IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 114

Originating Summons No 3 of 2021

Between

Law Society of Singapore

… *Applicant*

And

CNH

… *Respondent*

JUDGMENT

[Legal Profession — Disciplinary proceedings]

Law Society of Singapore
v
CNH

[2022] SGHC 114

Court of Three Judges — Originating Summons No 3 of 2021
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA, Steven Chong JCA
3 March 2022

19 May 2022 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 C3J/OS 3/2021 ("OS 3") is an application by the Law Society of Singapore (the "Law Society") for the respondent to suffer punishment as provided for under s 83(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"). The Law Society seeks a suspension for a period of 3½ to 5 years. The respondent did not appear at any stage of the proceedings before us.

2 By way of background, on 8 June 2020, the respondent pleaded guilty ("PG") to two charges in the State Courts of insulting the modesty of a victim ("V") and consented to having two other charges taken into consideration ("TIC") for the purposes of sentencing. The respondent was sentenced to four weeks' imprisonment. A disciplinary tribunal ("DT") was convened on 3 September 2020, to formally investigate two charges preferred against the

respondent under s 83(2)(*h*) of the LPA. We summarise the charges against the respondent in the following table:

Date of offences	**Summary of charges in the State Courts**	**Summary of charges preferred by the Law Society**
April 2017	3rd Charge: Took photographs of V's chest and brassiere (PG)	The respondent intentionally used his handphone to take photographs of V's chest and brassiere and panties without her consent
	4th Charge: Took photographs of V's panties (TIC)	
11 October 2017	1st Charge: Pressed thigh against V's upper arm (TIC)	The respondent intentionally used his handphone to take photographs of V's panties without her consent and pressed his thigh against her upper arm
	2nd Charge: Took photographs of V's panties (PG)	

3 On 8 February 2021, the DT found that both disciplinary charges were made out, and that there was cause of sufficient gravity for disciplinary action pursuant to s 93(1)(*c*) of the LPA. The Law Society filed OS 3 on 8 March 2021. On 6 September 2021, we made an order for substituted service of certain documents on the respondent. The respondent had been absent in the proceedings before the DT and, as we have noted, he also did not appear before us either at the hearing of the Law Society's application for substituted service or at the substantive hearing of OS 3.

4 Having considered the evidence and the Law Society's submissions, we order that the respondent be struck off the roll of advocates and solicitors. In this regard, we refer to the sentencing framework we have set out in *Law Society of Singapore v Seow Theng Beng Samuel* [2022] SGHC 112 at [41] ("*Samuel Seow*"), which we also apply to the present case (see [51] below).

Background

5 The respondent was admitted to the roll of advocates and solicitors on 27 August 2016. At the time of the offences, he was a legal associate at a local law firm (the "First Law Firm"). He was 26 years old at the time of the offences in April 2017, and 27 years old at the time of the offences in October 2017. The respondent resigned from the First Law Firm with effect from 16 November 2017, and started work at another local law firm (the "Second Law Firm") soon after. However, according to his mitigation plea in the criminal proceedings, he left that job after the matter was widely publicised in the media. Since January 2020, it is believed that the respondent has been working as an in-house legal counsel for a business in Indonesia.

6 At the time of the offences, V also was working at the First Law Firm, first as a trainee and later as a legal associate. She was in the same team as the respondent, and they initially shared the same open office space. V was 23 years old in April 2017, and 24 years old in October 2017.

Offences in April 2017

7 Sometime in April 2017, V, who was a trainee at the time, remained in the office of the First Law Firm till late to finish her work. Both the respondent and another person were also in the office and they went to V's cubicle to have a conversation, after which they left V's cubicle. At that time, the respondent

was sharing a room with another lawyer, and no longer worked in the open office space with V. Shortly after, at about 8pm, the respondent returned to V's cubicle alone. Knowing that V would be alone, he had decided to take some compromising photographs of V, ostensibly to ease his stressful state. V was seated facing her computer. The respondent approached V from behind and leaned over her on the pretext of reading her computer screen. V allowed the respondent to do so as she thought he was trying to get a closer look at her computer screen. The respondent asked V what she was working on, and she said she was working on a set of legal submissions.

8 The respondent then rested his body on the back rest of V's chair. He could see her brassiere, which was exposed because the neckline of her dress was loose. He took the opportunity not only to keep looking at her brassiere through the loose neckline, but also to take some photographs of her chest and brassiere so that he could view these later. The respondent held his handphone in his right hand and positioned it downwards over V's right shoulder. He then used his handphone to take several photographs of V's chest and brassiere.

9 The respondent then went back to his room and viewed the photographs he had taken. He was sexually aroused and decided to take some more compromising photographs of V. A few minutes later, he returned to V's cubicle and again asked her what she was working on, to which she repeated her earlier reply that she was working on a set of legal submissions. The respondent proceeded surreptitiously to take several photographs of V's panties before leaving abruptly.

10 The respondent then returned to his room, where he viewed all the photographs he had taken of V before deleting them.

Offences in October 2017

11 On 11 October 2017, V, who by then was a legal associate in the First Law Firm, was having lunch alone in her room in the First Law Firm. At around 2.30pm, the respondent entered her room and closed the door behind him. He sat on the floor to V's right while V sat at her desk.

12 The respondent struck up a conversation with V, asking her what she was eating. V then swivelled her chair to the right to face the respondent. V was wearing a dress that was slightly above knee level. When seated, the hem of her dress was at the mid-thigh level. The respondent saw that V's legs were slightly apart and he could see in between them. He became sexually aroused and decided to take some upskirt photographs of V. The respondent was holding his handphone in his hand, and he pointed the camera lens in the direction of V's thighs. V noticed this and swivelled her chair back to face her desk with her legs underneath it.

13 The respondent continued talking to V in order to get her to turn towards him again. He asked if he could see what she was having for lunch. V then swivelled her chair towards him and showed him her lunch. Her legs were directly in front of the respondent, and the respondent was still holding on to his handphone with the camera lens facing V's legs. V again swivelled back to face her desk.

14 The respondent again asked V to show him her lunch, and she swivelled her chair to face him once more. The respondent was still holding on to his handphone with the camera lens facing V's legs.

15 During this sequence of events, the respondent took several photographs of V's panties using his handphone.

16 When V crossed her legs, the respondent asked her whether it was painful for females to sit cross-legged for too long, and how long she could sit in that way. He then stood up and walked towards V's desk. He rested his buttocks on her desk and struck up another conversation with V. He subsequently pressed his thigh against her upper arm. Thereafter, the respondent returned to his room to view the upskirt photographs he had taken of V, before deleting them.

November 2017: V lodged a police report

17 About a month later, on 7 November 2017, V lodged a police report stating that a male colleague had outraged her modesty. On 15 November 2017, the respondent resigned from the First Law Firm.

