IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 81

Originating Summons No 4 of 2021

Between

The Law Society of Singapore

… *Applicant*

And

Zero Geraldo Mario Nalpon

… *Respondent*

JUDGMENT

[Legal Profession — Contempt of court]
[Legal Profession — Disciplinary proceedings]
[Legal Profession — Professional conduct — Breach]
[Legal Profession — Professional conduct — Grossly improper conduct]
[Legal Profession — Show cause action]

TABLE OF CONTENTS

Law Society of Singapore
v
Nalpon, Zero Geraldo Mario

[2022] SGHC 81

Court of Three Judges — Originating Summons No 4 of 2021
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Chao Hick Tin SJ
19 January 2022

12 April 2022 Judgment reserved.

Chao Hick Tin SJ (delivering the judgment of the court):

Introduction

1 This is an application by the Law Society of Singapore ("the Law Society") pursuant to s 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA") for an order that Mr Zero Geraldo Mario Nalpon ("Mr Nalpon") be made to suffer punishment under s 83(1) of the LPA for his conduct in relation to Magistrate's Appeal No 9269 of 2018 ("the MA") and subsequent events. Mr Nalpon is an advocate and solicitor of 26 years' standing and is the sole proprietor of Nalpon & Co. Disciplinary Tribunal 1 of 2020 ("the DT"), which was convened to investigate the complaints against Mr Nalpon, found him guilty of the charges preferred by the Law Society and determined that cause of sufficient gravity for disciplinary action existed under s 83 of the LPA.

2 Arising from the facts of this case are three important questions: first, the proper procedure to be followed when the disciplinary process is initiated by a complaint made by the Attorney-General ("the AG") as prescribed in s 85(3)(*b*) of the LPA; second, the propriety of publishing social media posts relating to pending court proceedings; and third, whether (and if so when) non-compliance with a civil costs order may amount to a *disciplinary* breach.

Criminal proceedings against Mr Nalpon's client

3 Mr Nalpon acted for the accused in the case *Public Prosecutor v Lim Chee Huat* [2018] SGDC 272, where on 5 September 2018 District Judge Mathew Joseph ("the DJ") convicted the accused on a charge of drug consumption under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed). On 12 September 2018, the accused filed his notice of appeal against his conviction and sentence. In view of the notice of appeal filed, the DJ wrote and released his written Grounds of Decision on 18 October 2018 (hereinafter referred to as "the DJGD"). The appeal (hereafter referred to as "the Magistrate's Appeal" or "the MA"), at which Mr Nalpon again represented the accused, was heard on 1 March 2019 by a Judge of the General Division of the High Court ("the Judge"). On 24 May 2019, the Judge dismissed the accused's appeal in *Lim Chee Huat v Public Prosecutor* [2019] 5 SLR 433 ("HC Judgment"). However, the Judge found that the DJ had failed to fully appreciate the material that was tendered before him, as there was substantial reproduction of the Prosecution's submissions in the DJGD and an absence of an assessment of the submissions from both sides, such that the Judge could not accord any deference to the DJ's findings (HC Judgment at [52]–[56]).

4 In February 2019 and again in May 2019, Mr Nalpon published material relating to the MA proceedings on a "Public" Facebook group named "Law

Society versus Zero Nalpon" ("the Facebook Group"). These acts formed the subject of the first charge against Mr Nalpon ("the First Charge").

Non-publication direction and costs order against Mr Nalpon

5 On 21 February 2019, leave was granted to the AG to issue a non-publication direction under s 13(1) of the Administration of Justice (Protection) Act 2016 (Act 19 of 2016) ("the AJPA") directing Mr Nalpon to cease publishing the material he had published on the Facebook Group in February 2019 ("the NPD"). Mr Nalpon removed this material on 23 February 2019.

6 Mr Nalpon's application to set aside the NPD was dismissed on 29 April 2019 and, pursuant to an order made on the same date, he was ordered to pay the AG's costs fixed at $2,600, inclusive of disbursements ("the Costs Order" and "the Costs"). On 7 June 2019, Mr Nalpon provided a cheque to the Attorney-General's Chambers ("AGC"), made payable to "The Attorney-General". Several days later, on 13 June 2019, a Deputy Public Prosecutor ("DPP"), Mr Senthilkumaran Sabapathy ("Mr Sabapathy"), informed Mr Nalpon that the cheque would need to be re-issued and made out to the "Attorney-General's Chambers", or, in the alternative, Mr Nalpon could make payment of the Costs in cash in person to an authorised representative of the AG at the AGC. Mr Nalpon did neither. However, at the hearing before us, we were informed by the parties that Mr Nalpon had made payment of the Costs in December 2021. This was done by means of an un-crossed cheque made in favour of "The Attorney-General" on 29 December 2021, which was encashed into the AGC's bank account on 11 January 2022.

7 Mr Nalpon's (initial) non-payment of the Costs and related publications on the Facebook Group formed the subject of the second charge against him ("the Second Charge").

Complaints

8 On 17 and 20 June 2019, pursuant to s 85(3)(*b*) of the LPA, two complaints against Mr Nalpon (each a "Complaint", and collectively, "the Complaints") were lodged with the Law Society, with a further request that the matters be referred to a Disciplinary Tribunal. The Complaints, written under the AGC's letterhead, set out the facts giving rise to the First and Second Charges. Paragraphs 1 and 2 of each Complaint stated that the "Attorney-General" referred the complaint to the Law Society and requested for the matter to be referred to a Disciplinary Tribunal. Both Complaints were signed off by Mr Tan Kiat Pheng, the Chief Prosecutor of the AGC ("CP Tan"), in the following manner:

> TAN KIAT PHENG
> CHIEF PROSECUTOR
> *for and on behalf of the* ATTORNEY-GENERAL
> SINGAPORE

Charges

9 The Law Society initially proceeded on only the First Charge, an alternative to the First Charge (which is not material for present purposes), and the Second Charge. The details of these two charges are as follows:

> (a) The First Charge, which was brought under s 83(2)(*b*) of the LPA and cited r 13 of the Legal Profession (Professional Conduct) Rules 2015 ("the PCR"), related to Mr Nalpon's alleged publication of material concerning the MA proceedings which amounted to a contempt of court and/or was calculated to interfere with a fair trial of the case and/or prejudice the administration of justice.

(b) The Second Charge, which was brought under s 83(2)(*h*) of the LPA, related to Mr Nalpon's alleged wilful failure to comply with the Costs Order; Mr Nalpon's publication of a false allegation that the AGC had requested for payment to be made to a separate entity other than the AG; and Mr Nalpon's publication of the exchange of correspondence between himself and the AGC on this matter.

10 On 9 March 2020, Mr Nalpon filed a preliminary application to the DT seeking an order to strike out the Complaints. On 16 March 2020, Mr Nalpon filed his Defence in the DT proceedings.

11 According to the Law Society, on or around 9 March 2020, it came to the attention of its director, Mr K Gopalan ("Mr Gopalan"), that Mr Nalpon had allegedly published material relating to the DT proceedings on the Facebook Group from January to March 2020. In publishing this material, Mr Nalpon had also made several comments regarding the DT proceedings and the parties involved therein.

