Loh Der Ming Andrew
v
Law Society of Singapore

[2017] SGHC 256

High Court — Originating Summons No 350 of 2017
Woo Bih Li J
27 June 2017

Legal profession — Disciplinary proceedings

Legal profession — Professional conduct

17 October 2017 Judgment reserved.

Woo Bih Li J:

Introduction

1 Mr Andrew Loh Der Ming ("the Applicant"), discontent with professional services rendered to him by Mr Koh Tien Hua of Harry Elias Eversheds LLP ("Mr Koh"), filed complaints under ss 75B and 85(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") with the Law Society of Singapore ("the Law Society"). These complaints were referred to an Inquiry Committee ("the IC"). The IC recommended, in relation to one head of complaint that Mr Koh had acted against the Applicant's instructions, that a penalty of $2,500 be imposed with no need for a formal investigation. Other heads of complaint were dismissed. Council of the Law Society ("the Council") adopted the IC's recommendations.

2 Dissatisfied with the Council's decision, the Applicant filed an application under s 96 of the LPA for the High Court to direct the Law Society to apply to the Chief Justice for the appointment of a Disciplinary Tribunal ("DT") in respect of his complaints. Before me, the Applicant proceeded on three of the seven heads of complaint raised in his original letter of complaint to the Law Society. On the evidence, I find that the Applicant has established sufficient grounds to show that all three of these heads of complaint warrant further investigation and consideration by a DT. Accordingly, I grant the application.

The background

The Divorce Suit

3 This application stems from the Applicant's divorce suit, *vide*, FC/D 3672 of 2014 ("the Divorce Suit"), filed against his ex-wife ("the Defendant") on the ground of adultery between her and another man ("the Co-Defendant"). The Divorce Suit commenced in April 2014 and ended in June 2016.

4 The Defendant was represented by JLC Advisers LLP. She withdrew her Defence in the Divorce Suit on 26 March 2015.[1]

5 The Co-Defendant was represented by Nicholas & Tan Partnership LLP. On 30 August 2014, the Co-Defendant filed his defence denying that he had committed adultery.[2] He maintained this position even after the Defendant had

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1 Applicant's Affidavit dated 28 March 2017 at p 155.

2 Applicant's Affidavit dated 28 March 2017 at paras 38-40.

withdrawn her defence. In addition, the Co-Defendant filed two applications against the Applicant respectively seeking (collectively, "the Divorce Applications"):[3]

(a) a non-disclosure order (FC/SUM 2128 of 2015); and

(b) an order to strike out the Applicant's claim against the Co-Defendant or, alternatively, to strike out portions of the Applicant's Statement of Particulars ("the SOP") (FC/SUM 2009 of 2015).

6 These Divorce Applications were scheduled to be heard in the Family Court on 27 July 2015. The Applicant filed his own replies and affidavits in response to these applications on 3 July 2015. Thereafter, the Applicant decided to engage a lawyer's assistance due to the increasing complexity of the matter.

Pre-hearing instructions to Mr Koh

7 The Applicant first met Mr Koh on 25 August 2014 at the recommendation of a mutual friend. The Applicant was accompanied by his cousin. At that meeting, the Applicant and Mr Koh discussed the Divorce Suit and the Applicant gave Mr Koh the particulars and contacts of the counterparties and their counsel.[4] Mr Koh explained his fees and made a photocopy of the Applicant's NRIC. Mr Koh later confirmed, by his letter to the IC dated 29 August 2016, that he had performed a conflict of interest search before agreeing to meet the Applicant on 25 August 2014. However, at the time of the

3 Applicant's Affidavit dated 28 March 2017 at p 155.

4 Applicant's Affidavit dated 28 March 2017 at para 56.

meeting, the Applicant did not appoint Mr Koh as his solicitor or give any instruction to Mr Koh.

8 Close to a year later, after the Co-Defendant filed the Divorce Applications, the Applicant e-mailed Mr Koh on 6 July 2015 to seek the latter's help with the Divorce Suit until either the Co-Defendant's Defence was withdrawn or the matter proceeded to trial.[5] Mr Koh accepted the appointment. By this time, the Defendant's Defence had already been withdrawn.[6]

9 On 7 July 2015, the Applicant met Mr Koh and signed the warrant for Mr Koh to act for him.[7] During this meeting, Mr Koh informed the Applicant that the Co-Defendant's counsel had previously discussed this case with him on a general basis with no names mentioned, but assured the Applicant that there was no conflict of interest.[8]

10 Thereafter, the Applicant sent several e-mails to Mr Koh stating his position in relation to the Divorce Applications and suggesting arguments that may be made. In particular, the Applicant's e-mail dated 14 July 2015 to Mr Koh contained a "first cut" of his responses to the Co-Defendant's striking out application (see above at [5(b)]). The Applicant proposed to concede on eight of the 61 challenged particulars and clarified that he would "defer to

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5 IC First Report at para 14; Applicant's Affidavit dated 28 March 2017 at p 201.

6 IC First Report at para 17.

7 IC First Report at para 18.

8 Applicant's Affidavit dated 28 March 2017 at p 76.

[Mr Koh's] counsel on the final list".[9] Mr Koh did not reply to this or the other e-mails sent by the Applicant.

11 On 15 July 2015, Mr Koh's paralegal e-mailed the Applicant to inform him that (a) the court hearing for the Divorce Applications had been fixed for 9.30 am on 27 July 2015, (b) the Court had by letter directed both the Applicant and the Co-Defendant to file skeletal submissions by 24 July 2015, and (c) "[Mr Koh] will prepare [the skeletal submissions] and attend Court on your behalf".[10] The Applicant acknowledged receipt of the e-mail on the same day.[11]

12 Between this exchange and the hearing on 27 July 2015, the Applicant sent three further e-mails to Mr Koh:

(a) E-mail dated 16 July 2015, in which the Applicant asked Mr Koh what Mr Koh would be putting forward in the skeletal submissions.[12]

(b) E-mail dated 24 July 2015 (Friday), in which the Applicant referred to Mr Koh's earlier comment that Mr Koh would discuss the issue of "amendment of pleadings" with the Co-Defendant's counsel prior to the hearing on 27 July 2015 (coming Monday), and requested for updates in that regard.[13]

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9 Applicant's Affidavit dated 28 March 2017 at p 209.

10 Applicant's Affidavit dated 28 March 2017 at p 210.

11 Applicant's Affidavit dated 28 March 2017 at p 211.

12 Applicant's Affidavit dated 28 March 2017 at p 212.

13 Applicant's Affidavit dated 28 March 2017 at p 213.

(c) E-mail dated 26 July 2015 (Sunday), in which the Applicant expressed anxiety over the hearing, reiterated his desire to retain as much of the pleadings as possible, and stated that Mr Koh could call him anytime during the hearing "if any issues come out, which require more instructions from me".[14]

13 Mr Koh did not reply to any of the e-mails stated in [12].

Hearing of the Divorce Applications

14 On 27 July 2015, the Divorce Applications were heard before Assistant Registrar Eugene Tay ("AR Tay"). At the scheduled commencement time of 9.30 am, Mr Koh was not present even though the Co-Defendant's counsel was. Upon being reached by mobile phone, Mr Koh rushed to court and turned up at around 10.10am – a delay of around 40 minutes. He apologised to AR Tay, explaining that he thought that the hearing was fixed at 2.30 pm later in the afternoon.[15] Thereafter, the following exchange took place between AR Tay and Mr Koh:[16]

> Mr Koh: I spoke to my Learned Friend. Trying to reach settlement in terms of pleadings. But I am unable to get my client's confirmation. We can proceed. I will make oral submissions.
>
> Ct: Directions given for skeletals to be filed.
>
> Mr Koh: I was hoping my client would agree with my proposed course of action. The way I read the file,

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14 Applicant's Affidavit dated 28 March 2017 at p 214.

15 Applicant's Affidavit dated 28 March 2017 at p 161.

16 Applicant's Affidavit dated 28 March 2017 at pp 161-2.

> there is really no need to go into a full blown litigation, just on question of pleadings.

15 Later in the hearing, AR Tay asked Mr Koh for his client's position on the striking out application, to which Mr Koh replied as follows:[17]

> Ct: For the record, contesting everything that Co-Defendant Counsel is intending to strike out?
>
> Mr Koh: Yes. No instructions to agree. …

16 The hearing then proceeded into a line-by-line examination of the Co-Defendant's challenges to the Applicant's SOP. During this exchange, Mr Koh conceded several amendments to the SOP and agreed for these amendments to be recorded as "by consent". In total, based on the NEs, 19 amendments were recorded as "by consent".[18] For ease of reference, this aspect of the Court's order will be referred to as the "Consent Order". The Court also ordered amendments in respect of certain other paragraphs, and for costs to be in the cause (collectively, "the Striking Out Order").

17 In relation to the non-disclosure application (see above at [5(a)]), Mr Koh made various oral submissions resisting the application. He also appeared to have tendered to the Court four looseleaf authorities.[19] Upon deliberation, AR Tay granted the Co-Defendant's application and made no orders as to costs ("the Non-Disclosure Order").[20]

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17 Applicant's Affidavit dated 28 March 2017 at p 166.

18 Applicant's Affidavit dated 28 March 2017 at p 193.

19 Applicant's Affidavit dated 28 March 2017 at p 189.

20 Applicant's Affidavit dated 28 March 2017 at p 196.

18 It should be noted that on 24 July 2015, pursuant to the Court's direction (see above at [11]), the Co-Defendant's counsel filed skeletal submissions of 53 pages in respect of the Divorce Applications. On the day of the hearing on 27 July 2015, he also tendered to the Court a bundle of authorities ("BOA") of more than 300 pages. The Applicant was neither informed of nor provided a copy of the submissions or the BOA filed by the Co-Defendant. He was only sent a copy of the submissions by Mr Koh's paralegal later on 28 July 2015,[21] and a copy of the BOA apparently only five days before the date of an appeal hearing.[22]

Instructions to appeal

19 On 28 July 2015, the Applicant was informed of the outcome of the Divorce Applications by e-mail from Mr Koh's paralegal in which Mr Koh was carbon-copied.[23] In particular, a list of the paragraphs removed from the SOP by consent was provided under the header "[t]o be strike out [*sic*] unless otherwise stated as per submitted by the Co-Defendant". A softcopy of the Co-Defendant's submissions was also appended.

20 A lengthy series of e-mail exchanges then occurred between the Applicant, Mr Koh, and Mr Koh's paralegal. Most of these e-mails were sent by the Applicant concerning reminders, instructions, and suggestions. Mr Koh provided an occasional reply.[24] In summary, these e-mails evidenced the following:

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21 IC First Report at para 41; Applicant's Affidavit dated 28 March 2017 at p 217.

22 Applicant's Affidavit dated 28 March 2017 at p 109.

23 Applicant's Affidavit dated 28 March 2017 at p 217.

24 Applicant's Affidavit dated 28 March 2017 at pp 221-264.

(a) The Applicant was unhappy with the outcome of the two Divorce Applications. He sought the NEs of the hearing on 27 July 2015 from Mr Koh and gave Mr Koh repeated and unequivocal instructions to appeal against both the Striking Out Order and the Non-Disclosure Order.[25]

(b) Discussions were simultaneously ongoing with Mr Koh about amendments proposed for the SOP.

(c) In respect of the Non-Disclosure Order, it appears that Mr Koh had a conversation with the Applicant on 27 July 2015 during which Mr Koh agreed that the Applicant should appeal against the order made.[26] A Notice of Appeal against this order was filed on 6 August 2015.[27]

(d) In respect of the Striking Out Order, Mr Koh stated in two of his replies that there was "[n]o need to appeal striking out as this incurs costs",[28] and that "[t]he Appeal against the striking out may prove to be a superfluous exercise given that we are amending the SOP. In any event I am not confident that you will succeed in the Appeal given that submissions and opinions and evidence are not allowed to stand as pleadings."[29] The Applicant acknowledged the advice but persisted in

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25 See Applicant's Affidavit dated 28 March 2017 at pp 226, 236, 238, 241, 247, 249, 251, 255, 257, 258, 259, and 263.

26 Affidavit dated 28 March 2017 at p 226.

27 Affidavit dated 28 March 2017 at p 252.

28 Applicant's Affidavit dated 28 March 2017 at p 231.

29 Applicant's Affidavit dated 28 March 2017 at p 256.

his instructions to appeal.[30] Eventually, the Notice of Appeal in respect of this order was filed on 11 August 2015.[31]

21 The e-mails also evidenced the escalating distrust and deteriorating relationship between the Applicant and Mr Koh. On 12 August 2015, after the appeals had been filed, the Applicant filed a notice of intention to act in person in place of Mr Koh. In total, Mr Koh acted for the Applicant as his solicitor for around a month from 7 July 2015 to 11 August 2015.

Post-retainer events

22 On 2 September 2015, the Applicant received the NEs for the 27 July hearing from the Court.[32] The Applicant then argued the appeals in respect of the two orders in person:[33]

(a) On 23 September 2015, in FC/RA 17 of 2015, before the District Judge ("DJ"), some particulars that had earlier been ordered by AR Tay to be struck out were restored. The Applicant apparently informed the IC that the DJ had pointed out to him at this hearing that he was appealing against an order made by consent.[34] However, it appears from the record that, even if the DJ had made this point, the DJ had proceeded

30 Applicant's Affidavit dated 28 March 2017 at p 257.

31 Applicant's Affidavit dated 28 March 2017 at p 266.

32 Applicant's Affidavit dated 28 March 2017 at para 12(a).

33 IC First Report at paras 57-58.

34 IC First Report at para 57.

on the substantive merits of the appeal and not on whether the amendments had been made by consent.[35]

(b) On 29 December 2015, on further appeal to the High Court in HCF/OSN 28 of 2015, orders were made by the Judge to, among other things, vary the scope of the Non-Disclosure Order by consent of the Applicant and the Co-Defendant. The Co-Defendant was also given leave to withdraw his Defence. It appears that, contrary to the IC's observation,[36] the High Court did not make any order to restore to the SOP any particulars that had been struck out by AR Tay but which were left undisturbed by the DJ on appeal.

23 On 21 January 2016, the Applicant succeeded in obtaining an interim judgment in the Divorce Suit.[37]

24 On 31 August 2015, Mr Koh sent a letter to the Applicant waiving all legal fees and refunding the Applicant's deposits.[38] He later clarified that this offer was not indicative of guilt, but rather to prevent the issue of fees from "caus[ing] more bad blood between the [Applicant] and I".[39]

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35 Notes of Evidence for FC/RA 17 of 2015.

