

DISCIPLINARY TRIBUNAL SECRETARIAT

**1 SUPREME COURT LANE, SINGAPORE 178879
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DT/SEC/13/2019

28 May 2020

BY EMAIL

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 KOH TIEN HUA
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 Mr Koh Tien
Hua.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Edwin San', is written on a light blue background.

EDWIN SAN
SECRETARY
DISCIPLINARY TRIBUNAL

C:DT/13/2019.(18D) - ES/AC

DISCIPLINARY TRIBUNAL

DT 13/2019

In the Matter of **KOH TIEN HUA**, an
Advocate and Solicitor

And

In the Matter of the Legal Profession
Act (Cap. 161)

REPORT

Coram:

President: Ms Molly Lim, SC
Advocate & Solicitor: Mr Teo Weng Kie

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Dated this 28th day of May 2020.

Introduction

1. These proceedings concern a complaint made by the Attorney-General (“**the AG**”) against Mr Koh Tien Hua (“**the Respondent**”) in his letter dated 4 October 2018 to the Law Society of Singapore (“**the Law Society**”),¹ and pursuant to Section 85(3)(b) of the Legal Profession Act (Cap. 161, 2009 Rev Ed) (“**LPA**”).
2. The Respondent is an Advocate and Solicitor of the Supreme Court of Singapore of 26 years’ standing, having been called to the Singapore Bar on 28 May 1994. The Respondent is currently a Partner of M/s Eversheds Harry Elias LLP (“**EHE**”) and the Co-Head of EHE’s Family and Matrimonial Law and Private Client Advisory Practice Groups.
3. The AG’s complaint pertained to the Respondent’s conduct in relation to Originating Summons (Adoption) No. 355 of 2014 (“**OSA 355**”), and his subsequent correspondence with the AG’s Chambers (“**the AGC**”).

Charges

4. As a result of the complaint, the Law Society preferred the following charges against the Respondent:²

First Charge

That you, Koh Tien Hua, an Advocate and Solicitor of the Supreme Court of Singapore, are charged that on or about 26 December 2017, you did provide copies of the brief grounds of decision dated 26 December 2017 issued by the

¹ Respondent’s Bundle of Documents dated 9 March 2020 (“**RBOD**”) at Tab 14.

² RBOD at Tab 17, pp. 396-401.

District Judge Shobha G Nair in Originating Summons (Adoption) No 355 of 2014 to persons who were not party to the proceedings (*i.e.*, members of the media), without having obtained the court's permission to do so, in breach of Rule 671 of the Family Justice Rules 2014 (No 27 of 2014, S 813/2014), such breach constituting a violation of the principles set out in Rule 9(1) of the Legal Profession (Professional Conduct) Rules (Cap 161, S 706/2015) regarding a legal practitioner's duty to assist in the administration of justice, and therefore amounting to improper conduct as an advocate and solicitor within meaning of Section 83(2)(b)(i) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

Alternative First Charge

That you, Koh Tien Hua, an Advocate and Solicitor of the Supreme Court of Singapore, are charged that on or about 26 December 2017, you did provide copies of the brief grounds of decision dated 26 December 2017 issued by the District Judge Shobha G Nair in Originating Summons (Adoption) No 355 of 2014 to persons who were not party to the proceedings (*i.e.*, members of the media), without having obtained the court's permission to do so, in breach of Rule 671 of the Family Justice Rules 2014 (No 27 of 2014, S 813/2014), such breach constituting a violation of the principles set out in Rule 9(1) of the Legal Profession (Professional Conduct) Rules (Cap 161, S 706/2015) regarding a legal practitioner's duty to assist in the administration of justice, and therefore amounting to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within meaning of Section 83(2)(h) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

Second Charge

That you, Koh Tien Hua, an Advocate and Solicitor of the Supreme Court of Singapore, are charged that on or about 28 December 2017, you did falsely claim by way of a letter dated 28 December 2017 addressed to the Attorney-

General's Chambers that you had, during the hearing of Originating Summons (Adoption) No 355 of 2014 on 26 December 2017, expressly sought the leave of the court to release the brief grounds of decision dated 26 December 2017 issued by District Judge Shobha G Nair to your client's friends and relatives, although you had in fact made no such request of the court, such dishonest conduct amounting to a violation of the principles set out in Rule 9(1) of the Legal Profession (Professional Conduct) Rules (Cap 161, S 706/2015) regarding a legal practitioner's duty to always be truthful and accurate in his communications with any person involved in or associated with any proceedings before a court, and therefore amounting to improper conduct as an advocate and solicitor within meaning of Section 83(2)(b)(i) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