12 On 10 April 2020, the Law Society applied for leave to amend its Statement of Case to prefer the following additional charges against Mr Nalpon relating to these further publications and comments ("the Third and Fourth Charges"):

(a) The third charge (brought under s 83(2)(*b*) and, in the alternative, s 83(2)(*h*) of the LPA), which related to Mr Nalpon's alleged publication of material concerning the DT proceedings which was calculated to interfere with the fair trial of a case and/or prejudice the administration of justice, in breach of the Law Society's Practice

Direction 6.1.1 on Media Comments and Internet / Social Media Posts ("PD 6.1.1") and/or r 13 of the PCR.

(b) The fourth charge (brought under s 83(2)(*b*), and in the alternative, s 83(2)(*h*) of the LPA), which related to Mr Nalpon's alleged publication of material containing adverse and/or discourteous remarks on the conduct or character of the Law Society, its solicitors, the DT Secretariat and/or the DT, in breach of PD 6.1.1 and/or r 13 of the PCR.

Disciplinary proceedings and the DT's determination

13 On 19 October 2020, the DT dismissed Mr Nalpon's striking out application, but granted the Law Society's application for leave to amend its Statement of Case ("the DT's Decision").

14 Thereafter, the hearing before the DT took place on 14 and 15 December 2020 ("the DT Hearing"). At the close of the Law Society's case, Mr Nalpon made a submission of no case to answer on two grounds: (a) first, that the proceedings were void because the wrong party had filed the Complaints (namely, CP Tan instead of the AG), in breach of s 85(3)(*b*) of the LPA; and (b) second, that the complainant was not called to give evidence and most of the documents (including the Complaints) had not been admitted into evidence.

15 The DT rejected Mr Nalpon's submission of no case to answer as it was satisfied that the Law Society had established a *prima facie* case *apropos* each of the Charges. The DT then invited Mr Nalpon to enter his defence, but he declined to give any evidence-in-chief, and the proceedings were thereafter brought to a close.

16 In its report dated 14 June 2021 ("the DT's Report"), the DT set out its grounds for rejecting Mr Nalpon's submission of no case to answer, and found Mr Nalpon guilty on all four charges (without making any findings on their alternatives). The DT determined that cause of sufficient gravity for disciplinary action existed under s 83 of the LPA.

The parties' cases

17 The Law Society submits that the DT's determination should be affirmed, and urges this court to find that cause of sufficient gravity for disciplinary action under s 83 of the LPA exists in respect of each of the four charges. It seeks sanctions of "the highest and most severe level" against Mr Nalpon under s 83(1) of the LPA, to properly reflect the true severity of his misconduct.

18 Mr Nalpon's main submissions in response can be summarised as follows:

(a) First, that the Complaints are void because they were not filed by the AG in compliance with s 85(3)(*b*) of the LPA.

(b) Second, that the proceedings against him stemmed from the AGC's displeasure at the publication of his criticisms regarding the DJ's plagiarism, and that these acts of publication were not in contempt of court and/or in breach of r 13 of the PCR.

(c) Third, that his non-payment of the Costs to the AGC could not amount to misconduct, particularly because the AGC had no basis in law to compel him to pay the Costs in its name.

(d) Fourth, that the Third and Fourth Charges relate to his publication of material concerning the present DT proceedings, which are completely unrelated to the Complaints lodged by the AG against him which initially formed the subject of the DT proceedings.

Issues before this court

19 The facts of this case and the arguments made before us raised the following issues for our determination:

(a) First, are the proceedings against Mr Nalpon void because the Complaints were not filed by the AG personally?

(b) Second, was the DT entitled to investigate and make determinations in respect of the Third and Fourth Charges?

(c) Third, has due cause been shown under s 83(2) of the LPA in respect of the relevant charges, such that Mr Nalpon should be subject to the sanctions set out in s 83(1) of the LPA? If so, what is the appropriate sanction that should be imposed on Mr Nalpon?

We will address each of these issues in turn.

Whether the proceedings were void for non-compliance with s 85(3)(*b*) of the LPA

20 We begin with Mr Nalpon's contention that the disciplinary proceedings against him were void because the Complaints were not filed by the AG personally in compliance with s 85(3)(*b*) of the LPA. Section 85(3)(*b*) provides that, where certain office holders refer a matter to the Law Society and request that it be referred to a Disciplinary Tribunal, the Law Society must apply to the Chief Justice for the appointment of a Disciplinary Tribunal:

> **Complaints against regulated legal practitioners**
>
> **85.**— …
>
> …
>
> (3) Any judicial office holder specified in subsection (3A), *the Attorney-General*, the Director of Legal Services or the Institute may at any time refer to the Society any information touching upon the conduct of a regulated legal practitioner, and the Council must —
>
> …
>
> (*b*) if that judicial office holder, *the Attorney-General*, the Director of Legal Services or the Institute (as the case may be) requests that the matter be referred to a Disciplinary Tribunal, apply to the Chief Justice to appoint a Disciplinary Tribunal.
>
> [emphasis added]

21 In the present case, Mr Nalpon contends that the Complaints were made by *CP Tan*, purportedly on behalf of the AG. Mr Nalpon further contends that this is impermissible because only the AG had the statutory power to file the Complaints under s 85(3)(*b*) of the LPA, and the AG did not have the power to delegate the making or signing of the Complaints to his staff to perform on his behalf. Mr Nalpon argues that, in any event, there is no evidence that CP Tan was duly appointed to act for the AG or to sign the Complaints on the AG's behalf.

22 We reject this argument. On the material before us, it is plain that the Complaints were duly made by the AG himself in accordance with s 85(3)(*b*).

23 In this regard, and as we pointed out to Mr Nalpon during the hearing before this court, a distinction should be drawn between the *exercise* of a power and the *signification* of the exercise of that power. In relation to Ministers' powers, this is reflected in s 35 of the Interpretation Act 1965 (2020 Rev Ed) ("the IA (2020 Rev Ed)"):

> **Signification of orders, etc., of Minister**
>
> **35.** Where any written law *confers upon a Minister power* to make any subsidiary legislation or appointment, give any direction, issue any order, authorise any thing or matter to be done, grant any exemption, remit any fee or penalty or exercise any other power, *it is sufficient*, unless in the written law it is otherwise provided, *if the exercise of such power by the Minister is signified under the hand of the Permanent Secretary to the Ministry for which the Minister is responsible or of any public officer duly authorised in writing by the Minister*.
>
> [emphasis added]

24 Section 35 can be contrasted with s 36 of the IA (2020 Rev Ed), which allows a Minister to delegate the *exercise* of a statutory power to an officer designated by him, who would then exercise that power on the Minister's behalf. Thus, in *Asia Development Pte Ltd v Attorney-General* [2020] 1 SLR 886 ("*Asia Development*") at [12], the Court of Appeal distinguished the question of whether the Minister's exercise of power was properly *signified* from the question of whether it had to be *exercised* by the Minister in person. The Court of Appeal characterised s 35 of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the IA"), which is substantively identical to the present s 35, as serving "an *evidentiary* function, in that acts of a Minister would be deemed to be such if signified under the hand of the relevant Permanent Secretary or of a public officer duly authorised in writing by the Minister" [emphasis added] (*Asia Development*, also at [12]).

