DT 13 OF 2021

IN THE MATTER OF CLARENCE LUN YAODONG

AN ADVOCATE AND SOLICITOR

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT 1966

REPORT OF THE DISCIPLINARY TRIBUNAL

Disciplinary Tribunal:

Siraj Omar, S.C. – President

Tan Jee Ming – Advocate

Solicitors for The Law Society of Singapore	**Solicitors for the Respondent**
Mr Sarbjit Singh Chopra / Mr Roshan Singh Chopra (Selvam LLC)	Mr Mark Seah / Mr Lau Wen Jin (Dentons Rodyk & Davidson LLP)

Dated this 22nd day of March 2022

Introduction

1. The Law Society of Singapore (the "**Law Society**") brought five charges against Mr Clarence Lun Yaodong (the "**Respondent**")[1], a solicitor of 8 years' standing as at the commencement of these proceedings in 2021.

2. The Respondent admits that he had purported to act as the supervising solicitor for two individuals, Mr Lim Teng Jie ("**Mr Lim**") and Ms Trinisha Ann Sunil ("**Ms Sunil**"), at different periods during their practice training at Foxwood LLC between October 2019 and January 2020.[2] The Respondent admits that he was not qualified to act as a supervising solicitor during the material time[3] and the fact that he purported to do so is a clear breach of Rule 18(1) of the Legal Profession (Admission) Rules 2011 (the "**Admission Rules**"). The charges levied against him in these proceedings arise from those breaches as well as events which are alleged to have occurred after those breaches were discovered.

3. Having carefully considered the facts of the case, the evidence of the witnesses and the parties' respective submissions, we find that:

   (a) Cause of sufficient gravity for disciplinary action exists:

      (i) under Section 83(2)(b) of the Legal Profession Act (Cap. 161, Rev Ed 2009) (the "**Act**") in respect of the First Charge (as defined below);

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1 The Law Society's Closing Submissions ("**LSCS**") [31].
2 The Respondent's Closing Submissions ("**RCS**") [1].
3 RCS [1].

(ii) under Section 83(2)(j) of the Act in respect of the Second Charge (as defined below); and

(iii) under Section 83(2)(h) of the Act in respect of the Alternative First Charge, the Alternative Second Charge and the Third Charge (all as defined below), and

(b) The Fourth, Alternative Fourth, Fifth and Alternative Fifth Charges (all as defined below) were not made out.

4. We set out our grounds below. We deal first with the Second Charge, which the Law Society described as setting out *"the crux of the misconduct of the Respondent*"[4]. We then deal with the First Charge and remaining three charges in numerical order.

The Second Charge and Alternative Second Charge

5. The Second Charge alleges:[5]

> "*That you, Clarence Lun Yaodong, an Advocate and Solicitor of the Supreme Court of Singapore are guilty of contravening Rule 18(1)(b) of the Legal Profession (Admission) Rules 2011, by being the supervising solicitor during the practice training periods of [Mr Lim] and [Ms Sunil], who were practice trainees serving their respective practice training periods under separate practice training contracts with Foxwood LLC, while having in force a practicing certificate of a period of less than 5 out of the 7 years immediately preceding the date of the commencement of your supervision of Mr Lim and [Ms Sunil] which warrants disciplinary action within the meaning of Section 83(2)(j) of the Legal Profession Act (Cap. 161, 2009 Rev Ed).*"

[4] The Law Society's Statement of Case (Amendment No. 2) (the "**SOC**") page 8.
[5] SOC page 13.

6. The Law Society also alleged in the alternative that the conduct described in the Second Charge amounted 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 Section 83(2)(h) of the Act (the "**Alternative Second Charge**").[6]

7. To succeed in these charges, the Law Society must establish that (a) Mr Lim and Ms Sunil were practice trainees serving their respective practice training periods under separate training contracts with Foxwood LLC, (b) the Respondent purported to act as their supervising solicitor during their respective practice training periods, and (c) the Respondent was not qualified to do so by reason of not having a valid practicing certificate for at least five out of the seven years immediately preceding the respective commencement dates of Mr Lim's and Ms Sunil's training contracts.

8. Each of these facts are admitted. The Respondent admits that he acted as Mr Lim's supervising solicitor "*with effect from 16 December 2019*" and as Ms Sunil's supervising solicitor "*with effect from 2 January 2020*".[7] He also admits that he held a practicing certificate for a total of only two years and 10 months as at 1 October 2019.[8]

9. Rule 18(1) of the Admission Rules prohibits a solicitor from acting as a supervising solicitor of a practice trainee unless (i) he is in active practice in a Singapore law practice, **and** (ii) has had in force a practicing certificate for a total of "*not less than 5 out of the 7 years immediately preceding the date of commencement of his supervision of the practice trainee*".

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6 SOC page 14.
7 Defence [10] read with SOC [15].
8 Defence [9] read with SOC [14].

10. There is therefore no question that the Respondent has breached Rule 18(1) of the Admission Rules. The only question therefore is whether his conduct warrants disciplinary action within the meaning of Section 83(2)(j) of the Act for the purposes of the Second Charge and/or amounts to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession for the purposes of the Alternative Second Charge.

11. The Respondent submits that both questions ought to be answered in the negative.[9] We shall deal with each of his arguments in turn.

Alleged mitigating circumstances

12. The Respondent points to what he describes as mitigating circumstances. First, he says that he admitted to having acted as supervising solicitor for Mr Lim and Ms Sunil "*even though an alternative would have been to argue that they had in fact no Supervising Solicitor*", and that his admission therefore "*resolved this issue in [the Law Society's] favour, even though the position was 'grey', stepping up to shoulder the blame*".[10]

13. During oral closing arguments, the Respondent's counsel clarified that the Respondent's argument was simply that he could have argued that there was no supervising solicitor in law – i.e. as defined under the Act.[11] However, this argument also does not take him very far. The fact there was no supervising solicitor for the purposes of the Act is undeniable given that the Respondent did not satisfy the requirements under the Act. The critical fact is that he admits to having acted as Mr Lim's and Ms Sunil's supervising

9 RCS [59].
10 RCS [46].
11 Transcript 7 Dec 2021, 42(9) to 44(6).

solicitor despite not having satisfied the requirements under the Act. This is the very substance of the breach before us.

14. The Respondent appeared to us to be seeking credit for admitting that he had acted as supervising solicitor for Mr Lim and Ms Sunil – i.e. for telling the truth. Telling the truth is not mitigatory – it is the absolute minimum expected of any advocate and solicitor. To claim that he ought to be given credit for not arguing that Mr Lim and Ms Sunil had no supervising solicitor (an argument that he must know to be false given his pleaded admission) is an appalling submission, and one which we completely reject.

15. Second, he argues that the responsibility for ensuring that the practice trainees taken in by Foxwood LLC are properly supervised is shared between the Respondent and Foxwood LLC's sole director at that time Mr Goh Keng How ("**Mr Goh**").[12] He argues that it would therefore be unfair to pin the effect of this "*lapse*" solely on him.

16. Indeed, the Respondent appears to suggest that Mr Goh should bear most of the blame for alleged systemic regulatory and compliance failures at Foxwood LLC.[13] He argues that Mr Goh was *"responsible for regulatory and compliance matters*"[14] but (i) "*did not raise any concerns regarding regulatory compliance*"[15] despite the Respondent having kept him in the loop on the hiring of practice trainees, and (ii) "*failed to provide any form of guidance or policy relating to the employment of trainees*"[16] by Foxwood LLC.