Alternative Second Charge

That you, Koh Tien Hua, an Advocate and Solicitor of the Supreme Court of Singapore, are charged that on or about 28 December 2017, you did falsely claim by way of a letter dated 28 December 2017 addressed to the Attorney-General's Chambers that you had, during the hearing of Originating Summons (Adoption) No 355 of 2014 on 26 December 2017, expressly sought the leave of the court to release the brief grounds of decision dated 26 December 2017 issued by District Judge Shobha G Nair to your client's friends and relatives, although you had in fact made no such request of the court, such dishonest conduct amounting to a violation of the principles set out in Rule 9(1) of the Legal Profession (Professional Conduct) Rules (Cap 161, S 706/2015) regarding a legal practitioner's duty to always be truthful and accurate in his communications with any person involved in or associated with any proceedings before a court, and therefore amounting to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within meaning of Section 83(2)(h) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

Third Charge

That you, Koh Tien Hua, an Advocate and Solicitor of the Supreme Court of Singapore, are charged that on or about 28 December 2017, you did omit to mention in your letter dated 28 December 2017 addressed to the Attorney-General's Chambers that you had, on or around 26 December 2017, disseminated the brief grounds of decision dated 26 December 2017 issued by the District Judge Shobha G Nair in Originating Summons (Adoption) No 355 of 2014 to persons who were not party to the proceedings (*i.e.*, members of the media) despite a direct query from the Attorney-General's Chambers on the same in its letter dated 28 December 2017 addressed to you, and by such omission, conveyed the inaccurate impression that you and/or your firm were not involved in and/or responsible for the dissemination of the brief grounds to the members of the media, such dishonest conduct amounting to a violation of the principles set out in Rule 9(1) of the Legal Profession (Professional Conduct) Rules (Cap 161, S 706/2015) regarding a legal practitioner's duty to always be truthful and accurate in his communications with any person involved in or associated with any proceedings before a court, and therefore amounting to improper conduct as an advocate and solicitor within meaning of Section 83(2)(b)(i) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

Alternative Third Charge

That you, Koh Tien Hua, an Advocate and Solicitor of the Supreme Court of Singapore, are charged that on or about 28 December 2017, you did omit to mention in your letter dated 28 December 2017 addressed to the Attorney-General's Chambers that you had, on or around 26 December 2017, disseminated the brief grounds of decision dated 26 December 2017 issued by the District Judge Shobha G Nair in Originating Summons (Adoption) No 355 of 2014 to persons who were not party to the proceedings (*i.e.*, members of the media) despite a direct query from the Attorney-General's Chambers on the same in its letter dated 28 December 2017 addressed to you, and by

such omission, conveyed the inaccurate impression that you and/or your firm were not involved in and/or responsible for the dissemination of the brief grounds to the members of the media, such dishonest conduct amounting to a violation of the principles set out in Rule 9(1) of the Legal Profession (Professional Conduct) Rules (Cap 161, S 706/2015) regarding a legal practitioner's duty to always be truthful and accurate in his communications with any person involved in or associated with any proceedings before a court, and therefore amounting to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within meaning of Section 83(2)(h) of the Legal Profession Act (Cap 161, 2009 Rev Ed).

5. The Respondent denied all the above charges and filed his Defence (Amendment No. 1) dated 4 March 2020 ("**Respondent's Defence**")³ to this effect.

Background facts

6. The facts relating to the charges as set out below were taken from the Agreed Statement of Facts dated 6 March 2020 ("**ASOF**") submitted by the parties.
7. At all material times, the Respondent was acting for the applicant in OSA 355, which was an application to the Family Justice Courts ("**FJC**") for the adoption of an infant under Section 3(1) of the Adoption of Children Act (Cap. 4, 2012 Rev Ed). The Director of Social Welfare, Ministry of Social and Family Development ("**MSF**"), was appointed as the Guardian-in-Adoption of the infant in the proceedings, and was represented by the AGC.

³ RBOD at Tab 18.

8. OSA 355 was heard on 8 November 2017 before District Judge Shobha G Nair (“**the DJ**”). The Respondent and Ms Low Siew Ling (“**Ms Low**”), State Counsel, appeared as lead counsel for the applicant and the MSF respectively. The proceedings were heard *in camera* pursuant to Section 10(1) of the Family Justice Act (No. 27 of 2014).
9. On 26 December 2017, the DJ dismissed OSA 355 and delivered her brief grounds of decision (“**Brief Grounds**”)⁴ orally (“**OSA 355 Hearing**”). Written copies of the Brief Grounds were extended to the Respondent and the AGC.
10. On 28 December 2017, there were newspaper articles in The Straits Times and the TODAY newspaper and social media postings on various websites (“**Media Reports**”)⁵ which published quotes from and/or copies of the Brief Grounds.
11. On 28 December 2017, the AGC (represented by Ms Low and another) wrote to the Respondent asking for an explanation concerning the Media Reports (“**AGC’s 28 December Letter**”)⁶. In this letter, the AGC asked the Respondent whether his firm (i.e. EHE) and/or his client (i.e. the applicant in OSA 355) were responsible for disseminating and/or providing copies of the Brief Grounds to any non-parties, including members of the media.

⁴ RBOD at Tab 3.

⁵ Law Society’s Bundle of Documents dated 9 March 2020 (“**LSBOD**”) at Tab 1, pp. 8-21.

