Top Ten Entertainment Pte Ltd *v* Law Society of Singapore
[2010] SGHC 263

Case Number : Originating Summons No 1048 of 2008

Decision Date : 31 August 2010

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Bajwa Ragbir Singh (Bajwa & Co) for the plaintiff; Mohan Pillay and Yeo Boon Tat (M Pillay) for the defendant.

Parties : Top Ten Entertainment Pte Ltd — Law Society of Singapore

Civil Procedure – Costs

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 20 of 2010 was dismissed by the Court of Appeal on 7 April 2011. See [2011] SGCA 11.]

31 August 2010

Belinda Ang Saw Ean J:

Introduction

1 By a letter dated 29 January 2007, the plaintiff, Top Ten Entertainment Pte Ltd, lodged a complaint with the defendant, The Law Society of Singapore ("the Law Society"). In the complaint, the plaintiff alleged that Mr Andre Arul ("Mr Arul"), an advocate and solicitor of the Supreme Court of Singapore practicing at Messrs Arul Chew & Partners, had: (a) rendered exorbitant bills of costs contrary to agreed costs at $25,000; (b) received strict instructions from the plaintiff not to transfer any money from the client's account; and (c) in defiance of those specific instructions, transferred $54,909 and $32,000 respectively from the client's account to satisfy the solicitor's bills of costs which were disputed by the plaintiff. This same complaint was re-lodged on 19 April 2007 ("the Complaint") because the Law Society required the appropriate letter of authority from the plaintiff, being a body corporate, to authorise its managing director, Mr Peter Bader ("Mr Bader"), to lodge the complaint on its behalf. In connection with the Complaint, Mr Bader swore two statutory declarations.

2 On or about 7 May 2007, a Review Committee was formed to review the Complaint. The Review Committee recommended that the Complaint be referred to an Inquiry Committee to look into the merits of the Complaint pursuant to s 85(10) of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("LPA"). Based on the terms of reference provided by the Review Committee, the Inquiry Committee was constituted to inquire into the Complaint on or about 7 January 2008. On or about 10 June 2008, the Inquiry Committee concluded its inquiry and rendered its findings in a written report to the Council of the Law Society. The Inquiry Committee recommended the Council of the Law Society to: (a) dismiss the Complaint lodged by the plaintiff as there was no merit to the Complaint; but (b) impose a fine of $500 on Mr Arul for breaching the Law Society's practice directions in relation to Rule 7(1)(a)(iv) of the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R 5, 1999 Rev Ed) (the "Solicitors' Accounts Rules"), which required a solicitor to give adequate notice to his client of any transfer of moneys from a client's account.

3 The findings of the Inquiry Committee were accepted and adopted by the Council of the Law

Society. For the reasons stated in the Inquiry Committee's report, the Council of the Law Society decided that a formal investigation by a Disciplinary Tribunal was unnecessary and dismissed the Complaint.

4 On or about 11 August 2008, the plaintiff filed Originating Summons No 1048 of 2008/T ("OS 1048") to seek judicial review of the decision of the Council of the Law Society to dismiss its Complaint against Mr Arul under s 96 of the LPA.

5 At the conclusion of the adjourned hearing on 23 October 2009, the court:

(a) affirmed the Inquiry Committee's finding that there was no agreement on fees between the plaintiff and Mr Arul;

(b) directed the Law Society to apply to the Chief Justice for the appointment of a Disciplinary Tribunal to look into two matters, namely, to investigate whether Mr Arul, as solicitor for the plaintiff, was in breach:

(i) of his professional duties by disobeying the plaintiff's instructions contained in two e-mails dated 7 July 2006 and 24 August 2006 respectively, by placing a sum of $114,440.97 on 7 August 2006 into the client's account with Messrs Arul Chew & Partners and also transferring moneys in payment of the solicitor's fees.

(ii) of the Solicitors' Accounts Rules by placing a sum of $10,000 which he received on 11 August 2006 into his firm's office account instead of the client's account with Messrs Arul Chew & Partners.

(c) ordered the Law Society to pay 50% of the plaintiff's costs of the proceedings in OS 1048.

6 By a letter dated 29 October 2009, the Law Society's counsel, Mr Mohan Pillay ("Mr Pillay"), wrote in to request for further arguments in respect of the costs order. By a letter dated 2 November 2009, the plaintiff's solicitors objected to Mr Pillay's request. The court declined to hear further arguments and the parties were duly notified of its decision by a letter dated 11 November 2009.

7 By Summons No 6001 of 2009/B, the Law Society applied under s 34(2)(b) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) for leave to appeal to the Court of Appeal against the order requiring the Law Society to pay 50% of the plaintiff's costs in OS 1048. Leave to appeal to the Court of Appeal was granted on 21 January 2010. On 18 February 2010, the Law Society filed its Notice of Appeal against that part of the order made on 23 October 2009 requiring the Law Society to pay 50% of the plaintiff's costs in OS 1048.