25 Returning to the matter of the AG's powers, s 85(3)(*b*) of the LPA empowers the AG to *refer* to the Law Society information touching upon the conduct of regulated legal practitioners, and to *request* that the matter be referred to a Disciplinary Tribunal. It does not specify how the AG's exercise of such powers ought to be signified. In the present case, it is clear on the face of the Complaints that these statutory powers were in fact *exercised* by the AG, and were not delegated or devolved to another officer. This is indicated both by

the fact that CP Tan signed off on each Complaint "for and on behalf of the ATTORNEY-GENERAL", and by the identification of the "Attorney-General" as the party referring the complaint to the Law Society and requesting for the matter to be referred to a Disciplinary Tribunal in paras 1 and 2 of each Complaint. Contrary to Mr Nalpon's interpretation, the natural reading of the phrase "for and on behalf of the ATTORNEY-GENERAL" does not indicate that CP Tan was "doing the job" of *making* the Complaints in the AG's place, but rather that CP Tan was *conveying the AG's decisions* under s 85(3)(*b*) to the Law Society. Mr Sabapathy, a DPP who was involved in preparing the Complaints, also gave evidence that the Complaints were referred by the AG and that the letters conveying the Complaints were approved by the AG before being signed off by CP Tan. As Mr Sabapathy explained, "[t]he AG makes the decision, we [*ie*, officers of the AGC] execute that decision after the authorisation is given".

26 For the same reason, we find the parties' and the DT's references to s 27(2) of the IA to be, with respect, rather misconceived. Section 27(2) provides that where a written law confers a power on the holder of an office as such, the power may be *exercised* by the holder of the office for the time being or by a person duly appointed to act for him. This provision would allow the AG's powers under s 85(3)(*b*) of the LPA to be *exercised* by the individual holding the office of the AG at any given time or by a person duly appointed to act for the AG. As these powers were exercised *by the AG himself* in the present case, the question of whether CP Tan was a person duly appointed to act for the AG in this regard does not arise.

27 The Complaints were therefore duly made by the AG, and there is no non-compliance with s 85(3)(*b*) of the LPA on the facts. Having said this, we observe that there has been some inconsistency in the identification of the

complainant in the present case which, in future cases, should be avoided. Mr Nalpon draws the court's attention to a letter from the AGC to the DT Secretariat dated 4 December 2020, which sought leave for a Deputy Attorney-General and two State Counsel to attend the DT Hearing. The letter stated that "the AGC is an 'interested party' as it was *the AGC's complaints* against [Mr Nalpon] dated 17 June and 20 June 2019 which gave rise to the present proceedings" [emphasis added]. In *Asia Development* at [16], the Court of Appeal observed that it would be helpful in future cases to "carefully explicate which party made the decision in question and the statutory powers engaged", and that this would have "ameliorated much of the confusion in the proceedings below". While these observations were made in respect of the Minister of Finance and the Inland Revenue Authority of Singapore, they are equally pertinent in the present case, where more care could have been taken to avoid referring to the "AG" and "AGC" interchangeably.

28 In view of the above, it is not necessary for this court to decide whether, as a matter of law, the power conferred on the AG under s 85(3)(*b*) of the LPA can be validly *devolved* to certain AGC officers under the principle set out in *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560 ("the *Carltona* principle"). Nevertheless, in view of the Law Society's submission that the *Carltona* principle governing the devolution of Ministerial powers applies equally to the powers and functions of the AG, such that the power in s 85(3)(*b*) need not be exercised by the AG personally, we feel we ought to make a brief observation on the question.

29 In our view, even if the *Carltona* principle is extended beyond the powers and functions of Ministers and is applied to the powers and functions of the AG, the nature of the power conferred by s 85(3)(*b*) of the LPA cannot be described as "unremarkable" (in contrast to the Court of Appeal's

characterisation of the Minister's powers to reduce or remit duties and waive conditions under s 74(1) read with s 74(2B) of the Stamp Duties Act (Cap 312, 2006 Rev Ed) at [10] of *Asia Development*). Section 85(3)(*b*) of the LPA, in contrast to s 85(1), confers on a very select group of office holders a power of a relatively exceptional nature by granting their complaints special weight, according them a statutory "shortcut" that bypasses the usual procedure of an inquiry by an Inquiry Committee before a complaint can come before a Disciplinary Tribunal. The Explanatory Statement annexed to the Legal Profession (Amendment) Bill (Bill No 20 of 1986), which introduced an earlier iteration of s 85(3)(*b*), noted that one of the purposes of the Bill was "to *abridge the disciplinary process* in instances when the Supreme Court or a judge thereof or the Attorney-General complains against an advocate and solicitor" [emphasis added]. This procedural abridgement, in turn, carries substantive connotations regarding the gravity of the complaint being referred by such an office holder. We return to this point at [35] below. For present purposes, it suffices for us to say that we are not persuaded that the *Carltona* principle would permit the devolution of the AG's powers under s 85(3)(*b*), although we leave this question open for determination in a future case where it is more directly in issue.

Whether the DT was entitled to investigate and make determinations in respect of the Third and Fourth Charges

30 Having rejected Mr Nalpon's submission that the disciplinary proceedings against him are void in their entirety, we turn now to the Third and Fourth Charges. The DT was satisfied that it was entitled to investigate the Third and Fourth Charges. It took the view that it was "seized of the broad remit of section 89(4) LPA" and that the Third and Fourth Charges encapsulated the gravamen of the Complaints (DT's Report at paras 99–102).

31 The parties' submissions before us on this point are essentially the same as their submissions before the DT. The Law Society argues that the Third and Fourth Charges were preferred pursuant to s 89(4) of the LPA, and that there is no requirement thereunder that the additional charges must pertain to the complaints which gave rise to the disciplinary proceedings. The Law Society further submits that the case of *Law Society of Singapore v Yeo Khirn Hai Alvin and another matter* [2020] 4 SLR 858 ("*Alvin Yeo*") did not lay down the general proposition that a Disciplinary Tribunal's duty is limited to investigating the complaint and the charges preferred in connection with the complaint, and that such a proposition would be contrary to the wording and purpose of s 89(4). On the other hand, Mr Nalpon emphasises that the Third and Fourth Charges have "nothing whatsoever to do with the AG or AGC" and were "totally unrelated" to the Complaints.

32 Having carefully considered the scheme of things laid down in Part VI of the LPA, and in particular s 85, we are, with respect, unable to agree with the Law Society's position and the DT's determination on this point. In our view, the DT was *not* empowered to investigate and make determinations in respect of the Third and Fourth Charges, because s 89(4) is inapplicable to proceedings commenced by a complaint made by the AG under s 85(3)(*b*) of the LPA.