36 IC First Report at para 58.

37 Applicant's Affidavit dated 28 March 2017 at p 419; IC First Report at para 59.

38 Applicant's Affidavit dated 28 March 2017 at para 12.

39 Applicant's Affidavit dated 28 March 2017 at p 363.

The complaint

Letter of complaint

25 On 12 May 2016, the Applicant sent a 60-page letter of complaint to the Law Society alleging misconduct on the part of Mr Koh under ss 75B and 85(1) of the LPA. This letter levelled the following complaints:

(a) Seven heads of complaint against Mr Koh under s 85(1) of the LPA:[40]

(i) Perjury, knowingly misleading the court, and breach of duty in court;

(ii) Dishonesty and lying;

(iii) Acting against instructions and his deception on Consent Orders;

(iv) Acting against client's interest;

(v) Acting in conflict of interest;

(vi) Wasting the court's time; and

(vii) Lack of fairness and courtesy to Judge and to the client.

(b) Six heads of complaints against Mr Koh under s 75B of the LPA:[41]

(i) Failing to provide diligent service;

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40 Applicant's Affidavit dated 28 March 2017 at p 75.

41 Applicant's Affidavit dated 28 March 2017 at p 76.

(ii) Failing to complete work within a reasonable time;

(iii) Failing to keep client informed on the progress of the case;

(iv) Failing, without reasonable grounds, to respond to clients;

(v) Failing to explain to the client important developments in the case; and

(vi) Incompetence.

26 The proceedings before the IC and the Council, as well as the present application before the Court, concern only the seven heads of complaint against Mr Koh under s 85(1) of the LPA. According to a letter sent by the Law Society to the Applicant dated 27 May 2016, the Applicant's complaints under s 75B of the LPA will only be referred to the Council for deliberation upon completion of the inquiry into his complaints under s 85(1) of the LPA.[42]

Inquiry proceedings

27 On 1 August 2016, the IC (Inquiry Committee No 30 of 2016) was constituted by the Chairman of the Inquiry Panel to inquire into the Applicant's complaint under s 85(1) of the LPA.[43]

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42 See Applicant's Affidavit dated 28 March 2017 at p 378.

43 Applicant's Affidavit dated 28 March 2017 at p 325; IC First Report at Part B.

28 On 8 August 2016, the IC wrote to Mr Koh inviting him to respond to the complaints. Mr Koh did so by letter dated 29 August 2016.[44] Further, the IC invited both the Applicant and Mr Koh to be present at a hearing before the IC, which was later fixed on 20 October 2016.

29 On 20 October 2016, the Applicant attended the IC hearing at the Law Society. There, he confirmed that the e-mail dated 14 July 2015 (see above at [10]) was the only correspondence containing specific instructions from him to Mr Koh prior to the hearing of the Divorce Applications in relation to the Co-Defendant's striking out application.

30 Apparently, Mr Koh also attended the hearing and responded to the IC's queries. The next day, on 21 October 2016, Mr Koh e-mailed the IC to clarify the issue of whether Mr Koh had advised the Applicant on the viability of an appeal against the Striking Out Order given that part of it had been obtained by consent of Mr Koh.[45] In this regard, Mr Koh explained that:

(a) he had no opportunity to advise the Applicant on the appeal or submissions at the appeal as he "had been discharged by then";

(b) the Applicant "had not sought my advice on the appeal, the merits of the appeal or submissions or arguments that would be made at the appeal"; and

(c) the Applicant had been insistent on appealing, and Mr Koh complied despite his "reluctance to do so given the overall strategy…

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44 Applicant's Affidavit dated 28 March 2017 at pp 359-363.

45 Applicant's Affidavit dated 28 March 2017 at pp 364-365.

> that [Mr Koh] had in mind i.e. with the ultimate aim of resolving the divorce as amicably and as expeditiously as possible as [Mr Koh] had viewed the same as a 'poison' affecting the [Applicant]".

Findings of the IC and determination of the Council

31 The IC released two reports. The first report was dated 23 January 2016 ("the First Report"). This report dealt with each of the Applicant's seven heads of complaint (see above at [25(a)]) and reorganised certain aspects of them. The recommendations of the IC were as follows:[46]

> (a) With regard to the first, second, fourth to eighth heads of complaint, a formal investigation by a DT was not necessary.
>
> (b) With regard to the third head of complaint, no sufficient cause for a formal investigation existed, but that Mr Koh should be ordered to pay a penalty of $2,500.

32 On 14 February 2017, the Law Society wrote to inform the Applicant that the Council had considered the First Report and "determined to refer the IC report back to the IC for a reconsideration or a further report".[47] Clarifications were sought by the Council of the IC in two areas:[48]

> (a) The IC appeared to have relied on r 5(2)(i) of the Legal Profession (Professional Conduct) Rules 2015 (GN No S 706/2015)

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46 Applicant's Affidavit dated 28 March 2017 at p 351.

47 Applicant's Affidavit dated 28 March 2017 at para 19(o).

48 Applicant's Affidavit dated 28 March 2017 at p 321.

("LPPCR 2015") in deciding that the third head of complaint was made out, but the LPPCR 2015 only came into effect in November 2015.

(b) The IC did not appear to have addressed the part of the complaint that the Applicant had not been given the Co-Defendant's submissions and BOA which affected his ability to prepare for the appeals.

33 On 22 February 2017, the IC issued a supplementary report ("the Supplementary Report") in which it maintained its recommendations and made two clarifications:[49]

(a) The finding that Mr Koh had acted against client's instructions was premised on a "well-established" obligation for the lawyer to act according to his client's lawful instructions, rather than r 5(2)(1) of the LPPCR 2015.

(b) The complaint that Mr Koh withheld the submissions and the BOA served by the Co-Defendant "did not appear to be fatal to the Complainant", and "appeared not to have any impact on the outcome of the appeals". Further, there was insufficient evidence to conclude that Mr Koh had "deliberately withheld" these documents.

34 By a letter dated 14 March 2017, the Law Society informed the Applicant that the Council had accepted and adopted the findings and recommendations of the IC.[50]

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49 Applicant's Affidavit dated 28 March 2017 at pp 353-357.

50 Applicant's Affidavit dated 28 March 2017 at p 322.

Events leading to the present application

35 On 17 March 2017, the Applicant informed the Law Society that he wished to review the Council's decision. He further asked the Law Society for the Council's "reasons in writing", the IC's First and Supplementary Reports, and information as to how each member of the Council had voted on each head of complaint.[51]

36 By a letter dated 17 March 2017, the Law Society wrote that it would forward copies of the IC's reports to the Applicant with the caveat that, pursuant to confidentiality obligations imposed under s 66 of the LPA, the "report[s] should not be disclosed to 3rd parties, save for obtaining legal advice on any proposed application under s 96 of the [LPA]".[52] The Law Society did not respond to the Applicant's request for the Council members' voting records.[53] The Applicant collected the IC's reports on the same afternoon.[54]

37 On 29 March 2017, the Applicant filed this application, asking the Court to direct the Law Society to apply to the Chief Justice for the appointment of a DT pursuant to s 96(4)(*b*) of the LPA.

The Applicant's case

38 The Applicant filed relatively voluminous affidavits and submissions in support of his allegations of improper conduct against Mr Koh, the IC, the

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51 Applicant's Affidavit dated 28 March 2017 at p 407.

52 Applicant's Affidavit dated 28 March 2017 at p 408.

53 Applicant's Affidavit dated 28 March 2017 at para 19(r).

54 Applicant's Affidavit dated 28 March 2017 at para 19(r).

Council, and Law Society. Before me, the Applicant condensed his arguments into three main arcs.

39 First, the Applicant said that Mr Koh had acted contrary to the Applicant's instructions in agreeing to the Consent Order. Initially, the Applicant referred to his second head of complaint, *ie*, "[d]ishonesty and lying" (see above at [25(a)(ii)]). However, he also referred to paragraph 44 of his written submissions which dealt with various aspects of Mr Koh's conduct *vis-à-vis* the Consent Order. Paragraph 44 alleged that Mr Koh had withheld from the Applicant the fact that the Consent Order had been entered into, and had failed to advise the Applicant on the viability of an appeal against a consent order when the Applicant instructed him to file an appeal against the Striking Out Order. Accordingly, the substance of the Applicant's complaint here more appropriately related to his third head of complaint, *ie*, "[a]cting against instructions and his deception on Consent Orders" (see above at [25(a)(iii)]).[55]

40 Second, the Applicant said that Mr Koh had misled the Court by making untrue statements to AR Tay during the hearing of the Divorce Applications on 27 July 2015. In so doing, Mr Koh failed in his duty to be truthful to the Court. This related to the first head of the Applicant's original complaint, *ie* "knowingly misleading the court and breach of duty in court" (see above at [25(a)(i)]).[56]

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55 See Letter of Complaint at Applicant's Affidavit dated 28 March 2017 at para 5(C); IC First Report at para 60(c).

56 See Letter of Complaint at Applicant's Affidavit dated 28 March 2017 at para 5(A); IC First Report at para 60(a).

41 Third, the Applicant said that Mr Koh had placed himself in a conflict of interests by acting for the Applicant and the Co-Defendant at the same time in respect of the same proceedings. This related to the fifth head of the Applicant's original complaint, *ie*, "acting in conflict of interest" (see above at [25(a)(v)]).[57]

42 It should be noted that the Plaintiff prayed for five specific orders in his written submissions which were not stated in the Originating Summons. This may not be procedurally proper, but I did not hold it against the Applicant in light of the fact that he is a litigant-in-person, and that counsel for Law Society did not object to any procedural impropriety regarding the Applicant's prayers but rather dealt substantively with them in his own written submissions. The five orders prayed for were:[58]

> (a) The Court will make orders to set aside and annul the determination of the Law Society, and direct the Law Society to apply to the Chief Justice for the appointment of a DT.
>
> (b) The Court will award the Applicant costs given that the need for the application originated from the wrong decision of the Law Society, which was based on the incomplete and wrong findings of the IC.
>
> (c) The Court will respectfully ask the Chief Justice to order the Law Society to make the disclosure of how it voted on the decision of the

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57 See Letter of Complaint at Applicant's Affidavit dated 28 March 2017 at para 5(E); IC First Report at para 60(e).

58 Applicant's Written Submissions at para 136.

Applicant's complaint as provisioned in the public's interest under s 66(2) of the LPA.

(d) The Court will order the Law Society to provide proof of how Mr Koh had shown the Law Society a proposed course of action as he had alleged he did to AR Tay in the NEs.

(e) The Court will order the disclosure of Mr Koh's phone and e-mail records from the period of 7 July 2015 to 12 August 2015 to (a) corroborate Mr Koh's testimony that he had contacted the Applicant on the occasions he claimed he did, and (b) to rule out that Mr Koh had acted in a conflict of interest in assisting the opposing parties in the Divorce Suit.

The Law Society's case

43 The Law Society's submissions focused on the issue of natural justice. In this regard, the Law Society submitted that the Application had failed to establish that the IC or the Council had acted in an unfair manner that was prejudicial to the Applicant.[59]

44 In relation to the IC, it was submitted that the Inquiry Committee's role is inquisitorial and informal; it does not require the procedural rigour of a trial in court.[60] Further, the Inquiry Committee's role is merely to investigate the complaint and consider whether a *prima facie* case for formal investigation has been made out. In this context, the IC had properly performed its role and

59 Law Society's Written Submissions at paras 59, 61.

60 Law Society's Written Submissions at paras 24-25.

fulfilled the requirements of natural justice: the IC had conducted a full inquiry in compliance with s 87 of the LPA and addressed all seven heads of complaint in a detailed manner which evidenced that the IC had reached its decision in a fair and rigorous manner.[61]

45 In relation to the Council, its role is merely to review the IC's report, adopt or dismiss it, and to consider whether to implement a different penalty. There is no requirement that it must supplement the IC's reasons. Further, the Council had even sought further clarification from the IC and reviewed the Supplementary Report before accepting the IC's recommendations.[62]

46 On the facts, the Law Society submitted that the Applicant had not made out a case for his complaints to be submitted to the DT under s 96 of the LPA. It appears that the following points were being made, even though there was not much elaboration on the merits of the application:

> (a) Even in determining whether a criminal conviction implies a defect of character rendering an advocate and solicitor unfit for his profession, it is "the nature of the offence, and the circumstances under which it was committed" that is relevant: *The Law Society of Singapore v Wong Sin Yee* [2003] SGHC 197 at [12]; *The Law Society of Singapore v Ong Cheong Wei* [2017] SGDT 4 at [30]. Thus, even if Mr Koh had been negligent, that did not *ipso facto* amount to a defect of character that rendered him unfit to remain as a lawyer.[63]

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61 Law Society's Written Submissions at para 28.

62 Law Society's Written Submissions at para 28; Applicant's Affidavit dated 28 March 2017 at p 321.

63 Law Society's Written Submissions at paras 29-35.

(b) It is the sole discretion of a DT to determine its findings against the lawyer concerned under s 93 of the LPA. Accordingly, there is "no certainty" how the DT would rule even if the present application were allowed.[64]

(c) "From [Mr Koh's] written explanation" to the IC, it appeared that Mr Koh had consented to the Consent Order in the genuine belief that it would minimise acrimony between the Applicant and the Defendant, and also save cost for the Applicant. Mr Koh had acted in this manner based on his experience as a seasoned divorce lawyer, bearing in mind that the courts often try to encourage spouses to amicably settle divorce proceedings. This conduct by Mr Koh, although wrong, was not seen by the IC or the Council as being dishonest.[65] Mr Koh did not benefit from his actions, nor did he act for his own ends. This was more of a misjudgement than an act of dishonesty.

(d) There was no merit in the Applicant's claims of collusion between Mr Koh and the Defendant's lawyers or the Co-Defendant's lawyers.[66]

(e) The punishment meted out by the IC, and accepted by the Council, is sufficient and adequate.[67] In terms of proportionality, the Law Society found it "unfair and unnecessary" to subject Mr Koh to the

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64 Law Society's Written Submissions at para 36.

65 Law Society's Written Submissions at para 47.

66 Law Society's Written Submissions at para 49.

67 Law Society's Written Submissions at para 60.

harsh provisions of s 83(1)(*a*) of the LPA.[68] In fact, to comply with the Applicant's desire to have Mr Koh struck off would have been unreasonable and an abuse of power.[69]

(f) The Law Society had taken into consideration that Mr Koh had been "quick to make atonement" by waiving all the legal fees billed to the Applicant on 31 August 2016 with a view to ending their solicitor-client relationship on an amicable note. The Law Society took the view that this waiver "was not an admission to guilt but more of an acknowledgement that he had done his best for the Plaintiff". The fact that Mr Koh took up the Divorce Applications at short notice due to a friend's request was also noted.[70]

The decision

47 Having considered the matter, I allow the Applicant's application under s 96 of the LPA in respect of two out of the three complaints that he raised before me, *ie*, the first and third heads of complaint in his original letter of complaint (see above at [25(a)]). In relation to these two heads of complaint, which concern respectively the Consent Order and Mr Koh's conduct in misleading the Court during the hearing of the Divorce Applications, the evidence evinces a *prima facie* case of ethical breach which is of sufficient gravity as to warrant formal investigation and consideration by a DT. In this regard, the IC misdirected its mind and misunderstood the material objective evidence on record.