⁶ LSBOD at Tab 1.

12. On 28 December 2017, the Respondent replied to the AGC (“**Respondent’s 28 December Letter**”),⁷ and stated, *inter alia*, that EHE had, at the OSA 355 Hearing, expressly sought leave from the DJ for the Brief Grounds to be released to the general description of the applicant’s “*friends and relatives*”, and that such leave had been granted with no conditions imposed. However, the Respondent had in fact made no such request.
13. In the Respondent’s 28 December Letter, the Respondent did not mention that he had, on 26 December 2017, provided copies of the Brief Grounds to members of the media.
14. The first time the Respondent mentioned to the AGC that he had, on 26 December 2017, provided copies of the Brief Grounds to members of the media was in a letter dated 10 May 2018 (“**Respondent’s 10 May 2018 Letter**”).⁸
15. The Respondent’s 10 May 2018 Letter was made in response to a letter from the AGC dated 10 April 2018 (“**AGC’s 10 April 2018 Letter**”),⁹ asking again, *inter alia*, whether it was the Respondent and/or his client who had provided copies of the Brief Grounds to members of the media.

⁷ LSBOD at Tab 2.

⁸ LSBOD at Tab 7.

⁹ LSBOD at Tab 6.

16. The AGC's 10 April 2018 Letter came after:

- a. a letter from the Registrar of the FJC dated 19 January 2018 to the AGC, confirming that the Respondent did not, on 26 December 2017, make any request to the court for the release of the Brief Grounds to his client's friends and relatives ("**DJ's Confirmation**");¹⁰ and
- b. the DJ releasing her full grounds of decision on 8 March 2018,¹¹ stating in paragraph 4 that copies of the Brief Grounds had been provided to the parties' counsel at the end of the OSA 355 Hearing to facilitate the understanding of key concerns of the court in arriving at its decision and to prevent time from being expended on taking notes, that the Brief Grounds were not meant for publication, and that there had been no formal request to allow access to a larger audience.

The proceedings

17. At the hearing held on 20 March 2020, Ms Low gave evidence on behalf of the Law Society and the Respondent gave evidence on his own behalf. The following documents (apart from the ASOF), were also submitted to the Disciplinary Tribunal ("**the DT**");

¹⁰ LSBOD at Tab 5.

¹¹ LSBOD at Tab 8.

- a. by the Law Society – the affidavit of evidence-in-chief (“**AEIC**”) of Ms Low, the Law Society’s Bundle of Documents and the Law Society’s Bundle of Authorities, all dated 9 March 2020; and
 - b. by the Respondent – his AEIC, the Respondent’s Bundle of Documents and the Respondent’s Bundle of Authorities, all dated 9 March 2020.
18. Thereafter, parties exchanged and submitted their respective closing and reply submissions on 13 April 2020 and 20 April 2020.

First Charge and Alternative First Charge

The parties’ cases

19. The Law Society’s case against the Respondent was that he had, on 26 December 2017, disseminated the Brief Grounds (delivered in an *in camera* hearing) to the media without having obtained the Court’s permission to do so (“**Unauthorised Dissemination**”). By such Unauthorised Dissemination, the Respondent had breached Rule 671 of the Family Justice Rules 2014 (No 27 of 2014, S 813/2014) (“**Rule 671 FJR**”),¹² which states as follows:

“Judgment in proceedings heard in camera

671.—(1) *Where proceedings are heard in camera pursuant to any written law, any judgment pronounced or delivered in such proceedings shall not be available for public inspection.*

¹² Law Society’s BOA dated 9 March 2020 (“**LSBOA**”), Vol. 1 at Tab 4.

- (2) *Despite paragraph (1), the Court may, on such terms as it thinks fit to impose, do either or both of the following:*
- (a) *allow a person who is not a party to the proceedings to inspect or to be furnished with a copy of the judgment;*
 - (b) *allow reports of the judgment (after the removal from the judgment of all information which may disclose or lead to the disclosure of the identity of any party to the proceedings) to be published in law reports and professional publications.”*

20. The Law Society submitted that the Respondent’s Unauthorised Dissemination and consequent breach of Rule 671 FJR constituted a violation of the principles set out in Rule 9(1) of the Legal Profession (Professional Conduct) Rules (Cap 161, S 706/2015) (“**Rule 9(1) LPPCR**”)¹³ regarding a legal practitioner’s duty to assist in the administration of justice. Rule 9(1) LPPCR states as follows:

“Conduct of proceedings

9.—(1) The following principles guide the interpretation of this rule.

Principles

- (a) *A legal practitioner has a duty to assist in the administration of justice, and must act honourably in the interests of the administration of justice.*
- ...

21. The Law Society further submitted that:

¹³ LSBOA, Vol. 1 at Tab 6.