Whether the court can order costs against the Law Society

8 The court's power in judicial review proceedings brought under s 96(1) of the LPA is set out in s 96(4), which states as follow:

(4) At the hearing of the application, the Judge may make an order —

(a) affirming the determination of the Council; or

(b) directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Tribunal,

and *such order for the payment of costs as may be just*.

[emphasis added]

Notably, s 96(4) of the LPA expressly provides that the court has the discretion to make such an order for the payment of costs *to achieve the ends of justice*. The provision does not provide any special considerations that the court must take into account in making the cost order. Simply put, the language of s 96(4) is in plain and unfettered terms, and the power is exercisable against the Law Society if it is just to do so in the present circumstances.

9 I will now turn to consider, generally, the court's approach in the exercise of its discretion as to costs in cases involving disciplinary proceedings which are appealed to or reviewed by the higher courts.

10 First, I bear in mind that the overall aim of the discretionary power as to costs is to achieve the fairest allocation of costs in the circumstances of the case at hand: see *Re Shankar Alan s/o Anant Kulkarni* [2007] 2 SLR(R) 95 ("*Re Shankar Alan*") at [17]; *Soon Peng Yam v Maimon bte Ahmad* [1995] 1 SLR(R) 279 at [31]. In a civil case, this would ordinarily mean that costs will follow the event. The successful party will therefore receive his costs for the action: see *Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501 at [24]. In *Lim Teng Ee Joyce v Singapore Medical Council* [2005] 3 SLR(R) 709, Chao Hick Tin JA observed, in relation to a suit brought against the Singapore Medical Council, that the same principle would apply to disciplinary proceedings, for the following reason (at [17] and [18]):

> 17 Another established rule on costs is that costs should always follow the event unless the circumstances of the case warrant some other order: see *Elgindata Ltd (No 2)* [1992] 1 WLR 1207 at 1214 ("*Elgindata*"). In *Tullio Planeta v Maoro Andrea G* this court set aside that part of the trial judge's order which deprived the successful appellant of half his costs. There, this court noted (at [23]) that the judge below had "disregarded the principle that a successful party who had acted neither improperly nor unreasonably ought not to be deprived of any part of his costs".
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> 18 We are unable to see why the above principles on costs in normal civil proceedings should not apply to the disciplinary process.

11 The principle, that cost follows the event, is one (important) consideration which guides the court in the exercise of its discretion. However, this principle will have to be considered by the court alongside a multitude of other possible factors in reaching a just decision. Each case falls to be determined on its own facts. For example, in *Chua Ah Beng v Commissioner for Labour* [2002] 2 SLR(R) 945 ("*Chua Ah Beng*"), the court summarised the outcome of the proceedings, as follows (at [40]):

> The plaintiff has succeeded where the construction of s 33(3) of the WCA is concerned but has failed in his application to obtain the remedies prayed for. The points raised by all parties are important and the arguments put forward have been fair. I also have no doubt that the position taken by the Commissioner for Labour in this case is taken in good faith.

12 Given these circumstances, the court in *Chua Ah Beng* made no order as to costs. However, *Chua Ah Beng* does not therefore stand for the general proposition that no order as to costs would be made if both litigants acted in good faith and raised only fair points. The unique factual circumstances of that case also have to be taken into account. As Menon JC observed in *Re Shankar Alan* at [19]:

> In my judgment, that case [ie, *Chua Ah Beng*] also is distinguishable. The facts before Tay JC were that the plaintiff there had succeeded in some respects but failed in others *particularly in relation to securing the reliefs he sought*. In that context, the court considered it relevant that fair points had been raised and that positions had been taken in good faith, and therefore held there should be no order as to costs. However, *Chua Ah Beng* does not stand for the general proposition that in the sort of proceedings that Mr Yim referred to there should be no order as to costs if both litigants act in good faith and raise only fair points.
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> [emphasis original]

I agree with Menon JC's observation.

13 Furthermore, I would observe that costs have been ordered against the Law Society in proceedings brought under the LPA. In *Law Society of Singapore v Ang Boon Kong Lawrence* [1992] 3 SLR(R) 825, a written complaint of dishonourable and unprofessional conduct against the respondent for making unfounded allegations in open court was lodged with the Law Society of Singapore. An inquiry committee was appointed to investigate the matter and duly made its report. Relying upon this report, the Council of the Law Society determined under s 88 of the Legal Profession Act (Cap 217, 1970 Rev Ed) (now s 87(1) of 2009 Rev Ed) that the respondent should be ordered to pay a penalty and imposed a $1,000 penalty upon him. The respondent applied to the High Court to have this penalty set aside under s 95 of the Legal Profession Act (Cap 217, 1970 Rev Ed) (now s 95 of 2009 Rev Ed) on the grounds that the Law Society had no jurisdiction over him and that the complaint was in any case unfounded. He succeeded in his application at the High Court before Sinnathuray J (see *Ang Boon Kong Lawrence v Law Society of Singapore* [1990] 2 SLR(R) 783) and the Law Society appealed to the Court of Appeal against the order setting aside the penalty. The Court of Appeal dismissed the Law Society's appeal with costs, but regrettably, did not discuss the issue of costs in detail or address the public policy considerations in awarding costs against the Law Society. Sinnathuray J in the High Court held that the Inquiry Committee did not have jurisdiction and it was clear beyond reasonable doubt that there was no evidence whatsoever to support the findings of the Inquiry Committee. For those reasons, Sinnathuray J held that costs had to follow the event, noting that (at [11] and [12]):