17. Mr Goh testified on behalf of the Law Society. He admitted that he had not familiarized himself with the Admission Rules and was not aware that the Respondent was not

[12] RCS [47].
[13] RCS [48].
[14] *Ibid.*
[15] *Ibid.*
[16] *Ibid.*

qualified to act as supervising solicitor for Mr Lim and Ms Sunil. It was also patently clear to us from Mr Goh's testimony that he was not someone who placed a great deal of importance on the need to comply strictly with the applicable rules and regulations governing practice.

18. However, Mr Goh's conduct is not the subject of these proceedings. Even if Mr Goh's conduct had fallen below the standard expected of advocates and solicitors (on which issue we make no finding), it does not mitigate the Respondent's culpability.

19. The Law Society correctly highlighted that all solicitors ought to be familiar with the rules made under the Act and will at any rate be deemed to be aware of their existence and applicability: *Law Society of Singapore v Chiong Chin May Selena* ("***Selena Chiong***").[17] It follows therefore that each advocate and solicitor bears personal responsibility to ensure that the applicable rules of practice are strictly adhered to in all areas of his practice.

20. It was incumbent on the Respondent to familiarize himself with the relevant rules governing his practice as an Advocate and Solicitor. In particular, he ought to have familiarized himself with the rules governing the supervision of practice trainees before hiring Mr Lim and Ms Sunil as practice trainees. He ought, at the very least, to have satisfied himself that he met the statutory requirements for being a supervising solicitor.

21. The Respondent patently failed to do so – he admits he failed to familiarize himself with the relevant rules relating to being a supervising solicitor.[18] Indeed, the evidence before us suggests that he simply did not care whether there were any rules and, if so, what

[17] [2005] 4 SLR(R) 320, referred to at LSCS [48].

[18] Transcript 17 Dec 2021, 26(29) to 27(2).

they were. He claimed that he assumed that someone in the firm (presumably Mr Goh) would have told him if what he proposed to do contravened any applicable rules. That argument does not assist him. The onus was on him to ensure he complied with all relevant rules and regulations governing his practice. His failure to do so is not mitigated by any failing on the part of Mr Goh or anyone else in the firm.

22. Third, he claims that he always believed that *"he had a shield*" on regulatory issues – namely, that Mr Goh "*would take care of regulatory and compliance issues*".[19] This is essentially the same argument as above and is rejected for the same reasons.

23. Fourth, the Respondent claims that he did "*all he could to rectify the mistake and alleviate the situation for [Mr Lim]*"[20] by trying "*to find solutions to [Mr Lim's] predicament*"[21]. Mr Lim did not agree that the Respondent had been of much help in resolving the predicament he found himself in. However, while we are prepared to accept that the Respondent did take some steps to try and help, we do not think these steps have much mitigatory value. Mr Lim eventually secured a training contract with another firm through his own endeavors and not because of anything that the Respondent did.

24. We therefore find that none of the alleged mitigatory circumstances raised by the Respondent are of any assistance to him in diminishing his culpability.

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[19] RCS [49].
[20] The Respondent's AEIC, at [51].
[21] The Respondent's AEIC, at [54].

The Respondent's state of knowledge

25. The Law Society argues that the Respondent was aware from "*at least November 2019*"[22] that he did not meet the requirements to act as a supervising solicitor for trainees. This is a serious allegation. If true, it would mean the Respondent knew he did not satisfy the requirements under the Act before either Mr Lim or Ms Sunil commenced their training period. It would also mean that the Respondent had deliberately ignored the provisions of the Admission Rules and then dishonestly alleged in these disciplinary proceedings that the breach had been inadvertent.

26. The Law Society relies on the evidence of Mr Tan Yong Xian, Selwyn ("**Mr Tan**") and Mr Giam Zhen Kai ("**Mr Giam**"). Both Mr Tan and Mr Giam are Advocates and Solicitors. Mr Tan practiced at Foxwood LLC between September 2019 and April 2020. Mr Giam practiced at Nair & Co. LLC with the Respondent from February 2019 before moving with the Respondent to Foxwood LLC in July 2019 and practicing there until November 2019.

27. Mr Tan's evidence was that when he learnt that two practice trainees would be joining Foxwood LLC's dispute resolution team in December 2019, he "*had some concern that [the Respondent] would be the supervising solicitor for these [two] trainees*" since he was the only partner who handled litigation and dispute resolution at the firm.[23]

28. Mr Tan said that these concerns prompted him to check the applicable rules and the Respondent's LinkedIn profile, and that he then concluded that "*it was unlikely that [the Respondent] would be able to meet the criteria*" under the Rules. He said that during a break in trial proceedings sometime in November 2019, he had highlighted the

[22] LSCS [42].
[23] Affidavit of Evidence-in-Chief of Tan Yingxian, Selwyn ("**Mr Tan's AEIC**"), at [8] and [9].

applicable rules to the Respondent and had "*asked [the Respondent] directly if he had sufficient years of practice with a practicing certificate in force to supervise trainees*". Mr Tan said that Respondent had replied that "*there would be 'no issue'*" and that Mr Goh would be the trainees' supervising solicitor.[24]

29. Mr Giam testified that soon after he joined Nair & Co. LLC in February 2019, he was told that the reason Mr Suresh Nair was his supervising solicitor (and not the Respondent) even though he spent "*the vast majority of [his] practice training period assisting [the Respondent]*" was because the Respondent was not qualified to act as supervising solicitor.[25]

30. Mr Giam said that during the period when the Respondent was considering joining various other firms, the Respondent had assured him that his practice training "*would not be affected as [the Respondent] would be able to assign qualified persons to be [his] supervising solicitor in those firms"*.[26]

31. Mr Giam also said that he had accompanied the Respondent to interview Mr Lim sometime in early October 2019, and that he had asked the Respondent shortly after the interview whether the Respondent would be Mr Lim's supervising solicitor. Mr Giam said the Respondent replied that "*he would not be Mr Lim's supervising solicitor and that one of the other partners of Foxwood LLC would be named as Mr Lim's supervising solicitor*".[27]

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[24] Mr Tan's AEIC at [12] to [14].
[25] Affidavit of Evidence-in-Chief of Mr Giam Zhen Kai ("**Mr Giam's AEIC**") at [5] and [6].
[26] Mr Giam's AEIC at [7] and [8].
[27] Mr Giam's AEIC at [10] to [12].

32. The Respondent objected to the admission of these portions of the evidence of Mr Tan and Mr Giam and applied to strike them out on several grounds, namely (i) that these conversations had taken him by surprise as they were material facts that ought to have been, but were not, pleaded; (ii) that the evidence was not relevant, (iii) that he did not know the specific charge(s) to which this evidence relates, and (iv) that the evidence was being raised late in the day.

33. Having heard parties, we dismissed these objections and allowed the evidence in. The objection that the conversations were not pleaded was misconceived. The material allegation was that the Respondent knew or ought to have known that he was not sufficiently qualified. This was pleaded. The conversations referred to by Mr Tan and Mr Giam formed part of the evidence tendered by the Law Society in support of that material allegation. It is trite that evidence need not be pleaded.