- a. the Respondent's breach of Rule 671 FJR amounted to disrespect for the Courts and undermined the administration of justice by usurping the DJ's judicial discretion conferred thereunder. The Law Society pointed out that the DJ had provided the Brief Grounds for the convenience of the parties' counsel, of which indulgence the Respondent had taken advantage;
- b. the Respondent, being a senior family law practitioner of more than 25 years' standing, was expected to be well aware of both Rule 671 FJR and Rule 9(1) LPPCR, and the importance of regulating his conduct in accordance with both rules; and
- c. by reason of the Respondent's breach of Rule 671 FJR, and his consequent violation of the principles set out in Rule 9(1) LPPCR, the Respondent was guilty of either:
 - (i) "*improper conduct*" as an advocate and solicitor within the meaning of Section 83(2)(b)(i) of the LPA ("**Section 83(2)(b)(i) LPA**") under the First Charge; or
 - (ii) alternatively, of "*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 LPA ("**Section 83(2)(h) LPA**"), under the Alternative First Charge.

22. Sections 83(2)(b)(i) and (h) LPA state as follows:¹⁴

“Power to strike off roll, etc.

83.— ...

(2) *Subject to subsection (7), such due cause may be shown by proof that an advocate and solicitor —*

...

(b) *has been ... guilty of such a breach of any of the following as amounts to improper conduct or practice as an advocate and solicitor:*

(i) *any usage or rule of conduct made by the Professional Conduct Council under section 71 or by the Council under the provisions of this Act;*

...

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

...”

23. In his Defence, the Respondent admitted to the Unauthorised Dissemination – that he had disseminated the Brief Grounds to the media without having obtained the Court’s permission to do so. The Respondent explained that he had provided the Brief Grounds under the *“honest and bona fide understanding that the Court had permitted him to do so”*.¹⁵

¹⁴ LSBOA, Vol. 1 at Tab 3.

¹⁵ Respondent’s Defence at [11(c)]; RBOD at Tab 18, p. 405.

24. The Respondent, however, denied that the Unauthorised Dissemination was in breach of Rule 671 FJR. The Respondent contended that Rule 671 FJR deals with public inspection of the Court records, and is not a bar on the parties and their counsel communicating the outcome of cases they were personally involved in. Also, as the main intent of Rule 671 FJR was to keep the identities of the parties confidential, the Respondent did not defeat that intent, as he had ensured that the identities of his client and his client's son remained confidential, and that their names were redacted from the Brief Grounds.

DT's determination

25. The DT noted that, in his AEIC and his closing submissions dated 13 April 2020, the Respondent also contended that he did not breach Rule 671 FJR by reason of the Unauthorised Dissemination, as he did not need the Court's permission to disseminate the Brief Grounds to the media, since:
- a. he had ensured that the identities of his client and his child remained private and confidential;
 - b. the Brief Grounds were the final, complete, and only available grounds of decision in OSA 355; and
 - c. the Respondent was merely communicating the outcome of the matter he was personally involved in.

26. The DT found the Respondent's argument that he did not need the Court's leave to disseminate the Brief Grounds to be disconcerting, not least because such argument was wholly contrary to:
- a. the Respondent's pleaded defence that he had "*provided the [Brief Grounds] to the members of the media under the honest and bona fide understanding that the Court had permitted him to do so*",¹⁶ as he had mistakenly thought he had asked for, and was granted, the requisite permission;
 - b. his several statements made in his 28 December Letter that he had "*expressly sought*" the leave of the Court to release the Brief Grounds to his client's "*friends and relatives*" and was granted such leave;¹⁷ and
 - c. his defence against the Second and Alternative Second Charges, where he denied that he was guilty of dishonest conduct when he made the above statement, as he had honestly believed that he had sought the Court's leave, and was given the said leave to disseminate the Brief Grounds to his client's friends and relatives.
27. By reason of the above, it was clear from the Respondent's defence that he did not take the position that he did not require the leave of the DJ to disseminate the Brief Grounds to non-parties. His position was that he had thought (although mistakenly)

¹⁶ Respondent's Defence at [11(c)]; RBOD at Tab 18, p. 405.

¹⁷ Respondent's 28 December Letter at [2], [4], [7], and [8]; LSBOD at Tab 2.

that he had applied for, and was given, the said leave. In fact, by taking the position that he had thought that he had obtained the leave of the DJ to disseminate the Brief Grounds to non-parties, the Respondent had implicitly accepted that he had to obtain the DJ's leave for such dissemination.

28. In view of the above, the Respondent could not, and should not, have argued that no leave of Court was required for the dissemination of the Brief Grounds to the media.
29. In any case, the DT found the arguments raised by the Respondent in support of his case that he did not breach Rule 671 FJR to be wholly untenable and devoid of merits, not least because the Respondent's interpretation and application of Rule 671 FJR was erroneous and contrary to the express provisions of the said rule.
30. It is clear from the provisions of Rule 671 FJR (read with Rule 672 FJR) that judgements delivered in *in camera* hearings cannot, except with the leave of Court and on terms as the Court may impose, be made available to the public or to non-parties.
31. Rule 672 FJR provides as follows:¹⁸

“Inspection of judgment

¹⁸ LSBOA, Vol. 1 at Tab 4.