> 11 The learned Attorney-General has also asked for costs of these proceedings and the costs of his appearance for Mr Lawrence Ang before the Council.
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> 12 I think costs must follow the event. *These proceedings should not have been necessary*. The Law Society will pay the costs of these proceedings, including the costs of the Attorney-General before the Council when Mr Lawrence Ang was called upon to appear before the Council.
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> [emphasis added]

14 In *Re Lim Chor Pee* [1990] 2 SLR(R) 117, the respondent was ordered to show cause under the LPA. The court found that the six charges had not been proven beyond a reasonable doubt and discharged the order *nisi* to show cause. As for costs, the court held that (at [103]):

> ... In this case, the Law Society had framed the charges in an extremely broad manner, and in respect of the first charge and the seventh alternative charge they are outside the scope of the information referred by the Attorney-General. In respect of most of the charges we found the evidence most inadequate. For these reasons and taking into account all other relevant circumstances, we are of the opinion that in this case the respondent [i.e., Mr Lim Chor Pee] should have his costs of the hearing before us. We accordingly so ordered.

15 It is, therefore, evident that in cases involving appeals or reviews to the higher courts, the court's discretion to award costs against the Law Society under the LPA is unfettered. Before I set out my reasons for awarding 50% of the costs against the Law Society, I will turn to consider the two arguments that were raised by counsel for the Law Society ("Mr Pillay") to support his position that no costs should have been ordered against the Law Society in the present circumstances.

The Law Society's position on costs

16 Mr Pillay who appeared on behalf of the Law Society objected to the costs order on two main grounds. First, Mr Pillay contended that the present proceedings related to a "public interest" litigation such that no costs should be ordered against the Law Society who did not choose to initiate or defend the litigation. Mr Pillay cited R *(Corner House Research) v Secretary of State for Trade and Industry* [2005] 1 WLR 2600 ("*Corner House Research*") to support his contention. [note: 1] Second, Mr Pillay submitted that the Law Society was not a civil litigant and should, therefore, not be "penalized" on costs when it came to fulfilling its statutory function, citing *Baxendale-Walker v Law Society* [2008] 1 WLR 426 ("*Baxendale-Walker (CA)*"). [note: 2] In short, he contends that the Law Society should be treated, in disciplinary-related proceedings under the LPA, differently from a party to ordinary civil litigation. The effect of Mr Pillay's submission was that the principle that costs should ordinarily follow the event did not and ought not to apply to the Law Society in the present circumstances. I shall now consider in turn the two distinctive features raised by Mr Pillay.

Was there any public interest element present in opposing OS 1048

17 In the present case, the Law Society did not, in my view, further the public interest by opposing or resisting a challenge of its decision. Whilst the Council of the Law Society in coming to its decision having considered the report of the Inquiry Committee was exercising a public function, as with most public functions, the decision is subject to review by the courts and this is expressly provided for under s 96 of the LPA. In proceedings brought under s 96 of the LPA, it would be in the public interest for the Law Society to lay before the court its full reasons for its decision. However, it does not follow that it would be in the public interest for the Law Society to strongly defend its decision in the face of any challenge, regardless of whether it was legitimate or reasonable for it to do so under s 96 of the LPA.

18 In any case, no legal question of public interest was raised in OS 1048. I agreed with Mr Bajwa that *Corner House Research* is distinguishable and did not assist the Law Society. In that case, Corner House Research applied for judicial review of the Secretary of State for Trade and Industry's decision to amend the procedures of the Export Credits Guarantee Department ("ECGD") of the Department of Trade and Industry and the ECGD's standard forms relating to bribery, corruption and money laundering and, *inter alia*, applied for a protective costs order. Lord Phillips MR discussed the notion of public interest in the context of the grant of a protective costs order. Lord Phillips MR (at [69]–[70]) held that one important difference between public law litigation and private law civil and family litigation was that there was a public interest in the elucidation of public law by the higher courts in addition to the interests of the individual parties. Another case which deals with public interest in the outcome of litigation is *Oshlack v Richmond River Council* (1998) 193 CLR 72. There, the High Court of Australia held that there was public interest in the outcome of the litigation because a significant number of members of the public shared the appellant's stance to uphold environmental law and the preservation of endangered fauna. On the facts of the present case, it is clear to me that *no* such important question of *public interest* had arisen.

Did the Law Society appear in its capacity as a regulator of the legal profession

19 I now turn to the decision of *Baxendale-Walker (CA)*. Mr Pillay urged the court to follow the English position which recognises the difference in principles relating to costs in proceedings brought in the public interest in the exercise of regulatory functions on the one hand, from those which applied to ordinary civil litigation. In that case, the Court of Appeal recognised that the Law Society of England and Wales performed an important function as a regulator exercising a public function.