34. The objection as to the relevance of the evidence is equally unfounded. The issue of whether the Respondent knew he was not qualified is pleaded and in issue. While the Respondent admits that he was not qualified, the main plank of his mitigation is that his breach of the relevant regulation had been purely inadvertent – i.e. he had not known that he was not qualified. The conversations, if proved, would go towards undermining that assertion of inadvertence and are therefore plainly relevant.

35. As to the objection that the Respondent did not know which charge(s) the evidence related to, there is no requirement for each piece of evidence to be tagged to a particular charge. In any event, the nature of the conversations make it quite apparent which charge(s) they relate to.

36. Finally, the evidence was not adduced late in the day. The evidence of the conversations is contained in the affidavits of evidence-in-chief of Mr Tan and Mr Giam,

both of which were exchanged together with the affidavits of evidence-in-chief of all the other witnesses. The Respondent's main complaint appears to be that the conversations should have been raised at the pleading stage. For the reasons stated above, we disagree.

37. Having dismissed the Respondent's objections, we nonetheless granted him leave to address these alleged conversations either by way of a supplementary affidavit of evidence-in-chief or via oral testimony. The Respondent chose to do so by way of oral evidence. He claimed that his relationship with Mr Tan and Mr Giam had soured towards the end of their time with Foxwood LLC and suggested that this soured relationship tainted their evidence against him.

38. Both Mr Tan and Mr Giam candidly admitted that their relationship with the Respondent had soured. However, they steadfastly maintained that their evidence, particularly in respect of the respective conversations with the Respondent, was true. We would also be slow to find that two Advocates and Solicitors would lie under oath, especially when they had absolutely nothing to gain from doing so and could face severe repercussions if they did so and were found out.

39. Critically, the Respondent did not deny the conversations with Mr Tan and Mr Giam but said that he could not recall if they had taken place.[28] At the hearing, the Respondent did not directly challenge the evidence of Mr Tan and Mr Giam in respect of these respective conversations. Instead, he sought to undermine their evidence on this issue by challenging their evidence on the events that led to these alleged conversations. Specifically, he challenged Mr Tan's evidence on when and why he had searched the

[28] RCS [82].

Respondent's LinkedIn profile[29] and Mr Giam's evidence on how he had come to learn that the Respondent was not qualified to act as supervising solicitor.[30]

40. While we accept that they were some inconsistencies in the evidence of both Mr Tan and Mr Giam, we find that these inconsistencies do not detract from their unchallenged evidence on their respective conversations with the Respondent. Both Mr Tan and Mr Giam were unwavering in their evidence that they had each, on separate occasions, had conversations with the Respondent about whether he was qualified to act as a supervising solicitor. Having reviewed all the evidence on this issue, we conclude that the conversations alleged by Mr Tan and Mr Giam did take place.

41. The Respondent also argued that the conversations had not registered in his mind even if they had taken place.[31] He points to certain concessions made by Mr Tan and Mr Giam during cross-examination in support of this assertion. Mr Tan agreed that his conversation with the Respondent had occurred during an intensive trial and the Respondent could have been preoccupied with the trial.[32] Mr Giam agreed that his conversation with the Respondent was not an extended one and he could not provide details of the conversation save that it had occurred shortly after the interview with Mr Lim sometime in October 2019.[33]

42. We are unable to conclude with the necessary degree of certainty that these conversations had registered in the Respondent's mind or that he was otherwise aware, prior to 6 January 2020, that he was not qualified to act as a supervising solicitor for practice trainees. We highlight several factors in this regard. First, the fact that the

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29 RCS [82(g)] to [82(l)].
30 RCS [82(b)] to [82(f)].
31 RCS [83].
32 Transcript 28 Oct 2021 46(21) to 46(22).
33 Transcript 28 Oct 2021 7(5) to 8(18).

conversations were one-off, coupled with the concessions by Mr Tan and Giam, suggest it is possible that the conversations had not in fact registered in the Respondent's mind.

43. Second, there is no other contemporaneous evidence (apart from the conversations) that the Respondent was aware that he was not sufficiently qualified. As stated above, the Respondent's evidence is that he was not aware of the relevant regulations and had not bothered to check. There is no evidence to suggest that this is untrue.

44. Third, the Respondent informed Mr Lim that he was not qualified to be his supervising solicitor on or around 14 January 2020, shortly after he says he discovered his lack of qualifications on 6 January 2020. If the Respondent had in fact been aware all along that he was not qualified, there is no reason why he should suddenly choose to admit this fact to Mr Lim in January 2020. The fact that he did so is more consistent with him only having discovered this fact shortly before, as he claimed.

Is Section 83(2)(j) of the Act satisfied?

45. The Second Charge asserts a breach of Section 83(2)(j) of the Act, which relates to contraventions of the provisions of the Act that warrant disciplinary action. The Respondent contends that his conduct did not cross the threshold to warrant disciplinary action.[34]

46. We make two observations. First, while the section refers to provisions of the Act, it must necessarily extend to and encompass contraventions of subsidiary legislation and regulations promulgated under the Act. Second, a plain reading of the provision suggests that some contraventions of provisions of the Act may not warrant disciplinary

[34] RCS [59].

action. It follows that the mere fact that the Respondent may have contravened a provision of the Act does not necessarily mean that his conduct warrants disciplinary action. This is not controversial and is consistent with the general tenor of the disciplinary framework established under the Act.

47. For the reasons set out below in our discussion in relation to the Alternative Second Charge,[35] we find the Respondent's conduct in breaching Rule (1)(b) of the Admission Rules to be of sufficient severity to warrant disciplinary action and that the Law Society has therefore made out the Second Charge.

Is Section 83(2)(h) of the Act satisfied?

48. The Alternative Second Charge asserts a breach of Section 83(2)(h) of the Act, which relates to conduct that amounts to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession. The Respondent contends that his actions do not amount to such misconduct.[36]

49. The standard of unbefitting conduct is met if a solicitor's conduct is such as would render him unfit to remain as a member of an honourable profession, and the relevant test is 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: *The Law Society of Singapore v Ezekiel Peter Latimer* ("***Ezekiel Peter***").[37]

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[35] Paragraphs 48 to 52 below.
[36] RCS [59].
[37] [2019] 4 SLR 92, [38].

50. The Respondent describes his conduct as "*a case of simple negligence*".[38] He says he made an honest mistake. During oral closing arguments, the Respondent's counsel explained that the mistake was "*in failing to familiarize himself with the relevant rules relating to … being a supervising solicitor*".[39]

51. We disagree. This was not a case of a mistake or oversight. A mistake would have been if (for example) the Respondent had incorrectly calculated the number of years he had been in practice and thereby wrongly conclude that he was sufficiently qualified. That was not what happened. The evidence clearly showed that the Respondent did not know what the qualifying requirements were to be a supervising solicitor and did not bother to check. In fact, he admitted as much.

52. While the Respondent repeatedly claimed he had acted under a mistaken belief that he was qualified to act as a supervising solicitor, he could not provide an answer when asked what the basis of that belief was. Indeed, it would appear from his evidence that the first time he familiarized himself with the relevant rules was sometime on 6 January 2020 while waiting for a flight back from Perth.[40]

53. Applying the test set out in *Ezekiel Peter*, when asked whether an Advocate and Solicitor should have taken on the role of supervising solicitor for practice trainees without first familiarizing himself with the applicable rules and ensuring that he was qualified to take on the role (which is what the Respondent admits happened in this case), we have no doubt that a reasonable person would have said that he should not.