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68 Law Society's Written Submissions at para 39.

69 Law Society's Written Submissions at para 40.

70 Law Society's Written Submissions at para 41.

48 In relation to the third head of complaint regarding Mr Koh's purported conflict of interests, the allegation does not meet the *prima facie* threshold and is therefore dismissed.

49 As for the Applicant's allegations against the IC and the Council, given my decision to refer part of the Applicant's present complaints to the DT, it is not necessary to come to a conclusion on these matters. In any event, these allegations, if successfully established, would lead to reliefs inconsistent with the Applicant's stated objective in filing this application.

The analysis

The applicable law

Effect of the 2015 amendments to the LPA and LPPCR

50 Based on the Applicant's case, a solicitor-client relationship between him and Mr Koh arose in August 2014 and ended around August 2015. That raises a preliminary question as to the relevance of the introduction in 2015 of the new LPA and the LPPCR 2015.

51 In relation to the LPA, the new LPA came into force on 1 January 2015 and introduced significant amendments in two aspects: (a) it extended the then-existing disciplinary framework for Singapore-qualified lawyers to foreign-qualified lawyers who are registered in Singapore, and (b) it sought to ensure that both categories of lawyers fall under the Supreme Court's ultimate supervisory oversight (see Legal Profession (Amendment) Act 2014 (No 40 of 2014); *Singapore Parliamentary Debates, Official Report* (4 November 2014), vol 92 (K Shanmugam, Minister for Law)). As Mr Koh is a Singapore-qualified

lawyer, the 2015 amendments to the LPA do not materially change the disciplinary framework to which he is subject even if I were to take the Applicant's case that the solicitor-client relationship arose in August 2014 and ended in August 2015. Similarly, other subsequent amendments to the LPA introduced do not affect the applicable disciplinary framework.

52 For completeness, I note that in relation to the Legal Profession (Professional Conduct) Rules, the LPPCR 2015 only came into effect on 18 November 2015 (see r 1 of the LPPCR 2015). Thus, as the Council noted when it sought clarifications from the IC after the First Report was released,[71] it is the former Legal Professional (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("LPPCR 2010") that applies in the present case to govern Mr Koh's substantive ethical obligations. Nothing in the present Judgment, however, turns on this.

Overview of the disciplinary process

53 Part VII of the LPA provides for the key stages of the disciplinary framework (see Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015* (Academy Publishing, 2016) at para 04.036). In the present case, the relevant part of the Applicant's original complaint was filed under s 85(1) of the LPA, which reads as follows:

> **Complaints against regulated legal practitioners**
>
> 85.—(1) Any complaint of the conduct of a regulated legal practitioner —
>
> (*a*) shall be made to the Society in writing;

[71] IC Supplementary Report at para 3; Applicant's Affidavit dated 28 March 2017 at p 354.

> (*b*) shall include a statement by the complainant —
>
> > (i) as to whether, to his knowledge, any other complaint has been made to the Society against the regulated legal practitioner, by him or by any other person, which arises from the same facts as his complaint; and
> >
> > (ii) if so, setting out such particulars of each such complaint as the Council may require and he is able to provide; and
>
> (*c*) shall be supported by such statutory declaration as the Council may require, except that no statutory declaration shall be required if the complaint is made by any public officer or any officer of the Institute.

54 I have set out the disciplinary framework established under the LPA, which I described as an "elaborate stepped process", in some detail elsewhere (see *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 ("*Deepak Sharma (HC)*") at [28]–[32]). Only the salient aspects will be discussed here.

55 When a complaint is filed under s 85(1) of the LPA against a regulated legal professional, it will generally first be referred to the Chairman of the Inquiry Panel (s 85(1A)). A Review Committee will then be constituted to review the complaint within two weeks of that referral (s 85(6)). In the course of its review, the Review Committee may require the complainant or the regulated legal practitioner concerned to answer any inquiry or furnish any record as the Review Committee considers relevant for its review (s 85(7)). Once the review is completed, the Review Committee shall direct the Council to dismiss the complaint if the Review Committee's members are unanimously of the view that the complaint is "frivolous, vexatious, misconceived or lacking in substance", in which case reasons for the dismissal have to be given (s 85(8)(*a*)). Otherwise, the Review Committee shall refer the complaint back

to the Chairman (s 85(8)(*b*)), in which case the Chairman is obliged to constitute an Inquiry Committee to inquire into the complaint (s 85(10)).

56 The Inquiry Committee is obliged to commence its inquiry and report its findings to the Council within prescribed timelines (ss 86(1)–86(4)). This report must, among other things, include the Inquiry Committee's recommendation as to the necessity or otherwise of formal investigation of the complaint by a DT (s 86(7)). If the Inquiry Committee takes the view that no formal investigation is required, it may order that a penalty be paid, a reprimand or warning be given, or that the complaint be dismissed (s 86(7)(*b*)).

57 Under s 87(1), the Council must consider the Inquiry Committee's report and determine an appropriate course of action, which includes referring the case for formal investigation by a DT or back to the Inquiry Committee for reconsideration.

58 In the present case, after referring the matter back to the IC for reconsideration on two issues and receiving the IC's Supplementary Report in response, the Council decided to adopt the IC's recommendations. This decision was conveyed to the Applicant by letter dated 14 March 2017.[72] The Applicant, dissatisfied with the Council's determination and the IC's findings, filed this application under s 96 of the LPA, which reads:

> **Procedure for complainant dissatisfied with Council's determination under section 87(1)(*a*) or (*b*)**
>
> 96.—(1) Where a person has made a complaint to the Society and the Council has determined under section 87(1) —
>
> (*a*) that a formal investigation is not necessary; or

[72] Applicant's Affidavit dated 28 March 2017 at p 405.

> (*b*) that no sufficient cause for a formal investigation exists but that the regulated legal practitioner concerned should be given a warning, reprimanded or ordered to pay a penalty,
>
> that person may, if he is dissatisfied with the determination of the Council, apply to a Judge under this section within 14 days of being notified of the determination.
>
> (2) Such an application shall be made by originating summons and shall be accompanied by an affidavit or affidavits of the facts constituting the basis of the complaint and by a copy of the complaint originally made to the Society together with a copy of the Council's reasons in writing supplied to the applicant under section 87(4).
>
> (3) The application accompanied by a copy of each of the documents referred to in subsection (2) shall be served on the Society.
>
> (4) At the hearing of the application, the Judge may make an order —
>
> (*a*) affirming the determination of the Council; or
>
> (*b*) directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Tribunal,
>
> and such order for the payment of costs as may be just.
>
> (5) If the Judge makes an order directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Tribunal, the applicant shall have the conduct of proceedings before the Disciplinary Tribunal and any subsequent proceedings before the court under section 98, and any such proceedings shall be brought in the name of the applicant.

59 In the subsequent sections, the roles, powers, and duties of the Inquiry Committee, the Council, and the Court in relation to an application under s 96 of the LPA will be examined in turn.

60 The common starting point of the analysis, however, is the principle underlying the statutory framework for disciplinary proceedings under the LPA – that complaints against advocates and solicitors should first be adjudged by

their peers before they are brought before the Court (*per* Chan Sek Keong JC (as he then was), *Wee Soon Kim Anthony v Law Society of Singapore* [1988] 1 SLR(R) 455 ("*Anthony Wee 1988*") at [17]):

> The statutory scheme gives the advocate and solicitor concerned a right to be judged first by his own peers, *ie* the Inquiry Committee, followed by a determination by the Council, before the complaint can be brought by a dissatisfied complainant before a judge.

61 This has been accepted in *Tan Yeow Khoon and another v Law Society of Singapore* [2001] 2 SLR(R) 163 ("*Tan Yeow Khoon*") (at [31]), and it applies equally to the present s 96 of the LPA (see *Wee Soon Kim Anthony v Law Society* [2001] 3 SLR(R) 779 ("*Anthony Wee 2001*") at [119]). Accordingly, the roles of the Inquiry Committee, the Council, and the Court should be construed holistically in the context of, and with due deference to, this principle of peer judgment.

The Inquiry Committee

(1) Role of the Inquiry Committee

62 Under the LPA, the role of the Inquiry Committee in investigating complaints made against advocates and solicitors is inquisitorial and informal. Consistent with such a role, the investigative burden borne by the Inquiry Committee is not an onerous one: it only needs to determine if there is a *prima facie* case of ethical breach or other misconduct by a lawyer that warrants formal investigation and consideration by a DT. As the Court of Appeal explained in *Whitehouse Holdings Pte Ltd v Law Society of Singapore* [1994] 2 SLR(R) 485 ("*Whitehouse Holdings*") (at [38]):

> The role of the Inquiry Committee is merely to investigate the complaint. It does not have to make any conclusions on

> misconduct or whether an offence was committed but simply to consider whether or not there is a *prima facie* case for a formal investigation.

63 Similarly, the Court of Appeal in *Seet Melvin v Law Society of Singapore* [1995] 2 SLR(R) 186 ("*Seet Melvin*") stated as follows (at [46]):

> It must be noted, however, that the inquiry process is not adversarial but 'inquisitorial'. The [Inquiry Committee] was only required to determine whether there was a *prima facie* case which would merit formal investigation.

See also *Law Society of Singapore v Chan Chow Wang* [1974-1976] SLR(R) 237 ("*Chan Chow Wang*") (at [38]).

64 I accept that there is dictum suggesting a more onerous role on the part of the Inquiry Committee. In *Subbiah Pillai v Wong Meng Meng* [2000] 3 SLR(R) 404 ("*Subbiah Pillai (HC)*"), Choo Han Teck JC (as he then was) stated as follows (at [16]):

> … [The Inquiry Committee's] primary role is that of the investigator, a role that is sometimes not fully appreciated because of the slightly misleading description attached to the function of the Disciplinary Committee (the conduct of a 'formal investigation') when, in fact, by that stage the bulk of the investigative work ought to have been completed by the Inquiry Committee although the prosecuting counsel for the Law Society may still wish to verify or augment various aspects of the Law Society's case before the Disciplinary Committee. *The Inquiry Committee's role is not merely to uncover only such evidence as is sufficient to pass on to the Disciplinary Committee for further investigation. The Inquiry Committee is expected to investigate as fully as it can before presenting its report to the Council. It can scarcely justify making any of the*

> *recommendations which the Act empowers it to make unless it had conducted a thorough inquiry into the facts*. …
>
> [emphasis added]

65 However, with respect, the expectation that the Inquiry Committee should conduct investigations "as fully as it can" appears to go against the preponderance of authorities which suggest that the Inquiry Committee is not a thorough investigator of complaints but rather the organ to determine merely whether there is a *prima facie* case warranting formal investigation by a DT. Indeed, on appeal from *Subbiah Pillai (HC)*, the Court of Appeal appears to have adopted a different philosophy even though it did not expressly disagree with the High Court. Citing *Whitehouse Holdings*, Chao Hick Tin JA stated as follows (*Subbiah Pillai v Wong Meng Meng and others* [2001] 2 SLR(R) 556 ("*Subbiah Pillai (CA)*") at [32]):

> Under the Act, the function of the [Inquiry Committee] is only to inquire into complaints, to eliminate frivolous complaints and to ensure that only complaints which have been *prima facie* established will proceed to be heard formally and determined by the [DT].

66 In support of this proposition, the Court of Appeal in *Subbiah Pillai (CA)* explained that the assessment conducted by the Inquiry Committee is "essentially a screening exercise" and therefore "should not be an elaborate process like a trial… [but] should be informal. Otherwise, it would unduly burden a process which would not be warranted. It would be a waste of human and financial resources to have two full-blown hearings. It is a question of proportionality and practicality" (at [58]–[59]). Furthermore, the fact that the Inquiry Committee has broad powers to call and question witnesses on oath, and to make important decisions in respect of the complaints, did not render it more than a mere inquisitorial organ (*Subbiah Pillai (CA)* at [62]–[63]):

> 62 … In our judgment… the Legislature felt that if the infraction on the part of the solicitor is minor, not warranting a formal investigation, it would be expedient to deal with it in a summary manner [by the Inquiry Committee in exercising its power to recommend alternative sanctions other than dismissal and formal investigation].
>
> 63 True, in this eventuality, *the* [*Inquiry Committee*] *seems to be making some sort of definitive decision here, but this can in no way alter the fundamental character of the* [*Inquiry Committee*], *which is only to inquire.* …
>
> [emphasis added]

67 Accordingly, *Subbiah Pillai (CA)* stands for and affirms the propositions that (a) the Inquiry Committee's role is informal and inquisitorial, and (b) the principal question to be addressed by the Inquiry Committee is whether the complaint raises a *prima facie* case of ethical breach or other misconduct as to warrant formal investigation and consideration by a DT. It is worth noting that these propositions were stated in *Subbiah Pillai (CA)*, as well as in *Seet Melvin* and *Chan Chow Wang*, in the context of the courts there addressing the issue of what natural justice required in proceedings before the Inquiry Committee.

68 It should further be noted that *Subbiah Pillai (CA)* also supports the proposition that the Inquiry Committee may sieve out and decline to refer to the DT any complaint that, even if taken at face value, would not raise sufficiently grave concerns as to warrant formal investigation. This would be consistent with ss 86(7)(*b*)(i) and (ii) of the LPA, which permit the Inquiry Committee to order a penalty to be paid by the lawyer concerned, reprimand him, or give him a warning, if the Inquiry Committee takes the view that formal investigation by a DT is not required (see above at [56]). As the Court of Appeal explained in *Subbiah Pillai (CA)* (at [62]), these provisions reflect the legislative sentiment that it would be expedient to deal with minor

infractions in a summary manner instead of subjecting it to a formal investigation (see quotation above at [66]). A threshold test of gravity would also allow the Inquiry Committee to better give effect to the concerns of proportionality and practicality within the disciplinary framework, as highlighted in *Subbiah Pillai (CA)* (at [59]) (see above at [66]). Therefore, in addition to the *prima facie* evidential threshold, there is a threshold of gravity which the Inquiry Committee should address.

69 In the circumstances, in evaluating a complaint, the Inquiry Committee should address its mind as to whether the complaint and the evidence evince a *prima facie* case of ethical breach or other misconduct that is of sufficient gravity as to warrant a formal investigation and consideration by the DT. If the evidential basis for the complaint cannot even meet the *prima facie* threshold, or if the breach or misconduct alleged is relatively minor even if taken at face value, the Inquiry Committee may decline to recommend a formal investigation of the complaint, and accordingly dismiss the complaint or recommend alternative sanctions to be imposed.