20 Notably, the facts in OS 1048, where the Law Society here is defending its decision to dismiss the plaintiff's Complaint, should be contrasted with the English position, where the Law Society of England and Wales is responsible for instituting proceedings against errant lawyers. For a better appreciation of the differences between the two regimes, it is necessary to understand the procedure for disciplinary proceedings in the UK which I summarise as follows.

21 The Solicitors Disciplinary Tribunal ("the Tribunal") is an independent statutory tribunal constituted under s 46 of the UK Solicitors Act 1974 (c 47) (the "Solicitors Act"). It is independent of the Law Society of England and Wales although it is largely funded by the Law Society of England and Wales. The Tribunal adjudicates upon alleged breaches of rules or code of professional conduct which are designed to protect the public and maintain the reputation of the solicitors' profession for honesty, probity, trustworthiness, independence and integrity. The Tribunal has power to strike off a solicitor from the Roll, suspend from practice, fine or reprimand (see s 47(2) of the Solicitors Act) and award costs to either side (see s 47(2)(i) of the Solicitors Act).

22 It is the practice of the Tribunal to decide if the allegations have been substantiated. At the conclusion of the hearing, the Tribunal's written order is made available as soon as is practicable (see Rule 16(5) of the UK Solicitors (Disciplinary Proceedings) Rules 2007). The Tribunal's decisions can be appealed to the Master of the Rolls or the High Court depending on the circumstances. Under s 49(4) of the Solicitors Act, the Master of the Rolls or the High Court (as the case may be) has the power to make such order on appeal as they may think fit.

23 The Solicitors Regulation Authority initiates over 90% of the cases dealt with by the Tribunal. Whilst it is open to any person to make an application to the Tribunal directly, it is more common for a complainant to first approach the Legal Complaints Service for a matter to be investigated. Where an application is made directly to the Tribunal by a member of the public, the Tribunal may refer it to the appropriate body to conduct an investigation and/or pursue the complainant's original application on his behalf.

24 In contrast, under Singapore law, any complaint of the conduct of an advocate and solicitor has to be made to the Law Society in writing (s 85(1) of the LPA). If the complaint is made within the prescribed time, the Council of the Law Society has to refer it to the Chairman of the Inquiry Panel under s 85(1A) of the LPA. The Chairman of the Inquiry Panel will within 2 weeks, constitute a Review Committee (s s85(6) of the LPA) and this Review Committee will complete its review within 4 weeks of its constitution and direct the Council of the Law Society to dismiss the matter or refer the matter back to the Chairman of the Inquiry Panel (s 85(8) of the LPA). Under s 85(9) of the LPA, the Council of the Law Society shall within 7 days of receiving the direction to dismiss the matter, give effect to the direction. Where a person has made a complaint to the Law Society and the Council of the Law Society has determined that there is no sufficient cause for a formal investigation but the advocate and solicitor concerned should pay a penalty, the complainant may apply to a Judge within 14 days of being notified of the Council's determination (s 96(1) of the LPA). At the hearing, the Judge may make such order for the payment of costs as may be just (s 96(4) of the LPA).

25 Returning to the decision of *Baxendale-Walker (CA)*, the Law Society of England and Wales in that case initiated disciplinary proceedings against the solicitor at the Tribunal. One of the two

allegations of conduct unbefitting a solicitor was not proved but the second was admitted, and the Tribunal found the solicitor guilty of unbefitting conduct and suspended him from practice for three years. Pursuant to section 47(2) of the Solicitors Act 1974, the Tribunal made an order that the Law Society of England and Wales pay 30% of the solicitor's costs of the proceedings (since the first allegation had not been proved and a greater proportion of the solicitor's costs had been incurred in defending that allegation). The solicitor appealed to the Divisional Court of the Queen's Bench Division against the sentence of suspension from practice. The Law Society of England and Wales cross-appealed against the costs order. The Divisional Court allowed the cross-appeal and ordered the solicitor to pay 60% of the former's costs instead, holding that the principles relating to costs in proceedings brought in the public interest in the exercise of regulatory functions differed from those which applied to ordinary civil litigation.

26 In *Baxendale-Walker v The Law Society* [2006] 3 All ER 675, Moses LJ (sitting with Burnton J in the Divisional Court) held that where a regulator brings disciplinary proceedings in the public interest and in the exercise of a public function, which it is required to perform, it is different from private civil litigation as follows (at [43]):

> The question thus arises as to whether the order that the Law Society should pay a proportion of the appellant's costs and that no costs should be paid by the appellant was correct, as a matter of law. The principles, in relation to an award of costs against a disciplinary body, were not in dispute. A regulator brings proceedings in the public interest in the exercise of a public function which it is required to perform. In those circumstances the principles applicable to an award of costs differ from those in relation to private civil litigation. Absent dishonesty or a lack of good faith, a costs order should not be made against such a regulator unless there is good reason to do so. That reason must be more than that the other party has succeeded. In considering an award of costs against a public regulator the court must consider on the one hand the financial prejudice to the particular complainant, weighed against the need to encourage public bodies to exercise their public function of making reasonable and sound decisions without fear of exposure to undue financial prejudice, if the decision is successfully challenged.