33 The relevant provisions of s 89 of the LPA read as follows:

> **Application to appoint Disciplinary Tribunal**
>
> **89.**—(1) *Where the Council determines under section 87 that there should be a formal investigation*, the Council shall within 4 weeks apply to the Chief Justice to appoint a Disciplinary Tribunal which shall hear and investigate the matter.
>
> …
>
> (3) Where a Disciplinary Tribunal has been appointed to hear and investigate any matter against a regulated legal practitioner *under subsection (1)* and before the commencement of the

> hearing of and investigation into that matter there is any other matter pending against the regulated legal practitioner, the Chief Justice may, on the application of the Council, direct that Disciplinary Tribunal to hear and investigate the other matter or matters.
>
> (4) Where, *in the course of its investigation of any matter against a regulated legal practitioner referred to it under subsection (1) or (3)*, a Disciplinary Tribunal receives information touching on or evidence of the conduct of the regulated legal practitioner which may give rise to proceedings under this Part, *the Disciplinary Tribunal may, on the application of the Council, prefer such additional charge against the regulated legal practitioner as it thinks fit* with respect to such misconduct and, after giving notice to him, hear and investigate such charge and section 93 shall apply to such charge accordingly.
>
> [emphasis added]

34 While s 89(4) of the LPA may appear to have conferred a "broad remit" on the DT to prefer additional charges against Mr Nalpon if further misconduct on his part subsequently came to light and an application was made to the DT in relation thereto, it is clear on a close reading of s 89 that this additional jurisdiction of the DT under s 89(4) would only have applied if the DT had been appointed following the Council's determination under s 87 that there should be a formal investigation. This determination is, in turn, made by the Council after considering the report of the Inquiry Committee.

35 Therefore, s 89(4) applies directly in a case where the complaint is made in the typical manner under s 85(1) of the LPA. However, the position is different where disciplinary proceedings are commenced pursuant to a complaint made by the AG and the AG has requested that the matter be referred to a DT under s 85(3)(*b*) of the LPA. Section 85(3)(*b*), as we have observed at [29] above, confers on specified office holders a power of a relatively exceptional nature, which allows complaints referred by these office holders, by virtue of their positions, to bypass the usual procedure of an inquiry by an Inquiry Committee because these complaints are *ipso facto* taken to disclose

cause of sufficient gravity to warrant formal investigation by a Disciplinary Tribunal straightaway. As explained in *Alvin Yeo* at [64]:

> … In the case of a complaint made by a lay complainant (*ie*, by way of s 85(1) of the LPA), the "complaint" refers to that received by the Law Society, inquired into and reported upon by the Inquiry Committee and on which the Council has made a determination … In other words, the complaint is not the original complaint as such, but the complaint as "filtered" by the Inquiry Committee and Council. In this regard, there might be matters in the complaint which do not disclose a *prima facie* case of ethical breach or other misconduct, and therefore not warrant formal investigation and consideration by a DT …. *In contrast, for a complaint made by a judicial office holder, the Attorney-General, the Director of Legal Services or the Singapore Institute of Legal Education, pursuant to s 85(3)(b) of the LPA,* ***that complaint is referred directly to a DT without the need for the complaint to be inquired by the Inquiry Committee***. Since the LPA does not provide a filter mechanism, *implicit in the legislative framework is* ***an expectation that the entire complaint is of sufficient gravity to warrant a formal investigation and consideration by the DT****, and ought to be placed before the DT.*
>
> [emphasis added in italics and bold italics]

36 The effect of the Law Society's position, if accepted, would be to allow further complaints *not* referred by the AG (or any of the other specified office holders) to utilise this statutory "shortcut". This would be the case even where the further complaints do not relate to the original complaint, given that s 89(4) refers broadly to "information touching on or evidence of the conduct of the regulated legal practitioner *which may give rise to proceedings under this Part*" [emphasis added]. Indeed, this is illustrated by the facts of the present case, where the Third and Fourth Charges fall well outside the scope of the AG's Complaints: they concern Mr Nalpon's publication of material regarding the *DT proceedings* and adverse and/or discourteous remarks about various parties involved in those proceedings, and are based on acts which took place after the Complaints were filed. In our view, the Law Society's proposed approach would truncate the statutory framework and the proper process laid out in the LPA and

would deprive the legal practitioner in question of the opportunity to present his case before, and have his case reviewed by, an Inquiry Committee.

37 The Law Society has not adduced any provision of the LPA equivalent to s 89(4) that would apply where the complaint is referred directly to a DT by any of those specified office holders. On the contrary, *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 and *Law Society of Singapore v Manjit Singh s/o Kirpal Singh and another* [2015] 3 SLR 829 ("*Manjit Singh*"), where s 89(4) was used, were both cases involving complaints made by lay complainants under s 85(1) (clients of the legal practitioners in question). The Law Society's argument based on the *purpose* of s 89(4) is also, with respect, misconceived. It relies on [73] of *Manjit Singh*, where the Court of Three Judges remarked that "it is clear that the object of s 89(4) was to facilitate the efficient disposal of complaints of misconduct levelled against a solicitor so as to avoid multiplicity of disciplinary proceedings against the same solicitor, *subject always to the overriding consideration that the solicitor concerned should always have a fair opportunity to defend himself in relation to the new charge(s)*" [emphasis added]. The practical concern to ensure efficiency in the disposal of complaints cannot override the distinct statutory schemes laid down in the LPA, and it would be wrong to extend the applicability of provisions like s 89(4) to circumstances not envisaged under that provision.

38 It follows from this that the DT constituted to hear the First and Second Charges did not have the jurisdiction to hear and investigate the Third and Fourth Charges and make determinations thereon (see *Alvin Yeo* at [79(b)]). Accordingly, the DT's findings in respect of the Third and Fourth Charges should be set aside. The DT only had the jurisdiction to investigate and make determinations on the First and Second Charges. True, it would appear that in order to hold Mr Nalpon accountable for the misconduct specified in the Third

and Fourth Charges (if established), a fresh Disciplinary Tribunal may need to be constituted. But we do not think that that must necessarily follow. The important prerequisite is that the substance of the complaints specified in the Third and Fourth Charges had to have emanated from the AG or one of the other specified office holders. That is the key factor. Since there was no compliance with this requirement, this part of the decision of the DT was made in excess of its jurisdiction. We turn now to consider whether due cause has been shown in relation to the First and Second Charges.

The First Charge

39 The First Charge is that Mr Nalpon breached r 13 of the PCR by publishing material concerning proceedings which amounted to a contempt of court and/or was calculated to interfere with a fair trial of a case and/or prejudice the administration of justice, and that he was thereby guilty of grossly improper conduct in the discharge of his professional duty or guilty of improper conduct or practice as an advocate and solicitor under s 83(2)(*b*) of the LPA. The particulars of the First Charge refer to several posts Mr Nalpon made on the Facebook Group in February and May 2019 relating to the MA proceedings.

40 The relevant provision of the PCR is r 13(6), which provides:

> **Respect for court or tribunal and related responsibilities**
>
> **13.**— …
>
> …
>
> (6) A legal practitioner must not publish, or take steps to facilitate the publication of, any material concerning any proceedings, whether on behalf of his or her client or otherwise, which —
>
> (*a*) amounts to a contempt of court; or
>
> (*b*) is calculated to interfere with the fair trial of a case or to prejudice the administration of justice.

