if they had genuinely regarded her as Mr Lee's lawyer.

415. Mr LHY said that these emails were "*administrative*", as they dealt with "*logistical arrangements*" for attestation<sup>264</sup>. That is plainly incorrect. These were matters that Ms KKL would have handled if she was Mr Lee's lawyer, just as she had done for all his other Wills. Ms KKL was also not asked to give any advice on the changes to the draft Last Will.

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<sup>263</sup> See paragraphs 324 – 328 of this Decision.

<sup>264</sup> Mr LHY's AEIC (11 June 2019) at para 44; Transcript (4 July 2019), 137:1-11.

416. The Respondent gave a number of other reasons:

- (a) She did not notice that Ms KKL had been removed<sup>265</sup>.

This is not credible. The Respondent was the one who started some of the ensuing email chains in connection with the execution of the Last Will<sup>266</sup>.

- (b) She did no "*active removal*" Ms KKL by withdrawing her initial email, or by asking Ms KKL to "*stand down*"<sup>267</sup>.

However, Mr LHY excluded Ms KKL's involvement and proceeded quickly with the execution of the Last Will, without giving Ms KKL a reasonable opportunity to respond. The Respondent and Mr LHY knew that Ms KKL might be out of Singapore, and proceeded on that basis.

417. For completeness, we should also mention that the Law Society suggested that Ms KKL had not received the Respondent's email of 7.08pm (see paragraph 32 above)<sup>268</sup>. The Law Society relied on Ms KKL's email to the Respondent, saying: "*I don't seem to have received your first mail of 16 dec 7.08pm asking me to engross*"<sup>269</sup>. We do not need to, and do not make a finding on this, beyond noting that Ms KKL has said that she did not receive the email.

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<sup>265</sup> Transcript (3 July 2019), 77:3-4, 78:15-17, 79:8-11.

<sup>266</sup> See for example LSS BOD, Vol 1, p 179, email from the Respondent to Ms WLH, Mr LHY and Mr BL dated 16 December 2013 at 8.12pm, LSS BOD, Vol 1, p 200, email from the Respondent to Mr LHY dated 17 December 2013 at 12.13pm, and LSS SBOD p 14, email from the Respondent to Mr BL, Ms Joyce Han, Ms Clara Ng and Ms EK dated 17 December 2013 at 12.26pm.

<sup>267</sup> Transcript (3 July 2019), 33: 27-30, 41:10-11, 80:7-8, 86:27, 88:1-3; Transcript (4 July 2019), 63:2-5 & 25-28.

<sup>268</sup> Transcript (3 July 2019), 87:27 – 88:4; Transcript (4 July 2019), 63:14.

<sup>269</sup> LSS BOD, Vol 1, p 208, email from Ms KKL to the Respondent dated 17 December 2013, 2.59pm.

**(b) Mr Lee's discussion with Ms KKL on the Codicil to the Penultimate Will**

418. The Respondent also referred to some earlier emails between Mr Lee and Ms KKL (see paragraphs 28 and 29 above), as evidence that Ms KKL had, prior to 16 December 2013, already advised Mr Lee on the changes that he wanted to make to the Penultimate Will.

419. Mr Lee's prior discussions with Ms KKL, as evidenced by these emails, were unrelated to the Last Will, and did not touch on all of the changes that the Last Will effected, either to the Penultimate Will or the First Will. The Respondent offered no other evidence on this point.

420. The documents presented to us *prima facie* show that Mr Lee and Ms KKL discussed an entirely different (and more limited) approach: a codicil to the Penultimate Will, that would make two specific changes (see paragraphs 28, 29 and 37 above).

421. The Last Will also omitted changes which Mr Lee had discussed with Ms KKL (see paragraph 36 above).

422. To the Respondent and Mr LHY's knowledge, the Respondent was the only lawyer who had advised Mr Lee on the Last Will before it was signed. Mr LHY had also personally persuaded Mr Lee to proceed without Ms KKL.

**Mr LHY's attempts to prevent Ms KKL from giving evidence**

423. Mr LHY agreed that Ms KKL would have been a useful witness to these proceedings<sup>270</sup>. However, as an Executor of the Estate, he

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<sup>270</sup> Transcript (5 July 2019), 63:17-24.



restricted Ms KKL from discussing her communications with Mr Lee, on the grounds of privilege<sup>271</sup>.

424. In April 2019, the Law Society's lawyers wrote to Ms KKL, to request a meeting with her, *inter alia*, to discuss<sup>272</sup>:

- (a) A public statement which Ms KKL had issued in June 2017, stating that she did not prepare the Last Will<sup>273</sup>;
- (b) Her email to the Respondent on 17 December 2013, asking if Mr Lee had signed a new will (see paragraph 404 above); and
- (c) Ms WLH's email on 3 January 2014 (see paragraph 72 above), regarding the Codicil.

425. Ms KKL responded to inform the Law Society's lawyers that the Executors had objected to her participation in any discussion with them "*regarding the documents referred to...and any information or documents pertaining to my engagement as Mr Lee's solicitor*"<sup>274</sup>.

426. The effect of these restrictions was to prohibit Ms KKL from giving her account (to the Law Society) of what transpired, *vis-à-vis* the Last Will. She was barred from even explaining why she had no role in the Last Will (see paragraph 424(a) above).

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<sup>271</sup> Transcript (5 July 2019), 60:1-21, 63:2-3.

<sup>272</sup> Transcript (5 July 2019), 60:27-62:22.

<sup>273</sup> Ms KKL issued her statement to the media in response to a Facebook post put up by Mr LHY (Transcript (5 July 2019), 62:15-16; LSS Closing Submissions (20 September 2019) at para 152 and fn 161). Mr LHY's Facebook post stated that "[t]he will was drafted by Kwa Kim Li of Lee & Lee" (see further paragraphs 486 – 496 of this Decision).

<sup>274</sup> Transcript (5 July 2019), 60:27-61:7.

427. We found it difficult to see how this could be founded on a valid claim of privilege, particularly on Ms KKL's position that she was *not* involved in the Last Will. The Law Society said that it did not call Ms KKL, because of the arguments relating to privilege, and because her evidence on the contents of Mr Lee's First to Sixth Wills was no longer necessary after the Estate's attempts (in OS 639) to preclude the Law Society's production of these Wills had failed<sup>275</sup>.

428. We note that it was open to the Law Society to have issued a subpoena to Ms KKL and tested the argument on privilege. But the Law Society did not do so.

429. The Respondent and Mr LHY also levelled serious allegations of dishonesty and misconduct against Ms KKL before us<sup>276</sup>. They alleged that Ms KKL had lied, by saying that she had no involvement in the Last Will, and concealed her discussions with Mr Lee, regarding the Codicil to the Penultimate Will<sup>277</sup>. The Respondent also disclosed communications between Mr Lee and Ms KKL, regarding the Codicil, which were *prima facie* privileged (the Estate was of course entitled to waive that privilege and appears to have so waived). However, the Estate objected to Ms KKL giving evidence on these matters based on assertion of privilege.

430. During cross-examination, Mr LHY said that the Law Society could have subpoenaed Ms KKL<sup>278</sup>, if it disagreed with the claim of privilege.

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<sup>275</sup> Transcripts (1 July 2019), 5:28 – 6:18.

<sup>276</sup> Mr LHY also repeated this allegation against Ms KKL publicly, whilst these proceedings were pending (see paragraph 493 of this Decision).

<sup>277</sup> Transcript (3 July 2019), 93:6-7, 95:25-27; Transcript (4 July 2019), 94:27 – 95:6; Transcript (5 July 2019), 30:18-20, 60:7-8.

<sup>278</sup> The Respondent and Mr LHY referred, a number of times, to the Law Society's eventual decision not to subpoena Ms KKL as a witness. See Transcript (3 July 2019), 95:21-24; Transcript (5 July 2019), 62:26 – 63:7. See also Transcript (1 July 2019), 5:28 – 6:18 on why the Law Society decided not to call Ms KKL as a witness.

431. In her Closing Submissions, the Respondent advanced a new position. Her Counsel submitted that Ms KKL's response to the Law Society had only conveyed the Estate's objection "*to her participation in any meeting or discussion with Law Society*"; the Estate did not object to her "*testifying in these proceedings*" <sup>279</sup>. [Emphasis added.]

432. This contradicted what Mr LHY had told this Tribunal<sup>280</sup>:

"Tan CM: *Can I just ask, did the estate object to Kwa Kim Li testifying before this Tribunal?*

Mr LHY: *I think we were asked whether she could testify and I believe we were concerned about privilege, I suppose, given how Wei Ling and I see that she's been economical with the truth, she is free to testify on issues which don't regard privilege but to the extent that there are issues which shows privilege to the estate, she needs to clear it with the estate but Kim Li has been, I suppose, on several occasions acknowledged instructions and then didn't do and carry out those instructions...and my sister...and I are concerned about that.*

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For the reasons set out above, it is not in dispute that Ms KKL had no involvement in the events of 16 and 17 December 2013, and never advised Mr Lee on the specific contents of the Last Will. Nor is it the Respondent's case that Mr Lee had spoken with Ms KKL, beyond what the email set out. (Had that been the case, it would have been for the Respondent to call Ms KKL.) As such, it is for the tribunal to draw the appropriate inferences on the issue of retainer based on the unchallenged facts and objective evidence.

<sup>279</sup> Respondent's Closing Submissions (16 August 2019) at para 99.

<sup>280</sup> Transcript (5 July 2019), 60:4-21. See also Transcript (3 July 2019), 92:21-23, where the Respondent said she was aware that the Estate had written to Ms KKL to "object to her [Ms KKL's] participation in these proceedings".

Tan CM: *My question is very simple. Did the estate object to Kwa Kim Li appearing before this Tribunal?*

Mr LHY: *I can't remember the exact answer that R&T gave but I think we will have asserted privilege.*

[Emphasis added.]

433. In this regard, Ms KKL's response to the Law Society was also read to Mr LHY, whilst he was on the stand. His response (which the Respondent cited in her Closing Submissions) was as follows<sup>281</sup>:

- (a) Ms KKL *"could be subject to subpoena, she could appear here and she would be giving evidence".* These was nothing that *"prevented her from appearing at this Tribunal".*
- (b) If Ms KKL was subpoenaed, she was *"free to testify on any issues which are not privileged. And if there are issues which are privileged then, you know, they are subject to privilege."*
- (c) *"[I]f you ask me whether the estate should assert privilege, I think that's safeguarding the interests of the estate."*

[Emphasis added.]

434. The Respondent's statements are at odds with what Mr LHY had said. His position before the Tribunal confirmed his intention to continue to assert privilege, in the same terms as Ms KKL had set out to the Law Society, if she was called as a witness (see paragraphs 424 – 425 above). Mr LHY had even objected to Ms KKL explaining why she had no role in the Last Will (see paragraph 426 above). (In June 2017, Ms KKL had issued a public statement, denying that she had drafted

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<sup>281</sup> Transcript (5 July 2019), 62:23 – 63:7.

the Last Will.) It is clear that Mr LHY and the Respondent did not want Ms KKL to give any evidence on what role she played in the Last Will.

435. Having considered the three questions at paragraph 176, we will now set out our conclusions on the question of Implied Retainer.

**(C) Conclusion on question of Implied Retainer**

436. The Respondent (*inter alia*):

- (a) Took instructions from Mr Lee on the Last Will;
- (b) Advised Mr Lee on the Last Will;
- (c) Sent Mr Lee a draft of the Last Will, and assured him that: (i) it equalised the shares to be received by the three children, from the Estate (and was therefore in accordance with what Mr Lee wanted); and (ii) that it was in the same terms as the First Will;
- (d) Gave instructions to colleagues in her law firm, on the execution of the Last Will;
- (e) Excluded Mr Lee's usual lawyer, Ms KKL, from the process;
- (f) Kept the original of the Last Will in her office safe, after it had been executed;
- (g) Knew that Mr Lee had been told that she was primarily responsible for drafting the Last Will; and

- (i) Subsequently conveyed to AGC that Mr Lee had instructed her, on the drafting of the Last Will, a position which had also earlier been confirmed by Mr LHY, to the MC.

437. As far as the Respondent knew:

- (a) No one, other than she, had advised Mr Lee on the Last Will;
- (b) No one showed Mr Lee a true copy of the First Will (as opposed to the inaccurate version that the Respondent had sent him);
- (c) No one advised Mr Lee of the differences between the First Will, and the draft Last Will that the Respondent sent to him;
- (d) No one advised Mr Lee on the differences between the draft Last Will, and the Penultimate Will; and
- (e) No one advised Mr Lee that the draft Last Will was very different from what he had agreed with Ms KKL, on how his Penultimate Will should be amended.

438. On these facts, it is clear, beyond reasonable doubt, that the Respondent acted as Mr Lee's lawyer on the Last Will. There was an Implied Retainer.

**(D) The positions that the parties had taken previously, in respect of some of the questions that arose before us**

439. For completeness, we should also deal with one additional matter. This is in respect of what was said to the MC, to AGC, and to the public, in relation to the Respondent's involvement in the Last Will.

440. These issues were raised in both parties' pleadings, and were covered in some detail when the Respondent and Mr LHY took the stand. Substantial submissions were also made to us on these points by both parties. While they do not affect our conclusions, they relate to positions taken by the Respondent and Mr LHY, at an earlier point in time, on some of the key issues before us. In particular, they relate to the Respondent's role in the Last Will. We will therefore set out our views on these points.

**(1) The MC**

441. The MC raised a number of questions to the Executors concerning the preparation of the Last Will<sup>282</sup>. In a letter from the MC to the Executors on 25 April 2017<sup>283</sup>, the MC raised, *inter alia*, the following queries:

- (a) Whether a lawyer advised Mr Lee on the Last Will and, if so, who this lawyer was;
- (b) The nature of the Respondent's involvement in the preparation of the Last Will; and
- (c) For a copy of the contemporaneous attendance notes for the execution of the Last Will, which the Executors had referred to in their earlier letter of 28 Feb 2017 (see also paragraph 185(c) above).

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<sup>282</sup> MC report on 38 Oxley Road (2 April 2018), Annex C, at para 9 ([https://www.pmo.gov.sg/-/media/PMO/Newsroom/Files/Media-Release/MC\\_Report\\_38\\_Oxley\\_Road\\_Annex\\_C.pdf](https://www.pmo.gov.sg/-/media/PMO/Newsroom/Files/Media-Release/MC_Report_38_Oxley_Road_Annex_C.pdf)).

<sup>283</sup> LSS BOD, Vol 1, p 443 – 446 at paras 6 – 8, Letter from Mr Lawrence Wong, Minister for National Development, to Mr LHY and Dr LWL dated 25 April 2017.

The MC sent this letter, as a follow up, in response to certain points that had been made by the Executors to the MC<sup>284</sup>.

442. The MC's letter also invited the Respondent to set out her position on the questions raised.

443. The Executors initially responded to indicate that they would be travelling, and that the earliest they would be able to reply (if at all) was end June<sup>285</sup>. However, on 14 June 2017, two weeks before the end-June deadline, they released a public statement, taking issue with the MC and its work. They also wrote to the MC later that day, informing the MC that they had decided to "disengage"<sup>286</sup>.

444. As such, the questions raised in the MC's letter of 25 April 2017 were never answered. The Respondent also did not respond to the Committee directly to set out her position.

445. In the present proceedings, the Law Society pleaded in its Statement of Case that *"the Respondent was invited to set out her position...There was no response from the Respondent to the Committee's invitation"*<sup>287</sup>.

446. The Respondent denied this assertion in her Defence. She pleaded that *"[t]he Ministerial Committee had never written to the Respondent for any clarification"*<sup>288</sup>. She also took a similar position in her Affidavit, and suggested that she had never been involved in the MC work,

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<sup>284</sup> LSS BOD, Vol 1, p 408, Letter from Mr LHY and Dr LWL to the MC dated 28 February 2017.

<sup>285</sup> LSS BOD, Vol 1, p 479 at para 11, Letter from Mr LHY and Dr LWL to Mr Lawrence Wong, Minister for National Development, dated 12 May 2017.

<sup>286</sup> LSS BOD, Vol 1, p 506 at para 6, Letter from Mr LHY and Dr LWL to Mr Lawrence Wong, Minister for National Development, dated 14 June 2017.

<sup>287</sup> Statement of Case at para 34.

<sup>288</sup> Defence at para 56.



either directly, or through Mr LHY and Dr LWL. She said in her Affidavit that<sup>289</sup>:

(a) *"The Ministerial Committee never wrote to me to seek my views or responses"*.

(b) *"Yang and Ling...did not seek any input from me..."*<sup>290</sup>.

447. The Respondent's assertions are contrary to the contemporaneous documentary evidence. They were also contradicted by her testimony on the stand.

**(a) Did the MC seek the Respondent's views?**

448. The Respondent's assertion that the MC "*never wrote*" to her "*to seek [her] views or responses*", conveys the untrue impression that the MC had not sought the Respondent's views.

449. The language of the MC's letter to the Executors on 25 April 2017 was as follows:

*"In view of the questions which have been raised regarding Mrs [Lee Suet Fern's] involvement in the Last Will, the Committee would like to invite her to set out her position, and would also ask if she is prepared to do so by way of a statutory declaration"*<sup>291</sup>.

[Emphasis added.]

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<sup>289</sup> The Respondent's AEIC (17 June 2019) at para 35.

<sup>290</sup> Mr LHY took a similar position during cross-examination: see Transcript (4 July 2019), 105:27-31; 106:22-26; 113:19 – 114:4.

<sup>291</sup> LSS BOD, Vol 1, p 452 at para 7, Letter from Mr Lawrence Wong, Minister for National Development, to Mr LHY and Dr LWL dated 25 April 2017.

450. During cross-examination, the Respondent admitted that she was indeed told, around the time of the letter, that the MC had sought her views<sup>292</sup> (see also paragraph 453 below).