18 According to V's Victim Impact Statement in the criminal proceedings, after she reported the matter to the police, the respondent started contacting V with a view to getting her to withdraw her complaint against him. The respondent told V the case would hurt his mother who was very sick, and he even threatened to commit suicide. The respondent also shared his suicidal thoughts with some of their colleagues, intending that they convey this to V. The respondent also enlisted the help of their colleagues to let him know whether V was in the office, and to deliver letters to her on his behalf.

June 2020: The respondent's conviction and referral to the Law Society

Victim Impact Statement

19 On 4 June 2020, V recorded a Victim Impact Statement, where she described the "immediate emotional effect" of the offences, the "emotional toll

of proceeding" against the respondent, and "the longer-term emotional effect of the offences". We reproduce the salient portions of her statement as follows:

> [The immediate emotional effect of the offences]
>
> …After realising what the accused had done to me, I was angry at the Accused for what he did. But I was more angry at the Accused for the way that he did it … This was one of my closest friends in the office, doing this to me repeatedly while always making a point to remind me that I was his best friend. …
>
> I was also angry at myself. From the very first incident in early-2017, I knew what the Accused had done to me. On the one hand I was sure of what had happened, but on the other hand I just could not believe it. So I felt that, in a way, I was responsible for letting this happen to me again. I hated myself for being so stupid and blind. …
>
> In the months immediately after the second incident, I found it very hard to block out my memories of the offences. … Some nights I would drift off for a moment, and then wake up screaming because I dreamt the Accused was lying in my bed beside me, watching me. … It got so bad that my parents would come and check on me throughout the night, and sometimes my mother would even sleep with me so that she could calm me down if I woke up screaming. …
>
> Another predominant emotion I had to deal with was the constant fear I felt around the [redacted] and High Court. After I made my police report, but while the Accused was still working at [the First Law Firm], I was afraid to go to work. … I would carry a long umbrella to work every day to use as a stick in case I needed to protect myself. During the day, if I had to go to the toilet, I would ask my secretary to go with me because I was afraid to walk down that corridor alone. …
>
> Even after the Accused left [the First Law Firm], he simply moved a few buildings down the road to another law firm. … When I went to the High Court for hearings, I would run into the Accused in his court robes. … I was always quite tense, trying to pre-emptively scan the lunch crowd in case the Accused was in it, trying to keep one eye on PTC queue numbers and another eye on the escalators in case the Accused was coming up the next step. …
>
> Eventually I left [the First Law Firm] and went to work in [redacted]. I feel safer walking the streets of [redacted] at midnight than the halls of the Supreme Court by day. …

[The emotional toll of proceeding against the Accused]

… Initially, I was fearful about how to proceed against the Accused because it was my impression at the time that the Accused was untouchable without solid proof. … The impression I got was that the Accused was favoured by many senior people in our team. …

I decided to wait for the Accused to take advantage of me again and then catch him red-handed. … I was so scared and disgusted by the thought of it happening again, but I had to let it happen if I wanted proof. I felt as though I had no other choice. …

This went on for a few weeks, but eventually it became too difficult for me. … That is when I gave up on getting proof by myself and reported the offences to the police. I thought the police could get the proof for me. …

… Once the police informed the Accused of my allegations, the Accused started contacting me to drop the case. He told me how my case would hurt his mother who was already very sick. He threatened to commit suicide. He also used our mutual friends in his emotional blackmail. … These mutual friends came to me to express concern for the Accused's wellbeing, to tell me how much I would regret it if he really killed himself, how *my case* would destroy his career, how *my case* might land him in jail. As if the consequences of *his* actions were now the consequences of mine. He even had our mutual friends spying on me in the office, checking if I was at my desk so that he could send in our other mutual friends to pass me letters on his behalf. …

The emotional blackmail got so bad that I started physically harming myself. … So that whenever the Accused made me feel guilty about all bad things he was going through or might go through in the future, I could look down at my scars and see visible, tangible proof of my pain too. It helped me remember that even though no one can see my pain, it is real and it matters too.

Due to the Accused's refusal to plead guilty for so long, the emotional toll of proceeding against the Accused has continued to this day. Since the start, all I wanted was to forget what happened to me. But with a trial pending, that was the one thing I could not do. Under cross-examination, I cannot afford to mix up whether he held his phone with his left hand or right hand. So I play back the offences in my head, again and again, to make sure I do not forget a single detail. It has been nearly three years since the second offence. It has been nearly three years of having to constantly relive his offences this way. …

> [The longer-term emotional effect of the offences]
>
> … Because the offences were committed by someone I trusted so deeply, and because I was so blinded for so long, I have a lot of self-doubt which persists to this day. I no longer trust myself to judge a person's character. After I left [the First Law Firm] and started at a new office, I was initially resistant to forming personal friendships with any male colleagues. … I would actively remind myself: 'Yes, he's a nice person but he could sexually assault you tomorrow. You never know.' …
>
> The offences have also affected my work. At my job in [redacted], I was usually assigned the victims of sexual assault because I was the only woman on our team. … When my clients recount their assault, their fear, or their feelings of powerlessness, it brings back a lot of similar feelings and makes it painful for me to do my job. Another work-related disadvantage comes up whenever I am assigned to meet with a male client after-hours. … On those occasions, I had to be the 'lazy' lawyer that pushes her clients off to other colleagues because I was afraid of being alone in an empty office with a man.
>
> … I suppose I feel sad for everything that I lost. Before the offences, I could walk across [redacted] without fear. I could walk into the High Court without fear. … Before the offences, a female partner told me that if female lawyers pose in bikinis on Instagram, that might be considered 'conduct unbecoming of a solicitor'. After the Accused confessed to the offences, he remained decked in court robes. … Presently, I do not practice law. I know the Accused might lose some things at sentencing, but he was the one who committed these offences. I did not do anything wrong, but I have lost as well.
>
> [emphasis in original in italics]

The respondent's conviction

20 On 8 June 2020, the respondent pleaded guilty to and was convicted of the following charges in the State Courts (the "Proceeded Charges"):

> 2nd Charge
>
> You … are charged that you, on 11 October 2017 at about 2.30 pm, at [the First Law Firm], did insult the modesty of a woman, namely one [V], by intruding upon the privacy of the said [V], *to wit*, by using your handphone to take photographs of her panties, and you have thereby committed an offence punishable under s 509 of the Penal Code (Cap 224, 2008 Rev Ed).

> 3rd Charge
>
> You … are charged that you, on the first occasion in April 2017 at about 8pm, at [the First Law Firm], did insult the modesty of a woman, namely one [V], by intruding upon the privacy of the said [V], *to wit*, by using your handphone to take photographs of her chest and brassiere, and you have thereby committed an offence punishable under s 509 of the Penal Code (Cap 224, 2008 Rev Ed).

21 The respondent consented to the following two charges being taken into consideration for the purposes of sentencing (the "TIC Charges"):

> 1st Charge
>
> You … are charged that you, on 11 October 2017 at about 2.30pm, at [the First Law Firm], did use criminal force to one [V], knowing it to be likely that you would thereby outrage the modesty of the said [V], *to wit*, by pressing your thigh against her upper arm, and you have thereby committed an offence punishable under Section 354(1) of the Penal [C]ode, Chapter 224.
>
> 4th Charge
>
> You … are charged that you, on the first occasion in April 2017 at about 8pm, at [the First Law Firm], did insult the modesty of a woman, namely one [V], by intruding upon the privacy of the said [V], *to wit*, by using your handphone to take photographs of her panties, and you have thereby committed an offence punishable under s 509 of the Penal Code (Cap 224, 2008 Rev Ed).