672.—(1) Subject to rule 671, a copy of every judgment delivered in any cause or matter heard in open Court shall —

(a) be available for public inspection upon payment of the prescribed fee; and

(b) be given to any member of the public upon payment of the appropriate charges.

(2) Rule 891 does not apply to this rule.”

32. The effect of Rule 672 FJR and Rule 671 FJR (reproduced in paragraph 19 above) is that:

- a. as a general rule, all judgments delivered in open court hearings (except for *in camera* hearings, as dealt with by Rule 671 FJR), are available for public inspection, or can be given to the public upon payment of a prescribed fee. In other words, such judgments can be made available to non-parties;
- b. in contrast, the judgments delivered in *in camera* hearings shall not be made available for public inspection (under Rule 671(1) FJR) except as may be allowed by the Court, as provided for in Rule 671(2) FJR; and
- c. under Rule 671(2) FJR, the Court may, on terms it sees fit to impose: (i) allow a non-party to inspect or be furnished with a copy of the judgment; or (ii) allow the publication of the judgment (after the removal of information which may identify the parties therefrom).

33. Consequently, the intent of Rule 671 FJR is to confer on the Court the absolute power and sole discretion to decide whether judgments made in *in camera* proceedings should be made available to non-parties, either by inspection, by being furnished a copy thereof and/or by publication, and on what terms. The Parliament had deemed it fit to appoint the Court as the final arbiter as to whether the judgments made in *in camera* proceedings should be made accessible to a wider audience.
34. It is therefore clear that copies of the Brief Grounds cannot be, and should never have been, made available to any non-parties, including the media, except with the leave of the Court. The Respondent cannot, for whatever reason, usurp the DJ's authority and decide for himself to disseminate the Brief Grounds to the media.
35. Since, as was admitted by the Respondent, he had disseminated the Brief Grounds to the media without having obtained the DJ's permission to do so, the Respondent had clearly breached Rule 671 FJR.
36. The DT accepted the Law Society's submissions made in paragraphs 20 and 21 above that, for the reasons given therein, by reason of his breach of Rule 671 FJR, the Respondent had violated the principles set out in Rule 9(1)(a) LPPCR regarding his duty to assist in the administration of justice.
37. In the premises, the DT found that, by reason of the Respondent's breach of Rule 671 FJR and violation of the principles of Rule 9(1)(a) LPPCR, the Respondent was guilty of "*misconduct unbefitting an advocate and solicitor as an officer of the*

Supreme Court or as a member of an honourable profession” under Section 83(2)(h) LPA, as charged under the Alternative First Charge.

38. In view of this finding, there was no need for the DT to deal with the First Charge.

Second Charge and Alternative Second Charge

Law Society’s case

39. The Law Society’s case against the Respondent under the above charges was that he was guilty of dishonest conduct, as he had falsely claimed in his 28 December Letter that he had expressly sought the leave of Court to disseminate the Brief Grounds to his client’s friends and relatives, when he had not. Such dishonest conduct would amount to a violation of the principles in Rule 9(1) LPPCR, which required the Respondent to always be truthful and accurate in his communications with his opposing counsel in OSA 355, in this case, the AGC, and therefore amount to either “*improper conduct*” under Section 83(2)(b)(i) LPA or “*misconduct*” under Section 83(2)(h) LPA.

40. The Respondent admitted that his statement made in his 28 December Letter, that he had expressly sought the DJ’s permission to disseminate the Brief Grounds to his client’s friends and relatives, which permission was granted, was totally false (“**the False Statement**”), but he denied that he had acted dishonestly when he made the False Statement.

41. The Respondent's defence was that, when he made the False Statement, he had acted in the "*honest and bona fide belief*"¹⁹ that he had asked for leave to disseminate the Brief Grounds to his client's friends and relatives, and that such leave was granted. He did not realise that he had stopped short of his request by asking for leave to disseminate the Brief Grounds to his client, omitting friends and relatives, whom he had intended to ask for, but omitted to. It was only subsequently that the Respondent realised that he was mistaken upon receipt of the DJ's Confirmation.
42. In support of its case against the Respondent, and to rebut the Respondent's defence, the Law Society referred the DT to *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("**Udeh's case**"),²⁰ and submitted that a legal practitioner would be considered to have deceived or misled another if the requisite *actus reus* and *mens rea* were present:
- a. in relation to *actus reus*, deceiving or misleading conduct included the passive concealment of material facts, the presentation of half-truths, and the active articulation of untruths and/or the misrepresentation of facts; and
 - b. in relation to *mens rea*, the crux was the absence of an honest belief in the truth of what was being stated. Therefore, the *mens rea* was satisfied if the

¹⁹ Respondent's Defence at [12(d)]; RBOD at Tab 18, p. 407.

²⁰ LSBOA, Vol. 2 at Tab 27.

misleading conduct was carried out either knowingly, or without belief in its truth, or recklessly (without caring whether it was true or false).