451. The Respondent made similar untrue statements, in her correspondence with AGC:

- (a) The Respondent's letter to AGC on 19 November 2018<sup>293</sup> said that "your assertion... that the Committee wrote to me is plainly wrong... Please let me have a copy of this letter of 25 April 2017 written to me by the Committee that you cite."
- (b) Her letter to AGC on 3 December 2018<sup>294</sup> reiterated that "[t]he Ministerial Committee... had never through its lengthy deliberations written to me to enquire about Mr Lee's Will..."

[Emphasis added.]

452. The Respondent's evidence on the stand was evasive, and not coherent. Her positions shifted repeatedly, and were not credible.

453. Initially, the Respondent refused to admit that she had even seen the MC's letter of 25 April 2017<sup>295</sup>. After Counsel for the Law Society pointed her to the Committee's express invitation "to set out her position" (see paragraph 449 above), she admitted that she was told about this request.

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<sup>292</sup> Transcript (4 July 2019), 28:26-31, 30:16-22.

<sup>293</sup> LSS BOD, Vol 1, p 788, Letter from the Respondent to the AGC dated 19 November 2018.

<sup>294</sup> LSS BOD, Vol 1, p 795 at para 2, Letter from the Respondent to the AGC dated 3 December 2018.

<sup>295</sup> Transcript (4 July 2019), 26:19 – 27:12.

454. The Respondent also claimed that “a suggested response was also conveyed”<sup>296</sup>. [Emphasis added.] When asked about the particulars of this “*suggested response*”, and how it was “*conveyed*”, the Respondent changed her position, and said that the “*response*” was “*essentially not to respond*”<sup>297</sup> (see excerpt from the transcript at Annex D).

455. In other words, it was not a case of the MC not having sought the Respondent’s views. Rather, it was the Respondent who decided not to answer the MC’s questions.

456. The Respondent gave a number of reasons why she did not respond to the MC:

- (a) The MC’s request was voluntary<sup>298</sup>.
- (b) The MC did not write to her personally. She said that if they had done so, she would have responded<sup>299</sup>.
- (c) The MC was not “*the correct forum*”, so it was “*not worth bothering about*”, had there been real grounds for complaint, it would have gone to a Disciplinary Tribunal<sup>300</sup>.
- (d) The MC was a “*witch hunt*”, and “*any response would just be used against [her]*”<sup>301</sup>.

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<sup>296</sup> Transcript (4 July 2019), 28:22-31.

<sup>297</sup> Transcript (4 July 2019), 34:3-6.

<sup>298</sup> Transcript (4 July 2019), 34:14, 35:20-22.

<sup>299</sup> Transcript (4 July 2019), 34:14-19. See also Transcript (4 July 2019), 15:8-9.

<sup>300</sup> Transcript (4 July 2019), 30:24-25, 31:6 – 32:4, 35:22-28.

<sup>301</sup> Transcript (4 July 2019), 34:11 & 25, 35:1-3.

457. These reasons contradict each other. If the Respondent believed that the MC was a "*witch hunt*", as she claimed, why would she consider responding, even if the MC wrote to her personally? In addition, the MC had raised serious questions about the propriety of the Respondent's involvement in the Last Will (see paragraph 441 above). Even if a reply was "*voluntary*", as a senior lawyer with more than 30 years' experience, why would the Respondent leave these serious allegations unanswered as a matter of record, if they were indeed untrue, and without merit?

458. There are inherent difficulties with the Respondent's evidence. Our conclusion is that she had not wanted to answer the MC's questions, about her role in the Last Will.

**(b) Did Mr LHY and Dr LWL seek views from the Respondent on their representations to the MC?**

459. The contemporaneous correspondence also shows that the Respondent's assertion, that Mr LHY and Dr LWL "*did not seek any input*" from her on their representations to the MC, is also untrue.

460. On 16 December 2016<sup>302</sup>, the MC wrote to Mr LHY and Dr LWL, attaching a summary of Mr LHL's responses to them. The summary, which was attached, stated that there were "*serious questions*" regarding "*The circumstances leading to the execution of the Last Will*"<sup>303</sup>.

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<sup>302</sup> LSS BOD, Vol 1, p 359, Letter from Mr Lawrence Wong, Minister for National Development, to Mr LHY and Dr LWL dated 16 Dec 2016.

<sup>303</sup> LSS BOD, Vol 1, p 361 – 362 at para 10, Letter from Mr Lawrence Wong, Minister for National Development, to Mr LHY and Dr LWL dated 16 Dec 2016, Annex.

461. Two days later, on 18 December 2016<sup>304</sup>, the Respondent emailed Mr BL and Ms EK, to check if a doctor had been present, when Mr Lee signed the Last Will. Ms EK replied to the Respondent the next day, on 19 December 2016, enclosing her contemporaneous Attendance Note, from the execution of the Last Will (i.e. the EK Attendance Note (see paragraphs 69 and 185(c) above))<sup>305</sup>.

462. Mr LHY and Dr LWL's subsequent response, to the MC, then referred to certain parts of the EK Attendance Note<sup>306</sup>.

463. This sequence of events indicates that the Respondent had approached Mr BL, and Ms EK, on Mr LHY/Dr LWL's behalf, and shared the EK Attendance Note, with Mr LHY/Dr LWL, to be used for their response to the MC.

464. We note that the 18 and 19 December 2016 emails (see paragraph 461 above) were not in evidence at the time that the Respondent filed her Affidavit, and asserted that Mr LHY and Dr LWL "*did not seek any input*" from her on their representations to the MC. These emails were amongst the BL Documents, which the Respondent did not produce (see paragraphs 182 - 193 above). They show that the Respondent was involved in the Executors' correspondence with the MC, and that what she said in her Affidavit was not true.

465. When asked about these emails during cross-examination, the Respondent admitted that<sup>307</sup>:

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<sup>304</sup> LSS SBOD, p 18, email from the Respondent to Mr BL and Ms EK dated 18 Dec 2016, 11.14pm.

<sup>305</sup> LSS SBOD, p 18, email from Ms EK to the Respondent and Mr BL dated 19 Dec 2016, 10.49am.

<sup>306</sup> LSS BOD, Vol 1, p 420 at para 63, Letter from Mr LHY and Dr LWL to Mr Lawrence Wong, Minister for National Development, dated 28 February 2017.

<sup>307</sup> Transcript (4 July 2019), 9:3-17, 11:11-18, 22:22 – 23:11, 41:27-30, 43:18 – 44:5.

- (a) Mr LHY and Dr LWL had spoken with her about the MC's letter of 16 December 2016. In particular, they had asked her to check with Mr BL if a doctor was present, when Mr Lee signed the Last Will.
- (b) The Respondent thus emailed Mr BL and Ms EK, on Mr LHY and Dr LWL's behalves, to check. As part of the resulting email exchange, Ms EK had sent the Respondent a copy of her contemporaneous EK Attendance Note from 17 December 2013.
- (c) The Respondent then passed the EK Attendance Note on to Mr LHY and Dr LWL, which they then used for their response to the MC.

466. These statements contradicted what the Respondent had said in her Affidavit. Further, Mr LHY had said to the MC that Mr Lee instructed the Respondent (see paragraphs 224 - 225 above). The Respondent was obviously involved and knew about the responses being given by the Executors.

467. The Respondent attempted to reconcile the material contradictions. Her explanations were not credible. She prevaricated, and changed her evidence on the issue, several times. She eventually suggested that there had been "*a small misunderstanding*" because she had a different concept of what giving "*input*" entailed<sup>308</sup>. According to the Respondent, she had said that the Executors did not seek "*input*" from her, because they did not come to her "*in any formal way*", and she "*didn't have control over the process*"<sup>309</sup>. We found this to be

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<sup>308</sup> Transcript (4 July 2019), 52:11-16.

<sup>309</sup> Transcript (4 July 2019), 45:24-30.

contrived. The Respondent said this to avoid admitting that she had lied on Affidavit.

468. Taken as a whole, her evidence on this point, (as with several other points), was quite unsatisfactory.<sup>310</sup>

469. Mr LHY's evidence on this issue was equally unsatisfactory, and also contained various falsehoods.

470. During cross-examination, Mr LHY maintained that he had not discussed with the Respondent how to respond to the MC's letter of 16 December 2016<sup>311</sup>. This is inconsistent with the chronology of events apparent from the BL Documents, and the Respondent's own testimony, on cross-examination (see paragraph 465 above).

471. It is clear that both their evidence was largely untrue, and an attempt to: (a) distance the Respondent from the version of events that Mr LHY had put forward to the MC (see paragraphs 224 - 225 above), and (b) justify her not responding to the MC's questions (see paragraphs 441 - 444 above). The Respondent was obviously unwilling to answer questions that the MC had asked, on her involvement with the Last Will.

## **(2) AGC**

472. The Respondent exhibited a similar pattern of conduct, *vis-à-vis* questions from AGC, about her involvement in the Last Will. Before us, she denied that she had refused to answer AGC's questions, and blamed AGC.

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<sup>310</sup> Transcript (4 July 2019), 41:20 – 45:30.

<sup>311</sup> Transcript (4 July 2019), 105:27-31; 106:22-26.

473. The Law Society's Statement of Case referred to AGC's queries, regarding the Respondent's involvement in the Last Will. It averred that "[t]he Respondent did not provide a substantive response" to these queries.

474. The Defence explained why the Respondent had not provided a substantive response, as follows<sup>312</sup>:

*"The Respondent had repeatedly indicated that she would provide substantive responses to the AG's questions in due course... The AG instead opted to refer the complaint against the Respondent to the Law Society on 4 December 2018, before receiving her substantive responses."*

[Emphasis added.]

475. The implication, from her Defence, is that the Respondent had repeatedly confirmed her intention to provide substantive responses, but that AGC referred the matter to Law Society nevertheless.

476. She took a similar position in her Affidavit, and claimed that AGC had unilaterally referred the matter to the Law Society, even though she had "*unequivocally stated*", and even "*reiterated*" her "*commitment to providing a substantive response*"<sup>313</sup>.

477. The evidence before us, however, shows that AGC had proceeded with the referral, because the Respondent refused to confirm that she would respond substantively, to AGC's questions.

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<sup>312</sup> Defence at para 62.

<sup>313</sup> The Respondent's A/E/C (17 June 2019) at paras 38 – 40.



478. On 30 October 2018, AGC wrote to the Respondent, inviting her to respond to some questions about her involvement in the Last Will “[b]efore [AGC] decides on the appropriate course of action to be taken (if any)”<sup>314</sup>. AGC initially requested a written response by 13 November 2018<sup>315</sup>. This was subsequently extended to 20 November 2018<sup>316</sup>.

479. The Respondent then replied to AGC indicating, *inter alia*: “I am travelling and ...expect to let you have my response by 14 December 2018.”<sup>317</sup>.

480. On 28 November 2018, AGC informed the Respondent that if she intended to respond substantively to their questions, they were “prepared to consider [her] request for an extension of time”. As such, AGC asked her to confirm that she would respond substantively to their questions by 14 December 2018 (the date which the Respondent had requested)<sup>318</sup>. The Respondent was asked to provide her confirmation by 30 November 2018.

481. On 3 December 2018, three days after the 30 November deadline, the Respondent wrote to AGC, questioning the basis for AGC’s decision to review her involvement in preparing the Last Will<sup>319</sup>. She contended that the evidence cited by AGC “does not show any *prima facie* case at all”. Her letter made no mention of AGC’s offer of an

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<sup>314</sup> LSS BOD, Vol 1, p 775 at para 8, Letter from the AGC to the Respondent dated 30 Oct 2018.

<sup>315</sup> LSS BOD, Vol 1, p 775 at para 8, Letter from the AGC to the Respondent dated 30 Oct 2018.

<sup>316</sup> LSS BOD, Vol 1, p 785 at para 5, Letter from the AGC to the Respondent dated 13 Nov 2018.

<sup>317</sup> LSS BOD, Vol 1, p 788, Letter from the Respondent to the AGC dated 19 Nov 2018; LSS BOD, Vol 1, p 792 at para 6, Letter from the Respondent to the AGC dated 26 Nov 2018.

<sup>318</sup> LSS BOD, Vol 1, p 793 – 794 at para 4 and 5, Letter from the AGC to the Respondent dated 28 Nov 2018.

<sup>319</sup> LSS BOD, Vol 1, p 795 – 796, Letter from the Respondent to the AGC dated 3 Dec 2018.

extension, and did not confirm that she intended to respond subsequently, either by 14 December 2018, or at all.

482. It was in these circumstances that AGC wrote to the Respondent on 4 December 2018, informing her of their intention to proceed. AGC reiterated that they had been prepared to agree to the Respondent's request for an extension of time, had she required the time to respond to their queries. However, given the Respondent's refusal to provide the confirmation sought, AGC would proceed accordingly<sup>320</sup>. AGC referred the matter to the Law Society that same day.

483. Given the above facts, it is untrue for the Respondent to have said that AGC proceeded, despite her indicating "*repeatedly*" that she would provide a substantive response.

484. The Respondent's statement that she intended to substantively respond (see paragraphs 474 - 476 above), was contradicted by her testimony on the stand. During cross-examination, she admitted that she "*hadn't decided at that time*", whether or not to respond to AGC's queries, and had simply been "*asking for more time to think about it*"<sup>321</sup>.

485. In our view, the Respondent's claims in her Defence and Affidavit are untrue.

### **(3) Public Statements**

486. In her Defence, the Respondent suggested that she need not have responded to these queries about her involvement, because her husband, Mr LHY, had already "*made public statements as early as*

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<sup>320</sup> LSS BOD, Vol 1, p 797 at para 2 – 4, Letter from the AGC to the Respondent dated 4 Dec 2018.

<sup>321</sup> Transcript (3 July 2019), 11:5-22, 12:20-27, 13:1-14.

*June 2017 to the effect that the Respondent had not drafted [the Last Will] and was not Mr Lee's lawyer*"<sup>322</sup>.

487. Mr LHY's Facebook posts were largely concentrated over two periods. First, in June and July 2017 (see also paragraph 493 above); and second, in April 2019, around the time that the Respondent filed her Defence in these proceedings.

488. These posts gave the impression that Ms KKL had prepared the Last Will for Mr Lee, and that the Respondent had played no role in it.

489. None of these posts mentioned the Respondent's involvement in the Last Will. There was no reference, *inter alia*, to the Respondent having sent Mr Lee the draft Last Will, of her role in briefing Mr BL, of her retaining the original of the executed Last Will, of Ms KKL being overseas, or of Ms KKL having been excluded from the preparation of the Last Will.

490. Instead, Mr LHY said, in the Facebook posts, that Ms KKL was the lawyer of the Last Will. The assertions that he made included the following:

(a) *"The will was drafted by Kwa Kim Li of Lee & Lee."*<sup>323</sup>

(b) *"[Ms KKL] has been lying" because she "denied involvement in the events that led to [the Last Will]".*<sup>324</sup>

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<sup>322</sup> Defence at para 57.

<sup>323</sup> LSS BOD, Vol 1, p 515, Mr LHY's Facebook post dated 16 June 2017, 1.05am.

<sup>324</sup> LSS BOD, Vol 2, p 1340, Mr LHY's Facebook post dated 30 April 2019 sharing Dr LWL's Facebook post dated 30 April 2019.

- (c) *"The final will was subsequently given to Lee Kuan Yew's lawyer, Kwa Kim Li, for safe-keeping."*<sup>325</sup>
- (d) *"Lee Kuan Yew's final will was simply Lee Kuan Yew's first will of 20 August 2011 re-executed on his instructions."*<sup>326</sup>
- (e) *"The will my father signed on Tuesday 17 December 2013 reflected [his] prior discussions with his lawyer KKL."*<sup>327</sup>
- (f) *"It was exactly what he wanted."*<sup>328</sup>

491. Mr LHY admitted in cross-examination that aspects of these posts *"could be misleading"* and *"inaccurate"*<sup>329</sup>. These assertions are in fact untrue, and dishonest, for the reasons set out earlier (see paragraphs 34 – 37, 253 – 258, and 412 – 422).

492. Mr LHY also mentioned some parts from the BL Documents, in his posts, and omitted others.

493. In a Facebook post on 17 June 2017, Mr LHY referred to the *"contemporaneous file note by the two lawyers who witnessed the will"*<sup>330</sup>. He quoted the part from the EK Attendance Note which stated that *"LKY read through every line of the will and was comfortable to sign and initial at every page, which he did in our presence"* (see paragraph 69 above). He left out the part about Mr Lee asking who

<sup>325</sup> LSS BOD, Vol 1, p 532, Mr LHY's Facebook post dated 17 June 2017.

<sup>326</sup> LSS BOD, Vol 1, p 532, Mr LHY's Facebook post dated 17 June 2017.

<sup>327</sup> LSS BOD, Vol 2, p 1340, Mr LHY's Facebook post dated 30 April 2019 sharing Dr LWL's Facebook post dated 30 April 2019.

<sup>328</sup> LSS BOD, Vol 2, p 1340, Mr LHY's Facebook post dated 30 April 2019 sharing Dr LWL's Facebook post dated 30 April 2019.

<sup>329</sup> Transcript (5 July 2019), 40:24, 22:20 – 24:23.

<sup>330</sup> Respondent's Exhibit R1, Mr LHY's Facebook post dated 17 June 2017 at 1.46pm.

drafted the Last Will. He said that Ms KKL had drafted the Last Will; and that the Respondent had not drafted it; and he said that Ms KKL was lying. When he said this, he knew that Ms KKL had not drafted the Last Will, and it was the Respondent who had prepared it (see paragraphs 324 – 328 above).

494. The letters which Mr LHY and Dr LWL wrote to the MC<sup>331</sup>, (which were also in evidence before us), referred to how Mr Lee read the Last Will carefully, and was lucid. Again, nothing was said about Mr Lee having asked who drafted the Last Will, or the answers that he was given. Thus, to the MC and to the public, Mr LHY made selective reference to the documents, which were misleading.