41 The Law Society contends that Mr Nalpon's conduct in publishing a series of posts concerning issues in the MA proceedings while the MA was still pending amounted to *sub judice* contempt of court within the scope of s 3(1)(*b*)(i) of the AJPA, which reads:

> **Contempt by scandalising court, interfering with administration of justice, etc.**
>
> **3.**—(1) Any person who — …
>
> (*b*) *intentionally* publishes any matter that —
>
> (i) prejudges an issue in a court proceeding that is pending and such prejudgment prejudices, interferes with, or poses a real risk of prejudice to or interference with, the course of any court proceeding that is pending; or
>
> (ii) otherwise prejudices, interferes with, or poses a real risk of prejudice to or interference with, the course of any court proceeding that is pending;
>
> …
>
> commits a contempt of court.
>
> [emphasis added]

42 Section 28 of the AJPA further provides that the standard of proof for establishing contempt of court is that of beyond reasonable doubt.

43 The relevant posts published by Mr Nalpon in the Facebook Group are the following:

(a) A post on 11 February 2019 ("the 11 February 2019 Post") which stated: "I have discovered that a Judge has plagiarized the Substantive portion of the DPP's Submissions …". Attached to the post was a copy of Mr Nalpon's letter to the Chief Justice dated 11 February 2019 ("the Letter to the CJ"), which included the following statements:

> **COMPLAINT AGAINST DISTRICT JUDGE MR MATTHEW JOSEPH**
>
> **BLATANT PLAGIARISM OF DPP'S SUBMISSIONS IN JUDGMENT**
>
> 1. I am reporting a case of blatant plagiarism which I discovered less than a week ago.
>
> 2. In short, the substantive portion of the Judgment in *Public Prosecutor v Lim Chee Huat [2018] SGDC 272* was copied virtually word-for-word and passed off as DJ Mr Matthew Joseph's own work. …
>
> …
>
> 5. For the avoidance of doubt, the substantive portion of the Judgment which I am referring to comes under the heading "*Analysis and assessment of evidence*". In the 43 paragraphs under this section, DJ Mr Matthew Joseph plagiarized 27 paragraph or in excess of 60% of the [Prosecution's Closing Submissions]. All that DJ Mr Matthew Joseph did was to change part of the DPP's sequence and a few words from time to time. ***I take strong objection to this methodology which makes a mockery of the Judiciary. In short, this is a useless and unfair Judgment which discloses clear bias.***
>
> …
>
> 25. Your Honour, if the substantive portion of a Judgment is to be lifted from the Prosecution's Submissions, it would mean that the Judge is a mere spokesman for the Prosecution. No Judiciary can survive such a departure from the Rule of Law.
>
> 26. In this case, DJ Mr Matthew Joseph found my client guilty and sentenced him to 11 months in prison. ***It is apparent that he engaged in very limited analysis when he arrived at his decision.*** …
>
> …
>
> [emphasis in original in italics; emphasis added in bold italics]

(b) A post on 21 February 2019 ("the 1st 21 February 2019 Post"), which simply stated "Hmmm…"and attached a copy of a letter dated 20 February 2019 from Ms Juthika Ramanathan, the Chief Executive of

the Supreme Court ("the CE's Letter"). The CE's Letter noted that, as Mr Nalpon had lodged an appeal against the decision of the DJ in the MA, if (as Mr Nalpon contended) the outcome of the case had been impacted by the matters raised in his Letter to the CJ, this was "more appropriately dealt with at the appeal". The CE's Letter went on to state that Mr Nalpon's complaint would be dealt with "only after the appeal ha[d] been heard".

(c) A further post, also published on 21 February 2019 ("the 2nd 21 February 2019 Post"), stated:

> This letter was delivered by email at 5:45pm yesterday. I do not accept the arguments therein and shall deal with them in due course.

The post attached a copy of a letter from Mr Kow Keng Siong (for the AG) to Mr Nalpon dated 20 February 2019 ("CP Kow's Letter"). CP Kow's Letter stated that Mr Nalpon's 11 February 2019 Post and Letter to the CJ pertained to matters which were *sub judice* and in breach of s 3(1)(*b*) of the AJPA in view of the pending MA. CP Kow's Letter further noted that Mr Nalpon was making "fundamentally similar claims" against the DJ in the appeal as in his Letter to the CJ, and requested him to remove the 11 February 2019 Post with immediate effect.

(d) Following the issuance of the NPD on 21 February 2019, Mr Nalpon removed the 11 February 2019 Post and the 1st and 2nd 21 February 2019 Posts on 23 February 2019. Subsequently, on 24 May 2019, Mr Nalpon re-published the 11 February 2019 Post and the 2nd 21 February 2019 Post (including the attached copies of his Letter to the

CJ and CP Kow's Letter) ("the 24 May 2019 Posts"), prefacing each post with the following:

> Re-posting as Magistrate's Appeal No. 9269/2018/01 was determined today:
>
> …

44 Mr Nalpon does not deny that his publication of the material relating to the MA proceedings was intentional, nor is there any other reason to indicate that the *mens rea* requirement of intentional publication is not satisfied. Mr Nalpon also does not dispute that the *actus reus* requirement in s 3(1)(*b*)(i) of the AJPA – that his publications prejudged an issue in a pending court proceeding and this prejudgment prejudiced, interfered with or posed a real risk of prejudice to the pending court proceeding – is satisfied.

45 We find that the 11 February 2019 Post and the attached Letter to the CJ were indeed publications which prejudged an issue in pending court proceedings within the first limb of s 3(*b*)(i) of the AJPA. The notice of appeal in the MA was filed in September 2018. At the time of the 11 February 2019 Post, the MA proceedings were well underway. The issue of the DJ's alleged plagiarism and bias was squarely before the Judge in the MA, having been raised by Mr Nalpon as a key ground for his client's appeal in his MA submissions dated 19 February 2019:

> …
>
> 1. By now, your Honour should be fully aware of the fact that I wrote a complaint to the Chief Justice on 11th February 2019 with respect to the blatant plagiarism by the Trial Judge, DJ Mr Matthew Joseph, of the DPP's Submissions. ***He was essentially the biased mouthpiece for the Prosecution and I submit that his Judgment is therefore worthless.***
>
> …
>
> 3. The fact is that the Prosecution will just stick to their arguments and not bolster the case for the Defence. This is

> simply due to the adversarial nature of litigation. However, the Trial Judge has a duty to ensure that he gives due regard to the arguments of both parties, especially since the Defendant has to be given the benefit of the doubt. In this case, ***the Trial Judge woefully failed in his duty by exercising wilful blindness on anything other than the Prosecution's case***.
>
> …
>
> 82. Whi[l]st preparing my Skeletal Submissions, I discovered the shocking fact that the Trial Judge had simply plagiarized a large portion of the Prosecution's Closing Submissions ("the PSC"). Even the headings were shamelessly copied!
>
> …
>
> 84. For the avoidance of doubt, the substantive portion of the Judgment which I am referring to comes under the heading "*Analysis and assessment of evidence*". In the 43 paragraphs under this section, the Trial Judge plagiarized 27 paragraphs or in excess of 60% of the PSC. All that the Trial Judge did was to change part of the DPP's sequence and a few words from time to time. ***I take strong objection to this methodology which makes a mockery of the Judiciary. In short, this is a useless and unfair Judgment which discloses clear bias.***
>
> **DETAILS OF PLAGIARISM**
>
> …
>
> [emphasis in original in italics; emphasis added in bold italics]

46 Paragraphs 82 to 84 of these submissions, and paras 85 to 104 which followed the heading "Details of Plagiarism", reproduced almost word-for-word the contents of Mr Nalpon's Letter to the CJ. This was acknowledged by Mr Nalpon during the hearing before us.