(2) Relevance of the Review Committee

70 A final issue regarding the introduction of the machinery of the Review Committee in late 2001 should be addressed. As mentioned (see above at [55]), under the new disciplinary regime, the Review Committee is the first body to examine a complaint lodged with the Law Society, and its involvement in the disciplinary process chronologically precedes even the Inquiry Committee. Under s 85(8) of the LPA, the Review Committee may on completion of its review of a complaint do one of two things: (a) direct the Council to dismiss the matter if the Review Committee members are

unanimously of the view that the complaint is "frivolous, vexatious, misconceived or lacking in substance", or (b) refer the matter back to the Chairman of the Inquiry Panel who is obliged under s 85(10) of the LPA to constitute an Inquiry Committee to inquire into the complaint.

71 In my view, although the Review Committee may to some extent serve a similar sifting function as the Inquiry Committee by virtue of its power to direct the Council to dismiss frivolous or groundless complaints, the introduction of the Review Committee did not substantively change the role of or procedure before the Inquiry Committee as established by prior case law. Rather, both the Review Committee and the Inquiry Committee were intended to serve sifting functions in the disciplinary process, albeit at different stages and with differing focuses and intensities. This position is supported by the speech of the then Minister for Law, Professor S Jayakumar at the Second Reading of the Legal Profession (Amendment) Bill 2001 (No 39 of 2001), where he explained the context of the introduction of the Review Committee in Parliament as follows (*Singapore Parliamentary Debates, Official Report* (5 October 2001) vol 73 col 2195–2196):

> Prior to 1986, the Council could only refer to the Chairman of the Inquiry Panel those complaints relating to the conduct of a lawyer in his professional capacity. The Council therefore weeded out those complaints which did not relate to a lawyer's professional conduct. In 1986, the Act was amended to allow any complaints relating to any conduct of a lawyer, not just conduct in his professional capacity. This was because, sometimes, misconduct by a lawyer, even in his private capacity, may be sufficient to render him unfit to continue being a member of the honourable profession. The Council thereafter acted on the assumption that they should continue to play a sifting role in the post-1986 regime. However, the Court of Appeal ruled earlier this year that the Council should not be

> performing such a sifting function, but should simply forward all complaints to be dealt with by the Inquiry Committees.
>
> Sir, this is not practical and has resulted in some difficulties. The Law Society receives more than 100 complaints a year. More than half of them are without substance and are sifted out by the Council, while the remainder goes to an Inquiry Committee for a full inquiry. If the Council is not to sift, the caseload on the Inquiry Committees will more than double… doubling the caseload of the Inquiry Committees will create a serious strain on scarce resources and slow down the disciplinary process. Therefore a new machinery known as the Review Committee will be set up to act as a sifting mechanism.

72 It is clear from the foregoing that the Council and the Inquiry Committee had, prior to the introduction of the Review Committee in 2001, performed concurrent sifting functions, and that the Review Committee was designed to take over the Council's aspect of that function but not to pre-empt or affect the Inquiry Committee's role or function which remains the same. In other words, if the Review Committee does not direct the Council to dismiss a complaint and consequently an Inquiry Committee is constituted, the Inquiry Committee still performs an informal sifting function. The difference is that the Review Committee is intended to direct the dismissal of a complaint where it is quite obvious that this should be done. Furthermore, even though s 85(7) of the LPA confers upon the Review Committee some investigative powers insofar as it may require the complainant or the lawyer concerned to answer any inquiry or to furnish any record that it considers relevant for its review, that does not mean that the Review Committee has the same role and function as the Inquiry Committee. As the then Minister for Law explained, the Review Committee is intended to serve as a first sieve *before an Inquiry Committee is constituted* so as not to unduly tax the resources of the Law Society (see quotation above at [71]).

73 In 2008, further amendments were introduced in the Legal Profession (Amendment) Bill 2008 (No 16 of 2008) to streamline the disciplinary process, including the imposition of a time limit on the period the Review Committee has to review a complaint and make its recommendations. Similarly, however, nothing indicated a legislative intent to alter the relative and substantive roles of the Review Committee and the Inquiry Committee.

74 Accordingly, the legislative amendments introducing the machinery of the Review Committee were not intended to and did not affect the role and function of, or the procedural requirements before, the Inquiry Committee.

The Council of the Law Society

75 I now turn to the role and function of the Council, whose decision is the subject of challenge by the Applicant. Section 87(1) of the LPA provides for the decisions that the Council may come to upon consideration of the Inquiry Committee's report:

> **Council's consideration of report**
>
> 87.—(1) The Council shall consider the report of the Inquiry Committee and according to the circumstances of the case shall, within one month of the receipt of the report, determine —
>
> (*a*) that a formal investigation is not necessary;
>
> (*b*) that no cause of sufficient gravity exists for a formal investigation but that the regulated legal practitioner should be given a warning, reprimanded or ordered to pay a penalty under section 88;
>
> (*c*) that there should be a formal investigation by a Disciplinary Tribunal; or
>
> (*d*) that the matter be referred back to the Inquiry Committee for reconsideration or a further report.

76 In relation to the Council, the issue that usually arises relates to its duty to furnish independent reasons for its decisions under s 87(1) of the LPA. Section 87(4) states that, if the Council determines that a formal investigation is unnecessary, the Council shall on request of the complainant furnish him with its "reasons in writing". In *Yusuf Jumabhoy v Law Society of Singapore* [1988] 1 SLR(R) 63, Chan Sek Keong JC (as he then was) explained the content of this duty to furnish reasons in the context of s 88(2) of the Legal Profession Act (Cap 217, 1982 Reprint), which is *in pari materia* with s 87(4) of the current LPA (at [15]):

> Under s 88(2) of the Act, the Council is under an obligation to give reasons for its decision. In this context, the expression "reasons" means the grounds of explanation for the decision of the Council. The reasons should be such as are readily comprehensible to the complainant so that he could decide whether he should invoke his right of appeal and, if there is such an appeal, to enable the court to review the decision. The Council must give reasons not only to inform but to explain; they must be full and sufficiently intelligible and deal with the substantial points at issue…

77 At first blush, the position taken in *Yusuf Jumabhoy* may appear inconsistent with the Court of Appeal's decision in *Whitehouse Holdings*. In *Whitehouse Holdings Pte Ltd v Law Society of Singapore* [1993] 3 SLR(R) 484, the High Court held (at [5]) that there was no relevant determination by the Council when it merely accepted and adopted the Inquiry Committee's report without stating its determination as to certain matters set out in s 87(1) of the Legal Profession Act (Cap 161, 1990 Rev Ed), which is *in pari materia* with s 87(1) of the present LPA. The Court of Appeal disagreed and held that there is no strict need for the Council to supplement the reasons given in the Inquiry Committee's report if it agrees with the Inquiry Committee's findings

and recommendation (*Whitehouse Holdings* at [28]; see also *Anthony Wee 2001* at [44]):

> … However, with respect to the learned judicial commissioner, we are unable to agree that the Council by merely accepting and adopting the report had not made a determination. *We cannot see any objection to this practice. The Council need not supplement the reasons given by the Inquiry Committee in its report, when the Council in effect is in agreement with and accepts the findings of the Inquiry Committee and makes a determination consistent with that in the report.* The Council had clearly determined that no formal investigation was necessary and that there was therefore no ambiguity at all. The precise words in ss 87(1)(*a*) to 87(1)(*d*) need not be used as long as the meaning of the Council's determination was clear…
>
> [emphasis added]

78 It should be noted that although *Whitehouse Holdings* was a decision of the Court of Appeal whereas *Yusuf Jumabhoy* was that of the High Court, the Court of Appeal in *Whitehouse Holdings* expressly prefaced its dictum above with a qualification that counsel for the Law Society had not addressed the Court on the point of the Council's duty to furnish reasons (*Whitehouse Holdings* at [28]).

79 In my view, the two cases are not irreconcilable. Since s 96(1) of the LPA permits one who is "dissatisfied with the determination *of the Council*" to apply to Court, *Yusuf Jumabhoy* was correct to hold that the Council bears *in principle* a responsibility to provide reasons for its determination. Indeed, these reasons are necessary to allow the complainant to consider whether and how such an application under s 96 should be made, and for the Court to determine if the grounds of the application have been made out. However, *as a matter of practice*, the Council may generally discharge its duty to give reasons by adopting the reasons given by the Inquiry Committee. That would be consistent

with the Court of Appeal's language in *Whitehouse Holdings*: "We cannot see any objection *to this practice*" [emphasis added] (at [28]).

The Court in a proceeding under s 96 of the LPA

80 In relation to the Court, its jurisdiction and power in the context of an application under s 96 of the LPA will be examined in turn.

(1) Nature of jurisdiction

81 Section 96 of the LPA does not expressly state the nature of the jurisdiction exercised by the High Court over the Council's decision. Nevertheless, the Court of Appeal has established that in such proceedings, the Court "sits in the exercise of [its] appellate and supervisory jurisdiction" (*Seet Melvin* at [7]; *Whitehouse Holdings* at [44]). The Court may therefore play two roles in examining the Council's determination.

82 First, the Court may sit in exercise of its supervisory jurisdiction, which refers to the "inherent power of the superior courts to review the proceedings and decisions of inferior courts and tribunals or other public bodies discharging public functions" (*Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106 at [48]). In this regard, "the function of the High Court is to ensure that inferior tribunals stay with their allotted jurisdiction and observe the law. That is, the High Court looks only at the legality of the decision-making process rather than its merits; in applying the grounds of illegality, irrationality, and procedural impropriety, the court cannot substitute its own views for that of the decision-maker" (Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012) at para 10.045). In the context of s 96 applications,

one of the primary concerns would be with the Inquiry Committee's satisfaction of the requirements of natural justice.

83 Second, in the exercise of its appellate jurisdiction, the Court will examine the substantive merits of the Council's and/or the Inquiry Committee's decision. Nevertheless, in relation to the standard of review on appeal, Lai Siu Chiu JC (as she then was) clarified in *Wong Juan Swee v Law Society of Singapore* [1993] 1 SLR(R) 429 that the Court should be slow to disturb or interfere with the Council's findings of fact (at [14]):

> The court here is exercising its appellate jurisdiction over the defendants as an administrative tribunal (see the decision of Chan Sek Keong JC (as he then was) in *Wee Soon Kim Anthony v Law Society of Singapore* [1988] 1 SLR(R) 455). Therefore, the court should be slow to disturb or interfere with the findings of fact by the Inquiry Committee unless it can be shown that supporting evidence was lacking or there was some misunderstanding of the evidence or there are other exceptional circumstances justifying the court to do so. …

84 As the ensuing analysis of the complaints against Mr Koh would show, the Court may generally be faced with one of three situations when exercising its appellate jurisdiction over the Council's decision not to refer a complaint to a DT for formal investigation:

(a) the Council was correct (*ie*, the evidence does not meet the *prima facie* threshold and/or the test of gravity and thus formal investigation was not necessary),

(b) the Council was in error (*ie*, the evidence evinced a *prima facie* case of ethical breach that was of sufficient gravity as to warrant formal investigation); and

(c) it is not clear whether the Council was correct or in error (*eg*, where inadequate investigation had been conducted by the Inquiry Committee such that there was insufficient evidence for a proper assessment of the case).

85 Where situations (a) and (b) are in play, the Court's options are relatively clear: it would usually either grant or dismiss the application (see, *eg*, *Whitehouse Holdings*). It bears noting that if the Court grants the application directing the Law Society to apply for the appointment of a DT, it should consider refraining from making determinative findings of fact that would bind the DT prematurely given the tentative state of the affairs at this stage.

86 Situation (c) is more nuanced. It should first be noted that the Inquiry Committee's role in examining a complaint, while informal, inquisitorial, and only demands assessment on a *prima facie* basis, is nevertheless not without its checks and balances. As mentioned, the cases that stress the informality and inquisitorial nature of the Inquiry Committee mostly dealt with the procedural issue of natural justice, rather than the substantive issues that arise where the Court's appellate jurisdiction is concerned (see above at [67]).

87 However, when it comes to the substantive role of the Inquiry Committee in investigating and evaluating complaints, I see some force in the sentiment expressed by Choo J in *Subbiah Pillai (HC)* that some rigour should be required (see above at [64]). While I appreciate that an Inquiry Committee may face some difficulties in determining the appropriate extent to which it should investigate a complaint, and that deference should be given to its determinations in light of the principle of peer judgment, adequate

investigations must nevertheless be conducted. This is because the Inquiry Committee must, if it takes the view that formal investigation is warranted, know enough about the factual issues to recommend the charges to be preferred against the solicitor concerned. Even if the Inquiry Committee takes the position that formal investigation is not necessary, s 86(7) of the LPA empowers the Inquiry Committee to recommend alternative sanctions to be imposed on the lawyer concerned. Such a power conferred upon the Inquiry Committee suggests a legislative intent to impose at least some standard on the extent to which an Inquiry Committee would have to investigate into a complaint. Furthermore, the statutory regime also appears to contemplate adequate investigations being completed by the time the Council makes its decision based on the Inquiry Committee's recommendations, in order that the complainant can have a meaningful right of review under s 96 of the LPA and the Court can effectively exercise its appellate jurisdiction over the Council's decision. Parliament could not have intended that the rights and processes under s 96 be hollowed out by making the Council and the Inquiry Committee immune from criticism as to the adequacy of their investigation processes.

88 If there are any concerns that the Inquiry Committee's process would become overly burdened, the threshold test of gravity would to my mind serve as an adequate safeguard in permitting the Inquiry Committee to take the complaints at face value and sieve out those relating to less egregious conduct which would, in any event, not warrant formal investigation.

89 For these reasons, despite the Court's general reluctance to interfere with the decisions of the Council and the Inquiry Committee, it should nevertheless intervene where the investigation was not adequate and there is insufficient

evidence on the record for an assessment of the complaint on a *prima facie* standard.

(2) Powers of the Court

90 Having discussed the nature of the Court's jurisdiction in an application under s 96, the next issue relates to the Court's powers after hearing such an application.

91 Section 96(4) of the LPA provides that the Judge – which refers to "a Judge of the High Court sitting in chambers" under s 2(1) of the LPA – may in hearing the application of the dissatisfied complainant (a) affirm the Council's determination, or (b) direct the Law Society to apply to the Chief Justice for the appointment of a DT.

92 However, the Court is not bound to make one of the two stipulated orders. As the Court of Appeal explained in *Whitehouse Holdings*, s 96(4) states that "the judge may make an order" but does not use the word "shall". Thus, this "implies that there is no mandatory obligation to make either of the two stipulated orders" in s 96(4) (*Whitehouse Holdings* at [33]). For instance, the Court would have the power to make no order at all in relation to a s 96 appeal, which may be necessary if the Court finds that the Council's determination was wrong but yet cannot itself review the complaints as it does not have original jurisdiction and the complaints have theretofore not been considered by the Inquiry Committee (*Whitehouse Holdings* at [33]–[34]; *Anthony Wee 1988* at [16]).