495. The MC made a request<sup>332</sup> for the EK Attendance Note, after the Executors referred to the EK Attendance Note in their correspondence with the MC. This request was not acceded to. During cross-examination, Mr LHY said that the EK Attendance Note was not “*relevant*” to the MC’s work.<sup>333</sup> This was surprising, since he had drawn the MC’s attention to the EK Attendance Note to begin with, referring to parts which he wanted to refer to.

496. Mr LHY’s explanations for the untruths in his posts were not credible. He gave the same reason that he had cited in the context of his correspondence with the MC (see paragraph 232 - 233 above) – namely, that he had not written these posts “*with the level of care which a legal affidavit requires*”<sup>334</sup>. But in fact, this was not a case of

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<sup>331</sup> LSS BOD, Vol 1, p 420 at para 63, Letter from Mr LHY and Dr LWL to Mr Lawrence Wong, Minister for National Development, dated 28 Feb 2017; LSS BOD, Vol 1, p 511 at para 25, Letter from Mr LHY and Dr LWL to Mr Lawrence Wong, Minister for National Development, 14 June 2017.

<sup>332</sup> LSS BOD, Vol 1, p 445 at para 6(e), Letter from Mr Lawrence Wong, Minister for National Development, to Mr LHY and Dr LWL dated 25 April 2017.

<sup>333</sup> Transcript (4 July 2019), 112:31 – 113:7.

<sup>334</sup> Transcript (5 July 2019), 19:13-14, 24:6-9, 20-24, 39:4-7.

carelessness. Mr LHY knew the true facts. He admitted that some of his statements were inaccurate.

497. We have concluded (earlier) that there was an Implied Retainer. (see Section VIII(C) above). We will now deal with the question of whether the Respondent was in breach of her professional duties.

## **IX. Breach of Duties / Misconduct**

498. We will consider the Charges against the Respondent in the following order:

- (a) First, the primary and alternative first Charges (Charges 1 and 1A), which charge the Respondent with breaches of Rule 25 of the PCR, amounting to grossly improper, or alternatively improper, conduct under section 83(2)(b) of the LPA.
- (b) Second, the primary and alternative second Charges (Charges 2 and 2A), which charge the Respondent with breaches of Rule 46 of the PCR, amounting to grossly improper, or alternatively improper, conduct under section 83(2)(b) of the LPA.
- (c) Finally, the further alternative first and second Charges (Charges 1B and 2B), which charge the Respondent with misconduct unbefitting an advocate and solicitor, under section 83(2)(h) of the LPA.

As mentioned above (see paragraph 7 above), the further alternative Charges<sup>335</sup> are based on the same conduct, but premised on section 83(2)(h) of the LPA, ("misconduct

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<sup>335</sup> Statement of Case at paras 47 (further alternative first Charge) and 50 (further alternative second Charge).

unbefitting an advocate and solicitor"), and do not require proof of a retainer between the Respondent and Mr Lee.

499. Rules 25 and 46 of the PCR respectively state as follows:

*"Conflict of Interest*

25. *During the course of a retainer, an advocate and solicitor shall advance the client's interest unaffected by –*

(a) *any interest of the advocate and solicitor;*

...

(b) *any interest of any other person; or*

...

*Gift by will or inter vivos from client*

46. *Where a client intends to make a significant gift by will or inter vivos, or in any other manner, to –*

...

(d) *any member of the family of the advocate and solicitor;*

*the advocate and solicitor shall not act for the client and shall advise the client to be independently advised in respect of the gift."*

500. For the reasons set out below, we find that the primary first and second Charges against the Respondent (Charges 1 and 2) have been made out beyond a reasonable doubt. We also find that the alternative, and/or further alternative first and second Charges

(Charges 1A and 2A and/or 1B and 2B) are also made out beyond reasonable doubt.

**(A) Preliminary point**

501. Before turning to consider each of these groups of Charges, we first deal with a preliminary issue that the Respondent raised, in respect of all the Charges.

502. The Respondent submitted in her Closing Submissions, that all the Charges should fail, because there was no "*conflict of interest*". She cited two reasons:

- (a) First, she was unaware of the circumstances giving rise to the conflict, because she did not know that the Last Will increased Mr LHY's share (from the Penultimate Will)<sup>336</sup>; and
- (b) Second, Mr Lee was fully aware of, and had accepted the Respondent's involvement, in the Last Will<sup>337</sup>.

503. We will deal with each of these points in turn.

**(1) Was the Respondent aware of the conflict of interest?**

504. The Respondent contended that a conflict of interest could only arise if: (a) the Last Will conferred a *further* advantage on Mr LHY (beyond what Mr Lee had bequeathed to Mr LHY previously under the Penultimate Will), and (b) she, as the putative fiduciary, knew that the Last Will had this effect.

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<sup>336</sup> Respondent's Closing Submissions (16 August 2019) at para 185.

<sup>337</sup> Respondent's Closing Submissions (16 August 2019) at para 206.



505. The Respondent said that the latter requirement was not met. Specifically, she said that at the material time:

- (a) She was not aware that the Last Will increased Mr LHY's share, in Mr Lee's estate; and
- (b) Instead, she thought that the Last Will reduced Mr LHY's share, in Mr Lee's estate.

506. As such, she said that no conflict of interest arose on the facts.

507. We are unable to agree with this. There was a clear conflict of interest, regardless of whether the Respondent knew that the Last Will increased, decreased, or maintained, Mr LHY's share. (As to whether the Respondent knew about the Penultimate Will, see paragraphs 513 - 515 below).

508. Mr Lee's Last Will gave a significant (one-third) share of the Estate to the Respondent's husband, Mr LHY. The Respondent put herself in a position of conflict, by assuming the role of Mr Lee's lawyer, in respect of this substantial gift to her husband. As Mr Lee's lawyer, the Respondent owed him a duty of singular loyalty; she was required to put Mr Lee's interests, above those of anyone else. Her concurrent personal interests, as Mr LHY's wife, were in conflict with that duty.

509. The Court of Three Judges has said in *Tan Phuay Kiang*<sup>338</sup>:

"It is established law that an advocate and solicitor owes a duty of unflinching loyalty to his client..." This obligation is derived from the fiduciary nature of the solicitor-client relationship, which requires a solicitor to place his client's interests above those of his own as well as those of third parties. In fact, the obligations of a fiduciary

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<sup>338</sup> *Law Society of Singapore v Tan Phuay Kiang* [2007] 3 SLR (R) 477 at [62].

go beyond the avoidance of actual conflicts of interest, and extend to proscribe perceived or ostensible conflicts as well. While onerous in its requirements, the duty of unflinching loyalty is an essential cornerstone of the solicitor-client relationship as it ensures that a client may confidently expect to receive impartial and frank advice and in turn repose complete trust in a solicitor to safeguard his interests."

[Emphasis added.]

510. Instead of avoiding the conflict, the Respondent actively precipitated its occurrence. Mr LHY cut out Mr Lee's usual lawyer, Ms KKL, and the Respondent then assumed Ms KKL's role, in making all the arrangements regarding the Last Will (see Section VIII(B)(2) above).

511. This conflict was aggravated by Mr LHY's close involvement in the preparation and execution of the Last Will. He acted together with the Respondent, to ensure that the Last Will was executed urgently, overnight, within a matter of 16 hours, from the time the draft Last Will was sent to Mr Lee by the Respondent<sup>339</sup>. Together, they rushed the execution of the Last Will through. Mr Lee was not advised on any of the implications of the Last Will (see paragraphs 353 – 354 and 437 above).

512. We will also address the underlying question which arose from the Respondent's submission: Did the Respondent and Mr LHY know about the Penultimate Will, when the Last Will was signed?

513. The Respondent and Mr LHY's position was that they only learnt that Mr Lee had given Dr LWL an extra share, in the Penultimate Will, *after* he passed away.

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<sup>339</sup> See paragraph 607 of this Decision.

514. The Law Society challenged this position, and argued that the Respondent and Mr LHY had actually been aware of the contents of Mr Lee's Penultimate Will, and knew, *inter alia*, that the Last Will would give Mr LHY a *larger* share<sup>340</sup>. Counsel for the Law Society referred us to a number of documents, which suggest that by 16 December 2013, the Respondent and Mr LHY knew about the Penultimate Will:

- (a) Ms KKL's correspondence with Mr Lee's children suggests that Mr Lee had spoken to them, about his intention to divide his Estate unequally, through the Penultimate Will.

In an email from Ms KKL to Dr LWL on 3 June 2015<sup>341</sup>, Ms KKL told Dr LWL that each time Mr Lee instructed her to divide the estate unequally, Mr Lee said that he would "talk to the children". Ms KKL said that she recalled Dr LWL telling her that Mr Lee had spoken to her (Dr LWL).

[Emphasis added.]

In a note from Ms KKL to Mr LHL, Dr LWL and Mr LHY on 4 June 2015<sup>342</sup>, Ms KKL said that Mr Lee had asked her to prepare the Third and Penultimate Wills which divided the Estate unequally, and told her that "he would talk to the children to inform them why he wanted to divide the Estate unequally".

[Emphasis added.]

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<sup>340</sup> Transcript (4 July 2019), 67:18-29; LSS Skeletal Submissions (5 October 2019) at para 43.

<sup>341</sup> RBOD, p 51, email from Ms KKL to Dr LWL dated 3 June 2015, 8.39am.

<sup>342</sup> LSS BOD, Vol 1, p 257, note from Ms KKL to Mr LHL, Dr LWL and Mr LHY dated 4 June 2015.

- (b) Mr BL's Affidavit also said that the Respondent had told him, on 16 December 2013, that the Last Will was "*going back to [Mr Lee's] previous will with the Demolition Clause*"<sup>343</sup>. This shows that the Respondent knew that the Penultimate Will had removed the Demolition Clause, and the significance of the Last Will in reinstating it. The Respondent's Counsel challenged this aspect of Mr BL's account in cross-examination.
- (c) In an email from Dr LWL to Ms Ho Ching on 28 July 2014, Dr LWL shared her view about what transpired on the evening of 16 December 2013. She told Ms Ho Ching that<sup>344</sup>:
- (i) "*So one day, I called Kim Li. She said Papa had discussed w her giving me more than Loong n Yang and gave her the reasons Pa told me and she had amended the will as instructed...Kim Li said Pa had thought through carefully and called her to his office several times to discuss it. Nor do I remember doing anything that would make Pa so angry w me.*"
  - (ii) "*I said to kim Li, "papa did not tell me he changed the will back to 3 equal parts." Kim Li was surprised, and we both wondered whether Yang pulled a fast one.*"
  - (iii) "*By now, Pa was already v forgetful.*"

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<sup>343</sup> Mr BL's AEIC (1 July 2019) at para 10. It is undisputed that Mr Lee never mentioned reinstating the Demolition Clause in any of his discussions with the Respondent and/or Mr LHY (see paragraph 538 of this Decision).

<sup>344</sup> LSS BOD, Vol 1, p 238, Email from Dr LWL to Ms Ho Ching dated 28 July 2014 at 11.06am.

- (iv) *"If it is Pa's decision, I am ok with it. But I hv a sense that Yang played me out...I was very upset that Yang did it to me."*

[Emphasis added.]

(Dr LWL has subsequently changed her position)<sup>345</sup>.

515. There are facts which seem to suggest that the Respondent, and Mr LHY, knew about the contents of the Penultimate Will, including the fact that Mr LHY would get a smaller share under the Penultimate Will, as compared with the Last Will. Nevertheless, the Tribunal has decided to refrain from making a finding on this issue, because while the evidence is suggestive (that the Respondent and Mr LHY knew the above about the Penultimate Will), it is nevertheless not conclusive.

**(2) Did Mr Lee waive the conflict of interest?**

516. The Respondent also said that there was no conflict, because Mr Lee was fully aware that the Respondent was Mr LHY's wife, and had nevertheless accepted the Respondent's involvement in the Last Will.

517. In our view, this argument is based on a misapprehension of Rules 25 and 46 of the PCR. The alleged breaches under Rules 25 and 46 of the PCR do not stem from the Respondent's failure to disclose her *potential* conflict of interest, as Mr LHY's wife. That is the subject of a different rule, Rule 26 of the PCR, which provides:

*"Disclosure of Interest*

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<sup>345</sup> RBOD, p 53, Facebook post by Dr LWL dated 15 June 2017, 9.16am.

26. *In any case where the advocate and solicitor or any member of his family... has an interest in any matter entrusted to him by a client, the advocate and solicitor shall –*

(a) *make a full and frank disclosure of such interest to the client;*  
*or*

(b) *if, on the grounds of confidentiality or for any other reason, the advocate and solicitor is unable to make such disclosure, decline to represent or withdraw from representing that client."*

518. Rules 25 and 46 of the PCR stipulate additional duties that a solicitor must comply with, over and above the duty of disclosure mentioned in Rule 26 of the PCR. In situations where the Rules 25 and 46 of the PCR apply, the solicitor cannot argue that the client was aware of the conflict of interest.

519. Rule 46 of the PCR is clear: It states that a solicitor: (1) cannot act in respect of a gift that his client intends to make to him, or his family members; and (2) must advise his client to get independent advice in respect of the gift.

520. This is confirmed in case law, which explains that the foundation of Rule 46 of the PCR is based on a solicitor's presumed influence over his client. See *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221 ("*James Wan*") at [9]:

"When a client intends to make a gift to an advocate and solicitor, there is an ethical duty on him to remove, as far as he can, any vestiges of influence (or the appearance thereof) he might have over his client by virtue of their relationship. In the words of Dixon J in the High Court of Australia in *Johnson v Buttress* (1936) 56 CLR 113 at 135:

“...when [a solicitor] takes [from his client] a substantial gift of property, it is incumbent upon him to show that it cannot be ascribed to the inequality between them which must arise from his special position...”

The removal of any vestiges of influence is, in essence, what r 46 of the Rules mandates...When an advocate and solicitor fails to comply with r 46 of the Rules, disciplinary action is taken against him because he is taken to have misused his influence over his client, and thus to have put himself in a position where his personal interests conflict with his duty to act in the interests of his client.”

[Emphasis added.]

521. In such cases, a client's purported waiver is irrelevant, precisely because of the influence that a solicitor is presumed to exercise, over his client. The solicitor can only remove these vestiges of influence, by complying with both aspects of Rule 46 of the PCR.

522. In our view, the correct position is that set out in the Law Society's Guidance Note (see paragraph 575 below) – the prohibition in Rule 46 of the PCR against acting in respect of the gift is an absolute prohibition.

523. The obligations under Rules 25 and 46 of the PCR clearly applied to the Respondent, and the facts before us.

#### **(B) The Primary and Alternative First Charges – Rule 25, PCR**

524. The key elements of the primary and alternative first Charges<sup>346</sup> (Charges 1 and 1A) are as follows –

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<sup>346</sup> Statement of Case at paras 45 (primary first Charge) and 46 (alternative first Charge).

- (a) The Respondent prepared and arranged for the execution of the Last Will, for her client, Mr Lee<sup>347</sup>;
- (b) The Respondent breached Rule 25(a) and/or Rule 25(b) of the PCR because she failed to advance Mr Lee's interests, unaffected by her own, and/or Mr LHY's interests<sup>348</sup>;
- (c) In doing the above, the Respondent's conduct amounted to grossly improper conduct, (or improper conduct/practice), under section 83(2)(b) of the LPA<sup>349</sup>.

525. For the reasons set out above (see Section VIII(C) above), we find that the first of these elements is proved beyond a reasonable doubt. Our findings on the second element are set out below. As regards the third element, as both the primary and alternative first and second Charges require determination of this issue<sup>350</sup>, we will consider them together, at paragraphs 581 - 592 below.

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<sup>347</sup> Statement of Case at para 45 and 46 – primary and alternative first Charges: "*That you, Mrs Lee Suet Fern... during the course of your retainer for your client, Mr Lee Kuan Yew...[prepared] and arranged] for the execution of your client's will where a one-third share in your client's estate was to be given to your husband, Mr Lee Hsien Yang*". [Emphasis added.]

<sup>348</sup> Statement of Case at para 45 and 46 – primary and alternative first Charge: "*That you, Mrs Lee Suet Fern... breached Rule 25(a) and/or Rule 25(b) of the Legal Profession (Professional Conduct) Rules... in that you failed to advance your client's interests unaffected by your interest and/or the interests of your husband, Mr Lee Hsien Yang*". [Emphasis added.]

<sup>349</sup> Statement of Case at para 45 – primary first Charge: "...such act amounting to grossly improper conduct in the discharge of your professional duty within the meaning of s 83(2)(b) of the Legal Profession Act". [Emphasis added.]

<sup>350</sup> Statement of Case at para 48 – primary second Charge: "...such act amounting to grossly improper conduct in the discharge of your professional duty within the meaning of s 83(2)(b) of the Legal Profession Act". [Emphasis added.]

Statement of Case at paras 46 and 49 – alternative first and second Charges: "...such act amounting to improper conduct or practice as an advocate and solicitor within the meaning of s 83(2)(b) of the Legal Profession Act". [Emphasis added.]



**(1) Did the Respondent compromise Mr Lee's interests?**

526. Rule 25 of the PCR encapsulates a lawyer's paramount duty of loyalty to his client. As the Court of Three Judges stated in *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR(R) 674 at [53]:

"Most importantly, a solicitor must remember that his paramount duty is to conscientiously, unwaveringly and faithfully advance the interests of his clients and avoid all actual and/or potential conflict of interests."

[Emphasis added.]

527. As Mr Lee's lawyer, the Respondent owed him a duty of singular loyalty. As a fiduciary, she was required to place Mr Lee's interests above anyone else's – be it her own interests, or those of third parties (including Mr LHY).

528. The specific duties which a solicitor owes his/her client, when preparing a will are well-established. These were set out by the Court in *Low Ah Cheow v Ng Hock Guan* [2009] 3 SLR(R) 1079 ("*Low Ah Cheow*") , as follows (see [72] – [74]):

- (a) The preparation of a will involves serious professional responsibilities, which solicitors *must uncompromisingly observe and discharge*. It is *wrong* to regard the preparation of a will as "*no more than a routine exercise in form filling*".
- (b) A will is one of the most important legal documents which an individual can execute. There ought to be no room for even the slightest doubt (or the slightest possibility of a mistake) on the part of a solicitor in both *understanding* the testator's

intention and *expressing* that intention in the will to be drawn up.