27 In the context of the institution of disciplinary proceedings against a solicitor, Moses LJ also noted (at [50]) in relation to costs awards that the Tribunal might, in some circumstances, reflect the failure of one of the allegations by making an order that the unsuccessful solicitor should not have to pay all of the costs but that was a far cry from saying that he should be paid some of his costs.

28 The Court of Appeal in *Baxendale-Walker (CA)* in dismissing the appeal held, in relation to the public function of the Law Society of England and Wales, that (at [34]):

> An order that the Law Society itself should pay the costs of another party to disciplinary proceedings is neither prohibited nor expressly discouraged by section 47(2)(i). That said, however, it is self-evident that when the Law Society is addressing the question whether to investigate possible professional misconduct, or whether there is sufficient evidence to justify a formal complaint to the tribunal, the ambit of its responsibility is far greater than it would be for a litigant deciding whether to bring civil proceedings. Disciplinary proceedings supervise the proper discharge by solicitors of their professional obligations, and guard the public interest, as the judgment in Bolton's case [1994] 1 WLR 512 makes clear, by ensuring that high professional standards are maintained, and, when necessary, vindicated. Although, as Mr Stewart maintained, it is true that the Law Society is not obliged to bring disciplinary proceedings, if it is to perform these functions and safeguard standards, the tribunal is dependent on the Law Society to bring properly justified complaints of professional misconduct to its attention. Accordingly, the Law Society has an independent obligation of its own to ensure that the tribunal is enabled to fulfil its

statutory responsibilities. The exercise of this regulatory function places the Law Society in a wholly different position to that of a party to ordinary civil litigation. The normal approach to costs decisions in such litigation—dealing with it very broadly, that properly incurred costs should follow the "event" and be paid by the unsuccessful party—would appear to have no direct application to disciplinary proceedings against a solicitor.

29 Importantly, the Court of Appeal in *Baxendale-Walker (CA)* concluded that there was no assumption that an order for costs in favour of a solicitor who has successfully defeated an allegation of professional misconduct would automatically follow (at [39]):

> In our judgment Jackson J was right to equate the responsibilities of the institute in *Gorlov's* case [2001] ACD 393 with the regulatory actions of the licensing authority in Booth's case [2000] COD 338. *As Bolton's case [1994] 1 WLR 512 demonstrates, identical, or virtually identical, considerations apply when the Law Society is advancing the public interest and ensuring that cases of possible professional misconduct are properly investigated and, if appropriate, made the subject of formal complaint before the tribunal. Unless the complaint is improperly brought, or, for example, proceeds as it did in Gorlov's case [2001] ACD 393 , as a "shambles from start to finish", when the Law Society is discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs follow the event*. The "event" is simply one factor for consideration. It is not a starting point. There is no assumption that an order for costs in favour of a solicitor who has successfully defeated an allegation of professional misconduct will automatically follow. *One crucial feature which should inform the tribunal's costs decision is that the proceedings were brought by the Law Society in exercise of its regulatory responsibility, in the public interest and the maintenance of proper professional standards. For the Law Society to be exposed to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful might have a chilling effect on the exercise of its regulatory obligations, to the public disadvantage*. Accordingly, Moses LJ's approach to this issue did not go further than the principles described in this judgment.
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> [emphasis added]

30 *Baxendale-Walker (CA)* is distinguishable because on the facts of the present case, the Law Society was not the complainant, unlike the Law Society of England and Wales in *Baxendale-Walker (CA)*. Therefore it cannot be said that the Law Society here was acting as a regulator ensuring that cases of possible professional misconduct are properly investigated and, if appropriate, made the subject of a formal complaint before a disciplinary tribunal in the public interest and in the exercise of a public function. It was, instead, *defending* an application to review the decision of its Inquiry Committee. Another distinguishing feature is that costs in relation to judicial review proceedings is specifically provided for under s 96(4), and the plain language of sub-section (4) does not prevent the court from making an adverse costs order against the Law Society. This sub-section is drafted differently in comparison with s 103(4) of the LPA, which recognises, inferentially, the public function of the Law Society and its Disciplinary Tribunal. Subsections (3) and (4) to s103 of the LPA read as follows:

> (3) The costs of and incidental to all proceedings under section 97, 98, 100 or 102 shall be in the discretion of the Judge or of the court before whom the hearing has taken place.
>
> (4) Such costs may include the costs of the Society or Disciplinary Tribunal and may be ordered to be paid by the solicitor by or against whom or by the person by whom any complaint was made or was intended to be made or partly by the solicitor and partly by the other party.

31 Furthermore, on the present facts, there would be no chilling effect against the Law Society in the exercise of its regulatory obligations, if any. This is because the Law Society may take a neutral position where its decisions are challenged under s 96 of the LPA.