43. The Law Society's case was that the *actus reus* was satisfied by the False Statement, which was admitted by the Respondent.

44. As for the *mens rea* requirement, in response to the Respondent's defence that, in his mind, he had honestly believed that he had asked for the DJ's permission to release the Brief Grounds to his client's friends and relatives, although in fact he had only sought permission for release to his client, the Law Society submitted that:

- a. given the Respondent's level of experience as a senior family lawyer of more than 20 years' standing, he must have been aware that he had asked the Court for permission to release the Brief Grounds only to his client, and could not possibly have been honestly mistaken as to what he had sought permission for. That was especially so, as the Respondent did not once mention the phrase "*client's friends and relatives*" or anything to similar effect throughout the OSA 355 Hearing;²¹
- b. even if the Respondent held the *bona fide* belief that he had sought the DJ's permission to release the Brief Grounds to his client's friends and relatives,

²¹ Notes of Evidence for OSA 355 Hearing: RBOD at Tab 4; EHE Attendance Note dated 26 December 2017 ("**EHE Attendance Note**"); RBOD at Tab 2, p. 31.

that belief would have ceased to be *bona fide* and instead become reckless by the time he wrote his 28 December Letter, in light of his admitted failure to refer to the EHE Attendance Note²² (which was in his office, and which he had conceded was accurate), or verify his recollection of the OSA 355 Hearing with his colleagues before doing so; any reasonable practitioner would have done so, especially in light of the severity of the matter; had he done so, he would have realised that the EHE Attendance Note would have reflected that he had not asked the DJ for permission to disclose the Brief Grounds to his client's friends and relatives, which would have further prompted him to check with his colleagues present at the hearing; and

- c. the Respondent had ample opportunity and time (i.e. from 6.24pm on 28 December 2017 until 2pm the next day) to do any checks before responding to the AGC. Instead, the Respondent had chosen to respond to the AGC within eight minutes via email (sent at 6.32pm) ("**Respondent's 28 December Email**"),²³ and again after about two hours via the Respondent's 28 December Letter (sent via facsimile at 8.23pm),²⁴ when no such deadlines were demanded of him, in reckless disregard as to the truth or falsity of such statement.

²² RBOD at Tab 2.

²³ RBOD at Tab 5.

²⁴ LSBOD at Tab 2.

45. For the reasons given above, the Law Society submitted that both the *actus reus* and *mens rea* elements to establish a breach of Rule 9(1) LPPCR were fulfilled.
46. In the premises, the Law Society submitted that the DT should find that the Respondent had made the false claims in paragraphs 2, 4, 7, and 8 of the Respondent's 28 December Letter²⁵ that he had expressly sought the leave of the Court to disseminate the Brief Grounds to his client's friends and relatives "*with reckless disregard as to the truth and falsity of such statement*",²⁶ which would be sufficient to satisfy the *mens rea* element for the offence of dishonesty.
47. By being dishonest in his communications with the AGC, the Respondent had violated the cardinal principle of honesty which undergirds the sanctity of the legal profession, which conduct would amount to improper conduct under Section 83(2)(b)(i) LPA and misconduct under Section 83(2)(h) LPA.

Respondent's case

48. During the hearing, and in cross-examination, the Respondent maintained his case – that he had honestly believed (although that turned out to be untrue) that, at the OSA 355 Hearing, he had applied for such leave when he had asked for leave to disseminate a copy of the Brief Grounds, after confirming that the names were redacted. As such, when he made the False Statement, he did not act dishonestly or make a false claim, as he had truly believed (though he was wrong) that he had

²⁵ LSBOD at Tab 2.

²⁶ Law Society's Closing Submissions dated 13 April 2020 ("LSCS") at [81].

obtained the DJ's leave. In support, the Respondent relied on the following contemporaneous documents and/or evidence:

- a. the Respondent's 28 December Email sent at 6.32pm,²⁷ after receiving the AGC's email sent to him at 6.24pm that day ("**AGC's 28 December Email**"),²⁸ in which he had set out his recollection of events that had taken place at the OSA 355 Hearing. In the Respondent's 28 December Email, he had stated, "... *you will recall that I had sought the permission of the court to have the [Brief Grounds] released to our client's friends and relatives and to which the Court had allowed. No restrictions were imposed on the release by the court.*";
- b. the Respondent's 28 December Letter, sent about two hours later at 8.23pm,²⁹ in which he had repeated the statement that he had applied for the requisite leave;
- c. the Respondent was responding to the AGC's 28 December Letter, which was written by Ms Low, who was present at the OSA 355 Hearing, and who would be aware of whether he had asked for such leave. As such, the Respondent would not have asked Ms Low to recall that he had asked for the said leave,

²⁷ RBOD at Tab 5.

²⁸ RBOD at Tab 5.