(i) Understanding the testator's intention and wishes –

Before preparing a will, the solicitor ought to have a thorough discussion with the testator on all the possible legal issues and potential complications that might arise in the implementation of the terms of the will. The solicitor ought to painstakingly and accurately document his discussions with and his instructions from the testator.

(ii) Ensuring the will accurately expresses the testator's wishes –

The solicitor should also confirm with the testator, prior to the execution of the will, that the contents of the will as drafted accurately express the testator's intention. Half measures or the cutting of corners in the discharge of these serious professional responsibilities will not do.

[Emphasis added.]

529. The Court of Appeal also said in *Low Ah Cheow*<sup>351</sup>:

"[T]he solicitor concerned [in the preparation of a will] should also conscientiously seek to avoid being in any situation where a potential conflict of interest may appear to exist.

...

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<sup>351</sup> *Low Ah Cheow v Ng Hock Guan* [2009] 3 SLR(R) 1079 at [74].

In particular, exceptional restraint and care are called for if the solicitor concerned has a pre-existing relationship and/or past dealings with the sole beneficiary under a will, and all the more so if the will has been prepared urgently and executed in unusual circumstances with that sole beneficiary's active involvement. When such a case occurs, the solicitor involved must be prepared to have his conduct microscopically scrutinised and, perhaps, even his motives called into question."

[Emphasis added.]

530. Similarly in *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander)* [2010] 4 SLR 373 ("*Muriel Chee*"), the Court of Appeal said at [60] that "[i]n every case, the solicitor should be cautious about taking instructions from any person who is to be named as a beneficiary in the will".

531. The evidence shows that the Respondent acted quite contrary to the duties set out above. She abused her position to further Mr LHY's wishes that the Last Will be executed hurriedly (see paragraphs 30 – 52 and 346 - 365 above). The Respondent's conduct in taking instructions from Mr LHY on the arrangements relating to and arising from the execution of the Last Will is, in the Tribunal's view, an aggravating factor which increases the egregiousness of her conduct. The Courts have stressed that solicitors should be wary of taking instructions solely from a beneficiary to a will. The Respondent testified that she followed Mr LHY's directions as she was an "*obedient wife*". But her statement, that she was an "*obedient wife*" shows her mindset on 16 and 17 December 2013: that she focused primarily on what her husband wanted done, though her duties were owed to Mr Lee. She worked together with Mr LHY, with a singular purpose, of getting Mr Lee to execute the Last Will quickly. The

following is an excerpt from the cross-examination of the Respondent<sup>352</sup>:

"Tan CM:       *The first communication you had with Bernard Lui was at eight---before 8.11. Correct?*

Respondent:   *It was probably soon after my 7.08 email.*

Tan CM:       *Soon after your 7.08 email, you communicated with Bernard?*

Respondent:   *The sequence of events, Sirs, is that I sent that email out, I think, probably as I was leaving the office on my Blackberry. Yang called me---I think I was in the car, and he scolded me for taking so long to deal with it. Simply put, I was busy and preoccupied and I forgot, and he then asked me if I could have somebody on standby because Papa was anxious, and we identified Bernard, and he asked me to (indistinct) Bernard up. He would talk to Bernard directly and he would arrange for Bernard to have the will, and then he also asked me to let Lin Hoe know that Bernard was available for the execution. He asked me to do that because I knew Bernard's number straightaway at hand. When I got back home and reached home at 8.12, I proceeded to email Lin Hoe to get it out of the way. Yang was---must have been in the airport lounge calling and dealing with it. I hadn't yet completed my packing.*

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<sup>352</sup> Transcript (3 July 2019), 40:4-27.

Tan CM: *Mrs Lee, you told us that you communicated with Bernard Lui soon after 7.08pm.*

Respondent: *That's right. After Yang spoke to me and scolded me.*

Tan CM: *Why would you do this even without finding out if Kwa Kim Li would be able to assist?*

Respondent: *It was---*

Tan CM: *Why would you call Bernard Lui soon after 7.08pm?*

Respondent: *Because I'm an obedient wife and Yang told me to do so.*

[Emphasis added.]

532. On the facts, the Respondent failed to discharge the duties set out by the Court of Appeal in *Low Ah Cheow and Muriel Chee*.

**a. Understanding Mr Lee's intention and wishes**

533. Based on our findings above, the Respondent only spoke once to Mr Lee about the Last Will (see paragraph 225 above). Mr Lee had told her "*to revert to his first will from 2011*". Thereafter, aside from one email from Mr Lee (see paragraph 41 above), all the other instructions which she received, on the Last Will, came from Mr LHY<sup>353</sup>.

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<sup>353</sup> See paragraph 531 of this Decision.

534. On her evidence, there was no discussion between the Respondent and Mr Lee, about his intentions or reasons for wanting to reinstate the First Will, or the wider legal implications of doing so. This fell far short of the professional duties that the law imposed on her. As the lawyer preparing Mr Lee's Last Will, the Respondent should have had "*a thorough discussion*" with Mr Lee, "*on all the possible legal issues and potential complications*" that could arise, if he reverted to the First Will.

535. Such thorough discussions would have to be handled with utmost care. In this matter, that would entail the Respondent checking about previous Wills. The Respondent should have found out about the Penultimate Will (if, as she says, she did not know about it), and Mr Lee's intentions, on what changes he had wanted to make to the Penultimate Will. Mr Lee had discussed that with Ms KKL, just a few days earlier the changes he had wanted. Even if she did not know specifically the terms of the Penultimate Will, she knew that Mr Lee had made other Wills, superseding the First Will<sup>354</sup>. It was her duty to have them checked, and to see what was Mr Lee's latest valid will. She also had a duty to advise him carefully on the differences between the First Will (which she says he wanted to revert to), and whatever was his last valid Will.

536. For example, Mr Lee had discussed the Demolition Clause, and the terms on which Dr LWL was allowed to stay in 38 Oxley, on various occasions, with Ms KKL, when preparing his earlier Wills<sup>355</sup>. He had ultimately landed in favour of the positions articulated in his Fifth and Penultimate Wills. According to Ms KKL, Mr Lee did so because he wanted to leave it to Mr LHL to handle the "*hit and the heat*", and

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<sup>354</sup> Transcript (3 July 2019), 81:32 – 82:1.

<sup>355</sup> Mr Lee never mentioned reinstating the Demolition Clause in any of his discussions with the Respondent and/or Mr LHY (see paragraph 538 of this Decision). On the Respondent and Mr LHY's evidence, Mr Lee's instructions had been confined to going back to the First Will.

removed the Demolition Clause, altogether, from his Fifth and Penultimate Wills<sup>356</sup>.

537. There were also two versions of the Demolition Clause (see paragraph 19(b) above and Annex A). In the first version (from Mr Lee's First Will), demolition of 38 Oxley was subject to Dr LWL's right to stay there. This was the version in the draft that the Respondent sent to Mr Lee. However, this version of the Demolition Clause had been superseded by a second version (from Mr Lee's Second Will). This later version of the Demolition Clause was also used in Mr Lee's Third and Fourth Will. In the Fifth and Sixth (or Penultimate) Wills, the Demolition Clause was removed completely. Thus, the Respondent should have checked with Mr Lee: did he want the Demolition Clause reinserted, when he had removed them from his immediately preceding two Wills?

538. The Respondent did not do this. She did not tell Mr Lee that the Demolition Clause (which had been removed in the Penultimate Will) had been reinserted in the draft Last Will that she sent to Mr Lee. The Respondent's testimony<sup>357</sup> was as follows:

"Advocate:           ...[S]o on 16th December 2013, you never had a chance to speak to or advise Mr Lee Kuan Yew, right, about this decision to include any demolition clause in the final will

Respondent:        *I think Papa was his own best lawyer. He knew what he wanted.*

Advocate:           *Okay. So there was no conversation at all?*

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<sup>356</sup> LSS BOD, Vol 1, p 257 – 259, note from Ms KKL to Mr LHL, Dr LWL and Mr LHY dated 4 June 2015.

<sup>357</sup> Transcript (4 July 2019), 98:13-18.

Respondent: *There was no conversation at all.*"

[Emphasis added.]

539. Mr Lee had also removed Dr LWL's right to stay at 38 Oxley altogether in his Second, Third and Fourth Wills, before deciding to confer her with only a *conditional* right in his Fifth and Penultimate Wills.

540. The question of Dr LWL's rights (if any) to stay at 38 Oxley was an issue on which Mr Lee seems to have focussed considerable thought and attention in deciding on his Wills<sup>358</sup>. Apart from Mr Lee's First Will, *none* of his five subsequent wills give Dr LWL an *unfettered* right to stay at 38 Oxley, the Second, Third, and Fourth Wills did not give Dr LWL *any* right to stay at 38 Oxley, whilst the Fifth and Penultimate Wills subjected this right to Mr LHL's consent.

541. Mr Lee had also emphasised to Ms KKL the importance of requiring Mr LHL's consent in this respect. When Mr Lee reinstated Dr LWL's right to stay at 38 Oxley in the Fifth Will, he instructed Ms KKL, more than once, to ensure that this should be made subject to Mr LHL's consent<sup>359</sup>.

542. The Penultimate Will also contained a gift-over clause (as did all Mr Lee's wills, apart from the Last Will (see paragraph 21 above))<sup>360</sup>.

543. The Last Will departed from the considered positions that Mr Lee had settled on with Ms KKL on the changes to be made to his Penultimate

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<sup>358</sup> RBOD, p 51, email from Ms KKL to Dr LWL dated 3 June 2015, 8.39am; LSS BOD, Vol 1, p 257 at para 1, note from Ms KKL to Mr LHL, Dr LWL, Mr LHY dated 4 June 2015.

<sup>359</sup> LSS BOD, Vol 1, p 145, email from Mr Lee to Ms KKL dated 1 Oct 2012, 4.12pm; LSS BOD, Vol 1, p 144, email from Mr Lee to Ms KKL dated 1 Oct 2012, 11.32pm.

<sup>360</sup> LSS BOD, Vol 1, p 289, Penultimate Will executed by Mr Lee dated 2 November 2012.



Will. As Mr Lee's lawyer, the Respondent owed him a duty to find out what Mr Lee's true wishes were, take him through the Penultimate Will, and remind him of his discussions with Ms KKL a few days earlier. It was only with the benefit of such a discussion that Mr Lee (and the Respondent) could have been certain that the best (or even an accurate) way of giving effect to his wishes was to rescind the Penultimate Will, and reinstate the First Will (with all its attendant changes).

544. The Respondent made no effort to ascertain, discuss, or draw Mr Lee's attention to the changes between the Penultimate Will and the First Will. She did not try to obtain a copy of the Penultimate Will from Ms KKL, either for Mr Lee's or her own reference<sup>361</sup>. Any solicitor who proceeded thus would have acted contrary to the requirements set out by the Court of Appeal in *Low Ah Cheow* (see paragraph 528 above). The Respondent, being in conflict, fell foul of the additional observations made by the Court of Appeal in *Low Ah Cheow* and *Muriel Chee* (paragraphs 529 – 530 above). As the Court of Appeal said in *Low Ah Cheow*, the Respondent's motives, in sending a draft to Mr Lee which completely superseded the Penultimate Will and in rushing the execution of the Last Will, are in serious question.

545. Had Mr Lee's wish been solely to ensure an equal division of shares, there were various other options he could have used, rather than reinstating the First Will – he could have executed a codicil to the Penultimate Will (which is what he had agreed with Ms KKL), or reinstated one of his other previous Wills, which similarly divided his Estate into equal shares.

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<sup>361</sup> Transcript (3 July 2019), 29:25 – 30:29.

**b. Ensuring Mr Lee's wishes were fully and accurately expressed in the Last Will**

546. We found it established beyond reasonable doubt that the Respondent failed in this duty as well.

547. She did not fully ascertain what Mr Lee's wishes were (see paragraphs 533 - 545 above).

548. Even if Mr Lee's intention was to go back to the First Will, that was also not done.

549. She told Mr Lee that the draft Last Will that she sent to him was the First Will, when it was not (see paragraphs 34 – 35 above). She did not draw his attention to the differences between the draft Last Will and the First Will.

550. In particular, two substantive parts of the First Will were missing from the draft that the Respondent gave Mr Lee – (a) the gift-over clause, and (b) provision for Mr LHL to pay for the upkeep of 38 Oxley, whilst Dr LWL occupied the property.

551. On her evidence, she simply forwarded to Mr Lee, what Mr LHY sent to her, assuming it to be the First Will, as Mr LHY told her, and representing it to Mr Lee as such<sup>362</sup>. The Respondent contended that she did not open the draft, before she sent it on to Mr Lee. For the reasons set out above (see paragraphs 318 – 321 above), we did not find these statements credible.

552. However, had this indeed been the case (as the Respondent stated), it would have compounded her misconduct even further. It is a breach of the most basic duties for a lawyer to have:

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<sup>362</sup> The Respondent's AEIC (17 June 2019) at para 16.

- (a) Used a draft will sent to her by a beneficiary, whom she was closely related to; and
- (b) Sent on the draft, from the beneficiary, to her client, representing its contents to be in order, without even having opened the document to read it.

553. As Mr Lee's lawyer, it was a serious breach of the Respondent's duties to have misrepresented the Last Will as being identical to the First Will.

554. The Last Will also omitted changes which Mr Lee wanted to make. It failed to include the provision on the two carpets that Mr Lee had instructed Ms KKL to make, just a few days earlier (see paragraphs 28 and 29 above). The Respondent's omission to include this in the Last Will underscored her failure to discuss the Last Will with Mr Lee and ensure that its contents reflected Mr Lee's wishes.

555. The Respondent's disregard for Mr Lee's interests is also apparent from her conduct after sending him the draft Last Will. She made no effort to discuss the draft Last Will with Mr Lee, or at least confirm that the draft Last Will accurately and comprehensively reflected his wishes (see paragraph 544 above). On her own evidence, she did not know if Mr Lee even read the draft Last Will which she sent, because she did not speak with him after that<sup>363</sup>.

556. All of this was a gross breach of the Respondent's duties. As the Court of Three Judges has stated in *Law Society of Singapore v Vardan Vasantha Lakshmi* [2007] 1 SLR(R) 240 at [47]:

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<sup>363</sup> Transcript (3 July 2019), 89:7-9.

"[L]awyers have a duty generally (and always) to give their respective clients a thorough explanation of all relevant documents set in their appropriate contexts. This is the minimum standard of professionalism which we would expect."

[Emphasis added.]

557. In their testimony, the Respondent and Mr LHY repeatedly emphasised that Mr Lee read through the Last Will before it was executed. They contended that the Last Will must therefore have reflected Mr Lee's wishes.

558. This reasoning is contradicted, by the Respondent's own testimony. The Respondent's evidence is that even though she had worked on the First Will in 2011, she herself would not have realised, from a plain reading of the draft Last Will in 2013, that it was the wrong version<sup>364</sup>.

"Tan CM: *Would it be fair to say that if you did open, you will know that this is not the correct draft because you were involved in a wee bit of tidying, resulting in version 3 that resulted in the last will?*

Respondent: *No. I wouldn't have known.*

Tan CM: *You wouldn't have known?*

Respondent: *I wouldn't have known.*

Tan CM: *So would it be fair to say that when Mr Lee reads whatever draft of will it would be for him, he, too, would*

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<sup>364</sup> Transcript (3 July 2019), 74:9 – 75:9.

*not have known of the differences with the first will if it had not been placed before him?*

Respondent: *I don't know. But I had sent the will to the author. And I wouldn't have had the temerity of doing that if I had thought that it wasn't the will. This was sent to the author Kim Li. It was forwarded.*

...

Tan CM: *You see, your evidence is that if you had opened, you would not have noticed the difference. Correct?*

Respondent: *Yes, Sir.*

Tan CM: *That must be because the wee bit of tidying that you did was in August 2011. That will be more than 2 years ago?*

Respondent: *I had---yes, I had no reason to think that it was anything other than the will. And, yes, I don't have perfect memory to remember a document I may have go---looked at briefly 2 years ago.*

Tan CM: *By the same token, it would not be fair to expect that Mr Lee would remember or would have noticed the differences between the first and the last will because it was something that he signed some 2 years and 4 months ago. Would that be a fair statement?*

Respondent: *I think that that's probably the case, although you have to recognise, Papa can be a very perspicacious man and that he may well have the wills with him. And I did not.*

Tan CM: *You don't know that for a fact, am I correct?*

Respondent: *No, I don't.*

Tan CM: *Yes.*

Respondent: *Neither do you."*

[Emphasis added.]

559. The Respondent's comments that she would not have known the differences between the different variations of the First Will based on memory alone, apply with more force to Mr Lee. By December 2013, Mr Lee had signed five other Wills since the First Will. Mr Lee was 90 years old at the time, was very frail and had been in poor health<sup>365</sup>. It is not possible to assume that Mr Lee would have identified and appreciated the specific changes that the Last Will made to either the First Will, or the Penultimate Will, based on memory alone, and without a lawyer explaining the differences and implications to him.

560. The problems are compounded by the fact that the Respondent had made false representations to Mr Lee about the contents of the Last Will. It is grossly remiss for her to have allowed Mr Lee to sign the Last Will, based on her false representations to him.

561. Thus, it is no answer to say that Mr Lee read through the Last Will. He was given a document and given false assurances about it. He

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<sup>365</sup> See paragraphs 27 and 59 of this Decision above.