32 Section 96 of the LPA allows a complainant who is dissatisfied with the decision of the Council of the Law Society to apply to court to review that decision. As OS 1048 was the plaintiff's application, I accept that the Law Society's involvement as the defendant was unavoidable. That said, the Law Society, however, does not have a general duty or a specific statutory duty to *resist or oppose* every application that is made to the court under s 96 of the LPA. Section 38(1) of the LPA provides generally that the purpose of the Law Society is to maintain and improve the standards of conduct and learning of the legal profession in Singapore. Nothing in the LPA requires the Law Society to oppose every application that is made to court (under s 96) to review the decision of the Council of the Law Society.

33 This proposition – that the Law Society has *no* statutory or general duty to oppose OS 1048 – is supported by the analogous case of *Re Shankar Alan*, a decision brought to the court's attention by counsel for the plaintiff, Mr Ragbir Singh Bajwa ("Mr Bajwa"). In that case, the applicant, a solicitor, was successful in his application (which was brought under s 97(1) of the LPA) for a quashing order in respect of the findings of a disciplinary committee that he was guilty of professional misconduct. I pause to mention that s 97(3) of the LPA, like s 96(4), expressly provides that the Judge may make an "order for the payment of costs as may be just".

34 Counsel for the Law Society in *Re Shankar Alan*, in objecting to the applicant's claim for costs to follow the event, maintained that the Disciplinary Committee was established pursuant to a statutory regime regulating the legal profession and that the Law Society, in participating in the proceedings, was doing no more than fulfilling its statutory duty since it had done so in order to assist the court by presenting the opposing arguments to those advanced on the applicant's behalf.

35 Counsel for the Law Society in *Re Shankar Alan* also cited *Chew Kia Ngee v Singapore Society of Accountants* [1988] 2 SLR(R) 597 ("*Chew Kia Ngee")* in support of his case. In *Chew Kia Ngee*, the applicant was convicted by the Disciplinary Committee of the Singapore Society of Accountants and suspended from practice for five years. The appeal was allowed, but Thean J made no order as to costs on the basis that it was incumbent on the Singapore Society of Accountants in that case to resist the appeal and present its arguments to assist the court in arriving at its decision. Thean J held (*Chew Kia Ngee* at [24]):

> I now turn to the question of costs. Clearly, in view of what I have decided, there should be no order as to costs before the Committee. The only question is whether the appellant should be awarded costs of the appeal. I refrain from making this order, and my reason is this. The society has to discharge its duty under the Act; it has not acted improperly or vexatiously as against the appellant. The Committee at their inquiry had made a finding and given their decision against the appellant. Upon appeal by the appellant it seems to me that it is incumbent on the society, in this case at any rate, to resist the appeal and present its argument to court to assist the court in arriving at its decision. Having regard to all the circumstances, I make no order as to costs here and below.

36 Menon JC in *Re Shankar Alan* distinguished *Chew Kia Ngee* on the ground that the case before him was unlike that in *Chew Kia Ngee*, where Thean J had made the finding that it was incumbent on the Singapore Society of Accountants to resist the application. In *Re Shankar Alan*, there was no duty or obligation imposed on the Law Society to *oppose* that application to quash the findings of the Disciplinary Committee so as to present the court with an alternative position (*Re Shankar Alan* at

[10]). Menon JC drew a distinction between opposing an application and presenting the court with an alternative position in the following terms (*Re Shankar Alan* at [10]):

> As to the application for the quashing order, I do not consider that there was any duty or obligation upon the Law Society to *oppose* that application simply so as to present the court with an alternative position. To some degree, it is almost invariably the case in an adversarial system that the court in arriving at its decision finds the greatest assistance in a vigorously contested argument. However, that does not mean a prospective litigant is obliged to contest a position simply to facilitate this, or that he can avoid the usual consequence of being made liable for costs if he is unsuccessful in his efforts to persuade the court. [emphasis in original]

37 Menon JC noted that it was open to the Law Society to take no active position on the application (*Re Shankar Alan* at [11]). He noted that the Law Society had done exactly that in *Re Singh Kalpanath* [1992] 1 SLR(R) 595, by choosing not to participate in the proceedings and adopting a neutral stand. As a result, Chan Sek Keong J took the view that the applicant there was not entitled to costs against the Law Society (*Re Singh Kalpanath* at [102]).

38 Although the applicant in *Re Shankar Alan* applied for a quashing order pursuant to s 97(1) of the LPA, and the application on the facts here was made under s 96(1) of the LPA, a similar reading of s 96(1) of the LPA would lead one to the same conclusion that the Law Society did not have a statutory or any other obligation to resist or *oppose* the application under s 96(1) of the LPA. It will be apparent from the facts set out below that the Law Society here had strenuously resisted the plaintiff's application in OS 1048 on the ground that it was baseless and unwarranted. Simply put, the Law Society here did not take a neutral position.

