IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 255

Court of Three Judges/Originating Summons No 2 of 2020

In the matter of Sections 94(1) and 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed)

And

In the matter of Lee Suet Fern (Lim Suet Fern), an Advocate and Solicitor of the Supreme Court of the Republic of Singapore

Between

Law Society of Singapore

… *Applicant*

And

Lee Suet Fern (Lim Suet Fern)

… *Respondent*

JUDGMENT

[Legal Profession] — [Solicitor-client relationship]
[Legal Profession] — [Professional conduct] — [Breach]

Version No 1: 20 Nov 2020 (15:50 hrs)

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Law Society of Singapore
v
Lee Suet Fern (alias Lim Suet Fern)

[2020] SGHC 255

Court of Three Judges — Originating Summons No 2 of 2020
Sundaresh Menon CJ, Judith Prakash JA and Woo Bih Li J
13 August 2020

20 November 2020 Judgment reserved.

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

Introduction

1 This is an application by the Law Society of Singapore ("the Law Society") for an order pursuant to s 98(1)(*a*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA") that the respondent, Mrs Lee Suet Fern (alias Lim Suet Fern) ("the Respondent"), be subject to the sanctions provided for under s 83(1) of that Act. At the time of the proceedings before the disciplinary tribunal ("the DT"), the Respondent was an advocate and solicitor of the Supreme Court of Singapore of 37 years' standing and practised as a director of Morgan Lewis Stamford LLC, a law corporation.

2 After hearing the parties and considering their submissions, the DT concluded that there was cause of sufficient gravity for disciplinary action to be taken against the Respondent (see *The Law Society of Singapore v Lee Suet Fern*

(Lim Suet Fern) [2020] SGDT 1 ("GD")). The Law Society accordingly filed the present originating summons for this court to dispose of the matter. On the question of sanctions, the Law Society sought a striking off order against the Respondent pursuant to s 83(1)(*a*) of the LPA.[1]

3 Having considered the parties' submissions, and having reviewed the DT's GD, we differ from certain findings made by the DT. In particular, for the reasons set out in this judgment, we consider that the Respondent did not receive instructions or directions directly from her putative client. We also do not find that there was an implied retainer between the Respondent and her putative client. Nonetheless, we agree with the DT that the Respondent is guilty of misconduct unbefitting an advocate and solicitor. Given the circumstances and nature of her misconduct, we find it appropriate to suspend the Respondent from practising as a solicitor for a period of 15 months. We now explain the reasons for our decision.

The background facts

4 The present application concerns the Respondent's participation, principally on 16 and 17 December 2013, in the preparation and execution of what became the last will of her father-in-law, the late Mr Lee Kuan Yew ("the Testator"). Most of the facts before us were uncontroversial and supported by contemporaneous evidence. Where the facts were contentious, given that these are disciplinary proceedings which have the potential to adversely impact the Respondent's livelihood and reputation, we apply the standard of proof beyond a reasonable doubt: see *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 ("*Ahmad Khalis*") at [6], *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221 ("*James Wan*") at [46]–[52] and *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2013] 3 SLR 875 at [47].

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The Testator's first six wills

5 We begin by setting out some key events that preceded and are relevant to our ensuing discussion and analysis of the events surrounding the execution of the Testator's last will. Between 20 August 2011 and 2 November 2012, the Testator executed six wills (referred to as the "First Will" to the "Sixth Will" respectively). Each of these was prepared by Ms Kwa Kim Li ("Ms Kwa"), a partner in the law firm, Lee & Lee. The wills reflected the Testator's evolving wishes with regard to the bequest of his estate. Some of the key changes in the terms of his various wills are summarised below:

(a) In the First Will, which was dated 20 August 2011, the Testator granted a one-third share of his estate to each of his three children, namely, Mr Lee Hsien Loong ("Mr LHL"), Dr Lee Wei Ling ("Dr LWL") and the Respondent's husband, Mr Lee Hsien Yang ("Mr LHY"). It was agreed between the children that each of them would take a specific property of the Testator's, rather than have his properties jointly held in their names.[2] Pursuant to this agreement, the Testator's house at 38 Oxley Road ("the Oxley House") was bequeathed to Mr LHL, while Dr LWL and Mr LHY received various other properties owned by the Testator. The First Will also granted Dr LWL the right to reside rent-free at the Oxley House for as long as she desired,[3] and stipulated the Testator's wish that the Oxley House be demolished either upon his passing or after Dr LWL had moved out, whichever was later ("the Demolition Clause").[4] In addition, there was a clause providing for the valuation of the Testator's properties, with such valuation to be undertaken as at the date of his death ("the Valuation Clause").[5]

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(b) In the Second Will, which was dated 21 December 2011, Dr LWL's right to reside at the Oxley House was removed.[6]

(c) In the Third Will, which was dated 6 September 2012, each child's one-third share of the Testator's estate was altered, such that Mr LHL and Mr LHY each received three shares absolutely, while Dr LWL received four shares that were held upon trust for her life, and after her death, upon trust for Mr LHL and Mr LHY in equal shares.[7]

(d) In the Fourth Will, which was dated 20 September 2012, the Testator reverted in substance to his Second Will, such that each child's one-third share in the estate was reinstated,[8] save that the Valuation Clause was removed.[9]

(e) In the Fifth Will, which was dated 4 October 2012, Dr LWL was once again granted the right to reside at the Oxley House (which had been removed in the Second Will, and which was not reinstated in the Third and Fourth Wills). However, this right was made subject to the consent of Mr LHL, who was bequeathed the Oxley House as part of his one-third share of the Testator's estate, and, unlike the First Will, there was no mention that it was a right to reside at the Oxley House "free of rent".[10] The Demolition Clause, which had featured in the first four wills, was removed.[11]

(f) In the Sixth Will, which was dated 2 November 2012, the Testator changed the shares in which his estate would be left to his children. This will provided for a total of seven shares, with Mr LHL and Mr LHY to receive two shares each, and Dr LWL, three shares (1/7 more than her brothers).[12] As with the Fifth Will, there was no Demolition Clause in the Sixth Will.

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6 It is not clear on the evidence whether the Testator's children knew about the precise contents of each of the six wills. But, for the purposes of the present proceedings, it is not necessary for us to come to a firm view on this, save to note that it was not disputed that all three of them were aware that they were beneficiaries under each of the Testator's wills.[13]

The circumstances surrounding the execution of the Last Will

7 Sometime after the execution of the Sixth Will on 2 November 2012, the Testator's health deteriorated markedly. Between September and October 2013, he was hospitalised for an extended period with a number of medical issues, the details of which are not material.

The Testator's discussions with Ms Kwa in late 2013

8 Following his discharge from hospital, the Testator initiated discussions with Ms Kwa on or around 29 November 2013 about making some changes to the Sixth Will. Certain aspects of their discussions were recorded in a series of emails beginning on 30 November 2013. In her email of that date, Ms Kwa summarised some of the key provisions of the Sixth Will. This included the bequest of the Oxley House to Mr LHL as part of his share of the estate. As noted earlier, the Testator's children had evidently agreed that each of them would be left specific properties from the Testator's estate, rather than have his various properties jointly held in their names. In the same email, Ms Kwa also recalled that the Testator had raised the possibility of the Oxley House becoming "de-gazetted" after his passing, in which event the value of that property might escalate. The Testator was concerned to ensure that if that happened, Dr LWL and Mr LHY should also benefit from any increased value. Ms Kwa outlined various options to address this concern.[14]

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9 It appears that there were further discussions between the Testator and Ms Kwa, although these are not reflected in the email chain before us. On 12 December 2013, Ms Kwa wrote to the Testator again, noting his wish to revert to leaving equal shares of his estate to each of his children. In other words, unlike what had been provided for in the Sixth Will, Dr LWL would not be left an additional share. Ms Kwa also noted the Testator's wish that a codicil be prepared to effect this. Ms Kwa stated that she would prepare the codicil for the Testator to sign "this week, or when [he was] ready". Finally, she stated that "[r]egarding the Oxley [House], [she had] some thoughts and [would] call [the Testator] later" that day to discuss.[15]

10 The Testator replied to Ms Kwa on 13 December 2013 at 10.50pm, stating that "[the] codicil [was also] to specify that two carpets … go to [Mr LHY]".[16]

11 The email correspondence between Ms Kwa and the Testator ceased with the Testator's 10.50pm email on 13 December 2013, which was a Friday. The Respondent was not involved or copied in any of the foregoing discussions. As at 13 December 2013, which was three days before the Testator received from the Respondent a draft of what became his last will, the Testator's professed intention that had been discussed over a two-week period with his solicitor, Ms Kwa, was to execute a codicil to his Sixth Will that would: (a) revert to leaving his estate to his three children in equal shares; and (b) make provision for two carpets to be bequeathed to Mr LHY. While there had been discussions about making provision for any escalation of the value of the Oxley House in the event that it was "de-gazetted", there had been no discussions about replacing the Sixth Will with another will, nor about reinstating either the First Will as a whole or the Demolition Clause in particular.

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The events on 16 December 2013

12 No evidence was led as to what transpired over the weekend of 14 and 15 December 2013. On 16 December 2013, the Respondent sent an email to the Testator at 7.08pm, copying her husband, Mr LHY, and, evidently (based on the list of addressees), also Ms Kwa, although it appears that Ms Kwa, for some unknown reason, did not receive that email (the "7.08pm email").[17] To that email, the Respondent attached a draft will that appeared to have been dated 19 August 2011, and informed the Testator that "[t]his was the *original* agreed Will which ensures that all 3 children receive equal shares" [emphasis added]. She also addressed Ms Kwa, stating that she would be "[g]rateful if [Ms Kwa] could please engross" the enclosed draft.[18]

13 The circumstances which led to the Respondent sending the 7.08pm email and the means by which she obtained the draft will attached to that email are the subject of much contention between the parties, and we shall address these two issues later in this judgment (see [71]–[103] below).