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38 RCS [61].
39 Transcript 17 Dec 2021 26(30) to 27(2).
40 Respondent's AEIC [36].

54. We therefore find that the Respondent's conduct as particularized in the Alternative Second Charge amounted to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession and that the Law Society has made out the Alternative Second Charge.

The appropriate sanction

55. The function of a Disciplinary Tribunal is to act as a filter to determine if there is 'cause of sufficient gravity' that could, on a finding by the Court of Three Judges, be ascertained to constitute 'due cause' that merited the imposition of one of the range of sanctions prescribed in Section 83(1) of the Act: *Law Society of Singapore v Jasmine Gowrimani d/o Daniel* ("***Jasmine Daniel***").[41]

56. It is not for us to determine whether 'due cause' has been established in this case – that determination lies solely within the purview of the Court of Three Judges. Our role is to decide whether 'cause of sufficient gravity' has been established, and for that we need only be satisfied that there was a *prima facie* case on the relevant evidence that 'due cause' might be present: *Jasmine Daniel*.[42] There are three options open to us pursuant to Section 93(1) of the Act:

(a) Determine that no cause of sufficient gravity for disciplinary action exists;

(b) Determine there while no cause of sufficient gravity for disciplinary action exists, the legal practitioner should be reprimanded or ordered to pay a penalty sufficient and appropriate to the misconduct committed; or

[41] [2010] 3 SLR 390, at [37].

[42] *Ibid*., at [31].

(c) Determine that cause of sufficient gravity for disciplinary action exists, in which case the Law Society is obliged pursuant to Section 94 of the Act to make an application under Section 98 of the Act to the Court of Three Judges.

57. The Respondent submits that his conduct evinces no cause of sufficient gravity. He argues that his conduct was merely a mistake or an oversight. We have explained above why we disagree.

58. The Respondent also refers to and relies on two cases (*The Law Society of Singapore v Anand K Thiagarajan*[43] and *The Law Society of Singapore v Anand Kumar s/o Toofani Beldar*)[44] which he submits are factually akin to the present case and where the respective Disciplinary Tribunals found there to be no cause of sufficient gravity.

59. We do not think these cases take the Respondent very far. Neither of these cases deal with breaches of the Admission Rules. In any event, it is trite that whether cause of sufficient gravity is made out in any given case must necessarily turn on the specific facts and circumstances of that case.

60. Turning to the appropriate sanction, we are acutely conscious of the importance of ensuring that members of the public have access to quality legal advice. The framework for the training of advocates and solicitors seeks to ensure the quality of persons being called to Bar by way of the following three-pronged framework:

[43] [2009] SGDT 2.

[44] [2011] SGDT 12.

(a) Stringent criteria for those wishing to become a 'qualified person' as defined in Section 2(1) of the Act, including limiting the number of universities whose law degrees are recognized in Singapore;

(b) Requiring them to successfully complete the Preparatory Course leading to Part B of the Singapore Bar Examinations, as well as Part A of the Singapore Bar Examinations for those who obtained their law degree from a recognized foreign university; and

(c) Requiring them to undertake and complete six months of relevant legal training, relevant legal practice or work. The Admission Rules specify that such relevant legal training must be carried out under the supervision of suitably qualified person. This includes a solicitor in active legal practice for "*a total of not less than 5 out of the 7 years immediately preceding the date of commencement of his supervision*".[45]

61. The aim of these requirements is plainly to ensure that anyone granted the privilege of admission to the Bar is equipped with the relevant skills to provide clients with legal advice of the requisite standard. Rule 18(1) of the Admission Rule is therefore an important pillar in the framework for ensuring the quality of advocates and solicitors called to the Bar. This in turn helps ensure that the broader public interest of ensuring the quality of legal advice available to clients is met.

62. Viewed in this context, the Respondent's breach of Rule 18(1) of the Admission Rule is not simply one of "*oversight in failing to familiarize himself with the applicable rules*".[46]

[45] Rule 18(1) of the Admission Rules.

[46] RCS [61].

The undisputed facts evince a complete disregard for and disinterest in the rules governing his suitability to act as supervising solicitor. Not only did he not know the applicable rules, he also did not (and could not be bothered to) check. Such conduct imperiled the careful framework put in place to ensure the quality of advocates and solicitors admitted to the Bar.

63. We therefore find that cause of sufficient gravity for disciplinary action exists in respect of both the Second Charge and the Alternative Second Charge.

The First Charge and Alternative First Charge

64. The First Charge alleges:[47]

> "*That you, Clarence Lun Yaodong, an Advocate and Solicitor of the Supreme Court of Singapore are guilty of breaching rule 36(2)(a)(ii) of the Legal Profession (Professional Conduct) Rules 2015 …, as part of the management of a Singapore law practice known as Foxwood LLC, by failing to ensure that [Mr Lim] and [Ms Sunil], who were practice trainees serving their respective practice training periods under separate practice training contracts with Foxwood LLC, were supervised during each of their practice training periods with Foxwood LLC by a supervising solicitor who had in force a practicing certificate for a total of not less than 5 out of 7 years immediately preceding the date of the supervision of each of the said practice trainees, which amounts to improper conduct or practice as an advocate and solicitor within the meaning of Section 83(2)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed).*"

65. The Law Society also alleged in the alternative that the conduct described in the First Charge amounted to "*misconduct unbefitting an advocate and solicitor as an officer of*

[47] SOC page 8.

the Supreme Court or as a member of an honourable profession" within the meaning of Section 83(2)(h) of the Act (the "**Alternative First Charge**").[48]

66. The Responded raised a preliminary objection to the First Charge and Alternative First Charge, arguing that they were unnecessarily duplicative given the Second Charge.[49] He relied on Section 308(1) of the Criminal Procedure Code (the "**CPC**"), which states:

> **"*Limit of punishment for offence made up of several offences***
>
> *308 – (1) Where anything which is an offence is made up of parts, any of which parts is itself an offence, the person who committed the offence shall not be punished with the punishment of more than one of such offences unless it is expressly provided.*
>
> *(2) Where –*
>
> *(a) anything is an offence falling within 2 or more separate definitions of any law in force for the time being by which offences are defined or punished; or*
>
> *(b) several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence,*
>
> *The person who committed the offence shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences.*"

67. The objection is misconceived. A plain reading of Section 308(1) of the CPC clearly shows that it does not prevent a person facing multiple charges arising from the same set of facts. Rather, it is meant to regulate the punishment that can be meted out to such an individual. There is therefore nothing improper with the First Charge and Alternative First Charge arising from the same facts as the Second Charge.

68. The First and Alternative First Charges assert a breach of Rule 36(2)(a)(ii) of the Legal Profession (Professional Conduct) Rules 2015 (the "**PCR**"), which states:

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[48] SOC page 12.
[49] RCS [7] to [10].