39 The distinction between taking a neutral position and opposing an application as was drawn in *Re Shankar Alan*, is defensible in light of the government's concern that there were doubts that the self-regulating bodies were willing to discipline their own members. In 1986, the Second Minister for Law (Prof S Jayakumar) (see Parliamentary Debates of 22 September 1986) proposed significant amendments to the provisions dealing with the disciplinary processes of the legal profession and stated that (at cols 672 and 673):

> In recent times, the permissive attitude of these self-regulating bodies have created doubts in their willingness to police themselves or to discipline members of their own kind…
>
> I must add that most of these cases of misconduct which I have referred to, have become public knowledge only because they have been brought before our courts. Many other instances of misconduct go unnoticed and unreported as to how they are leniently disposed of by the Inquiry or Disciplinary Committee in which there is no representation for the consumer or public.
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> …
>
> Sir, because of the confidentiality which surrounds the investigations by the Bar and because all persons involved in the investigations are themselves members of the Bar, surely dissatisfied members of the public would have good reasons to question the manner of such investigations. This is a grey area.
>
> It is faulty with respect to the present structure for the discipline of lawyers, and it must be put right.

40 Further, the Report of the Select Committee on the Legal Profession (Amendment) Bill No 20/ 86

(at pg A5) explained that the proposed amendments to the disciplinary process were due to a perception that the legal profession was not willing to take action against its errant members. Specifically, in relation to the Inquiry Committee, the Report of the Select Committee (at p A22) had this to say:

> The IC and the Council currently serve the very useful function of weeding out groundless complaints. Of the complaints submitted to the Inquiry Committee, few are referred to the DC. Though the government is of the view that this shows permissiveness on the part of the Inquiry Committee it must also be true that some of the complaints were groundless.

41 Even though lay persons now form part of the Inquiry Committee (s 84(1) of the LPA), allowing the Law Society to freely oppose an application for review of its decision without adverse costs consequences could unintentionally perpetuate the public's perception which the government aimed to correct by amending the LPA – that the Law Society is unwilling to discipline its members. Furthermore, in terms of the balance of power between the Law Society and the complainant, it must be borne in mind that the complainant is often a client of the solicitor, *i.e.* he or she is unlikely to be legally trained.

42 A third ground for distinguishing *Baxendale-Walker (CA)* is the fact that in that case, the Tribunal, which is a separate entity from the Law Society of England and Wales, was tasked with making a decision. However, the Tribunal did not take part in the appeal to defend its own decision. On the other hand, the Singapore system does not have an independent tribunal separate from the Law Society. Instead, the Law Society constitutes Inquiry Committees, Review Committees and Disciplinary Committee to assist it in making a decision on the matter. In other words, the Law Society here did not participate in the hearing before the Judge in its capacity as a regulator of the legal profession, but rather, in its capacity as the maker of its decision to dismiss the plaintiff's complaint and with a view to defending its own decision. In the circumstances, it would be difficult to contend that the Law Society was acting in the public interest as opposed to its own private interests. In *Corner House Research* (at [144]), Corner House Research had no private interest in the outcome of the case; in contrast, the Law Society's strenuous defence of its decision has an element of self-interest.

43 On these grounds, I would dismiss the Law Society's argument that no costs ought to be ordered against it as it was performing a public function.

Reasons for ordering 50% costs against the Law Society

44 In the present case, the Law Society put up strenuous opposition to the plaintiff's application to review its decision to dismiss the Complaint. The Law Society took the position that OS 1048 should be dismissed as Mr Bader's affidavits filed in OS 1048 related to matters that were outside the scope of the Complaint as considered and deliberated by the Inquiry Committee. There were broadly three complaints before the Inquiry Committee (see also above at [1]). The first related to the alleged exorbitant fees charged by Mr Arul and the inquiry was on whether there was an agreement on Mr Arul's professional fees in respect of MC Suit 18905 of 2005 and DC 903 of 2006. The Inquiry Committee considered and accepted Mr Arul's explanation and held that there was no agreement on professional fees. I affirmed the Inquiry Committee's decision on this point.

45 The second complaint related to the allegation that Mr Arul had received strict instructions not to transfer any money from the client's account but disobeyed those instructions by transferring the sums of $54,909 and $32,000 respectively from the client's account to satisfy Mr Arul's bills for professional services rendered which bills were being disputed at the time of the transfers. Mr Bajwa

pointed out that the essence of the complaint was that Mr Arul had received moneys into client's account contrary to clear instructions in Mr Bader's e-mail dated 7 July 2006 directing the sum of $114,440.97 to be paid to the plaintiff. Ms Ambika Rajendram ("Ms Rajendram"), the director of Law Society's Conduct Department, deposed in her affidavit filed on 27 March 2009 that Mr Bader's allegation was not part of the Complaint that was lodged by the plaintiff with the Law Society and was never the subject of any inquiry undertaken by the Inquiry Committee.

46 The e-mail dated 7 July 2006 from Mr Bader to Mr Arul reads as follows: [note: 3]

> Dear Andre,
>
> As I can see from the demand you have requested that Leivest pay to the lawyers account. I would appreciate if you change this and make it payable directly to Top Ten account and not to your company first. Kindly confirm that this will be done and payment will be directly received by Top Ten.
>
> TKS Regards P Bader

47 Even though the 7 July 2006 e-mail was inadvertently not furnished to the Law Society, the 24 August 2006 e-mail was provided. The relevant portion of Mr Bader's e-mail dated 24 August 2006 to Mr Arul reads as follows: [note: 4]

> 3. You were informed in July 2006 that all moneys that would be paid by Leivest International Pte Ltd must be paid directly to Top Ten Ent. Pte Ltd and not into client's account. Despite that instruction you had the money paid into client's account!