14 What is undisputed, however, is that the words "original agreed Will" in the 7.08pm email were intended by the Respondent to refer to the Testator's First Will (dated 20 August 2011), and would have been understood by the Testator as such.[19] It is also undisputed that the draft will attached to that email was engrossed and eventually executed by the Testator on 17 December 2013 without any substantive amendment, and became his last will. For ease of distinction, we shall hereafter use the term "Draft Last Will" when referring specifically to the draft will attached to the 7.08pm email, and the term "Last Will" when referring to the Testator's final will in all other instances.

15 The Respondent had assisted the Testator in drafting certain aspects of his First Will,[20] and when she sent him the Draft Last Will on 16 December

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2013, she *thought* that it was the same as the First Will.[21] Hence, she told him that the Draft Last Will was "the original agreed Will" (meaning the First Will). However, the Draft Last Will in fact differed from the First Will in a number of respects. We set out below *some* of the more salient differences between them (with the differences highlighted in italics):

Clause No.	**First Will**	**Draft Last Will (which became the Last Will)**
4(a)	"I give devise and bequeath … *[s]ubject to the Proviso hereto*, [the Oxley House] to my son, [Mr LHL] or *if he so nominates* a company owned by him … *PROVIDED ALWAYS* that my daughter, [Dr LWL], shall be allowed to continue to live there for so long as she desires *free of rent. [Mr LHL] shall pay for the maintenance and upkeep of [the Oxley House] when [Dr LWL] is in occupation thereof* …" ("the Oxley Maintenance clause")	"I give devise and bequeath … [the Oxley House] to my son, [Mr LHL] or a company owned by him … *subject to the condition* that my daughter, [Dr LWL], shall be allowed to continue to live there for so long as she desires …"

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Clause No.	First Will	Draft Last Will (which became the Last Will)
7	"*For the purposes of this my Will:–* *(i) If my daughter, [Dr LWL], shall predecease me then any gift and share of my estate that she would have taken had she survived me shall be given to my sons, [Mr LHL] and [Mr LHY], in equal shares …* *(ii) If any of my said sons shall predecease me leaving issue living at my death, then such issue shall stand in place of such deceased son and take by substitution …*" ("the Gift-Over clause")	*No equivalent clause*

16 The precise origin of the Draft Last Will is not known. While it appears to have been similar in many respects to the First Will, nothing by way of evidence was led as to its provenance. The most that might be *inferred* is that it was one of the drafts that was prepared in the period leading up to the finalisation and execution of the First Will. However, even on that basis, it is not known what led to that draft subsequently being modified into the final form that the First Will took, giving rise to (among other differences) the differences noted above. What is clear on the evidence, and also accepted by the parties, is that:

(a) the Testator was told by the Respondent in the 7.08pm email that the Draft Last Will was the First Will;

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(b) the Testator would have believed that representation at the time he signed the Last Will; and

(c) the document that the Testator signed was, as we have noted, in fact *not* the same as the First Will.

17 At 7.31pm on 16 December 2013, shortly after the Respondent's 7.08pm email, Mr LHY sent the following email (the "7.31pm email") to the Respondent, copying the Testator and the Testator's personal secretary, Ms Wong Lin Hoe ("Ms Wong"), while removing Ms Kwa from the list of addressees:[22]

> [The Testator]
>
> I couldn't get in touch with [Ms Kwa]. I believe she is away. I don't think it is wise to wait till she is back. I think all you need is a witness to sign the will. [The Respondent] can get one of her partners to come round with an engrossed copy of the will to execute and witness. They can coordinate it with [Ms Wong] for a convenient time.

18 Before the Testator had even responded to the above suggestion by Mr LHY, the Respondent emailed Ms Wong at 8.12pm, copying Mr LHY and her colleague, Mr Bernard Lui ("Mr Lui"). She informed Ms Wong that she had "briefed [her] colleague, [Mr] Lui", and that Mr Lui "ha[d] the Will ready for execution and [Ms Wong could] reach him directly to make arrangements".[23] She also provided Ms Wong with Mr Lui's contact details.

19 Mr LHY departed from Singapore for Brisbane, Australia, at or about 9.15pm on 16 December 2013.[24]

20 Shortly thereafter, at 9.42pm, the Testator wrote to Mr LHY, the Respondent and Ms Wong, agreeing to Mr LHY's proposal to proceed with the execution of the Last Will without waiting for Ms Kwa:[25]

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> OK. Do not wait for [Ms Kwa].
>
> Engross and I will sign it before a solicitor in [the Respondent's] office, or from any other office.

21 At 10.06pm, Dr LWL emailed Mr LHY, referencing the Testator's intention to revert to the First Will:[26]

> Subject: "[The Testator] says go back to 2011 will"
>
> To get a notary public not from Lee [&] Lee to witness his signature [and] that settles it[.]

22 At or about midnight, the Respondent departed from Singapore for Paris, France.[27] While on the flight, she was actively in contact with Mr Lui, Ms Wong, Mr LHY and another colleague, Ms Elizabeth Kong ("Ms Kong"), as regards the engrossing and execution of the Last Will.[28]

The events on 17 December 2013

23 Mr LHY arrived in Brisbane on the morning of 17 December 2013.[29] Shortly after landing, he emailed the Testator at 4.53am (Singapore time), stating:[30]

> We will get someone to come to execute [the Last Will] either in Oxley Road or at your office at your convenience. [Ms Wong] has the contacts and will arrange it. One of the partners at [the Respondent's law corporation] who is a notary publics [*sic*].

A minute later, Mr LHY emailed Dr LWL, responding to her earlier email in which she had asked that a notary public who was not from Lee & Lee be arranged to witness the Testator's execution of the Last Will, as follows: "Will arrange. [Ms Wong] has contacts. Will get person to come to Oxley Road or Istana whichever is more convenient."[31] Mr LHY then emailed Mr Lui at 5.32am, informing him that the Testator "would like to get the will executed.

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Could you get it engrossed today, and be available when [Ms Wong] his assistant gets in touch please."[32]

24 At 9.02am, Mr Lui responded to Mr LHY, saying that he would prepare an engrossed copy of the Last Will.[33] At 9.22am, while *en route* to Paris, the Respondent sent Mr Lui a reminder, as follows: "please be ready and accessible at short notice. Ready to go. Impt that we get this done asap please."[34]

25 A minute later, at 9.23am, Ms Wong wrote to the Respondent, who had provided her with Mr Lui's contact details the night before (see [18] above), stating:[35]

> Dear [the Respondent],
>
> Thank you for the contact details.
>
> I will co-ordinate with Mr Bernard Lui and arrange for him to see [the Testator] asap. Thanks.

26 Arrangements were subsequently made between Ms Wong and Mr Lui for the Testator to execute the Last Will.[36] After engrossing it, Mr Lui and Ms Kong attended at the Testator's residence at or about 11.00am to witness its execution. In a contemporaneous note prepared by Ms Kong, the execution process was described as follows:[37]

> …
>
> 4. [The Testator] appeared frail and his speech was slurred, but his mind was certainly lucid – he asked us who drafted the will and specifically instructed us to date the will today.
>
> 5. [The Testator] read through every line of the will and was comfortable to sign and initial at every page, which he did in our presence.
>
> …

27 After witnessing the Testator's signature on the Last Will, Mr Lui and Ms Kong took their leave.[38] Thereafter, at 11.22am, Mr Lui updated the

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Respondent that the execution of the Last Will was "done", and that two original copies of it had been made. He suggested that Dr LWL and Mr LHY, who were the named executors, each keep one original copy.[39]

28 The Respondent then updated Mr LHY that the Last Will had been "signed uneventfully", and asked him what she should do with the two original copies of it. Mr LHY instructed the Respondent to give one of the original copies to Ms Wong, and to keep the other original copy in her office safe. The Respondent accordingly instructed Mr Lui to forward one original copy to Ms Wong, and to keep the other original copy in her office safe.[40]

29 At 1.16pm, about two hours after the execution of the Last Will, the Respondent emailed Ms Kwa, who had been excluded from all correspondence pertaining to the matter *after* the 7.08pm email the previous day, and informed her that the signing of the Last Will "ha[d] been dealt with already".[41] Ms Kwa replied about one and a half hours later at 2.59pm, as follows:[42]

> Dear [the Respondent],
>
> Thanks for your mail.
>
> I don't seem to have received your first mail of 16 dec 7.08pm asking me to engross.
>
> With reference to your email of 17 dec, does this mean that [the Testator] has signed a new will yesterday, in which case the former will which is on my record, is revoked? If so, I will update my file record.

30 At 3.10pm, the Respondent replied to Ms Kwa, confirming that "Yes, [the Testator] has signed already. In fact this is just going back to his 2011 will so it super[s]edes all. He read it extremely carefully before signing."[43] There is no record in the evidence of any reply from Ms Kwa to this email.

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31 Later that day, Ms Wong informed the Testator that one original copy of the Last Will would be retained by the Respondent, while the other original copy would be forwarded to the Testator. Ms Wong sought the Testator's instructions as to whether he wished to retain that original copy, or whether it was to be passed to Ms Kwa for her safekeeping, given that Ms Kwa was "keeping the original copies of title deeds of all the properties, including [the Oxley House]".[44] The Testator initially decided on the latter option,[45] but then changed his mind and instructed Ms Wong to "keep [the] original in [the] office and send [Ms Kwa] a copy", and to "[t]ell [Ms Kwa] this if [*sic*] the agreement between the siblings".[46]

The codicil to the Last Will

32 On 2 January 2014, about two weeks after executing the Last Will, the Testator himself prepared and executed a codicil to it ("the Codicil"), as follows:[47]

> This is a Codicil to my Last Will and Testament dated 17 December 2013.
>
> I bequeath the two carpets in my study and my bedroom to my son [Mr LHY]. …

The Codicil was signed by the Testator, and witnessed by Ms Wong and one Lee Koon San.

33 The next day (3 January 2014), Ms Wong sent the Respondent an email titled "Last Will & Testament & Codicil". The email was copied to the Testator, his three children, Mr LHL's wife and Ms Kwa, and stated as follows:[48]

> Dear [the Respondent],
>
> Further to our emails below [relating to the signing and safekeeping of the Last Will], attached is a copy of [the Testator's] codicil for your information.