> **"*Responsibilities to practice trainees in law practice***
>
> *36 – (2) The management of a law practice must ensure that all of the following apply to each practice trainee who serves the practice training period under a practice training contract with the law practice:*
>
> *(a) The practice trainee is supervised by a supervising solicitor who –*
>
> *(i) is in active practice in the law practice; and*
>
> *(ii) has in force a practicing certificate for a total of not less than 5 out of the 7 years immediately preceding the date the supervision of the practice trainee starts.*"

69. Rule 36(2)(a) of the PCR imposes an obligation on the management of a law practice in respect of the supervision of practice trainees. It is common ground that this obligation was breached in relation to Mr Lim and Ms Sunil. The only issue therefore is whether the Respondent was part of the management of Foxwood LLC at the material time.

70. The Law Society argues that the Respondent was a "de-facto *director of Foxwood [LLC] or was in any event part of [its] management*".[50] It argues that the fact that the Respondent had not been formally appointed as a director of Foxwood LLC and had not been notified as such to the Law Society was irrelevant, and that the substance of the Respondent's role must trump its form.

71. The Respondent argues that he was neither a *de facto* director of Foxwood LLC nor otherwise part of its management, but was at all times only a "*high-level employee*".[51] While he accepts that he effectively ran Foxwood LLC's dispute resolution department, he claims that Mr Goh retained overall control of the department and the rest of the firm and that he did not have "*visibility or access to Foxwood [LLC's] bank accounts, accounting information and clients outside of the [dispute resolution department]*".[52]

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[50] LSCS [60].
[51] RCS [19].
[52] RCS [20].

72. Mr Goh's evidence[53] was that the Respondent ran the entire dispute resolution practice of Foxwood LLC – hiring his own staff, taking on his own clients and running the practice as he saw fit. Mr Goh explained that Foxwood LLC would supply back-end support (e.g. software, payroll and human resource services) but would be compensated for these services. The Respondent would be "*entirely responsibly for the profit, losses and sustainability of the dispute resolution practice*".[54]

73. Mr Goh's evidence is supported by a Partnership Agreement between Foxwood LLC and the Respondent (the "**Agreement**").[55] While the copy of the Agreement in evidence was undated and unsigned, the Respondent does not dispute that he entered into the Agreement with Foxwood LLC. Indeed, the Respondent refers to and relies on some of the terms of the Agreement in support of his argument that he was not part of the management of Foxwood LLC[56] - an argument we deal with below.[57]

74. The Agreement expressly states that Foxwood LLC and the Respondent had entered into the Agreement "*in order to govern their relationship as stakeholders in [Foxwood LLC] and the management and the affairs of [Foxwood LLC], in particular, the Dispute Resolution Division*".[58] Clause 2 of the Agreement states as follows:

> "***2. DISPUTE RESOLUTION DIVISION***
>
> *2.1 [The Respondent] shall be responsible for starting, heading and maintaining the Dispute Resolution Division.*

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53 Affidavit of Evidence-in-Chief of Goh Keng Haw ("**Goh's AEIC**"), at [14].

54 *Ibid.*.

55 Exhibit GKH-2 of Goh's AEIC.

56 See, for example, [15] and [16] of the Respondent's AEIC.

57 See paragraphs __ to __.

58 Recital C, at page 16 of Goh's AEIC.

2.2 [The Respondent] shall have authority to, and be responsible for:

(a) Accepting and opening files from new clients and commencing work on behalf of such clients, subject always to satisfactory client due diligence and conflicts check;

(b) Signing off on all correspondences (only with respect to the Dispute Resolution Division) for and on behalf of [Foxwood LLC]; and

(c) Hiring, employing and terminating [employees of the Dispute Resolution Division].

2.3 In consideration of the above, [Foxwood LLC] shall pay [the Respondent] a partnership fee, to be paid out from the office account … only, as and when instructed by [the Respondent]. The amount of partnership fee shall be determined solely by [the Respondent]."

75. Clause 3.1 of the Agreement states that the Respondent would pay Foxwood LLC a monthly Administrative Fee of S$1,500 for each fee-earner in the Dispute Resolution Division. Clause 3.2 of the Agreement obliged the Respondent to pay Foxwood LLC a refundable Deposit calculated by multiplying the gross monthly salary of each employee of the Dispute Resolution Division by that employee's notice period in months. In consideration for the payment of the Administrative Fee and the Deposit, Foxwood LLC was required pursuant to Clause 3.4 of the Agreement to provide the Respondent and the Dispute Resolution Division with the following services:

"*(a) Costs and use of the following software:*

(i) Microsoft 365;

(ii) Lawnet (two users);

(iii) E-litigation;

(iv) Waveapp;

(v) Clio; and

(vi) Nuance Power PDF.

(b) pay-roll and Human Resource services;

(c) Stationaries, such as name cards, pens and papers;

(d) Client onboarding and invoicing;

(e) Marketing efforts through digital and traditional means;

(f) General administrative work in relation to application for practicing certification, professional indemnity insurance, employee benefit."

76. The picture that emerges is that the Respondent was clearly responsible for the management of Foxwood LLC's dispute resolution department even if he had not been formally appointed as a director of the firm. As part of this role, he made the hiring decisions concerning lawyers and trainees for the dispute resolution department.

77. This is apparent from the process by which both Mr Lim and Ms Sunil joined Foxwood LLC as trainees in the dispute resolution department. Mr Lim's evidence was that he sent his application for a training contract directly to the Respondent and was eventually interviewed by the Respondent and the offer to join the firm as a trainee was made by way of a letter on the firm's letterhead signed by the Respondent as "Head of Dispute Resolution".[59] Ms Sunil went through the same process as well.[60] Both Mr Lim and Ms Sunil dealt with the Respondent. There is no evidence that Mr Goh or anyone else at Foxwood other than the Respondent made the final decision on whether to offer them training contracts.

78. We agree with the Law Society that we must look at the substance and not the form of the Respondent's role at Foxwood LLC in determining whether he was part of its management. Similarly, whether a solicitor is part of a firm's management for the

[59] Mr Lim's AEIC, [9] to [14].
[60] Ms Sunil's AEIC, [10] to [21].

purposes of Rule 36 of the PCR cannot be determined by simply asking whether he held the title of director or partner. One must look at the actual role he performed in the running of the firm.

79. In this case, it is clear to us that the Respondent was part of the firm's management insofar as he called the shots in the dispute resolution department. As we described above, it was the Respondent who made the decision to offer Mr Lim and Ms Sunil training contracts with the firm and it was he who put himself forward as their supervising solicitor. It is not the Respondent's case that Mr Goh or anyone else at Foxwood LLC had made those decisions, and there is certainly no evidence that that was the case.

80. The Respondent argues that the Agreement does not "*give the Respondent control to Goh's exclusion*"[61] and that the Agreement did not state that Goh had no control over the dispute resolution department. He contends that Mr Goh, as the sole director of Foxwood LLC, always had the power to veto any decisions the Respondent made in relation to the dispute resolution department.

81. This may have been the case in theory, but the Respondent did not adduce any evidence of specific occasions when Mr Goh had done so. All the evidence before us points to the Respondent having been given a free hand to manage the dispute resolution department in accordance with the arrangement set out in the Agreement. It bears noting that the Respondent accepts that ensuring that practice trainees are properly supervised is a shared responsibility by the management of the firm, and he admits that he must take responsibility for his part.[62]

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[61] RCS [19].
[62] RCS [47].