93 In addition to the statutorily conferred powers, the Court also appears to have the power to make prerogative orders (*eg*, mandatory, prohibiting, quashing or declaratory orders) which are remedies that are traditionally available in administrative law. This flows from the Court's supervisory jurisdiction over the Council and the Inquiry Committee. However, since s 96 "was enacted as a specific appeal procedure for dissatisfied complainants [it] should be the procedure of first resort" (*Whitehouse Holdings* at [41]). As the Court of Appeal explained in *Whitehouse Holdings*, in most situations the statutory apparatus of s 96 would suffice to meet the complainant's objectives such that prerogative orders need not be resorted to (at [37] and [40]):

> 37 … A remedy in judicial review would, of course, be clearly appropriate where there was some form of procedural impropriety, bias or irrationality (see *Re Singh Kalpanath* [1992] 1 SLR(R) 595). We do not disagree that *mandamus* is also available to the appellants but we would also think that the statutory apparatus under the LPA, namely, s 96 already encompasses this situation here.
>
> …
>
> 40 [Counsel for the complainant] also submitted before us that the appropriate remedy for a dissatisfied complainant was to proceed under s 96 and that there was no necessity to incur additional expense by resorting to other remedies. We agree. Prerogative orders are, of course, concurrently available here. However, its scope of application would also extend to areas outside the ambit of s 96 and s 97 (for complainants dissatisfied with a Disciplinary Committee's decision).

94 Finally, it should be noted that because the LPA prescribes a statutory scheme of peer judgment, "a judge has no jurisdiction to inquire into any complaint which has not been inquired into by the Inquiry Committee or where the Council has not made a determination on the basis of such an inquiry" (*Anthony Wee 1988* at [17]; *Whitehouse Holdings* at [21]). Accordingly, where a complaint has not been inquired into by the Inquiry Committee or was not the

subject of the Council's determination, "it is not open for the court, in an application under s 96(1), to grant an order under s 96(4)(*b*) in respect of that complaint" (*Tan Yeow Khoon* at [31]).

Allegations against Mr Koh

95 In the exercise of my appellate jurisdiction, I first examine the Applicant's third, first, and fifth heads of complaints against Mr Koh, in accordance with the order in which the Applicant orally approached the issues before me (see above at [39]–[41]).

Consent Order

(1) The Applicant's submissions

96 The Applicant's first oral submission (see above at [39]) related to the Consent Order and contained two main aspects: (a) Mr Koh had acted contrary to his instructions in entering into the Consent Order,[73] and (b) Mr Koh had thereafter acted to deceive as he sought to conceal this conduct. The Applicant stressed that the gravamen of this complaint was that Mr Koh had acted *dishonestly* in relation to the Consent Order, and not merely, as the IC had found, that Mr Koh had acted against his instructions. In this regard, the Applicant's complaint related to the third head of complaint in his original letter of complaint to the Law Society, *ie*, "[a]cting against instructions and his deception on Consent Orders" (see above at [25(a)(iii)] above).[74]

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73 Applicant's Affidavit dated 28 March 2017 at para 99 and Table 3.

74 See Letter of Complaint at Applicant's Affidavit dated 28 March 2017 at para 5(C); IC First Report at para 60(c).

97 In relation to the first aspect of the Applicant's complaint, the Applicant highlighted that that he had sent several e-mails to Mr Koh proposing strategies and arguments to be made in respect of the striking out application, including one on 14 July 2015 in which he had provided a tabulated list of responses specifically addressing each of the Co-Defendant's 61 challenges to his SOP.[75] In that tabulation, the Applicant proposed only to make eight concessions. He also provided specific justifications for the inclusion of each of the other particulars that were challenged. However, until the date of the hearing, Mr Koh did not reply to the Applicant to provide any comment or advice. In agreeing to the Consent Order, Mr Koh had acted against the Applicant's instructions as the Applicant was only prepared to make eight concessions.

98 In relation to the second aspect, the Applicant submitted that Mr Koh had dishonestly intended to suppress the fact that he had wrongly conceded to the Consent Order. This was evidenced by the following:

(a) Mr Koh sought to avoid using the term "consent" and instead framed the amendments which arose from the Consent Order under the heading "[t]o be strike out [*sic*] unless otherwise stated as per submitted by the Co-Defendant" in his paralegal's e-mail to the Applicant dated 28 July 2015.[76]

(b) When the Applicant confronted Mr Koh about his failure to explain the Consent Orders, Mr Koh replied by e-mail dated 3

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75 Applicant's Affidavit dated 28 March 2017 at p 209.

76 Applicant's Affidavit dated 28 March 2017 at paras 105-106 and p 217.

September 2015 that "I exercised my discretion as counsel to consent to the obvious ones in order to try and mitigate the issue of costs".[77]

99 Further, the Applicant pointed out that material prejudice had been caused to him by Mr Koh's deception *vis-à-vis* the Consent Order:

(a) Mr Koh extracted the Consent Orders without informing the Applicant of his concession, thereby sealing the fate of the Applicant and causing him to be bound by orders to which he did not agree.

(b) Mr Koh assisted the Applicant to file an appeal against the Consent Order. This was wrong as Mr Koh had not advised him of the legal difficulties with such an appeal in the face of the Consent Order.[78] In this regard, the Applicant stated that he had become aware by 3 September 2015 that the relevant part of the Striking Out Order had been made by consent, but only realised that he could not appeal against that order at the appeal itself when the DJ remarked that he could not appeal against consent orders.[79]

(2) Mr Koh's explanations

100 Mr Koh explained in his letter to the IC that on 7 July 2015, when he met the Applicant, he took the view that the SOP offended the rule that only facts and not evidence were to be pleaded. He also took the view that the SOP was unnecessarily prolix and contained opinions. He advised the Applicant to

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77 Applicant's Affidavit dated 28 March 2017 at pp 92 (Exhibit 11) and 97(xviii).

78 Applicant's Affidavit dated 28 March 2017 at para 99.

79 Notes of Evidence at p 2.

seek closure on the divorce as soon as possible. He claimed to have "ended the meeting with the distinct impression that the Complainant did not disagree with my advice… that the pleadings would suffer striking out" on grounds stated above. He then studied the pleadings and "decided that the best course of action was to concede where I had to at the hearings and where there was an opportunity, to argue against the striking out of certain particulars".[80] Before the IC, he stated that "[i]n my mind, there was no way I would agree to go to Court on the basis of the Complainant's pleadings".[81]

101 Further, Mr Koh also informed the IC that (a) he did not expressly inform the Applicant that he had made concessions on some particulars after the hearing on 27 July 2015, (b) he did not follow up in writing explaining why or how the Consent Order was made, and (c) he did not inform the Applicant about the effect of consent because the Applicant did not ask and because this was a legal issue and "so I don't understand what was there to explain about".[82]

(3) The IC's findings

102 The IC found that Mr Koh had acted against the Applicant's instructions. However, while acknowledging that there were some confusing signals, the Inquiry Committee did not take the view that Mr Koh had intended to conceal the fact that he had consented to the striking out of some particulars.[83] Thus, the allegation of deliberate concealment was not made out.

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80 Applicant's Affidavit dated 28 March 2017 at p 360.

81 IC First Report at para 70.

82 IC First Report at para 70.

83 IC First Report at paras 79-81.

(4) The Court's decision

103 In my view, the IC was correct to find that Mr Koh had acted against the Applicant's instructions in making concessions on the Co-Defendant's application to strike out parts of the SOP that eventually led to the Consent Order. The Applicant's e-mails made it unequivocally clear that, while he was receptive to Mr Koh's contrary advice prior to the hearings, his instructions were to strenuously defend the vast majority of the particulars under challenge. It was not disputed that the Applicant's e-mail to Mr Koh dated 14 July 2015 was the only correspondence containing specific instructions given by the Applicant to Mr Koh in relation to the striking out application (see above at [29]). Furthermore, as the IC noted, the Applicant's reason for insisting on his version of the SOP was to portray the Defendant, who is his ex-wife, in a better light for the sake of their children. If Mr Koh's professional opinion had been otherwise, it would have been imperative for him to offer his advice to the Applicant and not to unilaterally disregard the instructions, however correct he may have thought his views to be and whatever his overall litigation strategy may be (see above at [30(c)]). A lawyer is bound to carry out his client's lawful, proper and reasonable instructions, and this proposition is now enshrined in r 5(2)(*i*) of the LPPCR 2015. If the lawyer believes that he cannot in good conscience carry out certain instructions, for example because they would cause him to commit or perpetrate an illegal or unethical act or because they are unreasonable, he may decline to act for the client.

104 However, notwithstanding my agreement with the IC on this point, this head of complaint should still be directed for further investigation by the DT. There was at least a *prima facie* case that Mr Koh's failure to comply with the instructions was not inadvertent but deliberate. It may further be that Mr Koh

then deliberately suppressed from the Applicant the fact that he had made concessions contrary to the Applicant's instructions. In my view, the IC failed to give due weight to the following two factors in determining whether the complaint met the *prima facie* threshold warranting formal investigation: (a) Mr Koh's silence after the hearing as regards the uninstructed concessions and their implications on the Applicant's intended appeal against the Striking Out Order, and (b) Mr Koh's attempts to dissuade the Applicant from appealing against the Striking Out Order and his delay in the filing of that appeal until the eleventh hour (see [20(d)] above).

105 On the first point of silence, to my mind, the critical question is why Mr Koh had not, in any of his correspondence with the Applicant subsequent to the hearing, made any reference to the fact that part of the Striking Out Order had been made "by consent", or advised that there might be difficulties appealing against a consent order.

106 These omissions must be assessed against two contextual observations. First, Mr Koh knew that the Applicant took a keen interest and hands-on approach in the Divorce Applications. He also knew that the Applicant had given very specific instructions regarding the striking out application. Indeed, the Applicant continued to make unequivocal protestations against the Striking Out Order after the hearing. Nevertheless, Mr Koh did not explain to the Applicant what had happened at the hearing and why that happened.

107 Second, and importantly, Mr Koh had seen fit to offer advice as to the lack of merits or the disadvantage of an appeal in at least two instances. In the first, he sent an e-mail dated 31 July 2015 to the Applicant stating: "No need to

appeal striking out as this incurs costs".[84] In the second, he sent another e-mail dated 7 August 2015 to the Applicant explaining as follows:[85]

> The Appeal against the striking out may prove to be a superfluous exercise given that we are amending the SOP. In any event I am not confident that you will succeed in the Appeal given that submissions and opinions and evidence are not allowed to stand as pleadings.

108 It was not the case, as Mr Koh claimed, that he did not advise the Applicant on the merits of an appeal against the Striking Out Order because the Applicant did not ask (see above at [30(b)]). Nor was it the case that Mr Koh had no opportunity to advise the Applicant because he had been "discharged by then" (see above at [30(a)]). Indeed, in total, Mr Koh offered three reasons why the appeal should not be filed: (a) costs, (b) redundancy given the amendments to the SOP, and (c) low chance of succeeding because opinions and evidence are not allowed to stand as pleadings. Yet, he did not raise the most obvious point and also the strongest point most likely to be taken in opposition on appeal: that a consent judgment or order is binding save in the most exceptional of circumstances. Even if the judge hearing the appeal did not eventually hold the Applicant to the consent previously given by Mr Koh, that would not justify Mr Koh's omission to advise the Applicant on the viability of an appeal against a consent order. To my mind, if Mr Koh had indeed been forthcoming with the Applicant, this is the point that he should have highlighted to the Applicant at the first instance. At present, no reason has been offered for this silence which appears to be selective.

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84 Applicant's Affidavit dated 28 March 2017 at p 231.

85 Applicant's Affidavit dated 28 March 2017 at p 256.

109 In this regard, I cannot comprehend Mr Koh's response to the IC's query as to whether it was his duty as counsel to explain to the Applicant the effect of the consent, *ie*, "I exercised my discretion on what was a legal issue, so I don't understand what was there to explain about".[86] As counsel, legal advice lay at the heart of his mandate. As a counsel of many years of experience, he could not have been unaware of, or confused about, this responsibility to provide legal advice and, in particular, his responsibility to disclose the concessions he made which might in turn affect the legal advice that he should have rendered.

110 In his letter to the IC, Mr Koh also appears to allude to certain phone conversations between him and the Applicant after the hearing, during which he had advised the Applicant to focus on amending the pleadings rather than the appeals in order to quickly resolve his matrimonial dispute.[87] In the absence of any minutes or records of what had been said during these conversations, this does not aid Mr Koh's case. Indeed, the fact that he had tried to persuade the Applicant to pursue recourse apart from an appeal against the Striking Out Order would be equally consistent with an intent to suppress the fact and effect of his concessions at the hearing.

111 I note that the draft Order of Court in relation to the striking out application does contain the words "By Consent",[88] and that this draft was sent by Mr Koh's paralegal to the Applicant by e-mail on 31 July 2015. This may suggest that the Applicant had known from as early as 31 July 2015 that part of

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86 IC First Report at para 70(f).

87 Applicant's Affidavit dated 28 March 2017 at p 362.

88 Applicant's Affidavit dated 28 March 2017 at p 232; IC First Report at para 79.

the Striking Out Order had been made by consent, rather than on 23 September 2015 (which was the date of the appeal before the DJ) as the IC's First Report noted.[89] However, it was not Mr Koh's explanation that he had not informed the Applicant about the uninstructed concessions or the effect of such consent because he thought the Applicant had already read the draft order. Rather, Mr Koh's explanation was that he did not give such advice because he saw no need to. Given this context, the time at which the Applicant came to know about the uninstructed concessions is immaterial *vis-à-vis* the question of whether Mr Koh had intended to suppress that fact and its effect.

112 On the second point of delay and dissuasion in filing the appeal against the Striking Out Order, Mr Koh's repeated attempts to dissuade an appeal against the Striking Out Order, and his delay in filing a Notice of Appeal against the same despite the Applicant's repeated and unequivocal instructions to do so (see above at [20]) also raise a question about his true motivations. I accept that Mr Koh may have held strong views against the Applicant's chosen course of action. However, that may not justify his conduct. Indeed, in respect of the Non-Disclosure Order, a Notice of Appeal was filed on 6 August 2015 on the Applicant's instructions,[90] even though Mr Koh also appeared to disagree with the Applicant on this issue: "I was of the view that… the gag order may be in the best interests of the children… it was more likely than not that the 'gag order' would be granted".[91] On the other hand, the Notice of Appeal in respect of the Striking Out Order was filed only on 11 August 2015.[92] There was clearly

89 IC First Report at para 57.

90 Applicant's Affidavit dated 28 March 2017 at p 252.

91 Applicant's Affidavit dated 28 March 2017 at p 360.

92 Applicant's Affidavit dated 28 March 2017 at p 264.

greater hesitancy in respect of the appeal against the Striking Out Order that could not be explained solely on the basis of a professional disagreement.