22 The respondent was sentenced to four weeks' imprisonment.

Referral to Law Society

23 On 16 June 2020, the Attorney-General referred the respondent to the Law Society pursuant to s 85(3) of the LPA.

24 The Law Society preferred two charges against the respondent, based on the conduct forming the Proceeded Charges and the TIC Charges:

> 1st Charge
>
> That you, [the respondent], an Advocate and Solicitor of the Supreme Court of Singapore, are guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap 161, 2009 Rev Ed) in that, sometime in April 2017, at about 8pm at [the First Law Firm], you did intentionally use your handphone to take photographs of the chest and [brassiere] and panties of a 23-year-old woman, who at the time was your colleague in a law firm, without her consent.
>
> 2nd Charge
>
> That you, [the respondent], an Advocate and Solicitor of the Supreme Court of Singapore, are guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap 161, 2009 Rev Ed) in that, on 11 October 2017, at about 2.30pm at [the First Law Firm], you did intentionally use your handphone to take photographs of the panties of a 24-year-old woman, who at the time was your colleague in a law firm, without her consent and did, [knowing] it likely you would outrage the modesty of the said 24-year-old woman, press your thigh against her upper arm.

Attempts to notify the respondent of the disciplinary proceedings

25 On 24 June 2020, prior to the commencement of proceedings before the DT, the Law Society sent an email to the respondent's email address (the "Email Address"), informing the respondent that it would be applying to the Chief Justice to appoint a DT. No response was received from the respondent. The Email Address had been provided by the respondent in a Notice of Change of Particulars filed in 2017 ("2017 Notice of Change of Particulars").

26 On 1 September 2020, the Law Society applied to the Chief Justice to appoint a DT to hear and investigate the respondent's conduct. On 3 September 2020, the DT was appointed to hear and investigate the matter against the respondent.

27 There were multiple subsequent attempts by the DT Secretariat to contact the respondent. We summarise these as follows:

(a) On 4 September 2020, the DT Secretariat sent letters by courier to the respondent's last known residential address (the "Premises"), and to the Second Law Firm, the principal address at which the respondent last practised in Singapore. The location of the Premises was stated in the respondent's application for a Practising Certificate for Practice in a Singapore Law Practice ("PC") made on 19 December 2017 for the year ending 31 March 2018, the respondent's application for a PC made on 3 April 2019 for the year ending 31 March 2020 (the "2020 PC Application"), and the respondent's 2017 Notice of Change of Particulars. The letter that had been sent to the Second Law Firm was not accepted – it was returned to the DT Secretariat with a note stating: "Do not want to accept. [L]awyer left company."

(b) On 22 September 2020, the DT Secretariat emailed a letter to Allen & Gledhill LLP ("Allen & Gledhill"), counsel for the Law Society, and also sent this to the respondent (by courier, addressed to the Premises and to the Second Law Firm). The letter set out certain timelines pursuant to the Legal Profession (Disciplinary Tribunal) Rules (2010 Rev Ed) (the "DT Rules"). The copy that was sent to the Second Law Firm was again not accepted.

(c) On 2 October 2020 at around 11.45am, one Chan Lai Yin ("Chan"), a process server from Allen & Gledhill, visited the Premises to try to serve a copy of the documents that the Law Society intended to rely on in the hearing before the DT. The respondent was not present at the Premises. Instead, an elderly man and woman answered the door and

informed Chan that they were the respondent's parents. They told Chan that the respondent was "outstationed" [*sic*], and that they did not know when he would return to Singapore. The respondent's mother accepted the documents but refused to sign the acknowledgement because the respondent's father did not allow her to do so.

(d) On 15 October 2020, the DT Secretariat emailed a letter to Allen & Gledhill and sent this also to the respondent (by courier, addressed to the Premises and to the Second Law Firm) informing them of a pre-hearing conference on 19 October 2020. The copy sent to the Second Law Firm was once again not accepted.

(e) On 23 October 2020, the DT Secretariat emailed a letter together with the notice of the hearing to Allen & Gledhill and sent this also to the respondent (by courier, addressed to the Premises and to the Second Law Firm). The copy sent to the Second Law Firm was again not accepted.

(f) As at 9 November 2020, the respondent had not responded to any of these letters; nor did he attend the pre-hearing conference.

28 On 23 November 2020, the hearing before the DT was held. The respondent did not attend the hearing either in person or by counsel. On 8 February 2021, the DT issued its report. It found that the charges preferred by the Law Society against the respondent were made out, and determined, pursuant to s 93(1)(*c*) of the LPA, that there was cause of sufficient gravity for disciplinary action under s 83 of the LPA.

Attempts to notify the respondent of the DT's decision and OS 3

29 On 9 February 2021, the Law Society sent a second email to the respondent's Email Address, informing him of the DT's decision that there was cause of sufficient gravity for disciplinary action and that the respondent be referred to the Court of Three Judges. No response was received.

30 On 8 March 2021, the Law Society filed OS 3 pursuant to ss 94(1) and 98(1) of the LPA. On four subsequent occasions in March 2021, the Law Society attempted to serve a copy of OS 3 and the 1st Affidavit of K Gopalan dated 5 March 2021 (the "Documents") on the respondent at the Premises:

(a) 10 March 2021 at around 8.45pm;

(b) 11 March 2021 at around 7.00pm;

(c) 15 March 2021 at around 10.50am; and

(d) 15 March 2021 at around 11.20am.

On each occasion, there was no response despite ringing the doorbell at the Premises repeatedly.

31 On 16 April 2021, the Law Society filed C3J/SUM 1/2021 ("SUM 1"), seeking an order for substituted service.

32 On 18 August 2021 at around 7.30pm, Allen & Gledhill again attempted to serve the Documents on the respondent at the Premises. The process server, one Lim Puay Hock ("Lim"), rang the doorbell at the Premises. The door was opened by an elderly Chinese man who, upon seeing Lim, abruptly slammed the door shut without saying anything. Lim rang the doorbell several times after

that but there was no response from anyone in the Premises. Lim tried to serve the Documents again at the Premises at about 8.30pm the same evening, but no one came to the door despite Lim persistently ringing the doorbell. In a subsequent affidavit filed on 3 September 2021, Lim confirmed, based on photographs in Chan's affidavit, that the elderly Chinese man who slammed the door shut was the same man Chan had encountered and who had identified himself to Chan as the respondent's father.

33 On 2 September 2021, the Law Society made four phone calls to the phone number provided by the respondent in his 2020 PC Application (the "Phone Number"):

(a) The first phone call made at 9.51am was not answered.

(b) The second phone call made at 1.35pm resulted in a "busy" signal.