47 The Judge ultimately found that the DJ had indeed copied the Prosecution's submissions to such a degree that only minimal weight could be given to the DJ's decision on conviction and sentence (HC Judgment at [17]). However, at the time of the 11 February 2019 Post, the extent and implications of the DJ's judicial copying were issues which had yet to be adjudicated by the Judge in the pending MA proceedings, and the 11 February 2019 Post prejudged

these issues by stating Mr Nalpon's assertions regarding the DJ's plagiarism and the unfairness, bias and limited analysis in the DJGD as though these assertions were irrefutable facts.

48 We find Mr Nalpon's contention, that his complaint regarding the DJ's plagiarism was not crucial to his MA submissions and that the Judge was cognisant that the issue of plagiarism did not form part of the "substantive appeal" (based on [12] of the HC Judgment), entirely disingenuous. The very first issue dealt with by the Judge was the issue of judicial copying, which formed the bulk of the judgment (HC Judgment at [18]–[60]), and it is plain that the Judge at [12] of the HC Judgment was simply distinguishing the issue of judicial copying from the issues relating to conviction and sentence.

49 Mr Nalpon further contends that his allegation of plagiarism cannot be *sub judice* because the act of plagiarism is a factual matter which does not require judicial determination. However, the issue that clearly *did* require judicial determination in the MA (and which the Judge considered at length) was the *effect* of this judicial copying on the DJGD and, consequently, the *weight* to be placed on the DJ's decision on conviction and sentence, bearing in mind Mr Nalpon's own client's submission that the DJ's conduct necessitated the *remittal* of the case for retrial before a different judge (see the HC Judgment at [11]). As we explained during the hearing before us, what we find objectionable is the fact that Mr Nalpon's 11 February 2019 Post on the Facebook Group involved the publication of a complaint which related directly to a crucial point taken in a pending appeal, and where the appeal had yet to be heard and decided by the appropriate court. Mr Nalpon simply had no regard for the fact that the appeal had yet to be heard and decided upon.

50 Such published views posed a real risk of prejudice to or interference with the pending MA proceedings within the second limb of s 3(*b*)(i) of the AJPA. The AJPA does not define a "real risk", but the common law definition of a "real risk" (preserved by virtue of s 8(3) of the AJPA) is one that is not merely a "remote possibility" or a "fanciful" risk, though whether there is indeed a real risk in a particular case "depends very much on the court's *objective* assessment of the relevant *facts* of the case itself" [emphasis in original]: see *Shadrake Alan v Attorney-General* [2011] 3 SLR 778 at [25]–[29]. Furthermore, as Woo Bih Li J (as he then was) held in *Attorney-General v Wham Kwok Han Jolovan and another matter* [2020] 3 SLR 446 at [63]–[64] and [76] (albeit in the context of applying the test of "*risk*" in s 3(1)(*a*)(ii) of the AJPA), it will almost always be relevant to consider the audience of the alleged contemnor for the conduct in question, which will include a consideration of the general size of such audience, even though the consideration of the general size of that audience does not require a quantitative "accounting exercise" and is not determinative.

51 In the present case, Mr Nalpon's posts were made on the Facebook Group, which was a "Public" group with around 579 members in February 2019. Moreover, the Letter to the CJ specifically identified not only the DJ, but also the case number of the pending MA. In these circumstances, we agree with the Law Society's submission that Mr Nalpon's publication of these posts posed a real risk of damaging the integrity and credibility of the MA regardless of whether this in fact influenced the decision of the Judge. By these publications, which were deliberate, Mr Nalpon sought to galvanise public sentiment in his client's favour while the MA, in which the very same point had been submitted for determination, had yet to be heard by a judge.

52 Mr Nalpon also relied on the fact that the Judge had said that he was not in any way affected by Mr Nalpon's publication of his complaint against the DJ. We reject this argument as well. Explanation 2 of s 3 of the AJPA makes clear that a publication of any matter falling within s 3(1)(*b*) is not incapable of posing a real risk of prejudice to or interference with the course of pending court proceedings, by reason only that the court is presided by a judge with legal and professional experience. One needs to draw a distinction between "real risk" and what in fact happened. Whether a publication posed a real risk must be determined objectively at the time of publication, and not whether eventually the judge who heard the case was in fact affected. In the circumstances of this case, there was plainly a real *risk* of prejudice or interference arising from the 11 February 2019 Post.

53 We pause here to note that the 1st 21 February 2019 Post did not make any comments regarding the MA proceedings, and that the 2nd 21 February 2019 Post merely stated that Mr Nalpon "[did] not accept" the arguments contained in CP Kow's Letter and would "deal with them in due course". Although the CE's Letter and CP Kow's Letter, which were attached to these posts, made reference to Mr Nalpon's earlier comments in his 11 February 2019 Post and Letter to the CJ, they stated clearly the correct position that these matters should properly be dealt with after the pending MA proceedings had concluded. As for the 24 May 2019 Posts, Mr Nalpon was careful to publish these *after* the MA had been determined earlier that day. At this point, the MA proceedings were no longer "pending". In our judgment, the 1st and 2nd 21 February 2019 Posts and the 24 May 2019 Posts therefore do not disclose *sub judice* contempt of court within s 3(1)(*b*) of the AJPA beyond a reasonable doubt, and r 13(6)(*a*) of the PCR is not satisfied in respect of these publications. There is also insufficient evidence to establish beyond a reasonable doubt that these publications were "calculated to interfere with the fair trial of a case or to

prejudice the administration of justice" under r 13(6)(*b*) of the PCR. Nonetheless, even though these posts do not *in themselves* amount to a breach of s 13(6) of the PCR for the reasons we have explained, they demonstrate that Mr Nalpon (having received the CE's Letter and CP Kow's Letter) was well aware that the MA proceedings were the appropriate forum for ventilating his allegations against the DJ and that his publications on the Facebook Group might be *sub judice*, and yet still chose to proceed in publishing them.

54 Mr Nalpon's defence based on s 16 of the AJPA is, in our view, wholly unmeritorious. Section 16(1) of the AJPA provides that a person is not guilty of contempt of court under s 3(1)(*a*) of the AJPA by reason that he has made a report to the Chief Justice alleging misconduct or corruption on the part of a judge, so long as that report is made in good faith and discloses grounds which (if unrebutted) would provide a sufficient basis for investigating the allegation. This defence is unavailable to Mr Nalpon for at least two reasons. First, s 16(1) provides a defence only to scandalising contempt under s 3(1)(*a*), and not to *sub judice* contempt under s 3(1)(*b*). Second, as the DT correctly found (DT's Report at [44]) and as the Law Society submits, s 16(1) only applies to the *making* of a report to the Chief Justice, and not to the further *publication* of that report.