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> As instructed by [the Testator], we will retain the original copy of [the Testator's] last Will & Testament and the Codicil in my office for safekeeping, and send a copy to Ms Kwa Kim Li for her record.
>
> Thank you.

The Testator's passing and probate of his Last Will

34 The Testator passed away a little over a year later on 23 March 2015. In accordance with the terms of his Last Will, Mr LHY and Dr LWL were appointed as the executors of his estate, and probate was extracted without opposition in October 2015.[49]

The charges against the Respondent

35 On 4 December 2018, the Attorney-General's Chambers ("the AGC") filed a complaint against the Respondent, stating that she appeared to have "potentially breached Rules 25 and 46" of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("the PCR") "by preparing the Last Will for [the Testator] without advising him to seek independent legal advice, despite knowing that her husband [Mr] LHY would receive a significant share of the estate under the will".[50] The Law Society filed its Statement of Case against the Respondent on 1 February 2019, and the DT was appointed on 13 February 2019 to hear the matter against her.

36 The Law Society preferred two charges (each with an alternative and a further alternative charge) against the Respondent. Both charges related to her participation in the preparation and execution of the Testator's Last Will on 16 and 17 December 2013.

37 The first charge ("Charge 1"), along with the alternative and further alternative charges ("Charge 1A" and "Charge 1B" respectively), related to the

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Respondent's alleged failure to advance the Testator's interest unaffected by her own interest and/or the interest of her husband, Mr LHY. The charges were framed thus:[51]

FIRST CHARGE

That you, [the Respondent], are charged that, sometime between 16 and 17 December 2013, during the course of your retainer for your client, [the Testator], [you] breached Rule 25(a) and/or Rule 25(b) of the [PCR] in that you ***failed to advance your client's interest unaffected by your interest and/or the interest of your husband, [Mr LHY]***, by preparing and arranging for the execution of your client's will where a one-third share in your client's estate was to be given to your husband, [Mr LHY], such act amounting to *grossly improper conduct in the discharge of your professional duty* within the meaning of s 83(2)(b) of the [LPA].

OR, IN THE ALTERNATIVE

That you, [the Respondent], are charged that, sometime between 16 and 17 December 2013, during the course of your retainer for your client, [the Testator], [you] breached Rule 25(a) and/or Rule 25(b) of the [PCR] in that you ***failed to advance your client's interest unaffected by your interest and/or the interest of your husband, [Mr LHY]***, by preparing and arranging for the execution of your client's will where a one-third share in your client's estate was to be given to your husband, [Mr LHY], such act amounting to *improper conduct or practice as an advocate and solicitor* within the meaning of s 83(2)(b) of the [LPA].

OR, IN THE FURTHER ALTERNATIVE

That you, [the Respondent], are charged that, sometime between 16 and 17 December 2013, you ***failed to advance [the Testator's] interest unaffected by your interest and/or the interest of your husband, [Mr LHY]***, by preparing and arranging for the execution of [the Testator's] will where a one-third share in [the Testator's] estate was to be given to your husband, [Mr LHY], such act amounting to *misconduct unbefitting an advocate and solicitor* as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(h) of the [LPA].

[emphasis added in italics and bold italics]

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38 The second charge ("Charge 2"), along with the alternative and further alternative charges ("Charge 2A" and "Charge 2B" respectively), related to the Respondent's alleged conduct in: (a) acting in connection with the significant gift that the Testator intended to give to her husband, Mr LHY, by will; and (b) failing to advise the Testator to be independently advised in respect of that gift. The charges were framed thus:[52]

SECOND CHARGE

> That you, [the Respondent], are charged that, sometime between 16 and 17 December 2013, during the course of your retainer for your client, [the Testator], [you] breached Rule 46 of the [PCR] by ***acting in respect of a significant gift (a one-third share in your client's estate) that your client intended to give by will to your husband, [Mr LHY]***, and ***failing to advise your client to be independently advised in respect of this significant gift***, such act amounting to *grossly improper conduct in the discharge of your professional duty* within the meaning of s 83(2)(b) of the [LPA].
>
> *OR, IN THE ALTERNATIVE*
>
> That you, [the Respondent], are charged that, sometime between 16 and 17 December 2013, during the course of your retainer for your client, [the Testator], [you] breached Rule 46 of the [PCR] by ***acting in respect of a significant gift (a one-third share in your client's estate) that your client intended to give by will to your husband, [Mr LHY]***, and ***failing to advise your client to be independently advised in respect of this significant gift***, such act amounting to *improper conduct or practice as an advocate and solicitor* within the meaning of s 83(2)(b) of the [LPA].

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OR, IN THE FURTHER ALTERNATIVE

> That you, [the Respondent], are charged that, sometime between 16 and 17 December 2013, … [you] ***act[ed] in respect of a significant gift (a one-third share in [the Testator's] estate) that [the Testator] intended to give by will to your husband, [Mr LHY]***, and ***fail[ed] to advise [the Testator] to be independently advised in respect of this significant gift***, such act amounting to *misconduct unbefitting an advocate and solicitor* as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(h) of the [LPA].
>
> [emphasis added in italics and bold italics]

39 For both sets of charges, the alternative and further alternative charges were premised on the same conduct as the corresponding primary charges. However, while the primary charges were brought on the ground of "grossly improper conduct in the discharge of [the Respondent's] professional duty", the alternative charges were brought on the ground of "improper conduct or practice as an advocate and solicitor", and the further alternative charges, on the ground of "misconduct unbefitting an advocate and solicitor". Additionally, while the primary and alternative charges were premised on a solicitor-client relationship existing between the Respondent and the Testator, as can be seen from the inclusion of the words "during the course of your retainer for your client" in these charges, this was not the case for the further alternative charges, which were framed under the "catch-all" provision contained in s 83(2)(*h*) of the LPA (*Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466 at [40] and *Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 at [24]).

The hearing before the DT and the DT's findings

40 The DT heard the Law Society's case on 1 and 2 July 2019. The Law Society called four witnesses, namely: (a) Mr K Gopalan of the Law Society, who filed an affidavit exhibiting the documents relied on by the Law Society, but who had no personal knowledge of the contents of those documents;[53]

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(b) DSP Lim Seng Chuan, who gave evidence as to the persons who came to or left the Oxley House on 16 and 17 December 2013; (c) Mr Manoj Pillai, an agent of the Respondent's law corporation who was subpoenaed by the Law Society to produce emails from the law corporation's email accounts; and (d) Mr Lui, who gave evidence about his involvement in the execution and witnessing of the Last Will. Ms Kwa was not subpoenaed to give evidence because the Testator's estate had asserted privilege over the documents pertaining to the Last Will and to her engagement as the Testator's solicitor.[54] In any case, the Law Society took the position that her evidence was not essential because the contemporaneous documents made it "clear that she was not involved in the execution of the [L]ast [W]ill", and, further, because the admissibility and authenticity of the First to Last Wills were not in question.[55]

41 After the close of the Law Society's case, the Respondent submitted that there was no case to answer.[56] This was rejected by the DT, which found that the Law Society had established a *prima facie* case against her.

42 The Respondent then called two witnesses in her defence, namely, herself and Mr LHY, and they were cross-examined and re-examined over the course of three days from 3 to 5 July 2019.

43 After hearing the parties and considering their submissions, the DT issued its GD on 18 February 2020. The DT concluded that all the charges against the Respondent had been made out by the Law Society beyond a reasonable doubt, and that there was cause of sufficient gravity for disciplinary action to be taken against her (GD at [620]).

44 In summary, the DT found that:

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(a) The Respondent had "acted as [the Testator's] lawyer on the Last Will", and there was an implied retainer between them (GD at [438]). This finding was premised on the following facts (GD at [436]–[437]):

(i) the Respondent had adopted Mr LHY's explanation to a Ministerial Committee that she had taken instructions from the Testator on the preparation and execution of the Last Will;

(ii) the Respondent had been the only lawyer to advise the Testator on the contents and effect of the Last Will, and had represented to him that the Draft Last Will (which became the Last Will) was the same as his First Will;

(iii) the Respondent had instructed her colleagues at her law corporation to see to the execution of the Last Will;

(iv) after the execution of the Last Will, the Respondent had kept one original copy of it in her office safe, whereas the original copies of the Testator's previous wills had all been kept by his usual lawyer, Ms Kwa;

(v) the Respondent had excluded Ms Kwa from the entire process pertaining to the preparation and execution of the Last Will (although we add the qualification that Ms Kwa in fact appeared to have been copied in the Respondent's 7.08pm email on 16 December 2013, and had been excluded from the process from the time of Mr LHY's 7.31pm email onwards: see [12] and [17] above); and

(vi) the Respondent had allowed the Testator to proceed to execute the Last Will in the belief that she had been primarily responsible for drafting it.

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(b) There was "a clear conflict of interest, regardless of whether the Respondent knew that the Last Will increased, decreased, or maintained … Mr LHY's share [of the Testator's estate]" (GD at [507]). This was because the Last Will gave Mr LHY a significant (one-third) share of the estate. This put the Respondent, as Mr LHY's wife, in a position of conflict as she had assumed the role of the Testator's lawyer in respect of this substantial gift to Mr LHY and was therefore required to put the Testator's interests above those of anyone else; yet, her concurrent personal interests as Mr LHY's wife were in conflict with this duty (GD at [508]). This conflict of interest could not be waived (GD at [516]–[522]).

(c) Rule 25 of the PCR encapsulated "a lawyer's paramount duty of loyalty to [her] client" (GD at [526]). Despite being in a position of conflict, the Respondent failed to act with exceptional restraint and care in relation to the preparation and execution of the Last Will, and instead abused her position as the Testator's lawyer to further Mr LHY's wish that it be executed hurriedly (GD at [529]–[531]). Her conduct in taking instructions from Mr LHY, a named beneficiary under the Last Will, on the arrangements relating to and arising from its execution was an aggravating factor which heightened the egregiousness of her actions (GD at [531]). She also failed to have a thorough discussion with the Testator "on all the possible legal issues and potential complications" [emphasis in original omitted] that could arise from his reverting to the First Will (GD at [534]). Such legal issues and complications included the reinstatement of the Demolition Clause, which had been omitted from the Fifth and Sixth Wills. Further, even if the Testator's intention was indeed to revert to the First Will, this was not achieved, given that the Last Will differed in several ways from the First Will (GD at [548]–

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[550]). In totality, the Respondent's conduct "fell grossly short of her professional duties as [the Testator's] lawyer", and her breach of r 25 of the PCR was established beyond a reasonable doubt (GD at [566]).