(c) The third phone call made at 1.36pm was answered, but the person who answered uttered a Hokkien vulgarity and ended the call.

(d) The fourth phone call made at 1.38pm was answered with the person saying "wrong number" when asked if it was the respondent.

34 On 6 September 2021, we granted SUM 1, and made the following orders:

> 1. Service of the Originating Summons in this action and the 1st Affidavit of K Gopalan dated 5 March 2021 be effected by way of posting a copy of the same together with a copy of the Order for Substituted Service made herein at the Respondent's last known residential address at [the Premises], as well as by email to his last known personal email address [the Email Address].
>
> 2. Such service be deemed good and sufficient service on the Respondent of the Originating Summons and 1st Affidavit of K Gopalan dated 5 March 2021.
>
> 3. There will be costs in the cause.

Our Grounds of Decision for SUM 1 are set out in *Law Society of Singapore v CNH* [2021] SGHC 212 (the "SUM 1 Decision").

35 On 9 September 2021, at 11.37am, Mr K Gopalan ("Gopalan") from the Law Society sent an email to the respondent's Email Address attaching a copy of OS 3 and a copy of the order of court in SUM 1, as well as a link to download the 1st Affidavit of K Gopalan dated 5 March 2021. In sending the email, Gopalan requested both a delivery and a read receipt. Upon sending the email, Gopalan received a notification stating: "Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server …".

36 On the same day, 9 September 2021, at around 7.15pm, Lim visited the Premises to serve the Documents and a copy of the order of court made in SUM 1. Lim left these documents in a sealed envelope against the main gate of the Premises.

The findings of the DT

37 We now briefly summarise the DT's findings:

(a) Having been satisfied that the documents stipulated in rule 6 of the DT Rules, as well as the letters to the respondent, had all been duly served on the respondent and brought to his knowledge and attention, the hearing before the DT proceeded in the respondent's absence pursuant to rule 16 of the DT Rules.

(b) The DT was entitled to and did accept as conclusive the facts underlying and forming the basis of the Proceeded Charges and the TIC Charges.

(c) The DT was of the view that the respondent's conduct, taken as a whole, fell below the required standards of integrity and probity and brought grave dishonour to the profession. The DT took into account the intense emotional effects experienced by V in the aftermath of the offences and the fact that the respondent had pleaded guilty to and was convicted of two charges in the State Courts.

(d) While the respondent's mitigation plea tendered in the criminal proceedings included a medical report by a psychiatrist opining that the respondent's acts were impulsive and arose from an undiagnosed and untreated condition, namely Attention Deficit Hyperactivity Disorder ("ADHD"), this did not have the effect of qualifying the respondent's guilty plea. The respondent did not even appear before the DT or tender any evidence of his psychiatric condition, or otherwise raise this or any other mitigating personal circumstances which could be said to diminish his personal culpability for his conduct. Hence, the DT was entitled to

disregard the references to the respondent's psychiatric condition that had been submitted in the State Courts criminal proceedings. In any event, such evidence would, at best, only go towards the issue of the appropriate sentence to be meted out to the respondent by the Court of Three Judges.

(e) In summary, the DT found that both the charges against the respondent were made out, and determined, pursuant to s 93(1)(*c*) of the LPA, that cause of sufficient gravity for disciplinary action existed under s 83 of the LPA.

Law Society's submissions

38 We turn to summarise the Law Society's submissions in OS 3, which were to the following effect:

(a) OS 3 should be heard in the respondent's absence under s 104 of the LPA. This is an appropriate case to do so because there appears to be some indication of a deliberate attempt by the respondent to avoid personal service. The relevant papers had been served on the respondent at the Email Address and the Premises, and there does not appear to be any further practicable step that may be taken to secure the respondent's appearance before this court.

(b) The DT was correct to find that the charges against the respondent were made out and that cause of sufficient gravity existed.

(c) A suspension from practice for a term of 3½ to 5 years may be an appropriate punishment. This appears to be consistent with sentences meted out to errant solicitors where the misconduct appeared to be of a sexual nature, albeit in different contexts.

Issues before this court

39 The issues we address are as follows:

(a) Should OS 3 be heard and determined notwithstanding the respondent's absence?

(b) Has due cause for disciplinary action under s 83(2)(*h*) of the LPA been established?

(c) What is the appropriate sanction to be imposed on the respondent?

Issue 1: Should OS 3 be heard and determined notwithstanding the respondent's absence?

40 We agree with the Law Society that OS 3 may be heard and determined notwithstanding the respondent's absence, pursuant to s 104 of the LPA:

> **Absence of person under inquiry**
>
> **104.** If the person whose conduct is the subject of inquiry fails to attend before the court, a Disciplinary Tribunal, the Council or the Inquiry Committee, as the case may be, the inquiry or proceedings may be proceeded with without further notice to that person upon proof of service by affidavit or statutory declaration.

41 In the present case, we made an order for substituted service in SUM 1, and, in accordance with our order, service had been effected on 9 September 2021, with proof of service in Lim's and in Gopalan's affidavits (see [34]–[36] above). In the circumstances, notwithstanding the respondent's absence, we are satisfied that OS 3 may be proceeded with without further notice to the respondent.

42 We note that in previous cases, this court has, pursuant to s 104 of the LPA, similarly proceeded with the show cause hearing where the respondent solicitor was not present either in person or by counsel in proceedings before the DT and before this court: see *Re Lim Kiap Khee; Law Society of Singapore v Lim Kiap Khee* [2001] 2 SLR(R) 398 ("*Lim Kiap Khee*") at [10]–[12]; and *Law Society of Singapore v Rasif David* [2008] 2 SLR(R) 955 at [2] and [21]. Indeed, the court has done so in other cases without express reference to s 104 of the LPA: see *Law Society of Singapore v Tay Eng Kwee Edwin* [2007] 4 SLR(R) 171 at [14]–[16]; *Law Society of Singapore v Loh Wai Mun Daniel* [2004] 2 SLR(R) 261 at [6]; and *Law Society of Singapore v Heng Guan Hong Geoffrey* [1999] 3 SLR(R) 966 at [3].

43 It is plain that we are empowered to proceed. It is plainly in the public interest that the matter be brought to a conclusion, and in the absence of any reason for not proceeding and given the seemingly intentional efforts of the respondent to evade service, we are satisfied that we should proceed to deal with the matter.

Issue 2: Has due cause for disciplinary action under s 83(2)(*h*) of the LPA been established?

44 We agree with the Law Society that due cause for disciplinary action under s 83(2)(*h*) of the LPA has been established.

45 In arriving at its findings, the DT relied on the documents tendered in the criminal proceedings before the State Courts, pursuant to rule 23 of the DT Rules and s 45A of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act").

46 Rule 23 of the DT Rules provides:

> **Application of Evidence Act**
>
> **23**.—(1) The Evidence Act (Cap. 97) shall apply to proceedings before the Disciplinary Tribunal in the same manner as it applies to civil and criminal proceedings.
>
> (2) The Disciplinary Tribunal may, in its discretion, accept as conclusive a finding of fact of a court of competent jurisdiction in Singapore to which proceedings the respondent was a party.