55 We therefore find that Mr Nalpon is guilty of such a breach of r 13(6)(*a*) of the PCR as amounts to "improper conduct … as an advocate and solicitor", as well as conduct that is "grossly improper", within s 83(2)(*b*) of the LPA. Whether particular conduct is "grossly improper" depends on whether the conduct is dishonourable to the solicitor concerned as a man and dishonourable in his profession, and conduct may be "grossly improper" notwithstanding that there is no dishonesty, fraud or deceit: see *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 ("*Wong Sin Yee*") at [23] and *Law Society of Singapore*

v Ezekiel Peter Latimer [2019] 4 SLR 1427 ("*Ezekiel Peter Latimer (2019)*") at [37]. Given Mr Nalpon's clear and wilful breach of the *sub judice* rule, we are of the view that his conduct crosses the threshold of being dishonourable to himself and dishonourable in the legal profession. Furthermore, on the "totality of the facts and circumstances of the case", Mr Nalpon's misconduct is "sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA" [emphasis in original omitted] (*Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("*Udeh Kumar*") at [30]). Due cause has therefore been made out in respect of the First Charge.

The Second Charge

56 The Second Charge is that Mr Nalpon was guilty of misconduct unbefitting of an advocate and solicitor within s 83(2)(*h*) of the LPA by carrying out any one or more of the following acts: (a) wilfully failing to comply with the Costs Order made on 29 April 2019, whereby he was ordered to pay the AG's Costs incurred in relation to the NPD proceedings; (b) publishing on the Facebook Group the false allegation that the AGC had requested for payment to be made to a "separate entity" other than the AG; and (c) publishing on the Facebook Group his exchange of correspondence with the AGC in June 2019.

57 At the time of the DT Hearing in December 2020 (more than one year and seven months after the making of the Costs Order), Mr Nalpon had not made payment of the Costs or any part thereof. The DT found that he had no intention of paying the Costs and that he had demonstrated no remorse over this contumelious conduct (DT's Report at paras 64 and 74–75). Mr Nalpon provided no explanation for his protracted delay in paying the Costs, save for his argument that the AGC had no basis in law to compel him to pay costs to

the AGC. His reason for this contention was that the Costs were ordered to be paid to the *AG*, whereas the AGC is a separate entity.

58 On 22 December 2021, the AGC wrote to Mr Nalpon demanding that he pay the Costs (together with other costs that had been ordered in separate proceedings) in full by bank transfer within 14 days. In response, on 29 December 2021, less than a month before the hearing of this matter, Mr Nalpon made payment of the Costs via an un-crossed cheque made in favour of "The Attorney-General". In his letter to the AGC enclosing the cheque, Mr Nalpon maintained his position that he "[could] only make payment to the Attorney-General", but stated that, "as a gesture of goodwill", he would not cross the cheque.

59 As a matter of principle, we agree with Mr Nalpon that non-compliance with a costs order cannot, *in and of itself*, amount to misconduct for the purposes of a disciplinary charge. A party in civil proceedings who has obtained an order for the other party to pay him a sum of money has a range of *civil* avenues to enforce that order and recover the debt owed. As we pointed out during the hearing, it seems to us that it would expose legal practitioners to considerable peril if they were liable to face disciplinary proceedings simply by virtue of having failed to make timely payment of a court-ordered sum. The position takes on a different complexion, however, where the legal practitioner's wilful non-compliance with the order is accompanied by *acts taken with the aim of garnering public support for that non-compliance*. In this regard, the subjective state of mind of the legal practitioner concerned can not only be gleaned from his own account of his motivations, but can also be inferred from the objective circumstances and the nature of the relevant conduct. Legal practitioners are, above all, officers of the court. Conduct that seeks to publicly justify non-compliance with an order of court on spurious grounds is, in our view, plainly

misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court and as a member of an honourable profession within s 83(2)(*h*) of the LPA. Even though such conduct might have taken place in the legal practitioner's personal rather than professional capacity, they are nevertheless acts which reasonable people would unhesitatingly say that as a solicitor he should not have done (see *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 at [79] and *Ezekiel Peter Latimer (2019)* at [38]). We are satisfied that Mr Nalpon's non-payment of the Costs in the present case fell well within this description. It is conduct which this court should evince its firm disapproval of.

60 It is not disputed that Mr Nalpon published the following posts on the Facebook Group after the making of the Costs Order:

(a) A post published on 16 June 2019 ("the 16 June 2019 Post"), which attached a copy of Mr Sabapathy's letter to Mr Nalpon dated 13 June 2019:

> The Attorney-General's Chambers is not a party to the action and *Mr Senthilkumaran Sabapathy has not cited any provision in the Rules of Court to support his request for my payment to be made to a separate entity.*
>
> I have already made payment* of the Costs to the Attorney-General pursuant to an Order of Court which I do not agree with. *I will not engage in any departure from the applicable law…*
>
> …
>
> [emphasis added]

(b) Further posts publishing copies of the correspondence exchanged between Mr Nalpon and Mr Sabapathy from 17 to 19 June 2019, with the following captions ("the Further Posts"):

> I find this letter rather disconcerting…

> …
>
> Correspondence with Mr Senthilkumaran Sabapathy (AGC)
>
> …
>
> I wonder where he is taking this…
>
> …
>
> I believe that I am entitled to an explanation…
>
> …
>
> Hmmm…
>
> …
>
> I do not think that I am being treated fairly…

The three letters from Mr Nalpon which were attached to the Further Posts maintained his position that Mr Sabapathy had not cited any provision in the Rules of Court to support the claim for the Costs to be paid to an entity other than the AG. Mr Nalpon's letter dated 18 June 2019 also stated that he felt Mr Sabapathy was "over-reacting when the amount [he] so desperately [sought] to recover was a mere $2,600.00".

61 In our view, the position adopted by Mr Nalpon in this regard is not only misguided, but also disingenuous. While the AG ought not to be generally conflated with the AGC (particularly in situations involving the exercise of a statutory power, such as that outlined in [27] above), payments made to the AG should rightly be made into the bank account maintained by the AG. We recognise that the AG could have maintained this bank account in the name of "the Attorney-General", similar to the bank account maintained in the name of "the Accountant-General". But, as a matter of fact, he does not. The AG maintains the bank account used in the discharge of his official duties under the name of "Attorney-General's Chambers". This was clearly explained to Mr Nalpon by the AGC in Mr Sabapathy's letter of 13 June 2019. Yet,

Mr Nalpon insisted on maintaining his position that there was no legal basis or legal provision which required that his cheque in payment of the Costs should be made payable to the "Attorney-General's Chambers" instead of "the Attorney-General". While we accept that Mr Nalpon would have been entitled to make his arguments (however erroneous we find them to be) regarding the proper payee under the Costs Order to an appropriate forum, what renders Mr Nalpon's conduct beyond the pale is the series of publications he made on the Facebook Group regarding the Costs Order. His allegation in the 16 June 2019 Post that the AGC had requested for his payment to be made to a "separate entity" was misleading and false, and both this and the Further Posts were transparent attempts by him to garner public support for his continued disobedience of the Costs Order. We thus find this stand of Mr Nalpon's not only wholly incomprehensible, but also clearly mischievous, as he took his campaign to the (virtual) streets. It is the nature of his acts which crosses the line and renders them disciplinable.