See also email from Dr LWL to Ms Ho Ching dated 16 Dec 2013, 5.21pm, sent the day before the Last Will was signed – Dr LWL said that Mr Lee had "*been doing very well*" because he had "*no admission to SGH for more than a month*", but that she thought that "*aging has caught up w his brain also*". (LSS BOD, Vol 1, p 172)

Dr LWL also subsequently recounted Mr Lee's health at the time, in the following terms: "*By now, Pa was already v forgetful*" (see email from Dr LWL to Ms Ho Ching dated 28 July 2014, 11.06am (LSS BOD, Vol 1, p 238)).

trusted the Respondent<sup>366</sup>. He read it, and signed it. But was he aware that this Will was very different from what he had discussed with Ms KKL just four days earlier<sup>367</sup>? Did he remember, for example, that four days earlier, he had not wanted to include the Demolition Clause? Did he, for example, remember that the Penultimate Will did not have the Demolition Clause?

562. The Respondent also said that Mr Lee's interests were not adversely affected, because the Last Will simply effected his undisputed wish to divide the Estate equally amongst his three children<sup>368</sup>. She also said that the only basis on which the first Charge (Charges 1, 1A, and 1B) could be sustained was if Mr LHY "*got some advantage that he was not entitled to because of [the Respondent's] intervention*".

563. This submission overlooks the several ways in which the Respondent failed to protect Mr Lee's interests, set out above.

564. Mr LHY's contentions in his Affidavit were also to similar effect<sup>369</sup>. He referred to the differences between the First and Last Will as being "*minor discrepancies*" and "*some occasional differences in legal words*". There were in fact substantive differences between the two Wills (see paragraphs 34, 548 - 550 and Annex B).

565. This was a dismissive approach. It shows, unfortunately, the complete disregard Mr LHY and the Respondent had for Mr Lee's wishes, and the Respondent's disregard for discharging her duties honestly and faithfully. The Respondent:

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<sup>366</sup> Transcript (3 Jul 2019), 30:30-32.

<sup>367</sup> See paragraph 29 of this Decision.

<sup>368</sup> Respondent's Skeletal Submissions for No Case to Answer (2 July 2019) at paras 54 – 55.

<sup>369</sup> Mr LHY's AEIC (11 June 2019) at paras 87 – 89.

- (a) Did not have a proper discussion with Mr Lee to ascertain his wishes;
- (b) Did not take the required steps to herself ensure that Mr Lee's wishes were properly reflected; and
- (c) Primarily focussed on ensuring that her husband's and her desire to get a will executed by Mr Lee quickly – which contained terms which had not been discussed with Mr Lee, and on which he was not advised.

566. We find it established beyond reasonable doubt that the Respondent breached Rule 25(a) and (b) of the PCR. The objective facts show that she fell grossly short of her professional duties as Mr Lee's lawyer.

567. As a fiduciary, who was beholden to protect Mr Lee's interests above all else, it was unacceptable for the Respondent to have abused her position as Mr Lee's lawyer and prioritised her husband's wishes.

**(C) The Primary and Alternative Second Charges: Rule 46 of the PCR**

568. The key elements of the primary and alternative second Charges (Charges 2 and 2A) are as follows:

- (a) The Respondent breached Rule 46 of the PCR by:
  - (i) Acting in respect of a significant gift that her client, Mr Lee, intended to give to Mr LHY, the Respondent's husband<sup>370</sup>; and/or

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<sup>370</sup> Statement of Case at paras 48 and 49 – primary and alternative second Charges: “*That you, Mrs Lee Suet Fern... during the course of your retainer for your client, Mr Lee Kuan Yew, breached Rule*



(ii) Failed to advise Mr Lee to seek independent legal advice<sup>371</sup>; and

(b) In doing the above, the Respondent's conduct amounted to grossly improper conduct (or improper conduct/practice) under section 83(2)(b) of the LPA<sup>372</sup>.

569. Rule 46 of the PCR expressly provides, *inter alia*, that "*where a client intends to make a significant gift by will to "any member of the family of the advocate and solicitor", the advocate and solicitor "shall not act for the client and shall advise the client to be independently advised in respect of the gift". It stipulates "two distinct obligations", which are "cumulative and not alternative" – a lawyer must both refuse to act for the client in respect of the gift, and advise the client to be independently advised (see *James Wan* <sup>373</sup>, at [9] and [22]). [Emphasis added.]*

570. In this regard, we note that the charges against the Respondent framed both limbs of Rule 46 of the PCR conjunctively (see paragraph 568(a) above). For the reasons set out below, we find that the Respondent breached both these limbs, as the charges set out. However, for completeness, we point out that for the reasons set out

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46...by acting in respect of a significant gift (a one-third share in your client's estate) that your client intended to give by will to your husband, Mr Lee Hsien Yang". [Emphasis added.]

<sup>371</sup> Statement of Case at paras 48 and 49 – primary and alternative second Charges: "*That you, Mrs Lee Suet Fern... breached Rule 46 of the Legal Professional (Professional Conduct) Rules ...[by] failing to advise your client to be independently advised in respect of this significant gift". [Emphasis added.]*

<sup>372</sup> Statement of Case at para 48 – primary second Charge: "... such act amounting to grossly improper conduct in the discharge of your professional duty within the meaning of s 83(2)(b) of the Legal Profession Act". [Emphasis added.]

Statement of Case at para 49 – alternative second Charge: "... such act amounting to improper conduct or practice as an advocate and solicitor within the meaning of s 83(2)(b) of the Legal Profession Act". [Emphasis added.]

<sup>373</sup> *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221.

above (see paragraph 569 above), a breach of Rule 46 of the PCR would be made out as long as *either* of these limbs are proved beyond reasonable doubt.

**(1) Acting in respect of a significant gift to Mr LHY**

571. For the reasons set out above (see Section VIII above), we find that this limb of Rule 46 of the PCR has been established beyond a reasonable doubt.

572. The assets which Mr Lee intended to bequeath to Mr LHY through the Last Will were a "*significant gift*", within the meaning of Rule 46 of the PCR. This was a gift that was both significant in absolute terms, and also significant in proportion (one-third) of Mr Lee's estate (see *James Wan*, at [10]).

573. The Respondent's decision to act for Mr Lee, despite knowing of the significant gift that her husband Mr LHY stood to receive, is in breach of Rule 46. As the Court of Appeal pointed out in *James Wan* at [20], a "clear instance of so acting is when the advocate and solicitor draws up an instrument by which a disposal of the client's property is effected, such as a will". [Emphasis added.]

574. The Court in *James Wan* has noted that in England and in New South Wales, the equivalent provisions to Rule 46 of the PCR do not apply when the client is closely related to the solicitor. However, the Court points out that Rule 46 of the PCR in Singapore does not have any exception. The obligations imposed by Rule 46 of the PCR apply regardless of any familial relationship between the solicitor and his client. The Court also made reference to the Law Society's Ethics Committee's Guidance Note of 4 December 2007, where the Ethics Committee made clear that the obligations apply even in relation to a

solicitor's own parents. The Respondent was in breach of Rule 46 of the PCR.

575. The Guidance Note from the Law Society's Ethics Committee (which was cited by the Court in *James Wan*) states that<sup>374</sup>:

*"A solicitor is absolutely prohibited under rule 46 PCR from acting for his parents in preparing any instrument (including a will) under which he (or his family members or colleagues) would receive a significant gift, whether as a beneficiary of his parents' will or estate or otherwise. In light of potential issues of conflict of interest and sensitivities involved, the solicitor should avoid acting for his parents even when they have not intimated any intention to make a gift. Naturally, once such intention was intimated, the solicitor must advise his parents to seek independent advice concerning the gift and cannot act for them."*

[Emphasis added.]

## **(2) Failing to advise Mr Lee to get independent legal advice**

576. The Respondent also breached the second requirement in Rule 46 of the PCR – to advise Mr Lee to seek independent advice.

577. The nature of this duty has been set out by the Court of Three Judges in *James Wan*<sup>375</sup>:

- (a) A solicitor's obligation to advise his client to seek independent advice arises even if the intended gift is *wholly unrelated* to the matter in which the advocate and solicitor is acting for the client – *a fortiori* where he is acting for the client in respect of the gift itself. The dispassionate counsel of an uninvolved

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<sup>374</sup> Law Society Ethics Committee, Guidance Note (4 December 2007).

<sup>375</sup> *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221 at [12]-[18].

party is needed, to establish that his client's judgement has not been clouded by influence, arising from their solicitor-client relationship.

- (b) An advocate and solicitor does *not* fulfil his obligation merely by telling his client "You should seek independent advice" without more.
- (c) He should explain to his client the reason why independent advice is required, *viz*, to ensure that the client's decision to make a gift to him, (or parties close to him), is free exercise of independent will, given the presumption that the decision is influenced by the solicitor-client relationship. He should explain that, even if the client does not perceive any influence, such influence may nevertheless exist. He should also emphasise, repeatedly if necessary, the importance of receiving independent advice.
- (d) The advocate and solicitor, should ask his client to nominate an independent advocate and solicitor, who can advise the client on the matter (the "advising advocate and solicitor"). He should then ensure that the advising advocate and solicitor, has no connections or involvement, which would in any way compromise independence.

He should advise his client to obtain written confirmation from the advising advocate and solicitor, to the effect that a full explanation of the nature of the transaction, and its practical implications, has been furnished.

- (e) Should the client decline to seek independent advice for whatever reason, he should insist with some force that his client do so, and reiterate the importance of receiving that

independent advice. In the absence of such advice, the advocate and solicitor should decline to accept the gift.

[Emphasis added.]

578. It is not in dispute that the Respondent failed to do any of these things. She did not advise Mr Lee to seek independent counsel. She breached the second aspect of her duty under Rule 46 of the PCR.

579. In fact, the Respondent did the opposite of what Rule 46 of the PCR required her to do.

580. The Respondent acquiesced in cutting out Mr Lee from getting advice from his usual lawyer, Ms KKL.

***(D) Section 83(2)(b) of the LPA: Grossly improper conduct***

581. The final question is whether her conduct was “*grossly improper*” under section 83(2)(b) of the LPA.

582. The test for what amounts to “*grossly improper*” conduct, within the meaning of section 83(2) of the LPA was also discussed by Menon CJ in *Law Society of Singapore v Ezekiel Peter Latimer* [2019] SGHC 92 (“*Peter Ezekiel*”):

“37 The principles relating to s 83(2)(b) of the LPA can be briefly stated. Whether a particular conduct is “grossly improper” within the meaning of s 83(2)(b) of the LPA depends on whether the conduct is dishonourable to the solicitor concerned as a man and dishonourable in his profession (*Re Marshall David*; *Law Society of Singapore v Marshall David Saul* [1971–1973] SLR(R) 554 at [23]; *Law Society of Singapore v Rasif David* [2008] 2 SLR(R) 955 at [23]). It is well established that deceit is not necessary for

a finding of grossly improper conduct. Indeed, s 83(2)(b) of the LPA makes it clear that the requirement is for either fraudulent or grossly improper conduct to be shown (*Re Han Ngiap Juan* [1993] 1 SLR(R) 135; *Re Lim Kiap Khee*; *Law Society of Singapore v Lim Kiap Khee* [2001] 2 SLR(R) 398 ("*Lim Kiap Khee*") at [19]). Whilst simple negligence or want of skill would not necessarily constitute grossly improper conduct, it has also been noted that there are degrees of negligence, and that the gravity of a negligent act must be viewed in the context of the matter, taking into account all the circumstances of the case (*Lim Kiap Khee* at [19]). Grossly improper conduct will also be found where a solicitor prefers his own interests to that of his client (*Law Society of Singapore v Khushvinder Singh Chopra* [1998] 3 SLR(R) 490 ("*Khushvinder Singh Chopra*") at [49]; *Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466 ("*Ng Chee Sing*") at [36])."

583. It would be "grossly improper", for an advocate and solicitor to act in a manner opposed to a client's interests: *Law Society v Heng Guan Hong Geoffrey* [1999] 3 SLR(R) 966 ("*Geoffrey Heng*") at [21]. "Grossly improper conduct", is also likely to arise, where a solicitor puts his interest, above his clients' interests<sup>376</sup>: *Khushvinder Singh Chopra* at [49]; and *Ng Chee Sing* at [36].

584. Conduct may be "grossly improper" even without any dishonesty, fraud or deceit: *Re Han Ngiap Juan* at [27] and [34]; and *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 ("*Wong Sin Yee*") at [23].

585. In *Peter Ezekiel*, the Court of Three Judges characterised the type of conflict of interest which has arisen in these proceedings as cases where "it would be impossible, save possibly in exceptional circumstances, to avoid the conclusion that the client had operated

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<sup>376</sup> *Law Society v Khushvinder Singh Chopra* [1998] 3 SLR(R) 490; *Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466.

under the undue influence of the solicitor in ... making the substantial gift”.

586. Based on these principles, we find the Respondent was guilty of grossly improper conduct, beyond any reasonable doubt.

587. This is not a case of sheer incompetence, inadvertent negligence, or even reckless indifference. The Respondent, as Mr Lee’s lawyer, deliberately failed to discharge the duties that she was supposed to perform. Her breaches are egregious.

588. Considered in totality, the Respondent’s conduct was quite dishonest. Mr LHY’s and her conduct, demonstrated a calculated attempt to:

- (a) Ensure that Mr Lee executed the Last Will as quickly as possible, without due regard for Mr Lee’s wishes, and
- (b) Hide their wrongdoing in having done so.

589. The Respondent and Mr LHY knew that it was important to Mr Lee to have a lawyer prepare and arrange for the execution of the Last Will. Despite this: (a) they cut out Mr Lee’s usual lawyer, Ms KKL, and replaced her with the Respondent, who was in a serious conflict of interest; and (b) instead of advising Mr Lee to seek independent counsel, as she was required to, the Respondent acquiesced in Mr LHY’s representation to Mr Lee, that it was best to proceed without Ms KKL; and actively ensured that the execution could proceed without Ms KKL.

590. Having removed Ms KKL from the picture, the Respondent compounded her wrongdoing by misleading Mr Lee on the contents of the Last Will. She and Mr LHY also rushed the signing of the Last Will by Mr Lee. It contained terms which had not been discussed with

Mr Lee (see paragraphs 536 – 538 above). Mr Lee signed the Last Will under false assurances.

591. The Respondent's conduct clearly lacked the integrity, probity and trustworthiness required of an advocate and solicitor. What she did was dishonourable, both to herself, as a person, and to the legal profession. It was "*grossly improper conduct*" under section 83(2)(b) of the LPA.

592. Having procured the Last Will through these improper means, she and Mr LHY then fabricated a series of lies and inaccuracies, to perpetuate the falsehood that Ms KKL had been involved in the Last Will, and hide their own role in getting Mr Lee to sign the Last Will and their wrongdoings (see paragraphs 439 - 496 above).

**(E) The Further Alternative First & Second Charges**

593. The further alternative Charges (Charges 1B and 2B) brought under section 83(2)(h) of the LPA, are also established beyond reasonable doubt.

594. Section 83(2)(h) of the LPA is broader than section 83(2)(b) of the LPA. It applies when a solicitor's conduct does not fall within any of the other subsections of section 83(2) of the LPA, but is "nonetheless considered unacceptable": *Wong Sin Yee*, [24]; *Ng Chee Sing*, [40]. Unlike "*grossly improper conduct*" under section 83(2)(b) of the LPA, "*conduct unbefitting an advocate and solicitor*" under section 83(2)(h) of the LPA, is not confined to misconduct in a solicitor's professional capacity; it also includes misconduct in his personal capacity: *Geoffrey Heng*, at [25]; *Khushvinder Singh Chopra*, at [36].

595. Menon CJ has summarised, in *Peter Ezekiel* at [38], the test for unbefitting conduct under section 83(2)(h) of the LPA as follows:



“38 As for s 83(2)(h) of the LPA, this provision is broader than s 83(2)(b). The standard of unbefitting conduct will be met if a solicitor is shown to have been guilty of such conduct as would render him unfit to remain as a member of an honourable profession (*Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 (“Wong Sin Yee”) at [24]). The relevant test is to consider whether reasonable people, on hearing what the solicitor had done, would have said without hesitation that as a solicitor he should not have done it (*Ng Chee Sing* at [41]; *Wong Sin Yee* at [24]).”

[Emphasis added.]

596. It is sufficient if the solicitor’s conduct brings him into discredit as a lawyer, or brings the legal profession as a whole into disrepute: *Wong Sin Yee*, at [24].

597. Even if the Respondent had not been Mr Lee’s lawyer, what she did to Mr Lee was dishonest and dishonourable. She:

- (a) Misled him, and procured his execution of the Last Will on the basis of misrepresentations;
- (b) Denied him the benefit of proper legal advice, on the contents of his Last Will; and
- (c) Participated in ensuring that the Last Will was signed quickly, without Mr Lee getting proper legal advice.

598. This conduct unquestionably falls within the rubric of “*conduct unbefitting an advocate and solicitor*”.

**X. Cause of sufficient gravity under section 93 of the LPA**

599. Having found that the first and second Charges against the Respondent were established beyond reasonable doubt, the final question to address is whether there is "*cause of sufficient gravity*" under section 93 of the LPA.

600. The existence of misconduct under section 83(2) of the LPA, does not *ipso facto* constitute "cause of sufficient gravity". The function of a Disciplinary Tribunal under section 93 of the LPA, is to serve as a "filter": *Law Society of Singapore v Jasmine Gowrimani d/o Daniel* [2010] 3 SLR 390 ("*Jasmine Gowrimani*") at [28]. It is open to the Tribunal to find that the conduct, technically, falls within one or more limbs of section 83(2) of the LPA, but take the view that the case is nevertheless not of "sufficient gravity", to merit a reference to the Court of Three Judges in *Jasmine Gowrimani*, at [39].

601. Cause of sufficient gravity for disciplinary action arises if, (and only if), the Tribunal is of the view that "there is (potential or prima facie) merit in the complaint", which would result in a finding of "due cause", by the Court of Three Judges (see *Jasmine Gowrimani*, at [34] and [37]). In other words, the misconduct must be "sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA" (see *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] SGHC 141 at [30]).

602. The sentencing principles set out in *Law Society of Singapore v Nor'ain bte Abu Bakar* [2009] 1 SLR(R) 753 at [92] are instructive –

- (a) "Where a solicitor has acted dishonestly, the court will order that he be struck off the roll of solicitors."