47 Section 45A of the Evidence Act provides:

> **Relevance of convictions and acquittals**
>
> **45A**.—(1) Without prejudice to sections 42, 43, 44 and 45, the fact that a person has been convicted … of an offence by or before any court in Singapore shall be admissible in evidence for the purpose of proving, where relevant to any issue in the proceedings, that he committed … that offence … and where he was convicted, whether he was so convicted upon a plea of guilty or otherwise.
>
> …
>
> (3) A person proved to have been convicted of an offence under this section shall, unless the contrary is proved, be taken to have committed the acts and to have possessed the state of mind (if any) which at law constitute that offence.
>
> (4) Any conviction … admissible under this section may be proved by a certificate of conviction … signed by the … registrar of the State Courts … giving the substance and effect of the charge and of the conviction …
>
> (5) Where relevant, any document containing details of the information, complaint, charge, agreed statement of facts or record of proceedings on which the person in question is convicted shall be admissible in evidence.
>
> …

48 Based on rule 23(1) of the DT Rules, we accept the Law Society's submission that the DT was entitled to accept the documents tendered in the respondent's criminal proceedings as evidence of the facts stated therein. These documents include the Statement of Facts and the Certificate of Conviction (ss 45A(4) and 45A(5) of the Evidence Act). In view of the facts set out in the Proceeded Charges, to which the respondent pleaded guilty, and the TIC

Charges, which the respondent consented to being taken into account for the purposes of sentencing (see [20]–[21] above), as well as the matters in the Statement of Facts, we agree with the Law Society that the DT was entitled to find that the facts underlying the charges preferred by the Law Society were made out.

49 In the present case, the Law Society is proceeding under s 83(2)(*h*) of the LPA, which states as follows:

> **Power to strike off roll, etc.**
>
> **83**.—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown —
>
> (*a*) to be struck off the roll;
>
> (*b*) to be suspended from practice for a period not exceeding 5 years;
>
> …
>
> (2) Subject to subsection (7), such due cause may be shown by proof that an advocate and solicitor —
>
> …
>
> (*h*) has been guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession;
>
> …

50 Sexual offences inevitably and almost invariably entail a severe violation of the dignity and bodily integrity of the victim, often causing deep-seated trauma. In our judgment, the respondent's misconduct plainly falls within s 83(2)(*h*) of the LPA and is sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA (*Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 at [30]). The only question is the appropriate sanction to be imposed.

Issue 3: What is the appropriate sanction to be imposed on the respondent?

51 In *Samuel Seow* (see [4] above), we set out the appropriate sentencing framework for cases like the present. The court should first consider whether the misconduct in question attests to any character defects rendering the solicitor unfit to be a member of the legal profession. In this analysis, the court should consider, taking into account all the circumstances of the misconduct, whether the misconduct stemmed from a lapse of judgment rather than a character defect (*Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 ("*Chia Choon Yang*") at [31], [34]; *Loh Der Ming Andrew v Koh Tien Hua* [2022] SGHC 84 at [75], [84] and [106]). Second, the court should consider whether the solicitor, through his misconduct, has caused grave dishonour to the standing of the legal profession. If the answer to either of these two questions is "yes", striking off will be the presumptive penalty.

The respondent's misconduct attests to character defects rendering the respondent unfit to be a member of the legal profession

52 We are satisfied in this case that the misconduct in question attests to character defects rendering the respondent unfit to be a member of the legal profession, for the reasons that follow.

Premeditation and persistence

53 First, we agree with the Law Society that the respondent's conduct was premeditated and persistent.

(a) According to the Statement of Facts in the criminal proceedings, for the offences in April 2017, the respondent leaned over V on the pretext of reading her computer screen and asked V what she was

working on. He then rested his body on the back rest of her chair and took advantage of this position to look at V's brassiere, before taking the photographs in question. After viewing these, the respondent then returned to V's cubicle just minutes later and again asked V what she was working on, before proceeding to take several photographs of her panties. As for the incidents in October 2017, the respondent deliberately sat *on the floor* of V's room, where she was having lunch alone, and positioned himself such that he could easily point his camera lens in the direction of V's thighs. He also persisted in talking to V under the guise of asking her to show him what she was having for lunch so that V would have to swivel her chair to face him, thereby allowing him to take more photographs of V's panties. Viewing his conduct as a whole, even if it could be said that the *first* offence in April 2017 was a momentary lapse of judgment on the respondent's part, the subsequent offences could not possibly be described as such, given the calculated, surreptitious and opportunistic manner in which the respondent went about his plan. It was premeditated.

(b) Next, the respondent's conduct was not only persistent; in fact, it *escalated* with each incident. In April 2017, the respondent first took photographs of V's neckline and brassiere, and then went on to take photographs of her panties – an even more intimate part of her body. In October 2017, the respondent went further. Not only did he take more photographs of V's panties, he also asked V a number of inappropriate and intrusive questions (see [16] above), and then pressed his thigh against her upper arm. If the first incident in April 2017 was just a momentary lapse of judgment on the respondent's part, one would have expected him not to engage in any further instance of such appalling and exploitative conduct. Instead, the respondent seemingly felt emboldened

by each violation of V to push the boundaries further, seemingly thinking he could get away with it.

(c) In sum, having considered the entirety of the respondent's offences, his misconduct was not a temporary aberration, but evinced disturbing predatory instincts which cannot be tolerated in society, much less among members of an honourable profession.

The respondent pressuring V to "drop the case"

54 Second, our conclusion as to the predatory nature of these offences is fortified by the respondent's reaction upon learning that V had reported him to the police, as described in V's Victim Impact Statement (see [19] above). We note that the contents of V's Victim Impact Statement were unrefuted in the respondent's mitigation plea in the criminal proceedings, and the respondent has not appeared before the DT or this court to dispute V's account of events. In our judgment, V's account of the respondent's "emotional blackmail", including claiming that if V proceeded against him it would "hurt his mother who was already very sick", and his threats to commit suicide, as well as his requests to mutual friends to communicate with V on his behalf in an attempt to pressure her into dropping the case against him, all reflect the respondent's cynical and exploitative attitude towards V.

55 Instead of evincing genuine remorse, the respondent attempted to save his own skin by waging a war of emotional attrition against V, in the hope that she would buckle under the pressure. We find this deeply disturbing.

Offences were committed in the workplace against a colleague

56 Third, it is also reprehensible that the respondent committed these offences against his colleague – and friend – in the workplace (specifically, in the office of the First Law Firm). This too is indicative of a character defect for the following reasons.

57 First, the respondent took advantage of V in an environment where she would have expected to be safe, and her guard would have been down. In fact, in October 2017, the respondent took advantage of the fact that V had her own office at that point to violate her dignity behind closed doors *in the middle of the day*, when (and where) she would have least expected this. We can do no better than to repeat V's words from her Victim Impact Statement:

> People told me that my fears were irrational. They told me the Accused would not dare harm me in a public place such as the office. But he did. When the second offence took place, it was in the middle of the workday, with my secretary sitting just outside my office, with our CEO sitting less than fifteen metres away. It was hard not to be afraid when the 'impossible' had already happened to me.