62 In considering the Second Charge, we take into account the fact that the Costs were eventually paid in full. In our view, however, this does not go far in ameliorating the seriousness of Mr Nalpon's conduct. This is because, as we have explained in the preceding paragraphs, what made Mr Nalpon's conduct unacceptable was not the non-payment *per se*, but his deliberate non-payment *coupled with his attempts to garner public support for his disobedience*. In any event, we note that the eventual payment of the Costs was made in response to a final demand issued by the AGC more than two years and seven months after the Costs Order was made, and it was not prompted by Mr Nalpon's acknowledgment of the error in his position; quite the contrary, as Mr Nalpon took pains to characterise the payment as one made purely out of goodwill. There is also no evidence before us of Mr Nalpon having made any attempt to correct or clarify his earlier publications on the Facebook Group. Those

publications are, as we have explained, the acts which we think warrant the institution of the present disciplinary proceedings against him.

63 In the circumstances, we find that due cause is made out in respect of the Second Charge. Mr Nalpon's conduct in respect of the Costs Order is plainly misconduct falling within the scope of s 83(2)(*h*) of the LPA, and on the totality of the facts and circumstances of this case, it is sufficiently serious to warrant the imposition of sanctions under s 83(1) (*per Udeh Kumar* at [30]).

The appropriate sanction

64 The final issue for this court's determination is the appropriate sanction that should be imposed on Mr Nalpon under s 83(1) of the LPA. Mr Nalpon did not make any written submissions on this point. In its skeletal arguments, the Law Society submitted that Mr Nalpon should be struck off the roll or suspended for a period exceeding two years, but this position was taken on the basis that the DT's findings on the Third and Fourth Charges should be upheld.

65 In our view, a 15-month suspension under s 83(1)(*b*) of the LPA would be appropriate for the First and Second Charges. To our knowledge, there are no direct precedents on the appropriate disciplinary sanctions for misconduct involving *sub judice* contempt of court and the non-payment of costs, save for (in respect of the latter) the Disciplinary Tribunal's decision in *The Law Society of Singapore v L.F. Violet Netto* [2019] SGDT 6 ("*Violet Netto*"), which the Law Society cited. That, however, was a case of a very different complexion because the gravamen of the legal practitioner's misconduct there was her "dilatory conduct" in failing to comply within a reasonable time with two personal costs orders that had been made against her, with no reasonable explanation offered for the delay. For the reasons set out at [59] above, we have some reservations as to the correctness of the Disciplinary Tribunal's decision

that the conduct in *Violet Netto* amounted to misconduct unbefitting an advocate and solicitor within s 83(2)(*h*) of the LPA. In the present case, we emphasise that our basis for finding that Mr Nalpon's conduct falls within the ambit of s 83(2)(*h*) is that his wilful non-compliance with the Costs Order was accompanied by publications on the Facebook Group which were made with a view to garnering public support for his non-compliance. Moreover, we reiterate that this was not a case of oversight *per se*, but instead a deliberate move on Mr Nalpon's part to be difficult and mischievous when it had already been explained to him by Mr Sabapathy's letter of 13 June 2019 that the AG did not operate a bank account under the name of "the Attorney-General", but instead operated his official bank account under the name of the "Attorney-General's Chambers".

66 Given the dearth of directly relevant precedents, it is apposite to restate the applicable general principles, which are well established. Cases involving grossly improper conduct without dishonesty or deceit will generally attract a monetary penalty, but the presence of aggravating factors may justify the imposition of more severe sanctions (such as a suspension from practice or being struck off the roll): see *Law Society of Singapore v Tan See Leh Jonathan* [2020] 5 SLR 418 ("*Jonathan Tan*") at [10]. A fine is not appropriate where the legal practitioner's misconduct was not mere inadvertence: see *Jonathan Tan* at [13]. Where there are multiple instances of misconduct complained of, the court will view the misconduct in totality and consider the overall gravity in determining the appropriate sanction: see *Udeh Kumar* at [87].

67 The following aggravating factors are present in this case:

(a) First, Mr Nalpon's conduct demonstrated a wilful disregard for the professional standards expected of legal practitioners. His

publications on the Facebook Group were exhibitionist and self-aggrandising at the expense of the integrity of pending court proceedings (in the case of the First Charge) and the AGC in its legitimate attempts to seek his compliance with the Costs Order (in the case of the Second Charge). The blatant nature of Mr Nalpon's misconduct warrants a period of suspension: see *Jonathan Tan* at [11] and *Law Society of Singapore v Ezekiel Peter Latimer* [2020] 4 SLR 1171 ("*Ezekiel Peter Latimer (2020)*") at [4].

(b) Second, Mr Nalpon is a senior practitioner of 26 years' standing. This should be taken into account against him in determining the length of his suspension. It is well established that the more senior an advocate and solicitor, the more damage he does to the integrity of the legal profession: see *Law Society of Singapore v Nathan Edmund* [1998] 2 SLR(R) 905 at [33] and *Ezekiel Peter Latimer (2020)* at [4].

(c) Third, Mr Nalpon has broadly similar disciplinary antecedents which may be taken into account under s 83(5) of the LPA. On 24 January 2014, in the proceedings in Originating Summons No 864 of 2013, Mr Nalpon was censured by the Court of Three Judges in respect of three charges under s 83(2)(*h*):

(i) making offensive remarks against certain DPPs in letters to the AG;

(ii) attaching and disseminating these letters via e-mail to certain third parties not involved in the subject matter of those letters, with intent to embarrass and humiliate those DPPs and the AGC; and

(iii) knowingly making statements, in an e-mail to certain third parties (including members of the Bar), which would undermine the integrity of the AG's office.

68 No mitigating factors have been raised in Mr Nalpon's favour, save for the point that the Costs have now been paid in full (which we have dealt with at [62] above). On the contrary, Mr Nalpon's conduct before the DT and this court thus far reveals a total absence of remorse. As in the case of *Wong Sin Yee* at [54], Mr Nalpon "did not accept that his conduct had been wrong or that it merited any rebuke at all"; and "a respondent-solicitor who vigorously contests the allegations against him in the face of clearly established objective facts (and therefore wastes the court's time without any conceivable purpose) is less likely to be treated leniently than one who properly admits his guilt" (*Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [42]). Mr Nalpon's conduct clearly falls within the former category, and the various unmeritorious defences he raised before the DT and maintained before this court demonstrate his continued intransigence.

69 The considerations above justify a reasonable period of suspension, and we take the view that a period of 15 months (out of the maximum of five years under s 83(1)(*b*) of the LPA) would be appropriate. In imposing this penalty, we have borne in mind that only the 11 February 2019 Post amounted to contempt.

Conclusion

70 For the foregoing reasons, we order that Mr Nalpon be suspended from practice for a period of 15 months in respect of the First and Second Charges.

71 Although we have found that the DT lacked the jurisdiction to investigate and make determinations on the Third and Fourth Charges, this issue formed only a small part of Mr Nalpon's case before us, which focused predominantly on his arguments on s 85(3)(*b*) of the LPA and on the First and Second Charges. That said, we think it is only fair to order Mr Nalpon to pay the Law Society 85%, instead of 100%, of the costs of and incidental to this application, as well as the costs of the proceedings before the DT.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Chao Hick Tin
Senior Judge

Yeap Poh Leong Andre SC and Timothy Ng Xin Zhan (Rajah & Tann Singapore LLP) for the applicant;
Zero Geraldo Mario Nalpon (Nalpon & Co) for the respondent.