48 Notably, Mr Arul in his written reply dated 7 February 2008, did *not* refer the Inquiry Committee to the 7 July 2006 e-mail or the 24 August 2006 e-mail. Instead, he relied and commented on an e-mail dated 18 August 2006 (which was a different e-mail) in response to the second complaint, *viz*, Mr Arul had received strict instructions not to transfer any money from client's account. [note: 5] To my mind, Mr Arul had received these e-mails with clear instructions to pay party and party costs (*ie*, $114,440.97) directly to the plaintiff. He ought to have commented on them in his reply to the Inquiry Committee on 5 February 2008 since the two e-mails were referred to in Mr Bader's statutory declarations. These e-mails would have shed light on whether the party and party costs were in the first place properly received in the client's account with Mr Arul's firm in contrast to the Inquiry Committee's assumption that moneys in client's account were properly received. As a consequence, the question that the Inquiry Committee considered was whether Mr Arul was allowed under his warrant to act to utilise money in the client's account to settle the firm's bills for professional services rendered to the plaintiff. I agreed with Mr Bajwa's argument that the fact that the Inquiry Committee did not pick up the client's express instructions when it could have did not mean that the non-observance of strict instructions was no longer a part of the Complaint and had to be re-lodged as a new complaint. [note: 6] In these circumstances, there was justification for referring the matter to a Disciplinary Tribunal for investigation on Mr Arul's *prima facie* failure to comply with his client's specific instructions to have the money paid directly to the plaintiff.

49 There was a further complaint relating to a sum of $10,000 which represented the security for costs that M/s Peter Phang & Co as solicitor for Leivest International Pte Ltd ("Leivest") had paid to Mr Arul's firm after Leivest lost its appeal and was obliged to pay costs of the appeal to the plaintiff. In that regard, the $10,000 received by Mr Arul was paid into Mr Arul's office account and not into the client's account, contrary to Rule 3 of the Solicitors' Accounts Rules. In her second affidavit

dated 29 June 2009, Ms Rajendram deposed that this allegation concerning the $10,000 had been considered by the Inquiry Committee during the inquiry process. Later and after an adjournment of the proceedings, Ms Rajendram explained in her third affidavit filed on 25 September 2009 that she had re-visited the Inquiry Committee Report and wished to clarify that:

> ... it is in fact not clear from the said report if the Inquiry Committee did look into the First Allegation (*ie*, $10,000 security for costs). I should also point out that Andre Arul did not address any issues relating to the First Allegation in his written explanation to the Inquiry Committee dated 5 February 2008. ... [emphasis original]

That said, Ms Rajendram went on to argue that the plaintiff's allegation relating to the sum of $10,000 fell outside the scope of his Complaint.

50 Having regard to the arguments, affidavit evidence and exhibits thereto, it seems to me that the plaintiff acted reasonably in commencing OS 1048 to review the decision of the Council of the Law Society. The plaintiff had to fight hard, in the face of strenuous opposition by the Law Society, to have his Complaint brought before a Disciplinary Tribunal. I saw from the brief outline of the position and arguments adopted by the Law Society that there was some misunderstanding of the evidence and that there existed compelling reasons justifying the court to interfere in the decision of the Council of the Law Society to dismiss the Complaint as a whole. The plaintiff was successful in defeating part of the Council of the Law Society's decision and should, therefore, be allowed to recover some of its costs. However, in other respects, the Law Society won. In my view, it was a proper exercise of judicial discretion to order the Law Society to pay half of the plaintiff's costs having regard to the following factors. First, the Inquiry Committee's finding that there was no agreement in professional fees was affirmed. Second, I was not prepared to give the plaintiff more than 50% of the costs as much of the difficulties faced by the Inquiry Committee, which made its tasks all the more time-consuming and problematic were the result of the messy presentation of the Complaint lodged by the plaintiff. The attendant risk of misunderstanding the evidence was all too real. The plaintiff's absence at the Inquiry despite the Inquiry Committee's invitation to the plaintiff compounded the difficulties. On the other hand, I am also mindful that Mr Arul's written reply of 7 February 2008 did not deal with the relevant e-mails. In the result, the hearing of OS 1048 became protracted. All these were matters which a court could take into consideration in deciding what was just and reasonable costs to award in the circumstances.

Conclusion

51 For the reasons stated, I ordered the Law Society to bear half the costs of the proceedings.

[note: 1] Mr Pillay's letter dated 29 October 2009 requesting further arguments on costs

[note: 2] Mr Pillay's written submissions for SUM 6001/20089/B

[note: 3] Plaintiff's core documents, Tab B

[note: 4] Plaintiff's skeletal submissions dated 27 August 2009, Tab B

[note: 5] Para 51(b) of Mr Arul's letter dated 5 February 2008 exhibited in Yeo Boon Tat's affidavit dated 10 September 2008

[note: 6] Plaintiff's skeletal submissions dated 27 August 2009 at para 4