58 Second, the respondent and V were close friends. This was evident from V's own Victim Impact Statement (see [19] above) as well as the respondent's mitigation plea in the criminal proceedings, where he described his relationship with V in terms that they were "best friends in the team at [the First Law Firm]", and even claimed that they "remained best friends" after the incidents in April 2017. V clearly reposed a high degree of trust in the respondent. Sadly, he took advantage of that trust to prey on V and betray their friendship. As V herself put it in her Victim Impact Statement:

> … This was not a stranger upskirting me one time on a random MRT escalator. This was one of my closest friends in the office, doing this to me repeatedly while always making a point to remind me that I was his best friend. Our supposed friendship

> is not simply a matter of context because he used that friendship as a tool in the very commission of his offences. He abused it.

59 Even putting aside the fact that V and the respondent were close friends, there is an implicit degree of trust placed in one's colleagues as colleagues in the same workplace. This relationship offers sexual predators – like the respondent – the perfect pretext to abuse that trust under the guise of work or casual conversation, as unfortunately transpired in this case.

60 In our judgment, the respondent's opportunistic exploitation of V's expectation of safety in the workplace, his abuse of V's trust as a colleague and a friend, and the factors we have mentioned earlier, namely the premeditated and persistent nature of the offending, the lack of remorse and the cynical and manipulative attitude of the respondent towards V, together demonstrate a defect of character so serious that it renders the respondent unfit to be a member of the legal profession.

The respondent's failure to plead guilty at an early stage

61 Fourth, the respondent only pleaded guilty in June 2020. This was some three years after the commission of the offences and, based on the Prosecution's sentencing submissions for the criminal proceedings, about 8 months after the conclusion of a two-day ancillary hearing in November 2019. In our judgment, the respondent's failure to plead guilty at an early stage is indicative of a character defect for two reasons.

62 First, if the respondent were genuinely contrite, he would not have waited till June 2020 – some 8 months after the ancillary hearing in November 2019 – to plead guilty. This evinces his lack of remorse regardless of whether or not the respondent was solely responsible for the entire delay in the resolution

of the matter. Simply put, it is the evident lack of remorse on his part that disturbs us.

63 Second, as a lawyer himself, the respondent knew, or at least ought to have known, that the prolonged delay would have caused emotional stress and anxiety to V as she would have to relive the episode in her mind in her preparation to testify at the trial. As V explained in her Victim Impact Statement:

> Due to the Accused's refusal to plead guilty for so long, the emotional toll of proceeding against the Accused has continued to this day. Since the start, all I wanted was to forget what happened to me. But with a trial pending, that was the one thing I could not do. Under cross-examination, I cannot afford to mix up whether he held his phone with his left hand or right hand. So I play back the offences in my head, again and again, to make sure I do not forget a single detail. It has been nearly three years since the second offence. It has been nearly three years of having to constantly relive his offences this way.
>
> Further, trial dates were originally set for November 2019. Although the Accused's defence converted those trial dates into an ancillary hearing, the fact remains that I was fully prepared to testify on those dates. I was sitting in Court the first day of the first tranche, waiting to be called in. Therefore, even though the Accused has finally decided to plead guilty, I am not sure what he has spared me at this point, if anything at all.

64 In our judgment, the respondent's delay in pleading guilty is further evidence of his unwillingness to take responsibility for his own actions, as well as his cynical and exploitative attitude towards V (see [54]–[55] above).

Absence from proceedings

65 Finally, the respondent's complete absence from the proceedings before the DT and before us underscores the utter lack of remorse on his part. The respondent has not deigned to proffer any explanation for his actions – or to express any remorse – despite the many attempts at service at the Premises (and

to contact him at the Email Address and the Phone Number) as we have set out earlier (see [25]–[36] above). As we previously observed in the SUM 1 Decision (see [34] above), there seemed to us to have been some indication of a deliberate attempt to avoid personal service.

66 In our view, the respondent's absence from these proceedings is at best indicative of his disinterest, and at worst, his disdain. We agree with the Law Society that, were the respondent really remorseful, he would have appeared before the DT and this court and demonstrated his willingness to face the consequences of his actions. His lack of remorse and unwillingness to accept responsibility for his actions only fortifies our conclusion that his misconduct stems from an underlying character defect rather than a momentary lapse in judgment (see [55] above).

Conclusion

67 For these reasons, we consider that the respondent's misconduct attests to character defects rendering the respondent unfit to be a member of the legal profession. Thus, the presumptive penalty is an order striking him off the roll. We turn to consider all other factors for completeness.

The respondent's misconduct has caused grave dishonour to the standing of the legal profession

68 In our judgment, the respondent's misconduct has caused grave dishonour to the standing of the legal profession, for the following reasons.

69 First, as we mentioned earlier (see [50] above), sexual offences severely violate the dignity and bodily integrity of the victim. In our view, the conduct

in question is egregious and would besmirch the reputation of the legal profession if the respondent were allowed to remain on the roll.

70 Second, we have noted earlier that the respondent committed these offences in the workplace against his colleague (see [56]–[60] above). In our judgment, this entails a particular breach of trust that brings grave dishonour to the profession. Workplaces are built on trust and mutual respect – people go about their work with the expectation that their colleagues will not abuse or violate them. Regrettably, the respondent's offences against V have sullied that expectation. And the offences are aggravated here because they took place in the office of a law firm, a place that should be associated with upholding the values of the profession.

There are no mitigating factors

71 We turn to consider whether there are any mitigating factors and agree with the Law Society that there are none in the present case. This is unsurprising given that the respondent has totally ignored these proceedings and has not sought to mount any attempt at mitigation (*Lim Kiap Khee* at [28]).

72 For completeness, however, we briefly deal with some of the points raised by the Law Society:

(a) First, we agree with the Law Society that, although the respondent pleaded guilty to the criminal charges in the State Courts, he did not appear before the DT and did not plead guilty to the charges before the DT (*Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [54]). Unlike solicitors in other cases who had pleaded guilty and in that way evidenced remorse and saved resources, there is no mitigating weight to be attributed to the respondent's conduct in these

disciplinary proceedings (*Law Society of Singapore v Dhanwant Singh* [2020] 4 SLR 736 at [123]).

(b) Second, since the respondent has not appeared before the DT to raise any mitigating factors, we agree with the Law Society that we should not have regard to his claim of suffering from ADHD, which was highlighted in a medical report dated 21 November 2017 adduced in the criminal proceedings. We add that, *even if* the respondent's ADHD could be taken into consideration by this court in determining the appropriate sanction (and even *assuming* in the respondent's favour that his ADHD had played a role in his commission of the offences), in disciplinary proceedings against solicitors, personal mitigating circumstances that diminish the culpability of the errant solicitor will have less, if any, weight than might be the case in criminal proceedings. This is because unlike in criminal proceedings, the paramount considerations in disciplinary proceedings are the protection of the public and upholding public confidence in the integrity of the legal profession (*Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 at [40]–[41] ("*Ravi*")). Thus, there is no basis for placing significant weight on this factor in any event.