(d) Rule 46 of the PCR contained two distinct and cumulative obligations, namely, that a lawyer must both refuse to act for a client in connection with a gift from that client to (among other persons) any member of the lawyer's family (r 46(*d*)), as well as advise that client to be independently advised in respect of the gift (GD at [569]). The Respondent breached both aspects of r 46 in: (i) acting for the Testator in connection with the Last Will despite knowing of the significant gift that her husband stood to receive under that will (GD at [573]–[574]); and (ii) failing to advise the Testator to seek independent counsel in respect of that gift (GD at [576]–[578]).

(e) The Respondent's conduct amounted to "grossly improper conduct" for the purposes of Charges 1 and 2 because she "deliberately failed to discharge the duties that she was supposed to perform" in her capacity as the Testator's lawyer (GD at [587]), and also acted dishonestly by engaging in "a calculated attempt to … [e]nsure that [the Testator] executed the Last Will as quickly as possible, without due regard for [his] wishes" (GD at [588]). Despite knowing that the Testator would have wanted his usual lawyer, Ms Kwa, to advise him on and to oversee the execution of the Last Will, and despite being in a position of a "serious conflict of interest", the Respondent "removed [Ms Kwa] from the picture" and stepped into her position as the Testator's lawyer. Further, she failed to advise the Testator to seek independent counsel, and compounded her wrongdoing by misleading the Testator about the contents of the Last Will and failing to draw his attention to how it

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differed from the First Will (GD at [589]–[590]). In all, the Respondent's conduct "clearly lacked the integrity, probity and trustworthiness required of an advocate and solicitor", and this was "grossly improper conduct" [emphasis in original omitted] under s 83(2)(*b*) of the LPA (GD at [591]).

(f) The Respondent's conduct also constituted "misconduct unbefitting an advocate and solicitor" for the purposes of Charges 1B and 2B because it brought her into "discredit as a lawyer" and/or would "[bring] the legal profession as a whole into disrepute". Even if the Respondent had not acted as the Testator's lawyer in relation to his Last Will, "what she did to [the Testator] was dishonest and dishonourable" (GD at [596]–[597]).

45 We should add that although the DT found that all the charges against the Respondent had been proved beyond a reasonable doubt (see [43] above), it did not in fact seem to have considered Charges 1A and 2A, in that it only assessed whether the Respondent's conduct constituted "grossly improper conduct" as alleged in Charges 1 and 2 (GD at [581]–[592]) and "misconduct unbefitting an advocate and solicitor" as alleged in Charges 1B and 2B (GD at [593]–[598]). However, nothing turns on this because, for the reasons explained at [139] below, we are of the view that the Respondent is not guilty of Charges 1A and 2A.

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The parties' submissions

The Law Society's submissions

46 Ms Koh Swee Yen ("Ms Koh"), who appeared on behalf of the Law Society at the hearing before us, submitted that there was no basis to interfere with the DT's findings, and that the DT's GD should be upheld in its entirety.[57]

47 According to Ms Koh, both the Testator and the Respondent had proceeded on the basis that the Respondent was the Testator's lawyer for the preparation and execution of the Last Will. While acting as the Testator's lawyer and advising him in that connection, the Respondent failed to advance the Testator's interest unaffected by her own and her husband's interests, and thereby breached rr 25(*a*) and 25(*b*) of the PCR. Instead of placing the Testator's interest above that of anyone else, the Respondent orchestrated the hasty execution of the Last Will without any "thorough discussion" [emphasis in original omitted] with the Testator of "all the possible legal issues and potential complications" [emphasis in original omitted] that could arise if he reverted to the First Will.[58] She also failed to ensure that the Last Will fully and accurately expressed the Testator's intentions. If the Testator's wish was indeed to revert to the First Will, this was unquestionably not achieved, given that the Last Will differed from the First Will in that, among other things, the Gift-Over clause and the Oxley Maintenance clause were not included in the Last Will (see [15] above).[59]

48 In addition, the Respondent breached r 46 of the PCR, which absolutely prohibits a solicitor from acting for a client in connection with any instrument or transaction under which the solicitor or (among other persons) a member of her family stands to receive a significant gift from the client, and also requires the solicitor to advise the client to seek independent advice in respect of that

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gift. It was not disputed that the Last Will provided for a significant gift to the Respondent's husband; despite knowing this, the Respondent acted for the Testator in connection with the Last Will and failed to advise him to seek independent advice in respect of the gift to her husband under that will. She also engineered the exclusion of the Testator's usual lawyer, Ms Kwa, from any involvement in its preparation and execution.[60]

49 The Respondent's breaches of rr 25 and 46 of the PCR amounted to grossly improper conduct. This was said to be the case whenever a solicitor preferred her own interests over those of her client.[61] The Respondent's conduct also manifested a deliberate failure to discharge her duties to her client, the Testator, and amounted to dishonesty as there was a "calculated attempt" by the Respondent and Mr LHY to expedite the execution of the Last Will by the Testator without due regard for his wishes, and to "[h]ide their wrongdoing in having done so".[62] The DT had correctly found that such conduct "clearly lacked the integrity, probity and trustworthiness required of an advocate and solicitor", and was therefore "dishonourable, both to [the Respondent] herself, as a person, and to the legal profession" (GD at [591], cited at [44(e)] above). Even if the Respondent had not been the Testator's lawyer for the preparation and execution of the Last Will, her conduct amounted to "misconduct unbefitting an advocate and solicitor" because what she did was "dishonest and dishonourable", and the further alternative charges (Charges 1B and 2B) were also established beyond a reasonable doubt.[63]

50 Ms Koh submitted that in these circumstances, striking off was the appropriate sanction. The Respondent had acted dishonestly and in disregard of her legal obligations, "focus[ing] primarily on what her husband wanted done, though her duties were owed to [the Testator]" [emphasis in original omitted].[64] In so doing, she had "paid absolutely no regard to the clear ethical rules and

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guidelines" that were applicable,[65] and her culpability was greatly enhanced given her wealth of experience as a senior lawyer of 37 years' standing.[66] She had also lied to the DT, which found her "a deceitful witness, who tailored her evidence to portray herself as an innocent victim who had been maligned" (GD at [618]). Further, the harm caused by her misconduct was severe, in that the Last Will did not in fact reflect the Testator's last known intentions and wishes as evidenced in his communications with Ms Kwa a few days before the execution of the Last Will. Failing to admonish the Respondent's misconduct with a sufficiently severe sanction would prejudice the public interest and damage the reputation of the legal profession.[67]

The Respondent's submissions

51 The Respondent's solicitors, Mr Kenneth Tan SC ("Mr Tan") and Prof Walter Woon SC ("Prof Woon"), submitted that the charges against the Respondent were not made out beyond a reasonable doubt. According to Mr Tan, the Respondent only had an auxiliary role in assisting the Testator to find witnesses for the execution of the Last Will. It was the Testator himself who had decided to revert to the First Will.[68] Pursuant to this decision, the Testator sought Mr LHY's help,[69] and Mr LHY then got the Respondent involved. The Respondent had forwarded the Draft Last Will, which she understood to be the First Will, to the Testator, while also asking Ms Kwa, the drafter of the First Will, to engross it for execution by the Testator. Later, because Ms Kwa was uncontactable, the Respondent arranged for Mr Lui to attend to the execution of the Last Will; the Testator himself had agreed not to wait for Ms Kwa to be back, and had indicated that he would sign the Last Will "before a solicitor in [the Respondent's] office, or from any other office".[70]

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52 At all times, the Respondent was not acting as the Testator's lawyer. Her role was limited to making arrangements for the execution of the Last Will to be witnessed.[71] While the Draft Last Will that the Respondent sent the Testator by way of the 7.08pm email on 16 December 2013 differed from the First Will in that it omitted the Gift-Over clause and the Oxley Maintenance clause, this was not due to any deceit on the Respondent's part, but because she genuinely did not know that it was different from the First Will, a copy of which she did not even have.[72] In any case, even if the Testator had been misled and the Last Will did not reflect his wishes accurately, he had access to his lawyer, Ms Kwa, after executing it. Ms Kwa had a copy of the Last Will, and could easily have advised the Testator to make a new will to reflect his wishes accurately. However, the Testator – whose lucidity at the time of signing the Last Will was not challenged[73] – did not do so. Instead, he later drafted and executed the Codicil, which directly referenced the Last Will, and this showed that the Last Will reflected his wishes accurately.[74]

53 Furthermore, even if there had been an implied retainer between the Respondent and the Testator, the Respondent had not acted in conflict of interest, which was the gravamen of the charges against her. According to Prof Woon, at the time the Last Will was executed, the Respondent thought that Dr LWL only had a life interest in her share of the Testator's estate, which was what had been provided for under the Third Will (see [5(c)] above). The Respondent did not know that Dr LWL's absolute and outright interest in her share of the estate had been reinstated from the Fourth Will onwards, and was also unaware that the Sixth Will (the will immediately preceding the Last Will) had granted Dr LWL an additional 1/7 share of the estate relative to her two brothers (see [5(f)] above).[75] Prof Woon submitted that given the state of the Respondent's knowledge at the time the Last Will was executed, from her perspective, the reversion to the Testator's children each having an equal share

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of the estate "would have *reduced* rather than *increased* her husband's share of [the] estate"[76] [emphasis added] due to the elevation of Dr LWL's life interest in her share of the estate to an absolute and outright interest. Since, owing to her state of knowledge, the Respondent believed the Last Will to be detrimental to her husband, it was "totally illogical to maintain that … the Respondent nonetheless was in a position of conflict".[77]

54 Prof Woon also submitted that there was no breach of duty on the Respondent's part because the Testator, who was the alleged principal, knew and approved of the Respondent's participation in the preparation and execution of the Last Will, and executed it despite knowing that it had been engrossed by solicitors from the Respondent's law corporation.[78] It was thus urged upon us that all the charges against the Respondent ought to be dismissed.[79]

The issues before this court

55 The issues that arise for our determination in this matter are the following:

(a) whether an implied retainer existed between the Respondent and the Testator;

(b) if an implied retainer existed, whether the Respondent's conduct amounted to grossly improper conduct in the discharge of her professional duty (as alleged in Charges 1 and 2), or improper conduct or practice as an advocate and solicitor (as alleged in Charges 1A and 2A);

(c) if no implied retainer existed, whether the Respondent's conduct nevertheless amounted to misconduct unbefitting an advocate and solicitor (as alleged in Charges 1B and 2B); and

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(d) if the Respondent is guilty of any of the charges, what is the appropriate sanction to impose.