- (b) If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, he will nonetheless be struck off the roll of solicitors, as opposed to merely being suspended, if his lapse is such as to indicate that he lacks the qualities of character and trustworthiness which are necessary attributes of a person entrusted with the responsibilities of a legal practitioner.
- (c) A further consideration to be borne in mind when deciding on the appropriate penalty is the public dimension of disciplinary sentencing, which is the equivalent of public denunciation by the court in the process of punishing an offender for the offence he has committed. This process serves to preserve public confidence in the legal profession as an integral part of the legal system."

[Emphasis added.]

603. The misconduct that the Respondent is guilty of represents a serious departure from the most basic and fundamental standards expected of an advocate and solicitor – complete honesty and fidelity to his/her client. The Respondent acted with dishonesty, deceit, and in disregard of her legal obligations. To leave such egregious and dishonest conduct unsanctioned would bring disrepute upon the profession. We accordingly determine, pursuant to section 93(1)(c) of the LPA, that cause of sufficient gravity for disciplinary action exists under section 83 of the LPA.

## **XI. Conclusion**

604. The main facts in this matter are not in much dispute.

605. In summary:

- (a) Ms KKL was responsible for drafting Mr Lee's First to Sixth Wills, from 2011 to 2012<sup>377</sup>. She was his lawyer. She took care of all the arrangements, for drafting the Wills, and kept the originals<sup>378</sup>.
- (b) As of 13 December 2013, Mr Lee had discussed and agreed with Ms KKL that he would execute a codicil, making two specific changes to his Sixth (or Penultimate) Will<sup>379</sup>.
- (c) The Sixth (or Penultimate) Will, *inter alia*:
  - (i) Did not contain any Demolition Clause<sup>380</sup>;
  - (ii) Provided for Dr LWL to stay at 38 Oxley subject to Mr LHL's consent<sup>381</sup>; and
  - (iii) Contained a gift-over clause (which all Mr Lee's previous Wills also contained)<sup>382</sup>.

As of 13 December 2013, Mr Lee had not wanted to change these aspects of the Penultimate Will, or any other provision in that Will. He had agreed to make only the two changes, referred to at (b) above<sup>383</sup>.

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<sup>377</sup> See paragraph 12 of this Decision.

<sup>378</sup> See paragraphs 15 and 256 of this Decision.

<sup>379</sup> See paragraphs 28 and 29 of this Decision.

<sup>380</sup> See paragraph 23 of this Decision.

<sup>381</sup> See paragraph 23 of this Decision.

<sup>382</sup> See paragraph 21 of this Decision.

<sup>383</sup> See paragraph 29 of this Decision.

- (d) A few days later, Mr LHY and the Respondent settled the Last Will with Mr Lee on 16 and 17 December 2013, whilst Ms KKL was away<sup>384</sup>. Mr LHY and the Respondent arranged for Mr Lee to revoke the Penultimate Will in its entirety (instead of executing a codicil to the Penultimate Will, as Mr Lee had instructed Ms KKL three or four days earlier), and arranged for Mr Lee to execute a new Will (namely, the Last Will).
- (e) The Respondent sent the draft of the Last Will to Mr Lee (via her email of 7.08pm on 16 December 2013)<sup>385</sup>. She and Mr LHY arranged for Mr Lee to sign the Last Will urgently, 16 hours later, before lunch the next day<sup>386</sup>.
- (f) Mr Lee signed the Last Will without legal advice from his usual lawyer, Ms KKL<sup>387</sup>.

The Respondent and Mr LHY knew that Ms KKL was away<sup>388</sup>. Mr LHY told Mr Lee that he should not wait for Ms KKL to settle the new Will<sup>389</sup>. The Respondent was on that email. They persuaded Mr Lee to sign the draft Last Will, without Ms KKL. Mr LHY told Mr Lee that the Respondent's firm, Stanford Law, could handle the matter<sup>390</sup>.

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<sup>384</sup> See paragraph 31 of this Decision.

<sup>385</sup> See paragraph 30 of this Decision.

<sup>386</sup> See paragraphs 346 - 365 of this Decision.

<sup>387</sup> See paragraph 437 of this Decision.

<sup>388</sup> See paragraphs 31 and 288 of this Decision.

<sup>389</sup> See paragraph 39 of this Decision.

<sup>390</sup> See paragraph 39 of this Decision.

Mr LHY removed Ms KKL from the email correspondence (after the Respondent's initial email of 7.08pm), even before Mr Lee agreed to use another lawyer for the Last Will<sup>391</sup>. Ms KKL was then cut out of the discussions<sup>392</sup>.

- (g) Mr LHY and the Respondent made all the arrangements for the execution of the Last Will<sup>393</sup>. They took steps to have lawyers from the Respondent's law firm, Stamford Law, engross and witness the Last Will for Mr Lee, hurriedly<sup>394</sup>.
- (h) Mr Lee was 90 at that time, very frail and in poor health<sup>395</sup>. He had been hospitalised in the preceding weeks<sup>396</sup>. Mr Lee agreed to sign the Last Will, because he trusted the Respondent (whom he had instructed<sup>397</sup>, and whom he was told prepared the Last Will<sup>398</sup>), and believed that what she told him was true<sup>399</sup>. He was not advised by any other lawyer before he signed the Last Will<sup>400</sup>.
- (i) The Respondent misled Mr Lee on the terms of the Last Will. She told him that the draft Last Will was the same as the First

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<sup>391</sup> See paragraph 39 of this Decision.

<sup>392</sup> See paragraphs 39, 324-327 and 414-416 of this Decision.

<sup>393</sup> See paragraphs 40-68 and 367-407 of this Decision.

<sup>394</sup> See paragraphs 40-52, 363-365 and 370 of this Decision.

<sup>395</sup> See paragraphs 27, 59 and 559 of this Decision.

<sup>396</sup> See paragraph 27 of this Decision.

<sup>397</sup> See paragraphs 224-249 of this Decision.

<sup>398</sup> See paragraphs 200-222 of this Decision.

<sup>399</sup> See paragraphs 268-269, 273 and 342 of this Decision.

<sup>400</sup> See paragraphs 437 and 578 of this Decision.

Will executed by Mr Lee in 2011<sup>401</sup>. That was untrue<sup>402</sup>. This is not in dispute<sup>403</sup>. Such misleading is in breach of a solicitor's duties<sup>404</sup>.

(j) The Respondent did not advise Mr Lee on the differences between the draft Last Will that she gave him, and Mr Lee's Sixth (or Penultimate) Will<sup>405</sup>. He was not advised that the draft Last Will:

(i) Inserted a Demolition Clause (which was not in the Penultimate Will)<sup>406</sup> - even though three days earlier, Mr Lee was not going to have such a clause; and

(ii) Made other changes to the Penultimate Will (beyond the equalisation of shares)<sup>407</sup> - none of which was discussed with Mr Lee.

(k) The Respondent did not alert Mr Lee to any of these changes<sup>408</sup>. Nor did she find out what Mr Lee had agreed with Ms KKL<sup>409</sup>, or confirm with Mr Lee that he indeed wanted to make these changes to the Penultimate Will<sup>410</sup>, or check if

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<sup>401</sup> See paragraphs 32-33 of this Decision.

<sup>402</sup> See paragraphs 34-35 and 549-550 of this Decision. See also Annex B.

<sup>403</sup> See paragraph 35 of this Decision.

<sup>404</sup> See paragraphs 549-553, 556 and 560 of this Decision.

<sup>405</sup> See paragraphs 36, 535, 544 and 545 of this Decision.

<sup>406</sup> See paragraphs 35 and 536 - 538 of this Decision.

<sup>407</sup> See paragraphs 35 and 539 - 542 of this Decision; See also Annex C.

<sup>408</sup> See paragraphs 555-556 of this Decision.

<sup>409</sup> See paragraphs 535 and 543 of this Decision; See also Transcript (3 July 2019), 88:11 - 89:3.

<sup>410</sup> See paragraphs 533-544 of this Decision.

there were any other changes that he wanted to make<sup>411</sup>. This is in direct contravention of the legal requirements on solicitors<sup>412</sup>.

- (l) There is no evidence why Mr Lee suddenly decided to completely disregard what he had agreed with Ms KKL, on these matters, just three or four days earlier<sup>413</sup>, revoke his Penultimate Will (in its entirety), and sign a new Will<sup>414</sup>. There is also no evidence as to why the First Will was chosen, when it had been superseded five times, by five other Wills<sup>415</sup>. The Respondent and Mr LHY say that Mr Lee decided this himself. We only have their word for this – and, in this case, on many aspects where there was other evidence, it was clear that both of them were lying, and had acted dishonestly<sup>416</sup>. Mr Lee's conduct in respect of the Last Will is quite different from the care he seems to have exercised just a few days earlier, when he was discussing with Ms KKL on amending his Penultimate Will<sup>417</sup>. The circumstances raise serious questions, including on the Respondent's and Mr LHY's motives<sup>418</sup>.
- (m) The Respondent managed every aspect of the process, from sending the draft Last Will to Mr Lee at 7.08pm, on 16 December 2013, and advising him on it, to its execution by Mr

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<sup>411</sup> See paragraphs 554 and 555 of this Decision.

<sup>412</sup> See paragraphs 556 and 565-567 of this Decision.

<sup>413</sup> See paragraphs 29 and 37 of this Decision.

<sup>414</sup> See paragraphs 351-354 and 543 of this Decision.

<sup>415</sup> See paragraphs 19-20, 533-534 and 545 of this Decision.

<sup>416</sup> See paragraph 612 of this Decision.

<sup>417</sup> See paragraphs 28-29, 350-351, 358 and 543 of this Decision.

<sup>418</sup> See paragraphs 544, 565, 587-591 and 597 of this Decision.



Lee at 11.10am, on 17 December 2013<sup>419</sup>. She organised lawyers from her firm to engross the Last Will (which was in the same terms as the draft), told them to get everything done quickly, and made the arrangements for execution of the Last Will by Mr Lee<sup>420</sup>. Mr LHY was also actively involved in the process<sup>421</sup>. The Respondent's conduct was in direct contravention of the Rules governing solicitors' conduct<sup>422</sup>. Rule 46 of the PCR expressly prohibits a solicitor from preparing a will when a family member of the lawyer is going to get a significant gift under the will<sup>423</sup>. The Respondent would have known this and other rules, but disregarded them<sup>424</sup>.

- (n) The Respondent knew that just before he signed the Last Will, Mr Lee had asked (twice), and was told, that she was the primary lawyer who drafted it<sup>425</sup>. She did not object to this<sup>426</sup>. Yet she told this Tribunal that there was no reason for Mr Lee to have considered her to be his lawyer for the Last Will<sup>427</sup>. When she said this, she did not know that Mr BL's evidence on this matter, contradicting her, was going to be presented<sup>428</sup>.

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<sup>419</sup> See paragraphs 40-68 and 367-407 of this Decision.

<sup>420</sup> See paragraphs 38-52, 363-365, 370, 380-384 and 389-394 of this Decision.

<sup>421</sup> See, for example, paragraphs 39, 44-46, 56-58, 279(b) and (c), 324-325, 385-388 and 511 of this Decision.

<sup>422</sup> See paragraphs 499-500, 526-532, 566-567, 570-573 and 576-580 of this Decision.

<sup>423</sup> See paragraphs 569 and 574-575 of this Decision.

<sup>424</sup> See paragraph 605(p) of this Decision.

<sup>425</sup> See paragraphs 200-208 of this Decision.

<sup>426</sup> See paragraphs 201 and 209 of this Decision.

<sup>427</sup> See paragraphs 187(b) and 211-215 of this Decision.

<sup>428</sup> See paragraph 213 of this Decision.

- (o) After the Last Will was signed, the Respondent kept an original of the Last Will in her office safe<sup>429</sup>. (Ms KKL had kept the originals of the First to Sixth Wills<sup>430</sup>.) The only other original of the Last Will was kept by Mr Lee<sup>431</sup>.
- (p) As a senior lawyer of 37 years' standing, the Respondent would have known her duties:
- (i) She should not mislead Mr Lee on the contents of the draft Last Will. However, she did mislead him<sup>432</sup>.
  - (ii) Rule 25(a) and (b) of the PCR requires that she take Mr Lee carefully through the terms of the draft Last Will. She did not do that<sup>433</sup>. After her initial (wrong) advice on what the draft Last Will was, she did not speak with Mr Lee again<sup>434</sup>. Instead, she focussed on getting the Last Will executed quickly, with undue haste<sup>435</sup>.
  - (iii) She would have known of the LPA, and in particular, Rules 25 and 46 of the PCR.
  - (iv) Therefore, she would have known (pursuant to Rules 25 and 46 of the PCR) that she should advise Mr Lee to get independent legal advice.

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<sup>429</sup> See paragraphs 68, 253-258 and 395-401 of this Decision.

<sup>430</sup> See paragraphs 15 and 256 of this Decision.

<sup>431</sup> See paragraph 68 of this Decision.

<sup>432</sup> See paragraphs 35, 549-553 and 560 of this Decision.

<sup>433</sup> See paragraphs 36-37, 437 and 533-567 of this Decision.

<sup>434</sup> See paragraphs 533-544, 554-555 and 565 of this Decision.

<sup>435</sup> See paragraphs 531 and 565 of this Decision.

Instead, she did the opposite, and went along with her husband, Mr LHY, in excluding Ms KKL, Mr Lee's usual lawyer, from the process<sup>436</sup>.

606. On these facts, there can be no doubt that the Respondent was in serious breach of her professional duties.<sup>437</sup>

607. The facts expose an unsavoury tale. The Respondent and Mr LHY, on 16 December 2013, persuaded their aged father-in-law/father, Mr Lee (then a 90-year-old man in poor health, who had recently been hospitalised for several weeks, with serious medical conditions), to sign a new Will without his usual lawyer (Ms KKL), to advise him. They cut off that lawyer (Ms KKL) from communications with Mr Lee on the Last Will, and rushed through the execution of the Last Will, in her absence. The Respondent took over as the lawyer to prepare the Last Will and advise Mr Lee, and misled Mr Lee on the terms of the Last Will that he was going to sign. Mr Lee was persuaded into signing the Last Will within 16 hours – the Respondent sent a draft of the Last Will at 7.08pm on 16 December 2013 and it was signed at 11.10am on 17 December 2013. The Will that Mr Lee signed was very different from both the Penultimate Will, and the proposed Codicil (that Mr Lee had discussed and agreed with Ms KKL, on 13 December 2013, four days before he signed the Last Will prepared by the Respondent). The Respondent gave the briefest of advice to Mr Lee, and did not alert Mr Lee to all the differences between what Mr Lee had earlier wanted and what the Last Will actually provided for.

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<sup>436</sup> See paragraphs 324-331, 412-416, 510-511, 531 and 578-580 of this Decision.

<sup>437</sup> See paragraphs 544, 551-556, 560-567, 586-592, 597 and 603 of this Decision.

608. As stated earlier, the Last Will increased Mr LHY's share in the Estate<sup>438</sup>. The Respondent, in explaining aspects of her conduct (with regards to the haste with which the Last Will was done), said that she was acting as an "*obedient wife*" (see paragraph 531).

609. Mr Lee, who was very frail and in poor health, was misled by the very people whom he trusted: his son, Mr LHY, and daughter-in-law, the Respondent.

610. Mr LHY and the Respondent tried to explain away their conduct, the contemporaneous documentary evidence and other surrounding evidence, and even their own previous statements. Their explanations ranged from the improbable, to the patently contrived, to the downright dishonest.

611. They tried to suppress their central role in what happened by:

- (a) Lying about what happened; and
- (b) Trying to suppress evidence on what happened from being revealed.

612. The lies stretched from 2013, both in public and in private forums, until and through the current disciplinary proceedings. We have earlier gone through the facts and set them out. To summarise:

- (a) The Respondent and Mr LHY said that the Respondent did not draft the Last Will. This is untrue. She prepared the draft Last Will and she advised Mr Lee on it<sup>439</sup>.

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<sup>438</sup> Mr Lee had discussed with Ms KKL on equalising the shares of all three children. See paragraph 29 of this Decision.

<sup>439</sup> See paragraphs 267-302 of this Decision.

- (b) Mr LHY lied to the public about how the Last Will was drafted<sup>440</sup>. He admitted to us that some of his statements were inaccurate<sup>441</sup>. He said his public statements could be inaccurate because they are not sworn statements, and thus he may not look at them carefully<sup>442</sup>. The Respondent adopted, in her Defence, what Mr LHY had said publicly (which was untrue)<sup>443</sup>. That was dishonest<sup>444</sup>.
- (c) The Respondent and Mr LHY said in these proceedings that after introducing Mr BL to Ms WLH and Mr LHY, the Respondent had no further role in the Last Will<sup>445</sup>. This is untrue. The Respondent was intimately involved, giving directions, in charge of what was happening, until Mr Lee signed the Last Will and even thereafter<sup>446</sup>. The Respondent's and Mr LHY's untruths came to light when Mr BL's evidence was produced<sup>447</sup>. They did not know that Mr BL's evidence would be produced before us<sup>448</sup>.
- (d) The Respondent said that Mr Lee had no reason to consider the Respondent as his lawyer, for the Last Will<sup>449</sup>. This is untrue. Mr Lee specifically asked, twice, who drafted his Last Will. He was told, both times, that the Respondent had drafted

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<sup>440</sup> See paragraphs 488-493 of this Decision.

<sup>441</sup> See paragraph 491 of this Decision.

<sup>442</sup> See paragraphs 233 and 496 of this Decision.

<sup>443</sup> See paragraph 486 of this Decision.

<sup>444</sup> See paragraphs 488-491 of this Decision.

<sup>445</sup> See paragraph 265(d) of this Decision.

<sup>446</sup> See paragraphs 367-407 of this Decision.

<sup>447</sup> See paragraphs 187(a) and 367-394 of this Decision.

<sup>448</sup> See paragraphs 213 and 266 of this Decision.