(c) Third, the Law Society informed us that the respondent did not file an application for a PC when his last PC expired on 31 March 2020. A voluntary suspension of practice may be considered as a mitigating factor if and to the extent the court is satisfied that it demonstrates genuine remorse and contrition on the part of the errant lawyer, but it is a matter for the court's discretion as to how this should be factored in the analysis; the court will typically not give credit for the full period of voluntary suspension because it is ultimately not for the lawyer to

determine his punishment (*Chiong Chin May Selena v Attorney-General and another* [2021] 5 SLR 957 at [11], referring to *Chia Choon Yang* at [52]–[53]). What is key is "whether one's cessation was truly voluntary and was undertaken in recognition of or in atonement for his transgressions" (*Choy Chee Yean v Law Society of Singapore and another* [2020] 3 SLR 1268 at [7]). In this case, we do not think the respondent should receive any credit for not renewing his PC. First, while the respondent may not be practising in *Singapore* any longer, he is believed to be working as an in-house counsel for a business in Indonesia as of January 2020, based on his mitigation plea in the criminal proceedings. In short, it appears that he continues to earn a living as a lawyer elsewhere. Second, the respondent stated in his mitigation plea that he was "forced" to leave his job with the Second Law Firm after his offences against V were widely publicised by the media, and that this "signified to him the end of his private practice in Singapore no matter how the future [unfolded] for him". There is no indication that the respondent ceased practice in Singapore voluntarily, in recognition of or in atonement for his transgressions, or out of genuine remorse or contrition. Rather, in his own words, the respondent was "forced" to leave his job in Singapore because he was unable to cope with the fallout from his own actions. Further, as was the case in *Chia Choon Yang* (at [53]), the respondent's misconduct had already come to light by the time he ceased practising in Singapore. In the circumstances, we do not think that the respondent should be given any credit for the period in which he has ceased practice.

73 In sum, we consider that there are no mitigating factors in this case. We do, however, wish to highlight two additional points that were raised in the course of the hearing.

The relevance of seniority (or lack thereof)

74 First, the Law Society compared the present case to *Law Society of Singapore v Ismail bin Atan* [2017] 5 SLR 746 ("*Ismail bin Atan*"), which concerned a solicitor who had grabbed and kissed the victim (a female legal executive employed by the firm of which the solicitor was a member at the material time), rubbed his body against hers and repeatedly suggested that they have an affair (at [4]). The solicitor in that case was struck off. The Law Society submits that a lower sanction may be warranted here than was imposed in that case because the errant solicitor in *Ismail bin Atan* was a senior lawyer of about 20 years' standing and stood in a supervisory position in relation to the victim, while the respondent in the present case was a fellow junior lawyer in the same team as V. We do not accept this submission.

75 First, the more senior an advocate and solicitor, the more damage he does to the integrity (and therefore the standing) of the legal profession (*Ismail bin Atan* at [18]). Seniority is therefore relevant as an aggravating factor. *Absence* of an aggravating factor, however, is not a mitigating factor. Thus, the mere fact that the respondent was in his first year of practice when he committed the offences against V does not justify a lower sanction (see *Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466 at [56]).

76 That being said, the fact that an errant solicitor is relatively junior *could* be mitigating if such inexperience explains or mitigates the misconduct. For example, where a solicitor was disrespectful to a District Judge ("DJ"), by

turning his back to the DJ while being addressed and remaining seated while being addressed by the DJ, this court took into account the fact that such misconduct was committed when the solicitor was a relatively junior counsel of about seven years' experience, as well as the likelihood that he was young and impressionable and behaved as he did because of "an exaggerated or inflated notion that that was the way to impress his clients as a fearless defence counsel" (*Law Society of Singapore v Ravi Madasamy* [2007] 2 SLR(R) 300 at [36], [38] and [39]).

77 In the present case, however, we see no nexus between the respondent's inexperience and his misconduct. The gravity of the offences he committed against V are plain to any solicitor regardless of his or her seniority. We therefore do not consider the respondent's lack of seniority at the time of the offences to be a mitigating factor.

The relevance of punishment in criminal proceedings

78 Second, the Law Society submitted at the hearing before us that the respondent had already been punished in the criminal proceedings with four weeks' imprisonment, and this could be taken into consideration by this court in determining the appropriate disciplinary sanction. The Law Society referred to *Law Society of Singapore v Wong Sin Yee* [2003] 3 SLR(R) 209 ("*Wong Sin Yee (2003)*"), where this court took into account the fact that the errant solicitor had been "severely punished" for an assault charge, having been sentenced to the maximum permissible imprisonment term for the offence (at [20]).

79 Since the decision in *Wong Sin Yee (2003)*, however, we note that there have been two decisions concerning the criminal law that considered (and rejected) such an argument: *Stansilas Fabian Kester v Public Prosecutor* [2017]

5 SLR 755 ("*Stansilas*") and *M Raveendran v Public Prosecutor* [2021] SGHC 254 ("*Raveendran*").

(1) *Stansilas*

80 In *Stansilas*, the appellant was a regular serviceman in the Singapore Armed Forces (the "SAF") who had been convicted of drink driving. He argued, among other things, that a custodial sentence would be "crushing" as he would end up also facing SAF disciplinary proceedings and had already felt the consequences of his actions. According to the appellant, his performance bonuses and merit increments had been withheld, and he would suffer a likely bar against promotion for a duration (at [24]). He also argued that a custodial sentence would bring an end to his career in the SAF because a serviceman would be discharged from the SAF upon being sentenced to a term of imprisonment for a criminal offence (at [25]).

81 The High Court in *Stansilas* observed that previous cases had not been consistent in their consideration of the relevance of disciplinary sanctions to criminal proceedings (at [105]–[108]). The court then considered two different arguments that emerged from the case law, and rejected both these arguments (at [109]–[111]):

> 109 For clarity of analysis, I distinguish between two different sorts of arguments that emerge from the case law. The first argument is that an offender who has had certain sanctions or measures imposed on him by his employer following his misdemeanour has 'already been punished' (using the appellant's language) and should therefore receive a lesser degree of (further) punishment from the court. I do not accept this argument. An employer may have any number of reasons for deciding to impose penalties on the offender, such as the detriment that the offender's conduct has had on the employer's reputation, or a decision by the employer that the offender has by his conduct demonstrated that he is not suited for a particular position or appointment. These decisions are based

on organisational goals and values, and are often difficult for a court to divine or assess. More importantly, these reasons have little to do with the rationale for punishment under the criminal law – which is the preservation of morality, protection of persons, the preservation of public peace and order and the need to safeguard the state's institutions and wider interests: *PP v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [17].