82. We therefore find that the Respondent was part of the management of Foxwood LLC at the material time and that Rule 36(2)(a)(ii) of the PCR was breached as pleaded in the First Charge and the First Alternative Charge.

83. We note that Rule 36 places the responsibility for providing supervised training on the management of the law firm. While we have found that the Respondent was part of the management of Foxwood LLC, he was certainly not the only person in management. Mr Goh, as the sole director of the firm, was certainly part of management as well. However, neither Mr Goh nor any other individuals are before us and we therefore make no comment on their respective roles or potential culpability.

Has Section 83(2)(b) of the Act been satisfied?

84. Section 83(2)(b) of the Act provides (among other things) that due cause may be shown by proof that an advocate and solicitor has been guilty of such a breach of "*any usage or rule of conduct made by the Professional Conduct Council under section 71 or by the Council under the provisions of [the] Act*"[63] as amounts to improper conduct or practice as an advocate and solicitor.

85. Given the seriousness of the breach (as we explained in dealing with the Second and Alternative Second Charges above), we find that the Respondent's conduct did amount to improper conduct or practice as an advocate and solicitor and that the First Charge has therefore been made out.

[63] Section 83(2)(b)(i) of the Act.

Has Section 83(2)h) of the Act been satisfied?

86. The Alternative First Charge asserts a breach of Section 83(2)(h) of the Act, which relates to conduct that amounts to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession.

87. Applying the test in *Ezekiel Peter*, we find that the Respondent's conduct as set out in the Alternative Second Charge amounts to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession. We repeat our remarks at paragraphs 48 to 52 above in relation to the Second and Alternative Second Charges in this regard. The Alternative Second Charge has therefore been made out.

88. The failure to ensure that Mr Lim and Ms Sunil were supervised during their respective training contracts by a solicitor who was sufficiently qualified is a serious breach. We find that cause of sufficient gravity for disciplinary action exists in respect of both the First and Alternative First Charges.

The Third Charge

89. At the hearing for oral closing submissions on 17 December 2021, Counsel for the Law Society highlighted that the Law Society was considering making amendments to the Third Charge. Subsequently, on 31 December 2021, we allowed an amendment to the Third Charge pursuant to an agreement between the parties. The amended Third Charge alleges: [64]

[64] Law Society's Further Submissions ("**LCFS**") [7].

> "*That you, Clarence Lun Yaodong, an Advocate and Solicitor of the Supreme Court of Singapore have behaved in a manner inconsistent with the public interest by being the supervising solicitor during the practice training periods of [Mr Lim] and [Ms Sunil], who were practice trainees under separate practice training contracts contracts with Foxwood LLC, when you did not have in force a practicing certificate of a period of not less than 5 out of the 7 years immediately preceding the date of the commencement of your supervision of Mr Lim and [Ms Sunil] as required under Rule 18(1)(b) of the Legal Profession (Admission) Rules 2011 …, which amounts 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).*"

90. The crux of the charge is that advocates and solicitors have "*a duty to behave in a manner consistent with the public interest*" [65] and the Respondent had breached this duty by purporting to act as the supervising solicitor for Mr Lim and Ms Sunil when he was not qualified to do so.

91. The Respondent does not appear to dispute the existence of such a duty. His argument instead is that "*the public interest is not engaged every time a lawyer makes a mistake*" [66] and that the conduct complained of in the Third Charge did not amount to a breach of that duty.

92. The Respondent's arguments in response to this Charge focus on his claim that he had not held himself out to be a supervising solicitor in an advertisement published on the Law Society's practice training website on 18 November 2019 (the "**Advertisement**").[67] We are prepared to accept the Respondent's argument on this issue. However, this finding does not assist him.

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[65] Respondent's Further Written Submissions ("**RFWS**") [3].

[66] SOC page 15.

[67] RFWS [5] to [15].

93. The Respondent's focus on addressing the Advertisement appears to arise from the pleaded particulars to the charge, the majority of which assert that the breach arose because the Respondent held himself out to be a supervising solicitor in the Advertisement. However, the Respondent has not addressed the body of the charge, which asserts that he had purported to act as supervising solicitor for Mr Lim and Ms Sunil while not qualified to do so – something the Respondent admits.

94. As we explained above in dealing with the Second Charge and Alternative Second Charge, the Respondent's conduct imperiled the framework put in place to ensure the quality of advocates and solicitors admitted to the Bar. Such conduct clearly offends the public interest.

95. We therefore find that the Third Charge has also been made out and that cause of sufficient gravity for disciplinary action exists in respect of this charge.

The Fourth Charge and Alternative Fourth Charge

96. The Fourth Charge and Alternative Fourth Charge both relate to the Respondent having allegedly demanded that Ms Sunil pay a sum of $2,000 pursuant to her practice training contract with Foxwood LLC.

97. The Fourth Charge alleges: [68]

> "*That you, Clarence Lun Yaodong, an Advocate and Solicitor of the Supreme Court of Singapore are guilty of breaching Rule 8(3)(a) of the Legal Profession (Professional Conduct) Rules 2015 …, by taking unfair advantage of [Ms Sunil] by demanding that she pay Foxwood LLC the sum of $2,000 when this sum was not recoverable by due process of law, which amounts to misconduct unbefitting an*

[68] SOC page 17.

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)."

98. The Fourth Charge asserts a breach of Rule 8(3)(a) of the PCR, which requires a legal practitioner to "*not take unfair advantage of any person*". The Law Society alleges that the Respondent took unfair advantage of Ms Sunil by demanding that she pay Foxwood LLC a sum of $2,000 that was "*not recoverable by due process of law*".

99. The Alternative Fourth Charge reads:

> "*That you, Clarence Lun Yaodaong, an Advocate and Solicitor of the Supreme Court of Singapore are guilty of breaching Rule 8(3)(b) of the Legal Profession (Professional Conduct) Rules 2015 by acting in a manner contrary to your position as a member of an honourable profession by demanding that [Ms Ann] pay Foxwood LLC the sum of $2,000 under the terms of a practice training contract under which you agreed to be [Ms Sunil's] supervising solicitor during her practice training period when you knew or ought to have known that you did not meet the requirements to be [Ms Sunil's] supervising solicitor under rule 18(1)(b) of the Legal Profession (Admission) Rules … as of the commencement of your supervision of [Ms Sunil] during her practice training period under the terms of that practice training contract, which amounts 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).*"

100. The Alternative Fourth Charge asserts a breach of Rule 8(3)(b) of the PCR, which requires a legal practitioner to "*not act towards any person in a way which is fraudulent, deceitful or otherwise contrary to the legal practitioner's position as a member of an honourable profession*". The Law Society alleges that the Respondent acted in a manner contrary to his position as a member of an honourable profession by allegedly demanding that Ms Sunil make the $2,000 payment.

Did the Respondent demand payment from Ms Sunil?

101. The threshold question therefore is whether the Respondent had in fact demanded that Ms Sunil pay a sum of $2,000 to Foxwood LLC.