Whether there was an implied retainer between the Respondent and the Testator

56 We begin with the first issue. It is undisputed that there was no express retainer between the Respondent and the Testator (GD at [170]).[80] A solicitor-client relationship can therefore arise only if an implied retainer is found.

The applicable principles

57 The emphasis in this context is on whether there is sufficient basis to impute a solicitor-client relationship. That inquiry, even if it is often framed in terms of whether a ***contract*** *of retainer* may be implied, plainly does not proceed on the basis of a conventional contractual analysis, in which the existence of an offer, acceptance of the offer, an intention to create legal relations and consideration are essential elements. Perhaps the best illustration of this is the leading case of *Ahmad Khalis* ([4] *supra*). There, the solicitor in question had been instructed by one Rasid to file a petition for letters of administration, with Rasid to be appointed as the sole administrator of his deceased father's estate. At Rasid's request, the solicitor met with the remaining surviving beneficiaries of the deceased's estate ("the remaining surviving beneficiaries"). At that meeting, some of the remaining surviving beneficiaries expressed misgivings over Rasid being appointed as the sole administrator and asked whether a co-administrator could be appointed. The solicitor assured the remaining surviving beneficiaries that, as the sole administrator, Rasid would not be able to dispose of or deal with the assets forming the estate, one of which was a piece of real property ("the Property"), without their consent. Rasid was subsequently appointed as the sole administrator of the estate, and the remaining surviving

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beneficiaries were asked to sign a document consenting to the dispensation of sureties to the administration bond ("the Consent Document"). Contrary to the assurance that the solicitor had given, Rasid mortgaged the Property to secure a personal loan without the remaining surviving beneficiaries' knowledge or consent. Rasid later fell behind on the mortgage payments, causing the bank to foreclose, after which the remaining surviving beneficiaries lodged a complaint against the solicitor.

58 A key issue was whether a solicitor-client relationship had come into being between the solicitor and the remaining surviving beneficiaries, notwithstanding the absence of an express retainer. The High Court made several pertinent observations in this connection. First, "whether or not a retainer between a lawyer and a client comes into being … is dependent very much on the precise factual matrix concerned", and "no legal formalities (such as writing) are required in order for such a retainer to exist" (*Ahmad Khalis* at [64]). Second, the analysis that must be undertaken to determine whether an implied retainer has come into being is an *objective* one: an implied retainer "[can] only arise where on an objective consideration of all the circumstances an intention to enter into such a contractual relationship ought fairly and properly to be *imputed* to the parties" [emphasis added] (*Ahmad Khalis* at [66], citing *Dean v Allin & Watts* [2001] 2 Lloyd's Rep 249 ("*Dean*") at [22]).

59 We pause to note that the word "impute", as used in this context, signifies the *attribution* of an intention to enter into a contractual relationship, rather than the fact of the existence of such an intention. As Lord Neuberger of Abbotsbury observed in *Stack v Dowden* [2007] 2 AC 432 at [126] (cited in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [111]):

> An inferred intention is one which is objectively deduced to be the subjective actual intention of the parties, in the light of their

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> actions and statements. An imputed intention is one which is *attributed* to the parties, even though no such actual intention can be deduced from their actions and statements, and even though they had no such intention. Imputation involves concluding what the parties *would have intended*, whereas inferences involves concluding what they did intend. [emphasis added]

60 In a similar vein (albeit in a different context), it has been observed that "the distinction between the ascertainment of *agreed* intention and the *imputation* of intention" [emphasis in original] is that (Andrew Phang Boon Leong & Goh Yihan, "Contract Law in Commonwealth Countries: Uniformity or Divergence?" (2019) 31 SAcLJ 170 at para 88):

> … For agreed intention, the *ascertainment* of such intention can be by way of express or implied reading of the contractual terms … In contrast, for an imputation of intention, the concern is with the *imputation* of what the court believes to be reasonable in the circumstances, as an approximation to what the parties *ought to* have intended. … [emphasis in original]

61 The fundamental question is thus whether, on an objective analysis of the circumstances from the perspectives of *both* the putative solicitor *and* the putative client, an intention to enter into a solicitor-client relationship should be attributed to the parties. In this regard, it is important to note that the putative client's *subjective* understanding of his relationship with the putative solicitor is not determinative of whether a solicitor-client relationship should be imputed in the circumstances. This can be seen from our recent decision in *Law Society of Singapore v Tan Chun Chuen Malcolm* [2020] SGHC 166 ("*Malcolm Tan*"). There, although the putative client testified that he regarded the putative solicitor as "an '[i]nvestor, adviser' rather than as a lawyer", we held that this did not mean that a solicitor-client relationship therefore did not exist (*Malcolm Tan* at [11]). As the High Court noted in *Ahmad Khalis* at [66]:

> … [T]he question is whether it was reasonable for the [putative solicitor] or the [putative client] to have arrived at the conclusions that they did in respect of their characterisation of

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> their relationship *inter se*. The objective stance enables the court to maintain a fair and balanced perspective in order to enable it to arrive at a just and fair result. …

62 In *Ahmad Khalis*, the High Court concluded, on an application of the objective approach, that a solicitor-client relationship should be imputed to the parties. This was because the solicitor had advised the remaining surviving beneficiaries, who had acted upon his advice. Such advice had been neither perfunctory nor non-committal. The solicitor had even gone so far as to tell the remaining surviving beneficiaries about the additional costs and delay that having a co-administrator would entail. He had also sought to allay their fears over Rasid acting as the sole administrator of the estate. This went beyond "merely 'processing matters'". In addition, the solicitor had taken steps to ensure that the Consent Document was explained to the remaining surviving beneficiaries. From an objective viewpoint, the solicitor must have regarded the remaining surviving beneficiaries as his clients, especially when his conduct was seen in the light of the fact that no other solicitor was acting for them. The court observed that although "the [solicitor] might have been unclear as to whether or not he was *officially* [the remaining surviving beneficiaries'] lawyer" [emphasis in original], an implied retainer nonetheless existed between them (*Ahmad Khalis* at [67]).

63 The decision in *Ahmad Khalis* was analysed in the following terms in Jeffrey Pinsler, *Legal Profession (Professional Conduct) Rules 2015 – A Commentary* (Academy Publishing, 2016) ("PCR Commentary") at para 5.014 (citing *Dean* ([58] *supra*) and *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR(R) 674 ("*Uthayasurian*")):

> … [T]he advocate and solicitor's perspective must be considered in an objective context: he cannot simply say that he believed that a relationship of advocate and solicitor and client had not arisen between him and the person concerned if such a belief is unreasonable. It is essential to take into account the person's

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> perspective: *did this person reasonably believe that such a relationship had arisen?* … An implied retainer could only arise where on an objective consideration of all the circumstances an intention to enter into such a contractual relationship ought fairly and properly to be *imputed* to the parties. … [emphasis added]

It can be seen from this that the focus is on the nature of the dealings between the putative solicitor and the putative client, and, as we highlighted at [61] above, the question is whether, on an objective assessment of the circumstances, one may conclude that a solicitor-client relationship has come into being between them (PCR Commentary at para 5.008):

> A person may become a client of an advocate and solicitor if the manner in which the advocate and solicitor conducts himself towards that person gives rise to such a relationship. This is so even if there was originally no express intention to create a retainer. An 'implied retainer' is said to arise in such circumstances.

64 A similar *objective* approach was adopted by the Court of Appeal in *Anwar Patrick Adrian and another v Ng Chong & Hue LLC and another* [2014] 3 SLR 761 ("*Anwar Patrick*"). There, the appellants were the sons of one Agus, who owed a bank ("the bank") a very substantial amount under a credit facility. Negotiations ensued between the bank and Agus' solicitor, Ng. After several rounds of negotiations, the bank, which had initially demanded that the appellants bear personal liability for Agus' loan, agreed to forbear from suing Agus provided he procured, among other things, further collateral which included mortgages of properties owned by the appellants ("the Forbearance Agreement"). Pursuant to the Forbearance Agreement, Agus and the appellants executed various security documents by which the appellants mortgaged several properties to the bank. Unbeknownst to Agus and the appellants, the security documents included a personal guarantee clause under which the appellants agreed to pay the bank on demand any sums due and owing by Agus.

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65 Despite the provision of the additional security, Agus eventually defaulted on the credit facility, and the bank sued Agus and the appellants. The bank's claims against the appellants were premised on the personal guarantee clause. The action was eventually settled for a sum of US$1m. The appellants then sued Ng and his law firm to recover the settlement sum and the legal fees that they had incurred in defending the bank's suit. A key issue was whether Ng had been in a solicitor-client relationship with the appellants under an implied retainer.