²⁹ LSBOD at Tab 2.

if he had not truly believed that was what had happened, as Ms Low would be in the best position to challenge the truth of his statement, if it was untrue;

- d. the Respondent did not check the EHE Attendance Note, as he was so sure in his recollection that he had asked for such leave, hence there was no need to check;
- e. he was able to respond to Ms Low within two hours of receipt of the AGC's 28 December Email as he had relied on his recollection, and was sure that was what had happened; and
- f. the Respondent explained that, as an experienced family law practitioner, he was well aware that, since the Brief Grounds would be made available to his client as of right, there was no need for him to ask the DJ for leave to disseminate the Brief Grounds to his client. Instead, his intent was to ask for leave to protect his client, as he had anticipated that his client would wish to disseminate the Brief Grounds to his "*friends and relatives*". During cross-examination, the Respondent's explanation was that:

"... I was very aware that the client was likely to release it to his friends and family which may or may not include the press. So I wanted to protect him in that sense by making sure the names were redacted. So when I asked for permission, it was more in line with that kind of thinking. So it wasn't so much to---to---I wanted to have it splashed across the newspapers. It was really in my mind thinking that, yes,

*it---it's very likely that it would go beyond him and---and---and his family and friends. So I wanted that---that protected in my mind. So when I asked him about redaction, it was really along those lines.”;*³⁰

- g. the Respondent was aware that, for confidentiality reasons, should the Brief Grounds be disseminated to non-parties, the names of his client and his client's son had to be redacted. For this reason, the Respondent had asked the DJ whether the names were redacted. When the DJ confirmed that the Brief Grounds did not contain any names, that response reinforced his belief then that he had asked the DJ for leave to disseminate the Brief Grounds to his client's friends and relatives;
- h. in short, the Respondent did not act dishonestly, as he did not know of “*the falsity and/or inaccuracy*”³¹ of the False Statement, as he had “*honestly believed [it] to be true*”;³² and
- i. the Respondent did not act “*recklessly*” as he had cared about his response to the AGC, given that he had responded to the AGC within two hours, and had taken the trouble to give a detailed response by his 28 December Letter. At worst, the Respondent acted “*carelessly*”;³³ but not dishonestly or recklessly.

³⁰ Transcripts of hearing on 20 March 2020, p. 57, lines 21-30.

³¹ *The Law Society of Singapore v Sham Chee Keat* [2018] SGDT 5 at [19]; RBOA at Tab 11, p. 285.

³² Udeh's case at [36]; RBOA at Tab 12, p. 317.

³³ Respondent's Closing Submissions dated 13 April 2020 (“RCS”) at [74]-[75].

DT's determination

49. For the Second Charge to be made out against the Respondent, the DT had to be persuaded beyond reasonable doubt, following the principles enunciated in *The Law Society of Singapore v Sham Chee Keat* [2018] SGGT 5 that, at the time when the Respondent made the False Statement, he knew of the “*falsity and/or inaccuracy*” of the False Statement, “*but nonetheless proceeded*” with making the same.³⁴
50. However, having heard and considered the Respondent’s evidence and contemporaneous documents as set out in paragraph 48 above, the DT found that, prior to his receipt of the DJ’s Confirmation, the Respondent had acted in the belief (though mistaken) that he had asked for leave to disseminate the Brief Grounds to his client’s friends and relatives. The DT was unable to find that the Respondent had acted “*dishonestly*” or “*recklessly*”.
51. In the circumstances, the DT found that the Second Charge and/or the Alternative Second Charge had not been made out against the Respondent, and dismissed those charges against him.

Third Charge and Alternative Third Charge

Law Society’s case

52. The Law Society’s above charges against the Respondent were that he was guilty of “*dishonest conduct*”, which was a violation of the principles in Rule 9(1) LPPCR

³⁴ *The Law Society of Singapore v Sham Chee Keat* [2018] SGGT 5 at [19]; RBOA at Tab 11, p. 285.

regarding a legal practitioner's duty to always be truthful and accurate in his communications with any person involved in or associated with any Court proceedings, and therefore amounting to either "*improper conduct*" under Section 83(2)(b)(i) LPA or "*misconduct*" under Section 83(2)(h) LPA.

53. The Law Society's case against the Respondent in support of the "*dishonest conduct*" allegation was that the Respondent had omitted, in his 28 December Letter, to mention that he had disseminated the Brief Grounds to the media, despite a direct query on the same in the AGC's 28 December Letter, and had by such omission conveyed the inaccurate impression that he and/or his firm were not involved in or responsible for the said dissemination of the Brief Grounds to the media.

DT's determination

54. For the offence of "*dishonest conduct*" to be made out against the Respondent such that it amounted to either "*improper conduct*", whether under Section 83(2)(b)(i) LPA or "*misconduct*" under Section 83(2)(h) LPA, the Law Society would have to prove beyond reasonable doubt the *mens rea* elements necessary to constitute such "*dishonest conduct*". Examples of such *mens rea* elements would be that the Respondent's said allegedly dishonest omission was done with the frame of mind, either intentionally or recklessly, to convey the inaccurate impression to the AGC that neither the Respondent nor his firm was responsible for the said dissemination to the media.