113 In my view, Mr Koh's apparently selective silence after the hearing on 27 July 2015 as to the uninstructed concessions and the effect of those on the viability of the Applicant's appeal against the Striking Out Order, as well as his unusual attempts to dissuade the Applicant from appealing, were potentially indicative of an attempt to suppress these concessions from the Applicant and should be investigated further. The IC, by focusing on the consistency of certain e-mails sent by Mr Koh's paralegal to the Applicant, failed to properly evaluate the evidence and overlooked the two contextual factors identified above (see above at [104]).[93] Contrary to the Law Society's submissions (see above at [46(c)]), the fact that Mr Koh did not ostensibly benefit from his conduct does not, if at all, mitigate the need for a formal investigation to be conducted. In the circumstances, I agree with the Applicant that his third head of complaint raised a *prima facie* case of ethical breach which is of sufficient gravity to warrant a further investigation by the DT.

Misleading the Court

(1) The Applicant's submissions

114 The Applicant's second oral submission (see above at [40]) was that Mr Koh failed to discharge his sacred duty to be truthful to the Court when he "actively and passively" misled AR Tay at various instances during the hearing

[93] IC First Report at para 79.

of the Divorce Applications on 27 July 2015.[94] This related to the first head of the Applicant's original complaint, *ie*, "knowingly misleading the court and breach of duty in court" (see above at [25(a)(i)]).[95]

115 The events that transpired on 27 July 2015 have been stated above (see above at [14]–[17]). The Applicant orally pointed out four untrue statements made by Mr Koh to the Court on that day:

(a) Mr Koh informed AR Tay that "I spoke to my Learned Friend. Trying to reach settlement in terms of pleadings".[96] However, it was unbelievable that after being late for 40 minutes, Mr Koh would find time to discuss a settlement on the pleadings with the counsel for the Co-Defendant.[97]

(b) Mr Koh told the Court that he was "unable to get [his] client's confirmation" in respect of a purported settlement that he was attempting to reach with the Co-Defendant's counsel. This was an untruth. On the day of the hearing and even before that day, the Applicant had received no calls on the matter from Mr Koh, even though he had informed Mr Koh that he would be available – and was in fact available – to take his calls.[98] Prior to the date of the hearing, it was also

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94 Applicant's Submissions at para 24(b).

95 See Letter of Complaint at Applicant's Affidavit dated 28 March 2017 at para 5(A); IC First Report at para 60(a).

96 Applicant's Affidavit dated 28 March 2017 at p 161.

97 Applicant's Affidavit dated 28 March 2017 at para 75.

98 Applicant's Affidavit dated 28 March 2017 at para 76–77.

Mr Koh himself who was uncontactable and unresponsive to the Applicant's e-mails.

(c) Mr Koh told the Court that he was "hoping [his] client would agree with my proposed course of action" but had not in fact provided any proposal to the Application for consideration or discussion.[99]

(d) Before the hearing, the Applicant instructed Mr Koh to concede on eight out of 61 of the Co-Defendant's challenges to his SOP.[100] Yet, when AR Tay asked Mr Koh if the Applicant was contesting "everything", Mr Koh replied in the affirmative and said that he was given no instructions to agree.[101]

116 The Applicant submitted that Mr Koh's refusal to carry out simple instructions caused him serious stress and mental anguish. The successful striking out also emboldened the Co-Defendant to file his amended defence on 24 August 2015 to reiterate his intention to go to trial.[102]

(2) Mr Koh's explanations

117 In his letter to the IC, Mr Koh maintained that he had not lied to or misled the Court. The following explanations were provided in response to the four purported untrue statements raised by the Applicant (see above at [115]):

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99 Notes of Evidence at p 2.

100 See Applicant's Affidavit dated 28 March 2017 at p 209, pleading paragraphs 2uuuuuu, 2wwwwww, 2yyyyyy, 2zzzzzz, 2hhhhhhh, 2kkkkkkk, 2lllllll, and 2mmmmmmm.

101 Applicant's Affidavit dated 28 March 2017 at para 88; Exhibit 14.

102 Applicant's Affidavit dated 28 March 2017 at para 90.

(a) Mr Koh maintained that he had spoken to the Co-Defendant's counsel "prior to the hearing" on the possibility of a settlement of the divorce and pleadings, but no agreement was reached.

(b) Mr Koh did not appear to have addressed the basis or veracity of his statement to the Court that he was unable to get the Applicant's confirmation in respect of the purported settlement.

(c) Mr Koh did not appear to have directly addressed the basis or veracity of his statement to the Court implying that he had given a "proposed course of action" to the Applicant. However, elsewhere in Mr Koh's letter to the IC, Mr Koh explained that he had advised the Applicant to agree to amend the pleadings and to avoid engaging in unnecessary litigation over particulars. Mr Koh added that "[w]hile [the Applicant] appeared not to disagree with me on this, I had not received any firm instructions from the Complainant on making a proposal to the above effect. This was my advice to him from our meeting on 7 July 2015".[103]

(d) Mr Koh did not appear to have addressed the basis or veracity of his statement to the Court that he had no instructions to agree to any changes to the SOP.

118 For completeness, Mr Koh's letter to the IC did address other incidents of dishonesty raised by the Applicant elsewhere. For instance, Mr Koh explained that he did not mislead or lie to the Court that he had thought the

[103] Applicant's Affidavit dated 28 March 2017 at p 361.

hearing was fixed for 2.30pm; he was genuinely mistaken.[104] However, these incidents and allegations are not the subject of the application before me and I make no comment in that regard.

(3) The IC's findings

119 The IC found that this head of complaint that Mr Koh had misled the Court was not made out for three main reasons:[105]

(a) The Applicant's allegation that Mr Koh "withheld the fact of settlement negotiations" was not established. The IC accepted Mr Koh's explanation that there were no prior settlement negotiations, but that Mr Koh had asked the Co-Defendant's counsel prior to the recommencement of the hearing on 27 July 2015 whether they could agree on how to dispose of the matter.

(b) Mr Koh informed the Court that he had hoped that his client would agree with his proposed course of action. This was "not incorrect" because this was "an admission that he knew the [Applicant] had differed from his advice".

(c) There was a "failure to answer the Court" when Mr Koh was asked about the latest instructions from his client, but that did not show that Mr Koh had misled the Court.

120 It appears that the IC did not make any recommendation or comment in relation to the first untrue statement raised by the Applicant, *ie*, whether Mr Koh

104 Applicant's Affidavit dated 28 March 2017 at p 360.

105 IC First Report at paras 62–66.

had discussed the possibility of a settlement on the pleadings with the Co-Defendant's counsel prior to the recommencement of the hearing before AR Tay.

(4) The Court's decision

121 With respect, the IC appeared to have misunderstood some of the Applicant's complaints and incorrectly accepted Mr Koh's explanations even though they were unsubstantiated and did not address the concerns raised. I agree with the Applicant that some of Mr Koh's statements to AR Tay in court appear to be inexplicable untruths. Taken together, the misstatements may evince a pattern of disregard for the truth that raises concerns about Mr Koh's integrity.

122 The starting premise of the analysis is that a lawyer owes a fundamental and paramount duty to be honest and truthful to the Court. Rule 9(2) of the LPPCR 2015 enshrines this duty, the salient parts of which are reproduced as follows:

> **Conduct of proceedings**
>
> 9.—(1) …
>
> (2) When conducting any proceedings before a court or tribunal on behalf of a client, a legal practitioner must not do any of the following:
>
> > (*a*) knowingly mislead or attempt to mislead in any way, whether by doing anything referred to in sub-paragraph (*b*) or (*c*) or otherwise —
> >
> > > (i) the court or tribunal;
> > >
> > > …

> (*b*) fabricate any fact or evidence in any communication with, or representation or submission to, the court or tribunal;

123 Prior to the introduction of the LPPCR 2015, r 56 of the LPPCR 2010 provides for the same principle:

> **Not to mislead or deceive Court**
>
> **56.** An advocate and solicitor shall not knowingly deceive or mislead the Court, any other advocate and solicitor, witness, Court officer, or other person or body involved in or associated with Court proceedings.

124 The lawyer's duty of honesty relates to both facts and law, and the prohibited misleading conduct may be active, passive, or a combination of both. The provision of incomplete information may also in some circumstances amount to an ethical violation. In *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR(R) 449, VK Rajah J (as he then was) explained as follows (at [35]; see also *Law Society of Singapore v Nor-ain bte Abu Bakar* [2009] 1 SLR(R) 753 at [89]):

> All solicitors *qua* officers of the court have an absolute and overriding duty first and foremost to the court to serve public interest by ensuring that there is proper and efficient administration of justice. They should never mislead the court either actively or passively. Nor should they consciously furnish to the court erroneous or incomplete information or for that matter incorrect advice that may subvert the true facts. This is a sacred duty which every court is entitled to expect every solicitor appearing before it to unfailingly discharge. So overwhelming is the public interest in maintaining the dignity and honour of the legal profession through the preservation of the highest ethical and moral standards amongst solicitors that the courts cannot risk allowing it to be compromised by even a few recalcitrant individuals within the profession. If and when any such breaches come to light, they must be dealt with swiftly and severely.

125 On the facts, it appears that Mr Koh may have stated several untruths to the Court during the hearing on 27 July 2015. Of the four purported untruths raised by the Applicant (see above at [115]), at least three warranted further investigation and consideration by a DT. The four purportedly untrue statements will be discussed in turn.

126 First, Mr Koh informed the Court that:[106]

> Mr Koh: I spoke to my Learned Friend. Trying to reach settlement in terms of pleadings. But I am unable to get my client's confirmation. We can proceed. I will make oral submissions.

127 It seems to me that the mere fact that Mr Koh had been late for the hearing did not necessarily preclude the possibility that Mr Koh had spoken to the counsel for the Co-Defendant immediately before the hearing to discuss a settlement. However, there is reasonable ground to suspect that Mr Koh's claim that he was unable to get his client's confirmation was untrue. By Mr Koh's own account, it appeared that the settlement negotiations occurred only at the doorstep of the courtroom on 27 July 2015. Yet, no evidence was shown of any attempt by Mr Koh to obtain instructions from the Applicant on the day of the hearing. Indeed, the Applicant in his affidavit averred that he had received no calls from Mr Koh on that day. Even if Mr Koh was referring to settlement negotiations before the date of the hearing, the Applicant still had not been informed of such negotiations.

128 In this regard, the IC did not address the point as to whether it was true that Mr Koh had been unable to get the Applicant's instructions on the day of

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106 Applicant's Affidavit dated 28 March 2017 at pp 161-162.

the hearing. It largely focused on the issue of whether there had in fact been settlement discussions, which was a different point.

129 Second, when AR Tay asked Mr Koh for his client's position on the striking out application, Mr Koh replied as follows:[107]

> Ct: For the record, contesting everything that Co-Defendant Counsel is intending to strike out?
>
> Mr Koh: Yes. No instructions to agree. …

130 There are grounds to suggest that this was untrue. By an e-mail dated 14 July 2015, the Applicant informed Mr Koh that he had agreed to concede to eight out of 61 of the Co-Defendant's challenges to his SOP.[108] The e-mail stated that the concessions were a "first cut" and that the Applicant would "defer to [Mr Koh's] counsel on the final list", but Mr Koh did not get back to the Applicant to propose any changes. The e-mail dated 14 July therefore stood as the latest and only set of instructions from the Applicant. Yet, Mr Koh unequivocally informed the Court that "everything" was being contested. This was plainly contrary to his instructions as they stood.

131 Before the IC, Mr Koh did not appear to have provided any explanation as to why he had made the statement. The IC went on to characterise Mr Koh's statement as a "failure to answer the Court" which did not show that Mr Koh had misled the Court.[109] It is not clear to me what the IC meant.

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107 Applicant's Affidavit dated 28 March 2017 at p 166.

108 See Applicant's Affidavit dated 28 March 2017 at p 209, pleading paragraphs 2uuuuuu, 2wwwwww, 2yyyyyy, 2zzzzzz, 2hhhhhhh, 2kkkkkkk, 2lllllll, and 2mmmmmmm.

109 IC First Report at para 63.

132 Third, the Applicant took issue with a statement by Mr Koh that suggested that Mr Koh had proposed a course of action to him:[110]

> Ct: Directions given for skeletals to be filed.
>
> Mr Koh: I was hoping my client would agree with my proposed course of action. The way I read the file, there is really no need to go into a full blown litigation, just on question of pleadings.

133 I agree that there are reasonable grounds to suspect that Mr Koh's statement was untrue because he had not in fact, by the time of the hearing, provided any proposal to the Applicant for consideration or discussion.[111] In Mr Koh's letter to the IC, he alluded to certain advice that he had provided to the Applicant. It is trite, however, that in the absence of credible contemporaneous records, the court may come to the view that an adverse inference should be drawn against the lawyer (see, *eg*, *Law Society of Singapore v Leong Pek Gan* [2016] SGHC 165 at [48]). There is also a question of how the series of e-mails sent by the Applicant to Mr Koh prior to the hearing should be construed: they suggest that the Applicant did not have in mind any alternative proposal. But whether that was because none had been put forward by Mr Koh, or whether the Applicant had by then rejected Mr Koh's proposal, is a matter that requires further investigation. On the evidence, the IC's reading of Mr Koh's statement to mean "an admission that he knew the [Applicant] had differed from his advice" appears to be too charitable.

134 For the foregoing reasons, there is a *prima facie* case of ethical breach that is of sufficient gravity to warrant a formal investigation and consideration

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110 Applicant's Affidavit dated 28 March 2017 at pp 161–162.

111 Notes of Evidence at p 2.

by the DT in relation to the three untrue statements that I have mentioned. Accordingly, I allow the application in relation to part of the Applicant's first head of complaint.

135 Two further points may be noted. First, while it may be that the occasional misstatement in Court could be explained away as a genuine slip of the tongue, miscommunication, anxiety, forgetfulness or otherwise, it is the series of "errors" here, seen together, that raises the spectre that these were not inadvertent slips by Mr Koh and that Mr Koh may have knowingly or recklessly misled the Court. Second, it bears noting that, if established, the untruths relating to the Applicant's instructions are particularly worrying. A client's positions and instructions for his lawyer are usually matters exclusively within the knowledge of the client and the lawyer; no one else would know or be able to verify these instructions, and all parties including the Court have to rely on the lawyer to communicate them. In the context, a lawyer who is not truthful about his instructions poses a serious threat to the profession and the public trust in the administration of justice.

136 The Applicant pointed to other purported untruths in Mr Koh's reply to the IC. Various allegations of perjury were therefore laid against Mr Koh.[112] For instance, Mr Koh maintained that the Court's direction for parties to file skeletal submissions had been given to the Applicant "before I had taken over the matter". But the Applicant claimed that this was not correct. Indeed, based on the evidence before me, it was Mr Koh's paralegal who had first informed the Applicant, carbon-copying Mr Koh, that the Court had directed the parties to

[112] Applicant's Submissions at paras 24(j), 24(k), 24(l), 24(o), and 24(r).

file skeletal submissions.[113] Several other points were also highlighted where Mr Koh had not been entirely truthful to the IC.[114] While I found some of these to be of concern, they arose after the date of the letter of complaint, and therefore do not fall properly within the scope of my consideration.