66 In finding that there was such an implied retainer, the Court of Appeal adopted the approach of the High Court in *Ahmad Khalis* ([4] *supra*), holding (*Anwar Patrick* at [49], citing *Ahmad Khalis* at [66]):

> [A] retainer may be implied where, on an objective consideration of all the circumstances, an intention to enter into such a contractual relationship ought fairly and properly to be *imputed* to all the parties. … [emphasis in original omitted; emphasis added in italics]

Applying this approach, the court concluded that the inquiry did not end simply because Ng had not directly advised the appellants (*Anwar Patrick* at [51]). In its view, an implied retainer "'ought fairly and properly' [to] be imputed to all the parties" because Ng had signed off as the "solicitor for the mortgagors" (meaning the appellants) on the "Certificate of Correctness", an official document of paramount importance which formed part of the security documents signed under the Forbearance Agreement. As a seasoned solicitor, Ng had to be taken to have known the importance of putting his signature on the Certificate of Correctness for the purposes of the mortgage of the appellants' properties. The court was therefore satisfied that from the putative solicitor's perspective, Ng "must have held the view that he was officially the [a]ppellants' solicitor for the mortgage", even if "in his own mind", he "thought that he was their solicitor for the mortgage only because he was advising Agus" [emphasis

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in original omitted] (*Anwar Patrick* at [58]). From the putative clients' perspective, it was also legitimate for the appellants to have regarded Ng as their solicitor, given that he had signed off as their solicitor on the Certificate of Correctness. Ng was also the *only* legally trained person on the appellants' side involved in the execution of a commercial transaction with legal implications, while the other side (the bank) had its solicitor representing it (*Anwar Patrick* at [59]). Hence, Ng was held liable to the appellants as their solicitor pursuant to an implied retainer.

67 More recently, in *Malcolm Tan* ([61] *supra*), the solicitor was engaged in an investment scheme with one Mr Kuek. In contesting the charges that were brought against him, the solicitor contended that he had never consummated a solicitor-client relationship with Mr Kuek, who had engaged his services "*not* as a solicitor but purely as a business advisor" [emphasis in original] (*Malcolm Tan* at [9]). In support of his contention, the solicitor relied on Mr Kuek's agreement under cross-examination that the solicitor had been acting as "an '[i]nvestor, adviser' rather than as a lawyer", and that there "wasn't really an advocate and solicitor relationship between [them]" (*Malcolm Tan* at [11]). Rejecting that contention, we held (*Malcom Tan* at [11]):

> … [T]he real question was whether Mr Kuek had been left with the impression that in investing in the two investment schemes promoted by [the solicitor], his interests would be protected by [the solicitor] as his solicitor pursuant to the terms of the letters of engagement [that he had signed with the solicitor's law firm]. …

On the evidence, we were amply satisfied that this was the case, and, further, that the solicitor had intended that end (*Malcolm Tan* at [11]).

68 In our judgment, it is clear from the foregoing authorities that in determining whether an implied retainer ought to be imputed to the putative

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solicitor and the putative client, the court should not get mired in questions such as whether the parties had entered into a formal contract, but should instead focus on whether, on an objective analysis of the circumstances from the perspectives of both parties, they should be taken to have understood and believed that they were in a solicitor-client relationship. Where this is the case, then an implied retainer will be imputed regardless of whether or not the particular requirements for the formation of a contract have been satisfied. Hence, a lawyer who acts *pro bono* with no expectation of receiving any fee is nonetheless plainly in a solicitor-client relationship even though there is no consideration moving from the client. Similarly, any communications between a solicitor and a *prospective* client remain subject to legal advice privilege even in the absence of a concluded retainer (see, for example, *Regina (Prudential plc and another) v Special Commissioner of Income Tax and another (Institute of Chartered Accountants in England and Wales and others intervening)* [2013] 2 AC 185 at [96]).

69 In assessing whether an intention to enter into a solicitor-client relationship should be *attributed* to the putative solicitor and the putative client under the objective approach, it may be relevant for the court to consider a range of non-exhaustive factors, including the following (*Ahmad Khalis* at [66]–[67], *BOM v BOK and another appeal* [2019] 1 SLR 349 ("*BOM v BOK*") at [109] and *Uthayasurian* ([63] *supra*) at [42]):

(a) who is paying the putative solicitor's fees, if any;

(b) who is providing instructions;

(c) whether a contractual relationship existed between the putative solicitor and the putative client in the past;

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(d) whether express advice was given by the putative solicitor, and if so, whether such advice was relied upon by the putative client;

(e) if express advice was given by the putative solicitor, the nature of such advice (including whether it constituted merely preparatory steps to explaining a legal document, or whether it constituted more substantive advice);

(f) whether the putative solicitor asked the putative client to seek independent advice; and

(g) whether any advice by the putative solicitor was rendered without qualification.

We emphasise, however, that "no single factor is determinative and the final assessment ultimately rests on a holistic and careful consideration of the factual matrix" (*BOM v BOK* at [109]).

The analysis from the Respondent's perspective

70 Turning then to the facts of the present case, we begin by assessing the situation from the Respondent's perspective. In this regard, while the objective evidence demonstrates that the Respondent came to be involved on 16 December 2013 when she sent the Testator the 7.08pm email, a deeper analysis of two sub-issues – namely: (a) what led her to send that email; and (b) how she obtained the Draft Last Will attached to that email – is necessary to enable us to situate her actions in their proper context.

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The circumstances that led to the Respondent sending the 7.08pm email

71 As to the first sub-issue, two conflicting explanations were advanced by or on behalf of the Respondent.

(1) The first explanation

72 The first explanation was that the Testator had given express instructions directly to *the Respondent* to revert to his First Will. This led the Respondent to send the Draft Last Will, "[which] she understood to be the final version of the [F]irst [W]ill",[81] to the Testator by way of the 7.08pm email. Some context will help to elucidate this point.

73 In July 2016, about a year after the Testator's passing, a Ministerial Committee consisting of some Cabinet ministers ("the MC") was formed to consider possible options for the Oxley House given its historical significance. In the light of public statements that had been made about the Oxley House, the MC wrote to the Testator's children, seeking their views on what the Testator's thinking in respect of the Oxley House was and the circumstances relating to his thinking and wishes in this regard.[82]

74 Mr LHL replied to the MC on 15 September 2016. While he outlined some thoughts on the matter, it was evident at one level that the Testator's views were encapsulated in the Last Will, in as much as this contained the Demolition Clause. As to this, Mr LHL set out some concerns, including the following:

(a) whether the Testator had been aware that the Demolition Clause had been reinserted into the Last Will (having earlier been removed from the Fifth and Sixth Wills), and whether he had given specific instructions for its reinsertion;[83]

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(b) whether the Testator had been informed or advised about the "significant" differences between the Last Will and the First Will;[84] and

(c) whether the Respondent's participation in the preparation and execution of the Last Will placed her in a position where her own interests and her duties to the Testator were in conflict.[85]

75 The MC conveyed these concerns to Mr LHY and Dr LWL and invited their comments.[86] In a joint letter to the MC dated 28 February 2017 ("the MC Letter"), Mr LHY and Dr LWL provided their substantive response to Mr LHL's letter of 15 September 2016. There, they stated that it was the Testator's "unwavering, heartfelt, and deeply personal wish" to demolish the Oxley House after his death.[87] This wish was reflected in the Demolition Clause. They pointed out that although Mr LHL was evidently "attacking the integrity of the [Last] Will as the true expression of [the Testator's] wishes" by highlighting the "troubling circumstances" surrounding its execution, probate of the Last Will had been granted without opposition, and its correctness and validity were therefore to be taken as having been conclusively established.[88] As for the differences between the First and Last Wills and the Respondent's participation in the preparation and execution of the latter, Mr LHY and Dr LWL said as follows ("the MC Statements"):[89]

> 53. With regards [to] the [G]ift-[O]ver clause in the First Will, the simple reason why this was not in the [Last] Will is that we were not aware that it had been inserted [into the First Will]. When *[the Testator] gave instructions to [the Respondent] for the [Last Will] to be engrossed*, she relied on what she believed was the final version of the will [that the Testator] wanted and was not aware of any later version including a [G]ift-[O]ver clause.
>
> …
>
> 61. Second, … the [Last] Will was simply [the Testator's] [F]irst [W]ill which had been drafted by Lee & Lee, with the exception of the absent [G]ift-[O]ver clause which has already been explained. …

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> 62. … [The Last Will] was *engrossed on the basis of [the Testator's] express instruction to revert to his [F]irst [W]ill from 2011*. We have explained above that on the basis of this instruction, [the Respondent] obtained what she understood to be the final version of the [F]irst [W]ill from 2011, without realising that a [Gift-Over] clause had been added to the executed version. …
>
> [emphasis added]

76 It is important to note that the MC Letter, which included the MC Statements, was written at a time when concerns had been raised by Mr LHL as to the circumstances surrounding the preparation and execution of the Last Will, and, specifically, as to whether the Testator had had his attention drawn to the reinsertion of the Demolition Clause. These concerns were highlighted to the MC in the specific context of its consideration of the options for the Oxley House. That was why the provenance of the Demolition Clause, which had resurfaced in the Last Will after having been omitted from the Fifth and Sixth Wills, assumed importance. The MC Statements formed part of the narrative advanced by Mr LHY and Dr LWL to defend the integrity of the Last Will as a whole, including, in particular, the Demolition Clause. The reference to the Testator having given *express instructions to the Respondent to revert to the First Will* (which contained the Demolition Clause) should be seen in that light.

77 On 30 October 2018, about 20 months after the MC Letter, the AGC wrote to the Respondent, highlighting that concerns had been raised over her participation in the preparation and execution of the Last Will, under which her husband, Mr LHY, was a significant beneficiary. The AGC sought the Respondent's clarification of "the nature of [her] involvement in the preparation of the Last Will", "[i]n particular, … when [the Testator] instructed [her] to prepare the Last Will, and what his instructions were".[90] The Respondent expressed unhappiness over the steps that the AGC was taking against her, but

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did not respond substantively to its queries.[91] As mentioned at [35] above, the AGC subsequently lodged a complaint against the Respondent with the Law Society on 4 December 2018, stating that she appeared to have breached rr 25 and 46 of the PCR "by preparing the Last Will for [the Testator] without advising him to seek independent legal advice, despite knowing that her husband [Mr] LHY would receive a significant share of the estate under the will".[92]

78 On 10 December 2018, *after* the AGC's complaint had been lodged, the Respondent wrote to the AGC, asserting that the Testator was "not [her] client and [she] was not his lawyer in connection with his Last Will".[93] Subsequently, on 21 December 2018, the Respondent wrote to the AGC again, stating that "[m]atters relating to any involvement [she] had in assisting [her] family in December 2013 [in connection with the Testator's Last Will] were addressed by [Dr LWL] and [Mr LHY] in detailed correspondence to the [MC], in particular in their letters of *28 February 2017* and 14 June 2017"[94] [emphasis added]. The 28 February 2017 letter is the MC Letter containing the MC Statements, which stated that (among other things) the Last Will had been "engrossed on the basis of [the Testator's] express instruction to revert to his [F]irst [W]ill from 2011"[95] (see [75] above).