102. Ms Sunil had signed a practice training contract with Foxwood LLC. The terms of this contract were set out in the letter of offer dated 11 October 2019 which the Respondent signed on behalf of Foxwood LLC and which Ms Sunil signed and accepted on 12 October 2019.[69] Clause 2 of the contract stated her gross monthly salary as $2,000 and Clause 3 permitted either party to terminate the contract "*with 1 month prior notice in writing*".[70]

103. Ms Sunil officially started her employment with Foxwood LLC on 2 January 2020.[71] On 4 January 2020, she decided to leave Foxwood LLC immediately for personal reasons that had nothing to do with the Respondent.[72] She informed the Respondent of this over a telephone conversation on 5 January 2020 – the Respondent being overseas at that time. Ms Sunil's evidence was that during this conversation, the Respondent asked if she could serve the entire one-month notice period set out in her training contract. Ms Sunil said she told the Respondent that she wanted to leave immediately,[73] and that the Respondent then told her that she would have to pay "*1 month's salary in lieu of notice which would be $2,000.00 … within seven days of [her] last day at Foxwood LLC*.[74]

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69 AB 33 & 34.
70 AB 33.
71 Affidavit of Evidence-in-Chief of Ms Trinisha Ann Sunil ("**Ms Sunil's AEIC**") [30].
72 Ms Sunil's AEIC [33].
73 Ms Sunil's AEIC [35(c)].
74 Ms Sunil's AEIC [35(e)].

104. Ms Sunil said that she understood from her conversation with the Respondent that "*she would have to pay damages in lieu of notice if [she] could not serve the 1 month notice period*".[75] She explained that while she "*had doubts on whether [she] was contractually obliged to pay this money*", she believed the Respondent must be right as "*he was a lawyer, a partner at Foxwood LLC and [her boss]*".[76]

105. Later that day, after having discussed the matter with her family, Ms Sunil sent the Respondent a WhatsApp message stating that she had "*decided that it would be best if [she] terminate [her] contract here and pay the full month of salary in lieu of notice*".[77] She was subsequently informed by one of the secretarial staff at Foxwood LLC that the amount she had to transfer to Foxwood was $1,793.13,[78] which she believed was derived by deducting from $2,000 a sum of $86.95 for each of her three workings days at Foxwood LLC.[79]

106. On 9 January 2020, the Respondent sent her a WhatsApp message asking her to "*please kindly make payment towards [her] notice period to clear up the remaining issue on [her] employment*".[80] She responded to say that would only be able to do so later in the week but would do so with the seven-day period he had mentioned.[81] Ms Sunil eventually paid the sum of $1,793.13 on 11 January 2020.[82]

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75 Ms Sunil's AEIC [35(f)].
76 Ms Sunil's AEIC [37].
77 Ms Sunil's AEIC [39]; AB 48.
78 Ms Sunil's AEIC [47].
79 Ms Sunil's AEIC [48].
80 AB 237.
81 Ms Sunil's AEIC [52]; AB 50.
82 Ms Sunil's AEIC [57].

107. The Respondent denies having made any demands. He says that given Ms Sunil's desire to leave immediately, he had merely given her the option of doing so by paying a month's salary in lieu of notice[83] and she had voluntarily accepted this option.[84]

108. It is therefore common ground that the Respondent had informed Ms Sunil that she would have to pay one month's salary in lieu of notice if she wanted to terminate her employment immediately. Whether this is characterized as a demand or merely the provision of an option is, in our view, irrelevant.

Did the Respondent take unfair advantage of Ms Sunil?

109. The material question insofar as the Fourth Charge is concerned is whether the Respondent can be said to have taken unfair advantage of Ms Sunil by requiring her to pay one month's salary in lieu of notice to immediately terminate her employment with Foxwood LLC.

110. The Respondent denied having taken advantage of Ms Sunil. He repeated his position that all he had done was to offer her the option of immediately terminating her employment with Foxwood LLC by paying one month's salary in lieu of notice.

111. The Law Society asserts that the Respondent took unfair advantage of Ms Sunil by "*demanding the sum of $2,000 from her when this sum was not recoverable by due process of law*".[85] During oral closing submissions, Counsel for the Law Society clarified that what was meant by the $2,000 not being "*recoverable by due process of law*" was that there was no enforceable contract because the fact that none of the lawyers at

[83] RCS [94].
[84] Respondent's AEIC [31].
[85] LSCS [103].

Foxwood LLC were qualified to act as supervising solicitors for practice trainees meant that the training contract could not be performed and was therefore a nullity.[86]

112. To show that the Respondent had taken unfair advantage of Ms Sunil by demanding payment of the $2,000, the Law Society must establish that he knew at the material time that the training contract was void. That in turn would require knowledge that none of the directors of Foxwood LLC were able to act as Ms Sunil's supervising solicitor. The Law Society argued that it had cleared this threshold.

113. First, the Law Society relied on *Selena Chiong* for the proposition that each Advocate and Solicitor is taken to know of the relevant Rules governing his practice, and argued that the Respondent therefore must be taken to have known that he was not qualified to act as Ms Sunil's supervising solicitor.

114. We accept the principles set out in *Selena Chiong* – an Advocate and Solicitor cannot rely on any alleged ignorance of the relevant regulations to avoid liability. However, we do not think that fundamental principle is directly applicable for the purposes of this charge. For the purposes of showing an unfair advantage, the Law Society must show that the Respondent had actual (as opposed to imputed) knowledge of his lack of qualifications to be Ms Sunil supervising solicitor and that the training contract was therefore a nullity.

115. The evidence in this case does not go that far, certainly not enough to make the point beyond a reasonable doubt. We have explained above why we cannot say with

[86] Transcript 17 Dec 2021 19(8) to 20(2).

sufficient certainty that the Respondent's conversations with Mr Tan and Mr Giam were sufficient to bring this fact to his attention.[87]

116. Second, the Law Society points out that even if we accept the Respondent's evidence that he only realized that he was not qualified on 6 January 2020, it would mean that the Respondent had the requisite knowledge when he repeated his demand for the $2,000 in his 9 January 2020 WhatsApp message to Ms Sunil.

117. The Respondent says that the WhatsApp message was merely a reminder and the fact that the training contract "*does not hold and therefore there is no basis to … make a reminder*" was not operative on his mind at that time.[88] Based on the totality of the evidence, we cannot say with the requisite certainty that the Respondent's version cannot be believed.

118. Third, the Law Society referred to and relied on the case of *Law Society of Singapore v Ong Teck Ghee*[89] for the principle that "*an advocate and solicitor has to be scrupulously beyond reproach in terms of his integrity, honesty and fairness*".[90]

119. While we accept this statement of principle, we do not see how the case assists the Law Society. The facts of *Ong Teck Ghee* bear no resemblance to the present case, the respondent in that case having entered into prohibited borrowing transactions by entering into loan agreements with his client.

120. We therefore find that the Fourth Charge has not been made out.

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87 See paragraphs __ to __ above.
88 Transcript 28 Oct 2021 127(16) to 127(25).
89 [2014] SGDT 4.
90 LSCS [89].

Did the Respondent act in a manner contrary to his position as a member of an honourable profession?

121. For the Alternative Fourth Charge, the material question is whether the Respondent had acted in a manner contrary to his position as a member of an honourable profession in requiring Ms Sunil to pay one month's salary in lieu of notice to immediately terminate her employment with Foxwood LLC.

122. For the reasons set out above in relation to the Fourth Charge, we accept the Respondent's explanation that he had merely provided Ms Sunil with an option and had not sought to take advantage of her. We therefore find that the Alternative Fourth Charge is also not made out.