Conflict of interest

(1) The Applicant's submissions

137 The third oral submission of the Applicant (see above at [41]) was that Mr Koh had acted in a conflict of interest. This related to the fifth head of the Applicant's original complaint, *ie*, "acting in conflict of interest" (see above at [25(a)(v)]).[115]

138 At the outset, I note that the Applicant was not very specific, clear, or consistent in particularising the precise relationship and conduct that grounded his complaint that Mr Koh had place himself in a position of conflict. In particular, the section on conflict of interest in the Applicant's letter of complaint was convoluted. It was difficult and time-consuming to ascertain what exactly the Applicant was alleging that Mr Koh had done wrong. In this regard, it appears that the Applicant has put forth these allegations in his letter of complaint:

(a) Mr Koh was in a position of conflict because, according to what Mr Koh told the Applicant on 7 July 2015, Mr Koh had "an antecedent

113 Applicant's Affidavit dated 28 March 2017 at p 210.

114 See, *eg*, Applicant's Affidavit dated 28 March 2017 at para 85; Exhibit 11.

115 See Letter of Complaint at Applicant's Affidavit dated 28 March 2017 at para 5(E); IC First Report at para 60(a).

relationship" with the Co-Defendant as Mr Koh had given "general advice" to the Co-Defendant's counsel, Nicholas Narayanan of Nicholas & Tan Partnership.

(b) Mr Koh was in a position of conflict because Mr Koh might have been working in cahoots with one Jeffrey Ong of JLC Advisors LLP, who was solicitor for the Defendant.[116] In this regard, the Applicant maintained that the Defendant's solicitor had "acted all along for the [Co-Defendant] behind the scene", even though he formally acted only for the Defendant.[117] The Defendant's solicitor was also, apparently, a witness to the adulterous relationship between the Defendant and the Co-Defendant. Furthermore, Mr Koh knew one Desmond Ong "very well", and Desmond Ong was the managing partner of JLC Advisors LLP at which Jeffrey Ong worked.[118] JLC Advisors LLP (which acted for the Defendant) and Nicholas & Tan Partnership (which acted for the Co-Defendant) also had "more than just a casual connection" as these two law firms shared the same office premises.[119]

(c) The Applicant relied heavily on an e-mail sent by Mr Koh to him dated 24 February 2016, in which Mr Koh expressed regret regarding the deterioration in their relationship "even though [Mr Koh] only came into the picture over the matter of an application for striking out by [the

116 Applicant's Affidavit dated 28 March 2017 at p 111.

117 Applicant's Affidavit dated 28 March 2017 at p 111.

118 Applicant's Affidavit dated 28 March 2017 at p 109.

119 Applicant's Affidavit dated 28 March 2017 at p 109.

Applicant's] wife's solicitors."[120] The Applicant submitted that this was evidence that Mr Koh could have been "in communications" with the Defendant's solicitor, and thus the Applicant "cannot rule out that Mr Koh had not acted in a conflict of interests".[121]

(d) Furthermore, Mr Koh's conflicted interests can be inferred from, among other things, Mr Koh's extensive and clandestine communications with the Co-Defendant's counsel prior to Mr Koh's agreeing to the Consent Order against the Applicant's instructions and interest.[122] Even after the hearing, Mr Koh did not disclose his prior communications with the Co-Defendant's counsel to the Applicant, even though the Applicant had specifically asked him.[123] According to the Applicant, these are clear suggestions that Mr Koh was "serving two masters".[124]

139 However, in his affidavit filed in this application, the Applicant's main grievance was with the relationship between Mr Koh and the Co-Defendant's counsel. He argued that an implied retainer had arisen between him and Mr Koh on 25 August 2014, when they first met, even though he had not at that time formally appointed Mr Koh to act for him. This was because they had, among other things, discussed the Divorce Suit in detail and he had given the particulars

120 Applicant's Affidavit dated 28 March 2017 at p 110.

121 Applicant's Affidavit dated 28 March 2017 at p 112.

122 Applicant's Affidavit dated 28 March 2017 at pp 113-114.

123 Applicant's Affidavit dated 28 March 2017 at p 113.

124 Applicant's Affidavit dated 28 March 2017 at p 113.

of the counterparties and their counsel to Mr Koh.[125] Thereafter, sometime between 25 August 2014 and 7 July 2015, Mr Koh must have discussed the Applicant's case with the Co-Defendant's counsel. In fact, when the Applicant next met Mr Koh on 7 July 2015, Mr Koh had explicitly apprised the Applicant of this discussion, but assured him that there was no conflict of interest (see above at [9]). At that time, the Applicant trusted Mr Koh and did not enquire further.[126] Nevertheless, given the subsisting implied retainer, Mr Koh placed himself in a position of conflict by "giving general advice" to the Co-Defendant's lawyer during their conversation between 25 August 2014 and 7 July 2015.[127] This conflict of interest manifested itself in Mr Koh's failing to properly protect the interests of the Applicant during his conduct of the Divorce Applications.[128]

140 In his written submissions tendered to the Court, the Applicant appeared to switch tack. He maintained that he was Mr Koh's client by express retainer, whereas the Co-Defendant was Mr Koh's client by implied retainer.[129] It is not clear what dates the Applicant was alleging that these express and implied retainers had arisen. In any event, Mr Koh was alleged to have "acted in a [c]onflict of [i]nterest to advise the opposing party (Co-Defendant's [c]ounsel) in the [Applicant's] divorce case".[130] The Applicant also referred to "strong

125 Applicant's Affidavit dated 28 March 2017 at para 56.

126 Applicant's Affidavit dated 28 March 2017 at para 57.

127 Applicant's Affidavit dated 28 March 2017 at paras 57, 58(d).

128 Applicant's Affidavit dated 28 March 2017 at para 62.

129 Applicant's Written Submissions at para 83.

130 Applicant's Written Submissions at para 83.

grounds for suspicion of how lawyers representing the three different parties… could have colluded" and requested that an investigation be done of all the lawyers involved.[131]

141 In relation to the IC's findings, the Applicant argued that the IC was wrong in accepting Mr Koh's bare assertion that he had no dealings with the Defendant's counsel because the Defendant had already withdrawn her defence by the time Mr Koh "came on board to represent [the Applicant]". Rather, Mr Koh himself stated in his e-mail to the Applicant dated 24 February 2016 that he first became involved as lawyer for the Applicant "over the matter of an application for striking out by [the Applicant's] wife's solicitors".[132] In this regard, the IC also failed to appreciate that Mr Koh's bare assertion could have been merely a lie to save his own skin.[133]

(2) Mr Koh's explanations

142 In relation to the Co-Defendant's counsel, Mr Koh denied that he had given general advice to him in relation to the Divorce Applications.[134] Mr Koh accepted that he did speak to the Co-Defendant's counsel prior to the hearing on 27 July 2015 on the possibility of a settlement, but that did not eventuate.[135]

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131 Applicant's Written Submissions at para 82(a).

132 Applicant's Affidavit dated 28 March 2017 at para 63; Exhibit 9.

133 Applicant's Affidavit dated 28 March 2017 at para 61; see IC First Report at para 92.

134 IC First Report at para 92.

135 Applicant's Affidavit dated 28 March 2017 at p 361.

However, there was "nothing further" said between them.[136] Mr Koh also denied any collusion.[137]

143 In relation to the Defendant's solicitor, Mr Koh denied conversing with the Defendant's solicitor and denied any collusion with him.[138] As for Desmond Ong (*ie*, managing partner of JLC Advisors LLP), Mr Koh accepted that he knew Desmond Ong well, but opined that this was irrelevant as the Defendant had withdrawn her Defence by the time Mr Koh became involved in the proceedings as counsel for the Applicant.[139] In any case, Mr Koh had no occasion to discuss the case with Desmond Ong.[140] Mr Koh also denied that he had any conversations with JLC Advisors LLP.[141]

(3) The IC's findings

144 The IC summarised the parties' positions and stated that "[t]he Committee accepts the Respondent's explanation. This head of complaint is NOT made out." [emphasis in original][142]

(4) The Court's decision

145 As can be observed, the precise content of the Applicant's complaint on the issue of conflict of interest morphed from his original letter of complaint, to

136 Applicant's Affidavit dated 28 March 2017 at pp 361–362.

137 Applicant's Affidavit dated 28 March 2017 at p 363.

138 Applicant's Affidavit dated 28 March 2017 at p 363.

139 IC First Report at para 91.

140 IC First Report at para 91.

141 Applicant's Affidavit dated 28 March 2017 at pp 362–363.

142 IC First Report at paras 94–95.

his affidavit filed in the present application, to his written submissions tendered to the Court. In this context, the Applicant's affidavit and written submissions on the issue of conflict are distracting. It is the Applicant's original letter of complaint that determines the scope of my present inquiry. This must logically be the case. The IC had sight of, and had the opportunity to consider, only the letter of complaint and not the other allegations contained in the subsequent affidavits and submissions in this application. The Council's decision to adopt the Inquiry Committee's recommendations was also based on what was before the Council. In such circumstances, since the Court is exercising its appellate jurisdiction, it should, in the usual course, limit itself to the allegations and evidence that were before the IC and the Council. This would be congruent with the principle of peer judgment and s 96 of the LPA under which the Court has no original jurisdiction to consider complaints (see above at [94]).

146 For this reason, I consider only the four main allegations that could be gleaned from the Applicant's original letter of complaint, which are stated above at [138]. I examine these allegations in turn.

147 The Applicant's first allegation was that Mr Koh had "an antecedent relationship" with the Co-Defendant as Mr Koh had given "general advice" to the Co-Defendant's counsel. It is not clear from the letter of complaint what this meant. Based on the way the Applicant framed his point,[143] there was presumably a conversation that took place between Mr Koh and the Co-Defendant's counsel before July 2015 (which was when the warrant for Mr Koh to act for the Applicant was entered into), during which Mr Koh gave the Co-Defendant's counsel "general advice". Apparently, that conversation

[143] Applicant's Affidavit dated 28 March 2017 at p 109.

gave rise to an "antecedent relationship" between Mr Koh and the Co-Defendant which amounted to a conflict of interest when Mr Koh subsequently acted for the Applicant. It is not clear what precisely "general advice" and "antecedent relationship" meant and whether they related to the Divorce Suit. Furthermore, given the context of the paragraph in which this allegation was mentioned,[144] it appears that the Applicant's main grievance was not with the fact that "general advice" had been given, but rather with the relationships that he claimed to have existed between Mr Koh, the Defendant's solicitor, and Desmond Ong (*ie*, the managing partner of JLC Advisors LLP). The latter issue of relationships will be dealt with below (at [149]-[153]). In my view, the first allegation as it stood in the letter of complaint is simply too vague and unsubstantiated to ground a *prima facie* case of conflict of interest warranting further investigation.

148 After the present application was filed in Court, the Applicant brought fresh evidence and made new allegations against Mr Koh. In particular, the Applicant argued that certain events occurring between August 2014 and July 2015 gave rise to various implied retainers between Mr Koh, the Applicant, and the Co-Defendant. The Applicant also gave evidence regarding a text message that he had sent to a third party dated 7 July 2015 which suggested that Mr Koh had in fact discussed the Divorce Suit with the Co-Defendant's counsel sometime between August 2014 and July 2015. It is not clear if these new evidence and allegations relate to the purported "antecedent relationship" between Mr Koh and the Co-Defendant mentioned in the Applicant's first allegation in his original letter of complaint. In any event, the evidence and allegations were not in the original letter of complaint. Therefore, they should

144 See Applicant's Affidavit dated 28 March 2017 at p 109.

not be considered by this Court in the exercise of its appellate jurisdiction under s 96 of the LPA (see above at [145]).

149 The Applicant's second allegation was that Mr Koh acted in cahoots with the Defendant's solicitor. Apart from a general cloud of suspicion that the Applicant attempted to raise, the precise factual basis of this allegation is not clear. Based on what can be gleaned, the Applicant appears to rely on two points: (a) that Mr Koh and Desmond Ong had known each other "very well", and (b) that Mr Koh and the Defendant's solicitor may have been "in communication" with each other.

150 In respect of point (a), this could not itself sustain a *prima facie* claim of conflict. Desmond Ong did not himself act for any of the parties in the Divorce Suit; he was merely the managing partner of the Defendant's solicitor's firm. Even if I were to examine the issue from the perspective of the law firm and not the lawyers personally, I am not aware of any authority which suggests that two law firms whose lawyers are well acquainted with each other cannot act for separate clients in respect of the same case. Indeed, such a sweeping rule is too broad and will potentially render in perpetual conflict the vast majority of lawyers and law firms in Singapore.

151 In respect of point (b), the mere potentiality of informal communication between Mr Koh and the Defendant's solicitor cannot without more form the basis for a *prima facie* claim of conflict. Even assuming that these communications had occurred, there is no evidence that they relate to the Divorce Suit. Furthermore, by the time the Applicant signed the warrant for Mr Koh to act for him in August 2015, the Defendant had already withdrawn her defence to the Applicant's Divorce Suit and neither she nor her solicitor

participated in the Divorce Applications (see above at [4] and [8]). The Defendant did not attend, whether in person or through her solicitor, any of the hearings and appeals in respect of the Divorce Applications.[145] The Applicant himself accepted, at least in respect of the application to strike out, that "[the Defendant's] solicitor was not in the picture".[146] In the circumstances, nothing between Mr Koh and the Defendant's solicitor warrants further investigation.

152 The third allegation raised by the Applicant in his letter of complaint was also based on Mr Koh's allegedly improper relationship with the Defendant's solicitor. The Applicant pointed to an email from Mr Koh to the Applicant dated 24 February 2016, in which Mr Koh expressed "regret that our relationship has deteriorated to this point even though I only came into the picture over the matter of an application for striking out by [the Defendant's] solicitors."[147] As mentioned, the Defendant had withdrawn her Defence by the time Mr Koh agreed to act as lawyer for the Applicant (see above at [4] and [8]). In referring to the Defendant in his email, Mr Koh was clearly mistaken because the striking out application was taken out by the Co-Defendant and not the Defendant. I do not consider that there is anything untoward that could be inferred from the mistake.

153 In relation to the above analysis on the second and third allegations, I should add that the Applicant raised several other allegations in his letter of complaint, *eg*, the Defendant's solicitor purportedly attending the

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145 Applicant's Affidavit dated 28 March 2017 at pp 159-160.