55. The DT noted that in the Third Charge and Alternative Third Charge, the Law Society had omitted to state the *mens rea* elements required for such dishonest conduct. The absence of such *mens rea* elements would mean that, based on the charges as presently drafted, any omission, even if it should be due to inadvertence or carelessness, would suffice to constitute “*improper conduct*” or “*misconduct*”. That would be draconian and wrong.
56. In view of the above, the DT found that the Third Charge and/or Alternative Third Charge were defective for not setting out the *mens rea* elements necessary for those charges to be made out against the Respondent, and dismissed those charges against him.
57. In any event, even if the Third Charge and/or Alternative Third Charge were not defective and were proceeded with, based on the evidence adduced and for reasons submitted by the Respondent’s Counsel, the DT would not have been able to find that the said charges of “*dishonest conduct*” had been made out against the Respondent, and would also have dismissed those charges against him.

Appropriate sanctions to be imposed

58. Since the DT had found the Respondent guilty of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court under Section 83(2)(h) LPA, as charged under the Alternative First Charge, the remaining question was whether Respondent’s misconduct fell within Section 93(1)(a), (b), or (c) of the LPA.

59. Section 93(1) of the LPA provides as follows:³⁵

“Findings of Disciplinary Tribunal

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

—

- (a) no cause of sufficient gravity for disciplinary action exists under section 83 or 83A (as the case may be);*
- (b) while no cause of sufficient gravity for disciplinary action exists under section 83 or 83A (as the case may be), the regulated legal practitioner should be —*
 - (i) ordered to pay a penalty that is sufficient and appropriate to the misconduct committed;*
 - (ii) reprimanded;*
 - (iii) ordered to comply with one or more remedial measures; or*
 - (iv) subjected to the measure in sub-paragraph (iii) in addition to the measure in sub-paragraph (i) or (ii);*
or
- (c) cause of sufficient gravity for disciplinary action exists under section 83 or 83A (as the case may be).”*

60. The DT noted that both the Law Society and the Respondent had accepted that, should the Respondent be found guilty of the one charge of Unauthorised

³⁵ LSBOA, Vol. 1 at Tab 3.

Dissemination, but not of the other charges (as was the case here), and as the Unauthorised Dissemination did not involve any deceit or dishonesty, a reprimand and financial penalty would be appropriate sanctions.³⁶ In support, the DT was referred to the principles laid out by the Court of 3 Judges (“**C3J**”) in *Law Society of Singapore v Chiong Chin May Selena* [2013] SGHC 5³⁷ and *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068.³⁸

61. The DT agreed that, having regard to the circumstances of the case, in the absence of any deceit or dishonesty by the Respondent, a reprimand and financial penalty would be the appropriate sanctions to be imposed.
62. In the circumstances, the DT determined, pursuant to Section 93(1)(b) of the LPA that:
 - a. no cause of sufficient gravity for disciplinary action exists under Section 83;
 - b. “*while no cause of sufficient gravity for disciplinary action exists under section 83*”, the Respondent should be “*ordered to pay a penalty that is sufficient and appropriate to the misconduct committed*” and “*reprimanded*”, as provided for under Sections 93(1)(b)(i) and (ii) of the LPA;³⁹ and

³⁶ LSCS at [127]-[128]; RCS at [110].

³⁷ RBOA at Tab 6.

³⁸ RBOA at Tab 5.

³⁹ LSBOA, Vol. 1 at Tab 3.

- c. having regard to all the circumstances of the case, a penalty of \$15,000 would be appropriate, and would achieve the objectives of the punishment as set out by the C3J in *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 (at [31]), which are: (i) protection of members of the public who are dependent on solicitors in the administration of justice; (ii) upholding of public confidence in the integrity of the legal profession; (iii) deterrence against similar defaults by the same solicitor and other solicitors in the future; and (iv) punishment of the solicitor who is guilty of misconduct.

63. Further, the DT ordered, pursuant to Section 93(2) of the LPA,⁴⁰ costs (to be agreed or taxed) to be paid by the Respondent to the Law Society.

Summary

64. In summary, the DT's findings and determination are as follows:
- a. the Respondent was guilty of “*misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court*” under Section 83(2)(h) LPA, as charged under the Alternative First Charge, although no cause of sufficient gravity for disciplinary action existed under Section 83;
 - b. pursuant to Section 93(1)(b) of the LPA, that while no cause of sufficient gravity for disciplinary action existed under section 83, the Respondent

⁴⁰ LSBOA, Vol. 1 at Tab 3.

should be reprimanded and ordered to pay a penalty of \$15,000 and costs (to be agreed or taxed) to the Law Society; and

- c. the Second Charge and Alternative Second Charge, and the Third Charge and Alternative Third Charge against the Respondent were dismissed.

Dated this 28th day of May 2020.



President
Ms Molly Lim, SC



Advocate & Solicitor
Mr Teo Weng Kie