The Fifth Charge and Alternative Fifth Charge

123. The Fifth Charge and Alternative Fifth Charge stems from the allegation that the Respondent represented to Mr Lim that he would qualify to serve as Mr Lim's supervising solicitor by May 2020 (the "**Alleged Representation**"). Both charges assert that the making of the Alleged Representation amounted to a breach of the requirement under Rule 8(3)(b) of the Rules that a legal practitioner "*not act towards any person in a way which is fraudulent, deceitful or otherwise contrary to the legal practitioner's position as a member of an honourable profession*".

124. The Fifth Charge states: [91]

[91] SOC page 21.

> "*That you, Clarence Lun Yaodaong, an Advocate and Solicitor of the Supreme Court of Singapore are guilty of breaching Rule 8(3)(b) of the Legal Profession (Professional Conduct) Rules 2015 …., by acting in a manner which is deceitful by representing to [Mr Lim], a practice trainee of Foxwood LLC, that by May 2020 you would meet the requirements under Rule 18(1) of the Legal Profession (Admissions) Rules 2011 … to be Mr Lim's supervising solicitor during his practice training period when you knew this to be false, which amounts 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).*"

125. The Fifth Charge therefore asserts that by making the Alleged Representation, the Respondent had breached Rule 8(3)(b) of the Rules by acting in a manner that was deceitful, and that this breach amounted to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession.

126. The Alternative Fifth Charge states: [92]

> "*That you, Clarence Lun Yaodaong, an Advocate and Solicitor of the Supreme Court of Singapore are guilty of breaching Rule 8(3)(b) of the Legal Profession (Professional Conduct) Rules 2015 … by acting towards [Mr Lim], a practice trainee of Foxwood LLC, in a manner which is contrary to your position as a member of an honourable profession by representing to Mr Lim that by May 2020 you would meet the requirements under Rule 18(1) of the Legal Profession (Admissions) Rules 2011 … to be Mr Lim's supervising solicitor during his practice training period when you knew this to be false, which amounts 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).*"

127. The Alternative Fifth Charge therefore asserts that by making the Alleged Representation, the Respondent had breached Rule 8(3)(b) of the Rules by acting in a manner contrary to his position as a member of an honourable profession, and that this

[92] SOC page 25.

breach amounted to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession.

Did the Respondent make the Alleged Representation?

128. The threshold question therefore is whether the Respondent had in fact made the Alleged Representation.

129. Mr Lim's evidence on this issue was as follows:[93]

> "*[The Respondent] told me that he would meet the requirements to be a supervising solicitor by May 2020. [The Respondent] mentioned in passing that he would have to 'check', but it was unclear what exactly he felt needed to 'check'. He never said that he would have to check to see if he would qualify by May 2020. I recall with certainty that he did inform me that he would qualify by May 2020. The impression that [the Respondent] gave me was that he would qualify in May 2020 even though he may have been uncertain as to the actual date of qualification.*"

130. This evidence is consistent with what Mr Lim had stated on two earlier occasions. The first was in an email dated 16 January 2020 to Professor Eleanor Wong from the NUS Law Faculty, where Mr Lim stated that the Respondent had told him on 14 January 2020 that "*he will qualify as a supervising solicitor in May 2020*".[94]

131. The second occasion was in an affidavit dated 4 August 2020 that Mr Lim had deposed in support of his application to abridge time for the filing of documents for admission to the Bar, where he stated that "*[the Respondent] further informed [him] that he would only qualify as an supervising solicitor in May 2020.*" [95]

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[93] Affidavit of Evidence-in-Chief of Mr Lim Teng Jie ("**Mr Lim's AEIC**") [37(a)].

[94] AB 249.

[95] AB 88, at [9].

132. The Respondent's evidence is that after he discovered that he was not qualified to act as Mr Lim's supervising solicitor, he had informed Mr Lim of this fact and had given him the following options for moving forward. One of those options was to continue with Foxwood LLC as a paralegal until May 2020, commence practice training with Foxwood LLC in May 2020 and be called in November 2020. His evidence in this regard was as follows:[96]

> "*[One option was to] offer Mr Lim the position of a paralegal and if I was to qualify as a supervising solicitor in May 2020, to commence practice training with Foxwood LLC and to be called to the [Bar] 6 months thereafter. I informed Mr Lim that I would need to check with the Law Society and SILE on whether I would qualify as a supervising solicitor in May 2020. That is because I did not have the exact dates for which I was holding a practicing certificate and intended to check on those matters, if this was proposal was to be advanced. I recall that I had also mentioned June or July 2020 depending on how the SILE/Law Society would respond to me.*
>
> *As I did not want Mr Lim to suffer financially from the mistake, I also mentioned that if Mr Lim went with this proposal and proceed to become a paralegal, I would ensure that he would not be financially worse off compared with his peers in major firms by paying him the big firm rate, which I understood to be $5,600 per month*."

133. In short, the Respondent admits having mentioned being qualified in May 2020 but says he qualified that by saying he would have to check with the Law Society and SILE.

134. Mr Lim struck us as an earnest and truthful witness, and we have no doubt that Mr Lim genuinely <u>believed</u> that the Respondent had made the Alleged Representation to him on 14 January 2020. His contemporaneous email to Professor Wong supports his evidence to the Tribunal and we see no reason why he would say that the Respondent had made the Alleged Representation if he did not believe it had been made. The only

[96] Respondent's AEIC [38(d)] and [38(e)].

question therefore is whether the Respondent had qualified the Alleged Representation as he claims to have done.

135. On this issue, we note that Mr Lim accepts that the Respondent had mentioned that he would have to 'check' and says that it was unclear exactly what the Respondent felt needed to be checked. The Respondent maintains that he meant that he would have to check with the Law Society and SILE. It is therefore quite possible on the evidence before us that there had been a degree of miscommunication or misunderstanding between Mr Lim and the Respondent as to whether the Respondent had given an unqualified representation that he would be qualified to act as supervising solicitor from May 2020.

136. In the circumstances, we are unable to conclude with sufficient certainty that the Respondent had in fact made the Alleged Representation. We therefore find that the Fifth Charge and the Alternative Fifth Charge are not made out.

Conclusion

137. We therefore find and determine pursuant to Section 93(1)(c) of the Act that cause of sufficient gravity for disciplinary action exists:

(a) under Section 83(2)(b) of the Act in respect of the First Charge;

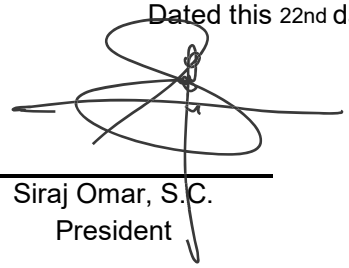
(b) under Section 83(2)(j) of the Act in respect of the Second Charge; and

(c) under Section 83(2)(h) of the Act in respect of the Alternative First Charge, the Alternative Second Charge and the Third Charge.

138. We also find and determine that the Fourth Charge, the Alternative Fourth Charge, the Fifth Charge and the Alternative Fifth Charge were not made out.

139. We order, pursuant to Section 93(2) of the Act, that the Respondent pays the Law Society's costs in relation to these proceedings, such costs to be taxed by the Registrar if not agreed.

Dated this 22nd day of March 2022



Siraj Omar, S.C.
President

Tan Jee Ming
Advocate