146 Applicant's Affidavit dated 28 March 2017 at p 110.

147 Applicant's Affidavit dated 28 March 2017 at para 63; Exhibit 9.

Co-Defendant's birthday drinks on 14 March 2014.[148] It appears in certain parts of this letter that the Applicant's grievances related more to the Defendant's choice of solicitor *per se*, rather than on his complaint that Mr Koh had acted in conflict of interest in relation to the Applicant himself. It is apparent that even before the Applicant signed the warrant for Mr Koh to act for him, the Applicant had harboured suspicions as to the loyalties of the Defendant's solicitor, whom the Applicant considered "not the best person to represent the Defendant as he is likely to continue to serve the best interests of the Co-Defendant first before the interests of the Defendant and her children."[149] It must be stressed, however, that whatever may be the situation with the Defendant's solicitor, that is not within this Court's scope of consideration (or that of the IC or the Council) unless it relates to the loyalties of Mr Koh.

154 The fourth allegation referred to Mr Koh's communications with the Co-Defendant's counsel prior to the hearing of the Divorce Applications. The Applicant summarised five points of suspicion in this regard.[150] In my view, none of these, whether taken alone or together, suffices to raise a *prima facie* case of conflict warranting formal investigation. First, the Applicant stated that Mr Koh had mismanaged the conflict issue by giving advice to two opposite parties in the same divorce suit. This appears to overlap with his first allegation, which I have considered above (at [147]-[148]). Second, the Applicant referred to clandestine communications between Mr Koh and the Co-Defendant's counsel of which Mr Koh did not inform the Applicant even when he was asked to do so. The Applicant's characterisation of the facts appears exaggerated.

148 Applicant's Affidavit dated 28 March 2017 at p 111.

149 See Applicant's Affidavit dated 28 March 2017 at p 112; Exhibit 24.

150 Applicant's Affidavit dated 28 March 2017 at p 114.

Mr Koh may not have kept the Applicant promptly updated on the case, and Mr Koh may perhaps have wanted to conceal the fact that uninstructed concessions had been made. Whether or not that may amount to misconduct which I have addressed above, it is not evidence of conflict. The Applicant's third and fourth points were respectively that Mr Koh had made an untrue statement to AR Tay, and that Mr Koh had surreptitiously entered into the Consent Orders with the Co-Defendant. Again, the possibility that Mr Koh might have committed some other ethical breach does not mean that he must have done so because he was in a conflict of interest. Fifth, the Applicant alleged that Mr Koh had falsified the heading of the Consent Order. If the Applicant was referring to falsification of the Court Order itself, there is no evidence of that. If the Applicant was referring to inaccurate representations in certain e-mails sent by Mr Koh to the Applicant (see above at [19]), the Applicant has stretched the facts too far. Finally, the Applicant complained that Mr Koh had "knowingly contradicted" himself by appealing against the Consent Orders that he undertook. It should be recalled that the Notice of Appeal in respect of the Striking Out Order was filed pursuant to persistent and express instructions of the Applicant (see above at [20]). It is unfair for the Applicant now to turn around and claim that Mr Koh had contradicted himself. In any event, even if Mr Koh had contradicted himself by filing the appeal, that does not amount to a *prima facie* case of conflict.

155 For the foregoing reasons, I agree with the Council's determination in relation to the fifth head of the Applicant's original complaint, *ie*, "acting in conflict of interest" (see above at [25(a)(v)]).[151] The allegations raised by the

[151] See Letter of Complaint at Applicant's Affidavit dated 28 March 2017 at para 5(E); IC First Report at para 60(e).

Applicant in his original letter of complaint do not evince a *prima facie* case of conflict of interest that warrants formal investigation and consideration by a DT.

Allegations against the IC, the Council and the Law Society

156 In his affidavit and written submissions, the Applicant made various allegations against the IC, the Council, and the Law Society, claiming that they were, among other things, careless and biased. In this regard, the Applicant's allegations of bias were founded on the bases that:

(a) The IC had found that Mr Koh could "leave the [Applicant] in the dark about his case" when the same view was not borne out of case law.[152]

(b) Various members of the IC, the Council, and the Law Society had purportedly close relationships with Mr Koh.[153] In this regard, a few members of the Council were partners at the same firm as Mr Koh's twin brother, or colleagues of Mr Koh at the firm at which he worked.

(c) The IC's reports used the phrase "respected member of the family bar" to describe Mr Koh,[154] Further, the IC allowed itself to be swayed by the high esteem in which they held Mr Koh.[155]

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152 Applicant's Written Submissions at paras 24(w), 114.

153 Applicant's 2nd Affidavit dated 6 June 2017 at paras 11-12; Applicant's Written Submissions at para 100.

154 See IC First Report at para 15.

155 Applicant's Affidavit dated 28 March 2017 at paras 130–135.

(d) Mr Koh was a member of the Family Law Committee of the Law Society. The Applicant described this as an "incestuous" relationship.[156]

157 In light of the Court's decision above to direct the Law Society to apply for the appointment of a DT, it is no longer necessary to consider these allegations.

158 However, I make three observations.

159 First, it is not clear why the Applicant brought up these allegations in the first place. If he intended to urge the Court to exercise its supervisory jurisdiction over the IC or Council, the remedy that he would obtain, assuming he succeeded on any of these grounds, would have been prerogative orders and not the statutory remedy under s 96(4)(*b*) of the LPA of a court direction to the Law Society for the appointment of a DT (see above at [93]). Therefore, even if the Applicant had legitimate grievances against the IC and the Council, he should have directed his mind to the kind of relief that he is seeking, and the nature of the arguments that he had to make to obtain that relief, in order to better focus and streamline his case.

160 Secondly, in response to the Applicant's request for the identities and voting records of the Council members in relation to his case, the Law Society submitted that it was not obliged to disclose these as the information was protected under s 66(1) of the LPA by a cloak of confidentiality. If the Applicant

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156 Applicant's 2nd Affidavit dated 6 June 2017 at para 7; Applicant's Written Submissions at paras 24(d), 16.

wanted these documents, the Law Society's position was that he is obliged to take a separate and formal application to request for them.[157]

161 Section 66 of the LPA provides as follows:

> **Proceedings of Council, Review Committee and Inquiry Committee to be confidential**
>
> 66.—(1) Except insofar as may be necessary for the purpose of giving effect to any resolutions or decisions of the Council and any Review Committee or Inquiry Committee, confidentiality shall be maintained in all proceedings conducted by the Council, its staff and the Review Committee or Inquiry Committee.
>
> (2) Notwithstanding subsection (1), the Chief Justice or the Attorney-General may require the Council to disclose to him any matter or information relating to any complaint of misconduct or disciplinary action against any advocate and solicitor.

162 Even though s 66 of the LPA is couched in broad language, it is not clear whether it shields the identities and voting records of the Council from disclosure, particularly in the context where an allegation of bias has been laid against the Council before the Court and where the statutory mechanism in s 96 of the LPA is available to the complainant. Indeed, arguably, such a case would not fall within the rationale of s 66, which appears to be for the protection of lawyers against the impact of frivolous complaints (Report of the Select Committee on the Legal Profession (Amendment) Bill (Parl 7 of 1986, 16 October 1986) at pp B4 and B209; see generally, Palakrishnan and Malathi Das, "Winds of Change: Disciplinary Proceedings under the Legal Profession (Amendment) Act 1993" (1995) 7 SAcLJ 175 at 185; Tan Yock Lin, *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths

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157 Law Society's Written Submissions at paras 53–57.

Asia, 2nd Ed, 1998) at p 850). Nevertheless, as this is no longer an issue in these proceedings, I need not say more.

163 Thirdly and relatedly, while I have found on the facts that an inquiry into the issues of bias and apparent bias is not necessary, I would mention for the future that it would be prudent for members of the Council (and other relevant bodies) to be cautious with the manner in which they sit and decide on disciplinary matters. In particular, Council members should be alert to the question of conflict of interest when evaluating and making decisions in respect of complaints made against lawyers. Where several disciplinary cases are dealt with in a single sitting of the Council, the risk of Council members overlooking this question may be greater. In these situations, members should direct their minds at the earliest opportunity to the question of who should sit in relation to each of the cases and adapt the composition of their quorum accordingly. In the end, there should be measures to ensure the integrity of Council proceedings.

Post-script: Correspondences with Prof Pinsler

164 In the course of writing this decision, the Applicant sent a letter to the Registrar of the Supreme Court dated 29 August 2017 appending his e-mail correspondences with Professor Jeffrey Pinsler SC ("Professor Pinsler") regarding (a) the ethical obligations of a lawyer in relation to consent orders and (b) the procedures that would apply if the court were to find in the Applicant's favour. Mr Koh was not named in any of the correspondence with Professor Pinsler, and there was no indication that Professor Pinsler had known the identity of the lawyer concerned. Rather, the Applicant's queries were expressly stated to be for "purely academic interest" and based on a "hypothetical scenario". Nevertheless, the e-mail correspondences between the Applicant and

Professor Pinsler between 25 July and 22 August 2017 were sent to the Supreme Court. In his cover letter, the Applicant stated that because the Law Society was "clearly conflicted to protect and assist [him] in [his] case", he was "left with no choice but to turn to Professor Pinsler for his help because [the Applicant was] also aware that lawyers can write in to the Singapore Law Society to seek their opinion and guidance for matters of court". Counsel for the Law Society was carbon-copied in the letter, but no response was received from him as of the date of release of this decision.

165 In my view, this letter and the annexed correspondences are irrelevant, unnecessary, and improperly adduced.

166 First, insofar as the Applicant is putting forth the contents of the letter and the correspondences as his submissions, these are far too late in the day and tendered without leave of Court or prior request for further arguments. The fact that the Applicant is a litigant-in-person does not absolve him of compliance with procedural rules. It will not serve the interests of fairness or finality if the court were to consider these submissions at this stage.

167 Secondly, Professor Pinsler's views were clearly and expressly qualified by his cautious use of the terms such as "may", "could apply", "[i]n my personal view", "on an informal basis", and the explicit disclaimer "[p]lease don't take this as legal advice" [underline in original]. Indeed, Professor Pinsler, not being apprised of the facts of the case, could only have discussed the matter at a broad and theoretical level. In that context, there is no need to refer to the correspondences for general propositions that could be derived elsewhere.

168 Third, and importantly, several of the possible ethical breaches discussed in the annexed correspondences are not properly the subject of the Applicant's complaints before me. For instance, there is a reference to the lawyer's liability for incompetence, but that appears to fall within the scope of the Applicant's complaint under s 75B of the LPA, which will only be referred to the Council for deliberation upon completion of the inquiry into the Applicant's complaints under s 85(1) of the LPA (see above at [26]).[158] A few of the other ethical breaches mentioned appear to fall outside the scope of the Applicant's letters of complaint entirely. It is too late in these proceedings for the Applicant to raise these new allegations. In any event, by virtue of the LPA's prescribed statutory scheme of peer judgment, this court has no jurisdiction to examine complaints which have not been inquired into by an Inquiry Committee or subject of a determination by the Council (see above at [94]).

169 For these reasons, I did not take into consideration the contents of this letter or the annexed correspondences between the Applicant and Professor Pinsler in coming to my decision. In fairness to Professor Pinsler, there is no indication that he had agreed to the Applicant tendering their correspondences to the Court in support of an ongoing disciplinary matter, or that he was even aware that the Applicant would do the same.

Conclusion

170 The Applicant's five prayers have been set out above (at [42]). For the foregoing reasons, I grant an order under s 96 of the LPA directing the Law Society to apply to the Chief Justice for the appointment of a DT to

158 See Applicant's Affidavit dated 28 March 2017 at p 378.

investigate and consider the following heads of complaint stated in the Applicant's letter of complaint dated 12 May 2016 (see above at [25]):

(a) *First head of complaint*: that Mr Koh had knowingly misled the Court and/or failed to discharge his duty to be honest and truthful to the Court by stating three untrue statements to AR Tay at the hearing on 27 July 2015 (see above at [125]–[136]); and

(b) *Third head of complaint*: that Mr Koh had acted against the Applicant's instructions by conceding to the Consent Order, and that Mr Koh had subsequently sought to deliberately suppress from the Applicant the fact that the Consent Order had been made and the effect of the concession on the viability of the Applicant's appeal against the Striking Out Order (see above at [103]–[113]).

171 I dismiss the application in relation to the fifth head of complaint, *ie*, Mr Koh had placed himself in a position of conflict *vis-à-vis* the Applicant, as stated in the Applicant's letter of complaint dated 12 May 2016 (see above at [145]–[155]).

172 Pursuant to s 96(5) of the LPA, the Applicant is to have conduct of the proceedings before the DT and any subsequent proceedings before the Court under s 98 of the LPA. The proceedings are also to be brought under the Applicant's name.

173 It appears that upon my order under s 96(4)(*b*) of the LPA directing the Law Society to apply to the Chief Justice for the appointment of a DT, the procedural rules and timelines prescribed by the Legal Profession (Disciplinary Tribunal) Rules (Cap 161, R 2, 2010 Rev Ed) will apply to both the Applicant

and the Law Society. It may be that some of these rules would cause difficulties for the Applicant and may warrant a review at a later date. In respect of the present proceedings, if the Applicant decides to pursue all the matters stated above (at [170]) then he may find that he has stretched himself thin. However, it remains for the Applicant to decide to what extent he wishes to continue to pursue his complaints.

174 For the avoidance of doubt, the DT is not bound by my assessment of the evidence here, and may consider any issue of fact *de novo* (see *Subbiah Pillai (CA)* at [46]). The heads of complaint summarised above (at [170]) may also be reframed as is appropriate.

175 In relation to the other prayers, I make no orders as to the Applicant's request for this Court to request the Chief Justice to order the Law Society to make disclosure of how members of the IC and the Council had voted in relation to the complaint. It is not clear if s 66 of the LPA shields such information from disclosure on the grounds of confidentiality (see above at [161]–[162]). Even if it does not, it is doubtful that it is within the power of this Court to make such a request to the Chief Justice. In any event, such an order – which is needed only to buttress the Applicant's allegations against the IC, the Council, and/or the Law Society – is no longer necessary in light of my orders in relation to the merits of the Applicant's complaints against Mr Koh (see above at [170]).

176 In addition, the Applicant prayed for:[159]

(a) an order that Mr Koh provide "proof of how he had shown the [Applicant] a proposed course of action as he had alleged"; and

(b) an order for the disclosure of Mr Koh's "phone and e-mail records from the period of 7 Jul 2015 to 12 Aug 2015".

These are matters which may relate to the investigation of the complaint and should properly be dealt with by the DT. Accordingly, I make no orders on these prayers.

177 The Applicant also prayed for costs of these proceedings (see above at [42(b)]). Under s 96(4) of the LPA, the Court is empowered make such order as to costs as may be just. However, as the Applicant is a litigant-in-person, he has no professional costs. In the circumstances, I order the Law Society to pay the Applicant's disbursements, the quantum of which is to be agreed or fixed by the Court.

Woo Bih Li
Judge

The applicant in person;
Prabhakaran Narayanan Nair (Derrick Wong & Lim BC LLP) for the respondent.

159 Applicant's Written Submissions at paras 136(d)–136(e).