110 The second argument is that an offender should not receive punishment of a certain type or above a certain degree because he will lose his job or face disciplinary proceedings otherwise. The argument is that the imposition of a certain type or degree of punishment will lead to hardship or compromise the offender's future in some way and that this additional hardship may and indeed should be taken into account by the sentencing court. However, this will not often bring the offender very far. Prof Ashworth accounts for the general lack of persuasiveness of such arguments in the following lucid fashion (*Sentencing and Criminal Justice* at p 194):

> Is there any merit in this source of mitigation [*ie*, the effect of the crime on the offender's career]? Once courts begin to adjust sentences for collateral consequences, is this not a step towards the idea of wider social accounting which was rejected above? In many cases one can argue that these collateral consequences are a concomitant of the professional responsibility which the offender undertook, and therefore that they should not lead to a reduction in sentence because the offender surely knew the implications. Moreover, there is a discrimination argument here too. If collateral consequences were accepted as a regular mitigating factor, this would operate in favour of members of the professional classes and against 'common thieves' who would either be unemployed or working in jobs where a criminal record is no barrier. It would surely be wrong to support a principle which institutionalized discrimination between employed and unemployed offenders.

111 Whichever way one looks at it, I do not regard it as relevant to sentencing. A person who breaches the criminal law can expect to face the consequences that follow under the criminal law. Whether or not such an offender has already or may as a result suffer other professional or contractual consequences should not be relevant to the sentencing court.

(2) *Raveendran*

82 In *Raveendran*, the appellant pleaded guilty to one charge of drink driving and was sentenced to one week's imprisonment by the District Court (at [1]). This was just after his retirement as a 1st Warrant Officer after serving for around 38 years with the SAF (at [10]). The appellant stated that he would have been entitled to certain emoluments upon retirement, and that these had been withheld from him as a result of his conviction and might potentially be forfeited if he were sentenced to a term of imprisonment (at [10]). He argued that the potential consequences he faced in connection with the potential loss of his employment benefits were relevant to sentencing in two ways: first, this could be a basis for the exercise of judicial mercy, and second, this could be viewed as a mitigating factor in sentencing in the sense that because he stood to suffer more than other offenders who committed the same offence, his sentence should be adjusted on grounds of proportionality (at [11]).

83 The High Court in *Raveendran* observed that there were four possible bases upon which the reduction of a sentence on account of the potential loss of emoluments might be justified, one of which included the principle of equal impact. This principle rests on the notion that if an offender suffers from some condition that would render the sentence significantly more onerous for him than for other offenders, a sentencing adjustment may be made so as to avoid such an "undue differential impact" upon him (at [15]). The court held that the principle does not, however, extend to factors that are *extrinsic* to an offender, such as financial consequences that would befall him as a consequence of his sentence (at [25]), for the following reasons:

(a) First, extrinsic factors are *downstream consequences* that might or would befall the offender because of the imposition of a sentence. It

is impossible for the court to place a value on such downstream consequences and to translate the potential financial losses into an appropriate reduction in sentence – the two are simply incommensurable (at [32]).

(b) Second, the different potential financial losses that could be faced by offenders cannot meaningfully be compared, given the varied consequences that one could suffer flowing from a particular sentence. Moreover, every offender who is imprisoned for some length of time will likely lose his employment altogether. That plainly cannot be a reason for not meting out a sentence of imprisonment (at [33]).

(c) Third, the consequences that would arise as a result of the sentence will often be indeterminate at the point when the case is heard before the court. In respect of disciplinary action that *might* be taken in cases where the disciplinary proceedings would be held only after the court proceedings, it would be unprincipled for the courts to pre-empt how the offender might be disciplined and attempt to influence that by imposing a more lenient court sentence. Separately, in respect of disciplinary actions that have already been taken against the offender, it is not the business of the courts to indirectly alleviate the consequences and severity of any disciplinary action by imposing a more lenient court sentence to offset the effects of that disciplinary action on the offender (at [34]).

(d) Referring to *Stansilas*, the court said that the Singapore courts had generally rejected the proposition that additional hardship suffered by an offender due to the potential consequences of his sentence on his employment may be considered by the sentencing court (at [39]). Taking

account of factors extrinsic to an offender have nothing to do with the sentencing objectives that the court is obliged to consider in this context, and is likely to undermine the functioning of the criminal justice system (at [40]) as it would result in the more favourable treatment of certain individuals (at [43]).

(3) The relevance of criminal proceedings to disciplinary proceedings

84 In our judgment, the analysis in *Stansilas* and *Raveendran* equally applies the other way round – that is to say in considering the relevance of criminal proceedings and sanctions when determining disciplinary proceedings.

85 First, as noted in *Stansilas* (at [109]), the rationale for punishment under the criminal law includes the preservation of public peace and order, and the need to safeguard the state's institutions and wider interests. This is different from the rationale for punishment under the disciplinary regime, which is primarily concerned with the protection of members of the public who are dependent on solicitors in the administration of justice and the upholding of public confidence in the integrity of the profession (*Ravi* at [31]–[35]). In our judgment, taking account of factors extrinsic to an offender has nothing to do with the sentencing objectives that the disciplinary court is obliged to consider in this context, and in fact, it is likely to undermine the functioning of disciplinary proceedings as it would result in the more favourable treatment of certain individuals (*Raveendran* at [43]). Such reasoning would mean that offenders like the respondent who are punished under the criminal law would be entitled to a *more lenient* disciplinary sanction than those offenders who receive a lighter punishment under the criminal law, or offenders who may well have been convicted but were eventually not prosecuted (see *Ismail bin Atan* at [11], where the matter was compounded).

86 Second, we think that the concerns articulated in *Raveendran* (see [83] above) equally apply in the disciplinary context:

(a) It is impossible for this court to place a value on downstream consequences like criminal sanctions and to translate this into an appropriate reduction in sentence in disciplinary proceedings.

(b) The different potential criminal consequences that could be faced by offenders cannot meaningfully be compared, given the varied punishments that one could suffer flowing from a particular offence.

(c) In respect of criminal punishments already imposed on the offender (like in the present case), it is not the business of the disciplinary court to indirectly alleviate the consequences and severity of any criminal proceedings by imposing a more lenient disciplinary sanction to offset the effects of the criminal punishment on the offender. As for criminal consequences that the offender *might* suffer (in cases where the criminal proceedings take place after the disciplinary proceedings), it would be unprincipled for the court to pre-empt how the offender might be punished under the criminal law and attempt to influence that by imposing a more lenient disciplinary sanction.

87 We therefore do not agree with the Law Society that we should consider the respondent's sentence of four weeks' imprisonment in the criminal proceedings in determining the appropriate disciplinary sanction.

Conclusion

88 For the reasons we have set out above, we order that the respondent be struck off the roll.

89 We award the costs of OS 3, SUM 1 and the DT proceedings (see ss 103(3) and (4) of the LPA) to the Law Society, and we fix this at $13,000 together with disbursements of $4,464.02.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Ramesh s/o Selvaraj and Afzal Ali (Allen & Gledhill LLP) for the applicant;
The respondent not attending and unrepresented.