79 At the hearing before the DT, the Respondent sought to persuade the DT that she had not, by her letter of 21 December 2018 to the AGC, adopted the MC Statements' description of her role in the preparation and execution of the Last Will.[96] The DT rejected this argument. We agree with the DT that the only reasonable inference to be drawn from this letter, which was written by the Respondent at a time when her participation in the preparation and execution of the Last Will was being questioned, was that the Respondent had adopted the position set out in the MC Statements, specifically, to the effect that the Last

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Will had been prepared pursuant to the Testator's express instructions to her (GD at [226]). By that stage, a complaint had been made against the Respondent. In such circumstances, if the MC Letter had painted an erroneous picture of her role in the preparation and execution of the Last Will, one would have expected her to correct any such error in the course of her letters to the AGC. The Respondent did not, however, do so. Instead, she described the MC Letter as accurately reflecting "any involvement [she] had in assisting [her] family in December 2013" in connection with the Last Will. Hence, we are satisfied that by her letter of 21 December 2018 to the AGC, the Respondent had represented, as Mr LHY and Dr LWL had done in the MC Statements, that she had assisted the Testator in reverting to his First Will based on his *express instructions* to her.

(2) The second explanation

80 In the course of the disciplinary proceedings, the Respondent sought to resile from the account of events set out in the MC Statements, contending instead, and for the first time, that the Testator had never spoken to her directly about his wish to revert to the First Will, and that all instructions to this effect from the Testator had been given to *Mr LHY*, who had then involved her in limited ways.[97] We refer to this alternative account as "the second explanation".

81 The second explanation, as presented by Mr LHY in his affidavit of evidence-in-chief ("AEIC") dated 11 June 2019, was that sometime on 16 December 2013, the Testator contacted him and informed him that he "wanted to change his will and revert to his original 2011 will", under which his children would receive equal shares of the estate. As Mr LHY was due to fly to Brisbane that evening, he spoke to his wife, the Respondent, and asked her to coordinate the arrangements with Ms Kwa for the Testator to re-execute

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the First Will (this being the "original 2011 will" referred to in Mr LHY's AEIC).[98]

82 The Respondent echoed Mr LHY's account in her AEIC dated 17 June 2019, where she said:[99]

> 13. … Sometime during the day [on 16 December 2013], [Mr LHY] called me to say that [the Testator] had decided to revert to the original 2011 will. [Mr LHY] explained that this was the agreed will which provided for equal shares for the children … As [Mr LHY] was flying to Australia for board meetings that evening, [Mr LHY] asked me to follow up with [the Testator] and [Ms Kwa] to organise the re-execution of [the First Will]. [Mr LHY] also intimated that he would forward a copy of the said will to me so that I could follow up with [Ms Kwa].
>
> …
>
> 15. That evening, I finally found time to attend to [Mr LHY's] request. I checked my email and saw that [Mr LHY] had sent me a draft of [the First Will]. I no longer have a copy of the abovementioned email from [Mr LHY], and other emails in relation to this matter. …
>
> 16. As requested by [Mr LHY], I forwarded the draft will which he sent me to [Ms Kwa] and [the Testator]. I did not draft or prepare this draft will, and did not amend it in any way. Indeed, I do not think I even opened and looked at the attachment. …

83 It will be readily evident that the position adopted by the Respondent in the disciplinary proceedings differed significantly from that set out in the MC Statements. Whereas the MC Statements asserted that the Testator had given express instructions directly to *the Respondent* to prepare and engross the Last Will, which "was simply [the Testator's] [F]irst [W]ill",[100] for execution, it was contended in the disciplinary proceedings that all such instructions were in fact conveyed by the Testator to *Mr LHY*, who then involved the Respondent just to coordinate the steps that needed to be taken in order to effect the Testator's wishes.

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84 Faced with this inconsistency, the Respondent contended that the MC Statements were "incorrect"[101] and the result of Mr LHY's habit of "jump[ing] many steps" when crafting his statements.[102] It was also suggested that the MC Letter had not been drafted with precision because it "wasn't a formal legal document",[103] and, thus, "optional explanations" were omitted.[104]

(3) Our decision

85 We do not accept the Respondent's attempted rationalisation of the two inconsistent explanations that she advanced as regards the circumstances which led her to send the 7.08pm email on 16 December 2013. As the DT observed, the first explanation (which was the account presented in the MC Statements) – namely, that the Testator gave express instructions directly to the Respondent to revert to the First Will – was *entirely contradictory* to the second explanation (which was adopted for the first time only in the course of the disciplinary proceedings) – namely, that the Testator *never gave* such instructions to the Respondent, but instead communicated the instructions to Mr LHY, who then asked the Respondent to make the necessary arrangements to give effect to those instructions. The diametrically opposed positions related to a basic fact, namely, whether or not the Testator gave express instructions directly to the Respondent to revert to the First Will. This inconsistency could not be explained away simply on the basis that Mr LHY had an apparent tendency to "shortcut … his statements",[105] or that the MC Letter had not been drafted with the level of care and precision ordinarily afforded to formal court documents (GD at [231]–[236]). Given the concerns that had been expressed by Mr LHL and conveyed by the MC to Mr LHY and Dr LWL (see [74]–[75] above), serious questions had been raised about the Respondent's and Mr LHY's actions in relation to the preparation and execution of the Last Will, a point that Mr LHY accepted under cross-examination.[106] In that light, if the Testator had spoken directly to *Mr LHY*

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about reverting to the First Will, we find it inconceivable that that fact as well as the contents of that communication would have been omitted from Mr LHY's and Dr LWL's responses to the MC due to an oversight or any inadvertent "shortcutting" on Mr LHY's part. However, nowhere in the several and lengthy responses to the MC from Mr LHY and Dr LWL is there any hint of the critical conversation that Mr LHY allegedly had with the Testator on 16 December 2013, in which, according to the Respondent and Mr LHY, the Testator told Mr LHY that he "wanted to change his will and revert to his original 2011 will".[107] This omission is crucial because, in its correspondence with Mr LHY and Dr LWL, the MC had directly raised (among other issues) the issue of the Testator's awareness of the changes effected in the Last Will, in particular, the reinsertion of the Demolition Clause.[108]

86 Further, the MC Letter had been prepared with the benefit of legal advice. This is unsurprising since the MC Letter was concerned with, among other things, the provenance of the Demolition Clause (see [75]–[76] above). We therefore find it implausible that the response set out in the MC Letter would have been crafted with anything other than due care. Emphasis was placed there on the Testator having given express instructions directly to the Respondent to revert to the First Will, and it wholly omitted to mention any communication between the Testator and Mr LHY on this matter.

87 Although we reject the Respondent's attempted rationalisation of the inconsistency between the two explanations which she advanced as to the circumstances that led her to send the 7.08pm email on 16 December 2013, this does not necessarily entail that the first (and earlier) explanation (that is to say, the account set out in the MC Statements) must therefore be true. The first explanation may be true, or it may, alternatively, reflect a position that was taken to avoid any suggestion that the reinstatement of the First Will and, in particular,

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the reinsertion of the Demolition Clause were not the result of the Testator's free will and wish. Which of the Respondent's two conflicting explanations is true calls for closer analysis and a forensic examination of all the relevant evidence and circumstances.

88 The DT concluded that the first explanation – namely, that the Testator had given express instructions directly to the Respondent to revert to the First Will – was true. This was because it considered that no coherent explanation had been offered as to why *the Respondent* would have sent the Draft Last Will to the Testator by way of the 7.08pm email if he had in fact spoken to *Mr LHY* about reverting to the First Will (GD at [248]). While we understand the DT's reasons for coming to this view, on balance, we do not agree with the DT on this finding.

89 In our judgment, it would have been extremely odd for the Testator to have contacted the Respondent directly about changing his then will, which was the Sixth Will. Ms Kwa was his regular solicitor and had seen to the execution of all his previous wills. He had been communicating with her on the changes that he wished to make to the Sixth Will until 13 December 2013, just three days before the Respondent sent him the 7.08pm email on 16 December 2013 and four days before he executed the Last Will on 17 December 2013. The following evidence also shows that the Testator regarded Ms Kwa, and not the Respondent, as his solicitor for matters pertaining to his estate generally:

(a) First, in the days leading up to the execution of the Last Will, the Testator discussed changing his Sixth Will only with Ms Kwa, and those discussions continued until 13 December 2013, being the Friday before the Last Will was executed.

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(b) Nothing in the correspondence between Ms Kwa and the Testator suggested that the Testator intended to proceed to effect the contemplated changes to the Sixth Will without Ms Kwa's involvement.

(c) After Ms Kwa intimated that she would prepare a codicil to the Sixth Will to reinstate the leaving of equal shares of the estate to the Testator's children, the Testator instructed her to add a bequest of two carpets to Mr LHY.

(d) The Respondent's 7.08pm email specifically singled out Ms Kwa as the person who should engross the Draft Last Will attached to that email. This suggests that at that point, Ms Kwa continued to be viewed as the person who would attend to the Testator's execution of the Last Will.

90 In the face of these circumstances, no plausible reason was advanced to explain why the Testator would have abruptly approached the Respondent to convey to her directly his wish to revert to the First Will, and to seek her assistance in that regard.