<sup>449</sup> See paragraph 214 of this Decision.

the Last Will<sup>450</sup>. On the second time that Mr Lee asked, he was told that the Respondent and Ms KKL had drafted the Last Will<sup>451</sup>. (Mr BL's reference to Ms KKL was inaccurate<sup>452</sup>.) Again, Mr BL's evidence exposed the untruths.

- (e) The Respondent and Mr LHY said that Ms KKL was Mr Lee's lawyer and had drafted the Last Will. This was said to us on oath<sup>453</sup>, and Mr LHY had said this to the public as well<sup>454</sup>. This is untrue. Ms KKL had no role in drafting the Last Will<sup>455</sup>. She was cut out of communications on the Last Will by Mr LHY<sup>456</sup> (except for one initial email which Ms KKL had said she did not receive)<sup>457</sup>.
- (f) Mr LHY compounded his dishonesty by accusing Ms KKL of lying, in public<sup>458</sup>, when Ms KKL said that she had not drafted the Last Will<sup>459</sup>. This was quite cynical conduct. He knew that Ms KKL was telling the truth, and that he and the Respondent were not being truthful<sup>460</sup>.

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<sup>450</sup> See paragraphs 202-204 and 215 of this Decision.

<sup>451</sup> See paragraphs 204 and 208 of this Decision.

<sup>452</sup> See paragraphs 210 and 409-422 of this Decision.

<sup>453</sup> See paragraph 409 of this Decision.

<sup>454</sup> See paragraphs 488-490 and 493 of this Decision.

<sup>455</sup> See paragraphs 412-417 of this Decision.

<sup>456</sup> See paragraphs 39 and 324-328 of this Decision.

<sup>457</sup> See paragraph 417 of this Decision.

<sup>458</sup> See paragraph 490(b) of this Decision.

<sup>459</sup> See paragraph 434 of this Decision.

<sup>460</sup> See paragraphs 409-416 of this Decision.

- (g) The Respondent and Mr LHY said that Mr LHY found the draft Last Will and sent it to the Respondent<sup>461</sup>. This is untrue<sup>462</sup>.
- (h) The Respondent and Mr LHY said that Mr Lee did not instruct the Respondent on the Last Will<sup>463</sup>. This is untrue<sup>464</sup>. Mr LHY had admitted, in writing, that Mr Lee had instructed the Respondent on the Last Will<sup>465</sup>. The Respondent adopted Mr LHY's account in her correspondence to AGC<sup>466</sup>.
- (i) The Respondent kept the original of the Last Will in her office safe<sup>467</sup>. Ms KKL, who was Mr Lee's lawyer for the First to Fifth Wills kept the originals of these Wills<sup>468</sup>. The Respondent gave untruthful reasons why she kept the original of the Last Will<sup>469</sup>.
- (j) The Respondent said that the Executors never asked for any "input" from her on their correspondence with the MC, in relation to her role in the Last Will<sup>470</sup>. This is untrue. She also gave untruthful answers to us<sup>471</sup>. The untruths were exposed when Mr BL gave evidence<sup>472</sup>.

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<sup>461</sup> See paragraph 303 of this Decision.

<sup>462</sup> See paragraphs 305-322 of this Decision.

<sup>463</sup> See paragraph 228 of this Decision.

<sup>464</sup> See paragraphs 224-249 of this Decision.

<sup>465</sup> See paragraphs 225-227 of this Decision.

<sup>466</sup> See paragraphs 226 and 241-245 of this Decision.

<sup>467</sup> See paragraph 68 of this Decision.

<sup>468</sup> See paragraphs 15 and 256 of this Decision.

<sup>469</sup> See paragraphs 398-401 of this Decision.

<sup>470</sup> See paragraphs 446-448 of this Decision.

<sup>471</sup> See paragraphs 459-468 of this Decision.

<sup>472</sup> See paragraph 187(c) of this Decision.

- (k) The Respondent made untrue statements to AGC<sup>473</sup>; and lied to us about what she had said to AGC<sup>474</sup>. The untruths are in writing.

613. The Respondent and Mr LHY also sought to suppress relevant evidence from coming to the Tribunal<sup>475</sup>.

614. The Respondent suppressed the BL Documents, which would have exposed her untruths<sup>476</sup>. As a solicitor of 37 years' standing, it was inexcusable for her to have not disclosed the BL Documents:

- (a) She was under a legal duty to disclose them. She was in breach of that legal duty;
- (b) She also falsely stated that she had disclosed all relevant documents, when she was deliberately holding back the BL Documents<sup>477</sup>; and
- (c) She knew her husband, Mr LHY, was selectively relying on parts of these documents (namely, the EK Attendance Notes) in public, whilst suppressing other parts which were damaging to her<sup>478</sup>.

615. Mr LHY, as one of the Executors of the Estate, caused the Estate to make an application OS 639, to prevent the Law Society from relying

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<sup>473</sup> See paragraph 451 of this Decision.

<sup>474</sup> See paragraphs 472-485 of this Decision.

<sup>475</sup> See paragraphs 85-89 and 122-147, 184-195 and 423-434 of this Decision.

<sup>476</sup> See paragraph 184-195 of this Decision.

<sup>477</sup> See paragraph 193 of this Decision.

<sup>478</sup> See paragraphs 194-195 and 493-495 of this Decision.



on various documents, including the previous Wills of Mr Lee<sup>479</sup>. That application was rejected<sup>480</sup>.

616. Thereafter, and despite the High Court's ruling in OS 639, the Respondent tried to prevent this Tribunal from obtaining various documents, including the previous Wills of Mr Lee<sup>481</sup>. These attempts were quite unmeritorious. She then complained that she had been unfairly treated because these documents were produced<sup>482</sup>.

617. In essence, an elaborate edifice of lies was presented, both on oath (through Mr LHY and the Respondent's Affidavits, and on the witness stand), and through their public and other statements, (which were referred to/relied upon during the Disciplinary Proceedings). The Affidavits were contrived to present a false picture. Several of the lies were quite blatant.

618. The Respondent was a deceitful witness, who tailored her evidence to portray herself as an innocent victim who had been maligned. This was a façade. She lied to the AGC and she lied to us. Before us, she lied or became evasive whenever she thought that it was to her benefit to lie or evade.

619. Mr LHY's conduct was equally deceitful. He lied to the public, he lied to the MC, and he lied to us. He tried to hide how he and his wife had misled his own father, Mr Lee, on the Last Will. He had no qualms about making up evidence as he went along. We found him to be cynical about telling the truth.

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<sup>479</sup> See paragraphs 85-86 and 143 of this Decision.

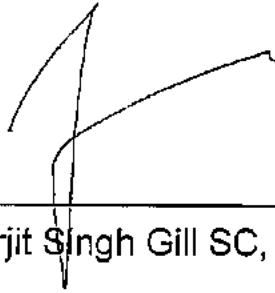
<sup>480</sup> See paragraphs 89 and 144 of this Decision.

<sup>481</sup> See paragraphs 139-147 of this Decision.

<sup>482</sup> See paragraph 154 of this Decision.

620. Under these circumstances, we find that all Charges against the Respondent have been proven beyond reasonable doubt, and we determine, pursuant to section 93(1)(c) of the LPA, that cause of sufficient gravity for disciplinary action exists under section 83 of the LPA.

Dated this <sup>4<sup>th</sup></sup>~~18<sup>th</sup>~~ day of February 2020



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Sarjit Singh Gill SC, President



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Yee Kee Shian Leon, Member

## **ANNEX A**

## The key differences between Mr Lee's First to Sixth Wills

Description of Clause	First Will – 20 August 2011	Second Will – 21 December 2011	Third Will – 6 September 2012	Fourth Will – 20 September 2012	Fifth Will – 4 October 2012	Sixth Will – 2 November 2012
Dr LWL's right to live at 38 Oxley	Proviso to Clause 4a (which bequeathed 38 Oxley to Mr LHL) –	No Proviso to Clause 4a	No Proviso to Clause 4a	No Proviso to Clause 4a	Proviso to Clause 4a (which bequeathed 38 Oxley to Mr LHL) –	Identical to the Fifth Will
+						Proviso to Clause 4a (which bequeathed 38 Oxley to Mr LHL) –
Maintenance of 38 Oxley whilst Dr LWL is staying there	(1) Dr LWL is allowed to live in 38 Oxley "for so long as she desires free of rent". (2) Mr LHL "shall pay for the maintenance and upkeep of 38 Oxley Road when [Dr LWL] is in occupation thereof".				(1) Dr LWL "may continue to reside at 38 Oxley Road subject always to Hsien Loong's consent". This right "shall not be construed as [Mr Lee] giving [LWL] a life interest in 38 Oxley Road". (2) No provision stating that Mr LHL is to pay for the maintenance and upkeep of 38 Oxley (cf. First Will).	(1) Dr LWL "may continue to reside at 38 Oxley Road subject always to Hsien Loong's consent". This right "shall not be construed as [Mr Lee] giving [LWL] a life interest in 38 Oxley Road". (2) No provision stating that Mr LHL is to pay for the maintenance and upkeep of 38 Oxley (cf. First Will).

Description of Clause	First Will - 20 August 2011	Second Will - 21 December 2011	Third Will - 6 September 2012	Fourth Will - 20 September 2012	Fifth Will - 4 October 2012	Sixth Will - 22 November 2012
Division of the Estate amongst Mr Lee's children	Clause 6 – Equal Shares	Clause 6 – Equal Shares	Clause 6 – a) Mr LHL: 3 shares b) Dr LWL: 4 shares upon trust for her life and thereafter as set out in Clause 7 c) Mr LHY: 3 shares  Clause 7 – The Trustees “shall hold Wei Ling’s 4 shares on trust for her for life and after Wei Ling’s death UPON TRUST for Hsien Loong and Hsien Yang in equal shares absolutely”	Clause 5 – Equal Shares	Clause 6 – Equal Shares	Clause 6 – a) Mr LHL: 2 shares b) Dr LWL: 3 shares c) Mr LHY: 2 shares
Gift-Over Clause	Clause 7 – Gift – Over Clause	Clause 7 – Gift – Over Clause  Identical to the First Will.	Clause 8 – Gift – Over Clause  Amended to provide that if Dr LWL predeceases Mr Lee, her share will lapse.	Clause 6 – Gift – Over Clause  Reverted back to original gift-over clause (in the First and Second Wills).	Clause 7 – Gift – Over Clause  Identical to the First, Second and Fourth Wills.	Clause 7 – Gift – Over Clause  Identical to the First, Second, Fourth and Fifth Wills.

Description of Clause	First Will - 20 August 2011	Second Will - 21 December 2011	Third Will - 6 September 2012	Fourth Will - 20 September 2012	Fifth Will - 4 October 2012	Sixth Will - 24 November 2012
Demolition Clause (including Dr L WL's right to live in 38 Oxley)	Clause 8 - Demolition Clause with condition that demolition is to be postponed after Mr Lee's death until Dr LWL moves out of 38 Oxley	Clause 8 - Demolition Clause that does not provide for postponement of demolition	Clause 9 - Demolition Clause that does not provide for postponement of demolition (Identical to the Second Will.)	Clause 7 - Demolition Clause that does not provide for postponement of demolition (Identical to the Second and Third Wills.)	No Demolition Clause	No Demolition Clause

## **ANNEX B**



Detailed comparison between the Last Will<sup>1</sup> and First Will (signed in August 2011)

Description of Clause	Last Will	First Will (20 August 2011)
Dr LWL's right to live at 38 Oxley free of rent  Mr LHL to pay for maintenance and upkeep so long as Dr LWL stays at 38 Oxley	Proviso to Clause 4a (whereby 38 Oxley is bequeathed to Mr LHL) – Dr LWL is allowed to live in 38 Oxley <i>"for so long as she desires"</i> .  No provision that Dr LWL can live rent-free or that Mr LHL will pay for the maintenance and upkeep of 38 Oxley.	Proviso to Clause 4a (which bequeathed 38 Oxley to Mr LHL) –  (1) Dr LWL is allowed to live in 38 Oxley <i>"for so long as she desires free of rent"</i> .  (2) Mr LHL <i>"shall pay for the maintenance and upkeep of 38 Oxley Road when [Dr LWL] is in occupation thereof"</i> .
Division of shares amongst Mr Lee's children	Clause 6 – Equal Shares	Clause 6 – Equal Shares
Gift-Over Clause	No Gift – Over Clause	Clause 7 – Gift – Over Clause
Demolition Clause (including Dr LWL's right to live in 38 Oxley)	Clause 7 – Demolition Clause with condition that demolition is to be postponed after Mr Lee's death until Dr LWL moves out of 38 Oxley	Clause 8 – Demolition Clause with condition that demolition is to be postponed after Mr Lee's death until Dr LWL moves out of 38 Oxley

<sup>1</sup> The Last Will was essentially based on the draft that the Respondent had sent to Mr Lee and referred to as the *"original agreed Will"* in the Respondent's email dated 16 December 2013 at 7.08pm (LSS BOD, Vol 1, p 174).

## **ANNEX C**

Detailed comparison between the Last Will<sup>2</sup> and the Sixth Will

Description of Clause	Last Will	Sixth Will – 2 November 2012
Dr LWL's right to live at 38 Oxley free of rent  Mr LHL to pay for maintenance and upkeep so long as Dr LWL stays at 38 Oxley	Proviso to Clause 4a (whereby 38 Oxley is bequeathed to Mr LHL) – Dr LWL is allowed to live in 38 Oxley <i>"for so long as she desires"</i> .  No provision that LWL can live rent-free or that LHL will pay for the maintenance and upkeep of 38 Oxley.	Identical to the Fifth Will  Proviso to Clause 4a (which bequeathed 38 Oxley to Mr LHL) –  (1) Dr LWL <i>"may continue to reside at 38 Oxley Road subject always to Hsien Loong's consent"</i> . This right <i>"shall not be construed as [Mr Lee] giving [LWL] a life interest in 38 Oxley Road"</i> .  (2) No provision stating that Mr LHL is to pay for the maintenance and upkeep of 38 Oxley (cf. First Will).
Division of shares amongst Mr Lee's children	Clause 6 – Equal Shares	Clause 6 – a) Mr LHL: 2 shares b) Dr LWL: 3 shares c) Mr LHY: 2 shares
Gift-Over Clause	No Gift – Over Clause	Clause 7 – Gift – Over Clause
Demolition Clause (including Dr LWL's right to live in 38 Oxley)	Clause 7 – Demolition Clause with condition that demolition is to be postponed after Mr Lee's death until Dr LWL moves out of 38 Oxley	No Demolition Clause

<sup>2</sup> The Last Will was essentially based on the draft that the Respondent had sent to Mr Lee and referred to as the *"original agreed Will"* in the Respondent's email dated 16 December 2013 at 7.08pm (LSS BOD, Vol 1, p 174).

## **ANNEX D**

## Annex D

This Annex D sets out the full transcript dealing with the Respondent's cross-examination on her involvement with the response to the MC where the Respondent also claimed that "a *suggested response* was also *conveyed*". However, when asked about the particulars of this "*suggested response*" and how it was "*conveyed*", the Respondent changed her position, and said that the "response" was "*essentially not to respond*".

4 July 2019, LSF, XX, 26:15 – 36:3

- 15 Q Even assuming you are right that it's a shortcut, in my view it's a quantum leap  
16 to support you but assuming it's a shortcut, the estate was given another  
17 opportunity to correct whatever inaccuracies there were that may have been  
18 present in their 28th February letter—2017 February letter when the committee  
19 sought further clarification at page 953. Alright? Please quickly go through  
20 this letter. That's a letter dated 25th April 2017 to Mr Lee Hsien and Dr Lee  
21 Wei Ling from Mr Laurence Wong. Have you seen this letter before?
- 22 A Yes.
- 23 Q Would that be at the material time?
- 24 A I'm not sure, I don't think so but I saw it after the AGC wrote to me.
- 25 Q Is it your evidence that before the AGC wrote to you, you did not see this letter?
- 26 A My evidence is I can't remember because I didn't have any close involvement  
27 with the ministerial committee. They had not written to me and I had a career  
28 and travel to deal with.
- 29 Q Would it be highly probable given that this letter concerns issues relating to you  
30 that it would have been shown to you by your husband Mr Lee Hsien Yang at  
31 around the time they received this letter?
- 32 A Not necessarily bec—

1 Q Would it be highly probable?

2 A I don't know. If I'm around, it may have been probable. And if I was travelling  
3 and out of town, no.

4 Q Is it your evidence that you were not asked to assist in the reply to the ministerial  
5 committee on queries arising from this letter dated 25th of April 2017?

6 A If this was fresh, they would have come to me. But this had been going on for  
7 years and they—they were fed up and they just dealt with it.

8 Q I just want a simple answer.

9 A That they asked this—

10 Q Were you asked or were you not asked? You can say yes, no or "I can't  
11 remember".

12 A I can't remember.

13 Q Now let's look at the allegations or clarifications that the ministerial committee  
14 sought, arising from the 28th of February 2017 letter from the estate.

15 TanCM: Your Honour, I would like you to please turn to 955.

16 President: Yes, we are there.

17 Q Focusing on paragraph (d):

18 [Reads] "Your Letter"—also—"states that 'Mr Lee gave instructions to Mrs Lee  
19 Suet Fern for the Final Will to be engrossed'. It further states that 'on the basis  
20 of Mr Lee's express instruction to revert to his first will, from 2011... Mrs Lee  
21 Suet Fern obtained what she understood to be the final version of the first will,  
22 without realising that a gift over clause had been added to the executed version'.  
23 Bullet point (1):

24 [Reads] "Could you clarify if Mrs Lee Suet Fern was involved in the preparation  
25 of the Last Will? If so, (i) What was the nature of Mrs Lee Suet Fern's  
26 involvement? (ii) Did anyone assist Mrs Lee Suet Fern in the preparation of the  
27 Last Will? If so, who assisted her, and what was the nature and extent of that  
28 person's involvement.

29 Where did Mrs Lee Suet Fern obtain what she understood to be the final version  
30 of the first will?

31 What happened on the evening of 16 December 2013, and the next morning,  
32 when the Last Will was signed?

11.15am

1 Who took Mr Lee's instructions on the Last Will, and prepared the final  
2 document for Mr Lee to engross?  
3 Did a lawyer or any other person provide legal advice to Mr Lee, and explain  
4 the provisions of the Last Will to him, before he signed it? If so, who was this  
5 lawyer?  
6 Did Mrs Lee Suet Fern, or anyone...confirm with Mr Lee that the version she  
7 obtained was the correct version of the first will, which he intended to engross?  
8 Were the differences between the Last... and Mr Lee's penultimate will of 2  
9 November 2016 explained to him?—and—“If so, by whom?”  
10 President: Should it be 2012? I think they got the—  
11 TanCM: Yes, should be 2012. It's an error, I believe.  
12 Q [Reads] “Your Letter also states that you have ‘contemporaneous notes of the  
13 execution of the Final Will showing that Mr Lee carefully read the document  
14 and was fully aware of what he was signing’.  
15 - Can you please provide...a copy of the contemporaneous notes of the  
16 execution of the Final Will?  
17 ...Mr Lee Hsien Loong's letter also states that Mr No Joo Khin...was present  
18 at the reading of the Last Will on 12 April 2015, and read the Last Will to Mr  
19 Lee's family.  
20 - Could you...explain why Mr NIK was present and read the Last Will to the  
21 family, if he had no connect with the matter?  
22 .. In view of the questions that have been raised regarding Mrs LSF's  
23 involvement in the Last Will, the Committee would like to invite her to set out  
24 her position, and would also ask if she is prepared to do so by way of a statutory  
25 declaration.”  
26 Let me start with this last paragraph that I just read. There was a request from  
27 the ministerial committee through the estate for you to explain your position.  
28 Was this request conveyed to you?  
29 A Yes, and a suggested response was also conveyed.  
30 Q And when was it conveyed?  
31 A I don't know. Must have been around the time.

1 Q So it would be correct to say that at around that time you would have received  
2 or read a copy of this letter?

3 A I might have and I might not. Basically, you have to realise that they were truly  
4 set up at this point. This—

5 Q Who is “they”?

6 A Ling and Yang. They basically said this committee was of Loong’s subordinate,  
7 was set up to look at options. And they were asked optionally whether they  
8 would like to contribute, and it soon by this time had become a witch-hunt. And  
9 they didn’t think this was the right forum. And I believe that they were thinking  
10 at that time, I’m—I’m not exactly sure when—

11 Q Mrs Lee—

12 A —that they wanted to disengage—

13 Q Mrs Lee, please stop there. Your counsel has objected to me asking you  
14 questions of what the estate’s thinking was at that time. But you seem to  
15 volunteer a lot of information on what you thought were the estate’s intention.  
16 Did you have—

17 A I apologise—

18 Q Let me finish—

19 A —I just know they were grumpy—

20 Q —let me finish. Did you have extensive discussions with the estate on this  
21 matter?

22 A I heard extensive grumbles.

23 Q Did you have extensive discussions with the estate on this matter?

24 A What do you mean, Sir, “on this matter”?

25 Q On these letters that are being sent to the estate by the ministerial committee.  
26 Because you seem to be able to offer a lot of views on what the estate felt about  
27 this whole issue.

28 A I know that they were grumpy and unhappy. That’s different from dealing with  
29 the substance of the letters going back and forth and I’ve now realised it’s  
30 voluminous.

31 Q Did you have extensive discussions on this issue with the estate? “Issue”  
32 meaning the queries from the ministerial committee.



1 A If your—I—I need to understand your question. Are you referring to the  
2 responses or how fed up they were?

3 President: I think the question is a very simple question. Can you repeat  
4 the question?

5 Q Did you have extensive discussions on this issue with the estate? The "issue"  
6 meaning the queries by the ministerial committee.

7 A I heard a lot of gripes from them on this issue.

8 Q Hearing gripes is different from discussion. Why do I sense that you had great  
9 difficulty in answering this simple question?

10 A No, I don't. I just didn't want you to misunderstand that we were sitting down  
11 and inquiring answers and discussing answers because that was not what was  
12 happening. I didn't want you to walk away with the misunderstanding about  
13 that.

14 Q Alright, can we focus on your position instead of the estate's position, because  
15 I will be able to ask Mr Lee Hsien Yang what the estate's position has been  
16 when he takes the stand. Let's look at paragraph 7 of this letter at page 957:  
17 [Reads] "In view of the questions which have been raised regarding Mrs Lee  
18 Suet Fern's involvement in the Last Will, the Committee would like to invite  
19 her to set out her position and would also ask if she is prepared to do so by way  
20 of a statutory declaration."

21 Your evidence is that this was—this request was conveyed to you. Yes?

22 A Yes.

23 Q And you chose not to respond?

24 A The estate suggested that it was not worth bothering about — let me hear—hear  
25 me out—and I went along because they pointed out that this was about Oxley.  
26 And if you look at paragraph 3 at 953, it was done in a very:  
27 [Reads] "I would appreciate it if you could let us know if you wish to  
28 respond..."

29 And—and further—

30 Q Mrs Lee, please don't side-track. Mrs Lee—

31 A No, no, no.

32 Q No, no. Mrs Lee—

1 A And—

2 Q —para 3 doesn't concern you, it concerns the estate. Para 7 concerns you. It  
3 concerns your professional integrity and standing as a senior member of this  
4 profession. So let's look at para 7.

5 A Indeed, Sir.

6 Q Why did you choose not to respond?

7 A I didn't believe that this was the correct forum or Tribunal to deal with issues  
8 like this.

9 Q Did you think at that time that you will be referred to the Disciplinary Tribunal  
10 of the Law Society?

11 A I did feel at that time that I was a victim because I'm Yang's wife.

12 Q That's not my question. You said that that ministerial committee was not the  
13 forum. What other forum were you thinking of?

14 A I—I'm not sure any thinking at that time because so much water has gone  
15 off—gone under the bridge, so be patient. I didn't think that it would be here  
16 because there was no evidence of my wrongdoing as a lawyer. But did I feel  
17 victimised because I'm Yang's wife? Yes, I did and I do.

18 Q You have not answered my question.

19 A I—

20 Q You said that the ministerial committee was not the forum. Did you think at  
21 that time that you were—your matter will be referred to the Law Society?

22 A I'm not sure my recollection now because so much has happened. But, no, I  
23 didn't think so because I didn't consider that there was—that I had done  
24 anything improper to help my husband find a witness for his father who knows  
25 exactly what he wants. And, in fact, had Kim Li been around, I wouldn't have  
26 had any involvement at all. So I didn't think it was an issue, probably I did at  
27 that time. So I was surprised when the AGC raised it so many years after.

28 Q I will come to the AGC later. Let's not side-track. You say that the MC was  
29 not—the ministerial committee was not the proper forum. What did you think  
30 was the proper forum to address these queries or clarification by the ministerial  
31 committee?

1 A I took it if anybody had serious grounds for complaint, real grounds, whether it  
2 was Papa, following 2013, the estate, any beneficiaries or even Papa's lawyer,  
3 Kim Li, that they would have complained to the DT. But I didn't believe that  
4 there were any real grounds.

5 Q Mrs Lee, unlike the allegations that we see in the annex at page 861 of this  
6 bundle, which goes to your professional standing as a lawyer, the queries that  
7 the ministerial committee were asking did not make any allegation or  
8 wrongdoing against you. Am I correct?

9 A If you look at the whole series of correspondence—

10 Q Please stick to—

11 A No, no.

12 Q No, no—

13 A No, I'm not sure that—I—I don't know well enough. But I do think you can  
14 recognise I felt that there was a witch-hunt.

15 Q Can you please look at page 955, sub-paragraph (d) through to para 7. Is there  
16 anything here to suggest that the ministerial committee had come to a  
17 conclusion that you had miscondacted yourself in any way?

18 A A conclusion may not yet had been reached, but it was clear that they  
19 were—there was perhaps some entrapment going on.

20 Q Can you please answer my question and I will go to your entrapment theory. Is  
21 there anything in pages 955 to 957, indeed is there anything in this entire letter  
22 that suggests that the MC, the ministerial committee, had come to a conclusion  
23 that you had miscondacted yourself?

24 A Not a conclusion.

25 President Can we take a 10-minute break?

26 TanCM: Thank you, Sir.

27 President And we will continue until 1 o'clock, okay.

28 Witness: Till 1.00?

29 President Yes. Thank you.

30 (Adjourned at 11.30am)

31 (Resumed at 11.42am)

32 President Yes. Yes, Mr Tan.

1 (Conferring)

2 Q We left off at paragraph 7 of the ministerial committee's letter—

3 President: Yes.

4 Q —at 957. You said that—

5 A Sorry, at 957.

6 President: Page 957.

7 Q 5-7.

8 A I've gone to the wrong page.

9 Q You said that this was brought to your attention and there was a suggested

10 response. The suggested response came from the estate, specifically Mr Lee

11 Hsien Yang?

12 A I think so.

13 Q And what was this suggested response?

14 A I think he felt frustrated. He said, "If they wanted to ask you, then let them write

15 to you "

16 Q And was this suggested response conveyed to anyone?

17 A I think he must have discussed it with the lawyers for the estate I assume. I

18 mean, when you say conveyed to anyone, are you asking if I conveyed it? No,

19 I don't think so.

20 Q Alright. Let me be more precise in my question. This request came from the

21 ministerial committee. You said there was a suggested response. Was—

22 A Well, not so much—

23 Q Let me finish.

24 A No, no. I—

25 Q Let me finish. Was—

26 A When you—when you said—

27 Q Let me finish.

28 A Okay. I'll let you finish.

29 Q Let me start again. You said the request came from the ministerial committee

30 and that there was a suggested response. My question to you is: Was this

31 suggested response conveyed to the ministerial committee?

1 A I think I have been unclear, Mr Tan. There wasn't—if I—if I suggested  
2 response, you and I, meaning, there was a draft, no. In fact, I think the position  
3 when you tell—suggested response to this was looking at paragraph 13, it said:  
4 "Your provision of any response is purely voluntary."  
5 And it wasn't even addressed to me. So, I—I—I just don't want you to  
6 misunderstand when I say suggested responses was essentially not to respond.  
7 Q Alright. It's an optional response.  
8 A Yes, it's an optional and—  
9 Q It relates to matters which concerns your professional integrity and you did not  
10 see it fit to respond? Is that your position?  
11 A No. I—it is not a matter if I did not see it fit. I felt that this was a witch hunt.  
12 Q And that was the reason why you didn't think you need to respond?  
13 A That there was not—it was not going to be helpful to the Committee to—well,  
14 to me. And since the Committee had said it was just voluntary, it was—if they  
15 needed or wanted to raise anything, they could just have asked me. They could  
16 have written. They wrote to one of my colleagues, they could have written to  
17 me.  
18 Q So is your—  
19 A Had they written to me, then I would have looked at a response.  
20 President: You see, Mrs Lee, I want to very—the Tribunal wants to be very  
21 fair to you, alright? But what the Tribunal is grappling with is  
22 that these are very serious allegations being made against you, a  
23 very senior member of the Bar and a prominent senior member  
24 of the Bar at that. Didn't you want to answer these allegations?  
25 Witness: Sir, I was very upset. I felt very victimised.  
26 President: But the way to overcome that upset surely must be that you  
27 would want to answer the allegations in writing so that you  
28 know, there is some documentary evidence available that at the  
29 first opportunity you had, you answered the allegations? That's  
30 what the DT is grappling with.

11:45am

1 Witness: I—I hear you, Sir, and the sense was that any response would  
2 just be used against me. That was the sense. You—you have no  
3 idea how victimised I felt over this.

4 President: Well, Mr Tan, carry on.

5 TanCM: Yes.

6 Q Well, we know for a fact that you didn't respond and nor was the reason for  
7 your not responding conveyed to the ministerial committee.

8 A Is that a question?

9 Q Do you accept that to be a fact?

10 A I think that—

11 Q I'm not asking a question. I'm asking while we know that you didn't respond  
12 and the reason—it's not "while". We know that you didn't respond nor was the  
13 reason for you not responding conveyed to the ministerial committee. Is that a  
14 correct statement of fact?

15 A It's a yes and no. Yes, in the sense that a specific "She's not responding to your  
16 voluntary request" was not in, but I think subsequently the estate chose to  
17 disengage and tried to explain the reasons for their disengagement with the  
18 ministerial committee. And it is broadly there, without the specific of this  
19 request from me.

20 Q Mrs Lee, please. My question is not directed at the estate. My question is in  
21 respect of what you did first. You didn't respond, agree?

22 A I did not respond to a—a request which was voluntary.

23 Q Yes. Second, the reason why you did not respond was not conveyed to the  
24 ministerial committee.

25 President: Do you agree?

26 Witness: The committee letter said it was voluntary so that—

27 TanCM: Yes.

28 Witness: —it didn't invite a response on that question.

29 Q That's not the answer but, never mind, I think it's clear. Nor did the estate give  
30 the ministerial committee any reason why they chose not to respond on your  
31 behalf, agree?

1 A I disagree because I think the estate felt that they had responded not necessarily  
2 on my behalf, but in respect of the issues surrounding the will many times over  
3 already.

## **ANNEX E**

## Annex E

This Annex E presents a table showing the list of assertions made by Mr LHY in his Facebook posts suggesting that Ms KKL was the lawyer of the Last Will, and the findings of fact by the Tribunal (based on Mr LHY's cross-examination).

S/N	Statements made in Facebook posts	Finding of Facts by the Tribunal
1.	<i>"The will was drafted by Kwa Kim Li of Lee &amp; Lee"</i> <sup>3</sup>	Ms KKL was excluded from and had no role in the preparation and the execution of the Last Will <sup>4</sup> . In fact, the Respondent had prepared the Last Will.  Mr LHY admitted during cross-examination that <i>"We realise that this could be misinterpreted to mean Kwa Kim Li had drafted the 2013 will..."</i> <sup>5</sup>
2.	<i>"[Ms KKL] has been lying" because she "denied involvement in the events that led to [the Last Will]"</i> <sup>6</sup>	Ms KKL was excluded from and had no role in the preparation and the execution of the Last Will <sup>7</sup> . The Respondent had prepared the Last Will.  Mr LHY later admitted that he used the word "involved" loosely: <i>"Kwa Kim Li was involved in events – or my sister is saying that Kwa Kim Li was involved in events that led to the 2013 will",</i> and that <i>"I consider that all the discussions my father had with her were events that led to this will."</i> <sup>8</sup>
3.	<i>"[The] final will was subsequently given to Lee Kuan Yew's lawyer, Kwa Kim Li, for safe-keeping"</i> <sup>9</sup>	There were two originals of the Last Will. The Respondent kept one original of the Last Will in her office safe. On Mr Lee's instructions, the

<sup>3</sup> LSS BOD, Vol 1, p 515, Mr LHY's Facebook post dated 16 June 2017, 1.05am.

<sup>4</sup> LSSBOD Vol 1, p 177, email from Mr LHY to the Respondent, Mr Lee and Ms WLH dated 16 December 2013, 7.31pm.

<sup>5</sup> Transcript (5 July 2019), 26:21 – 26:27.

<sup>6</sup> LSS BOD, Vol 2, p 1340, Mr LHY's Facebook post dated 30 April 2019 sharing Dr LWL's Facebook post dated 30 April 2019.

<sup>7</sup> LSSBOD Vol 1, p 177, email from Mr LHY to the Respondent, Mr Lee and Ms WLH dated 16 December 2013, 7.31pm.

<sup>8</sup> Transcript (5 July 2019), 29:15 – 29:30.

<sup>9</sup> LSS BOD, Vol 1, p 532, Mr LHY's Facebook post dated 17 June 2017 as referred to at "LHL-2" of the Statutory Declaration of Mr LHL dated 25 August 2017.



S/N	Statements made in Facebook posts	Finding of Facts by the Tribunal
		<p>other original was kept in his office. Ms KKL did not receive any originals of the Last Will for safe-keeping.</p> <p>Mr LHY admitted during cross-examination that <i>"I believe I got – I accept that this is wrong."</i><sup>10</sup></p>
4.	<i>"Lee Kuan Yew's final will was simply Lee Kuan Yew's first will of 20 August 2011 re-executed on his instructions"</i> <sup>11</sup>	There were material differences between Mr Lee's First Will and Mr Lee's Last Will in relation to: (a) Dr LWL's right to live rent-free; (b) that Mr LHL will pay for the maintenance and upkeep of 38 Oxley; and (c) the gift-over clause (which was not in the Last Will).
5.	<i>"The will my father signed on Tuesday 17 December 2013 reflected [his] prior discussions with his lawyer KKL"</i> <sup>12</sup>	<p>The discussions that Ms KKL had with Mr Lee related to the preparation of a Codicil to the Sixth Will for the purposes of: (a) equalising the shares given to his children; and (b) bequeathing two carpets to Mr LHY.</p> <p>Based on the wording of the Last Will, there were a number of changes to the Sixth Will which were not the subject of the prior discussions between Mr Lee and Ms KKL.</p>
6.	<i>"It was exactly what he wanted"</i> <sup>13</sup>	The Last Will is materially different from the First Will and the Sixth Will.

<sup>10</sup> Transcript (5 July 2019), 23:9 – 24:1.

<sup>11</sup> LSS BOD, Vol 1, p 532, Mr LHY's Facebook post dated 17 June 2017 as referred to at "LHL-2" of the Statutory Declaration of Mr LHL dated 25 August 2017.

<sup>12</sup> LSS BOD, Vol 2, p 1340, Mr LHY's Facebook post dated 30 April 2019 sharing Dr LWL's Facebook post dated 30 April 2019.

<sup>13</sup> LSS BOD, Vol 2, p 1340, Mr LHY's Facebook post dated 30 April 2019 sharing Dr LWL's Facebook post dated 30 April 2019.