91 We also note that the Respondent had copied Mr LHY and Ms Kwa in her 7.08pm email to the Testator. The inclusion of *Mr LHY* would have been perplexing, to say the least, if this email had been sent in response to an instruction from the Testator to *the Respondent* directly because there would, in that event, have been no need and no reason to involve Mr LHY in carrying out the Testator's instruction. Further, if, as alleged in the MC Statements, the Last Will had been "engrossed [by the Respondent] on the basis of [the Testator's] express instruction to revert to his [F]irst [W]ill",[109] there would have been no reason for the Respondent to copy *Ms Kwa* as well in the 7.08pm email and to request her to see to the engrossment of the Draft Last Will. In addition, if the

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Testator had indeed instructed the Respondent directly, we would have expected to find some further communications between the Testator and the Respondent after she sent him the 7.08pm email. There were, however, no such communications. Instead, the further communications were between Mr LHY and the Testator. All of this leads us to conclude that the MC Statements were untrue and gave the incorrect impression that Mr LHY had not himself been involved in receiving the Testator's instructions to revert to the First Will.

92 In the circumstances, while we are mindful that the second explanation (as set out at [80]–[82] above) reflected a new position that was adopted for the first time only in the course of the disciplinary proceedings, we find that that position was in fact the true position. In other words, we find that the Respondent learnt of the relevant instructions to revert to the First Will from Mr LHY, and not directly from the Testator, and that the account of events presented to the MC was incorrect. Mr LHY might perhaps have advanced that account to distance himself from the circumstances surrounding the preparation and execution of the Last Will by suggesting that the instructions to revert to the First Will were directly and expressly conveyed by the Testator to the Respondent. Whatever the reasons for presenting that account to the MC might be, it was contradicted by the evidence which surfaced in the disciplinary proceedings (see [89]–[91] above).

93 In the absence of any other evidence, we accept the second explanation of the circumstances that led to the Respondent sending the 7.08pm email on 16 December 2013. As we mentioned at [80]–[81] above, this explanation was raised for the first time in the AEIC which Mr LHY filed for the disciplinary proceedings, and it was to the effect that the Testator informed him sometime on 16 December 2013 that he "wanted to change his will and revert to his original 2011 will",[110] under which the children would receive equal shares of

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the estate. According to Mr LHY, as he was due to leave for Brisbane that evening, he contacted his wife, the Respondent, and asked her to liaise with Ms Kwa to make the necessary arrangements for the Testator to re-execute the First Will (this being the "original 2011 will").[111] This was also the position put forward by the Respondent in her AEIC (see [82] above) as well as under cross-examination, where she said:[112]

> … [Mr LHY] spoke to me sometime in the afternoon [of 16 November 2013] to ask me to make arrangements for [Ms Kwa] to sign because he was busy. I was preoccupied and I didn't remember to do it till I was leaving the office at 7.00 or whatever, 7.08 in the evening. [Mr LHY] was already at or on his way to the airport. He saw my email and he called up because he was cross that I hadn't made arrangements earlier. In the interim, I believe, [Mr LHY] had continued to try to call [Ms Kwa] and he told me he couldn't reach her. And so he said, '[the Testator] is anxious and when he's anxious, he has a bad temper.' And asked me to get somebody ready. And we discussed [Mr Lui] and he said he'd talk to [Mr Lui] after I warned [Mr Lui] off. That's when it happened.

94 Based on what was conveyed to her by Mr LHY, the Respondent sent the Testator the 7.08pm email attaching the Draft Last Will, which she presented as being "the original agreed Will which ensures that all 3 children receive equal shares".[113] We are satisfied that at that point, it remained the Testator's intention to have Ms Kwa attend to the re-execution of the First Will. The Respondent clearly appreciated this, and she therefore asked Ms Kwa to see to the engrossing of the Draft Last Will in her 7.08pm email.

95 We note that the Testator's decision to revert to the First Will marked a change in the position which he had arrived at as at 13 December 2013 following his discussions with Ms Kwa about the changes that he wished to make to the Sixth Will. As we mentioned at [11] above, although the Testator had decided by 13 December 2013 to revert to leaving his estate to his three children in equal shares (among other things), his discussions with Ms Kwa had

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not extended to replacing the Sixth Will with another will, nor to reinstating either the First Will as a whole or the Demolition Clause in particular. While the evidence does not enable a finding to be made as to how or why the Testator came to decide to revert to the First Will, it appears that this was motivated, at least in part, by the consideration that under that will, consistent with what he had discussed with Ms Kwa and with what he wished as at 13 December 2013, his children would inherit his estate in equal shares.

The means by which the Respondent obtained the Draft Last Will

96 Before going further, there is, as we pointed out at [70] above, a second sub-issue that we need to examine, and that pertains to how the Respondent came into possession of the Draft Last Will.

97 At the hearing before the DT, the Respondent and Mr LHY testified that the Respondent had received the Draft Last Will from Mr LHY and had forwarded it to the Testator. According to the Respondent, after forwarding the Draft Last Will to the Testator, she then enlisted the help of Mr Lui to see to its execution and sent his contact details to the Testator's personal secretary, Ms Wong. Thereafter, she had no further involvement in its preparation or execution. She also contended that she did not even open the Draft Last Will before forwarding it to the Testator.[114]

98 The DT rejected this account completely. It pointed out that Mr LHY was unable to give any cogent reason as to why he would have needed the Respondent to send the Draft Last Will to the Testator and Ms Kwa if that document had been in his computer all along. There would have been no need for Mr LHY to involve the Respondent at all on 16 December 2013 if he had been tasked just to convey a message to Ms Kwa that the Testator wished to revert to his First Will. Mr LHY said that he had involved the Respondent

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because he was travelling to Brisbane later that night. But, this made no sense because the Respondent too was due to depart for Paris just three hours after him. Further, Mr LHY continued to be involved in sending emails and making phone calls to coordinate the execution of the Last Will even after he had allegedly handed the reins to the Respondent (GD at [274]–[290]). The DT also found it suspicious that while Mr LHY had no difficulty in locating other emails from the material time, and even emails from 2011 and 2012, he was unable to produce the email by which he had allegedly forwarded the Draft Last Will to the Respondent (GD at [305]). In addition, no evidence was tendered at all to support Mr LHY's assertion that he had been "'privy to some drafts' of the First Will" [emphasis in original omitted], which raised doubts as to whether he even had any draft of the First Will to send to the Respondent (GD at [321]). Mr LHY's alleged role in forwarding the Draft Last Will to the Respondent was also not mentioned in the MC Statements, nor was it raised by the Respondent in her defence dated 10 April 2019 to the charges brought against her. Instead, it surfaced for the first time only in Mr LHY's and the Respondent's AEICs, which were filed in June 2019, some months after the disciplinary proceedings commenced (GD at [308]–[310]).

99 While there is no evidence before us that Mr LHY had indeed been privy to some drafts of the First Will as he claimed, the contrary is true in the Respondent's case. As we noted at [15] above, the Respondent had assisted the Testator in drafting certain aspects of his First Will. On 19 August 2011, the day before the First Will was executed, she sent an email to Ms Kwa and the Testator at 11.06pm, explaining that she had "done a wee bit of tidying up to [the Testator's] amended draft [of the First Will], to correct a few punctuation typos in the document as well as to read [*sic*] the unnecessary word 'me' in the opening line". That email included an attachment titled "WILL-LKY – Draft of 19 August 2011 – v3.DOC" ("the Version 3 Draft").[115] Reviewing the Version 3

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Draft, it can be seen that minor typographical errors were corrected by the Respondent, who, among other changes, removed an unnecessary "me" in the opening paragraph of the draft and replaced a comma with a full stop in cl 6.[116] The next day (20 August 2011), the Testator executed his First Will, which incorporated the amendments made by the Respondent the night before and appears to be identical to the Version 3 Draft.[117] Therefore, while the Respondent might not have appreciated this, she had in fact been involved in finalising the drafts of the Testator's First Will until the end, and the Version 3 Draft that she sent Ms Kwa and the Testator at 11.06pm on 19 August 2011 seems to have become the Testator's First Will.

100 However, although the Respondent appears to have had the final draft of the First Will (in the form of the Version 3 Draft) in her possession, upon being told that the Testator wished to revert to the First Will, she did not send him the Version 3 Draft in her 7.08pm email on 16 December 2013, but instead sent him a document titled "LAST_WILL-LKY – Draft of 19 August 2011.DOC",[118] that document being the Draft Last Will. It is undisputed that the Draft Last Will became the Testator's Last Will, and bore several differences from the First Will (as well as from the Version 3 Draft). Notwithstanding the differences between the First Will and the Draft Last Will (see [15] above), it can be inferred from their broad similarities, and the fact that they both stemmed from documents titled "Draft of 19 August 2011", that the Draft Last Will was an earlier draft of the First Will which was subsequently superseded by the Version 3 Draft. Crucially, Mr LHY was *not* copied in the email of 19 August 2011 to which the Version 3 Draft was attached. That email strongly points to the conclusion that the Respondent, and not Mr LHY, was the one who had been privy to the drafts of the Testator's First Will.

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101 In line with this, we note that para 62 of the MC Letter stated that "[the Respondent] obtained what she understood to be the final version of the [F]irst [W]ill from 2011".[119] This was not consistent with the case advanced before the DT as well as before this court, which was that the Draft Last Will had in effect been sent by Mr LHY to the Testator through the Respondent, who did not even open the document before forwarding it to the Testator. Having regard to all the circumstances and the reasons given by the DT for rejecting this account (as summarised at [98] above), we agree with and affirm the DT's finding that Mr LHY was not telling the truth when he said that he was the one who had forwarded the Draft Last Will to the Respondent. For the same reasons, we also agree with and affirm the DT's finding that the Respondent's evidence on this issue, which echoed Mr LHY's, was similarly untrue and to be rejected.

102 Contrary to what the Respondent and Mr LHY claimed in their AEICs, we find on the evidence that the Respondent, upon being told by Mr LHY that the Testator wanted to revert to the First Will, retrieved from her records a copy of what she thought was the final draft of the First Will and sent it to the Testator with a view to having it re-executed (see [93]–[94] above). It is undisputed that she made no effort to establish whether whatever draft of the First Will that she had and that she forwarded to the Testator (namely, the Draft Last Will) was in fact the same as the executed version of the First Will. Instead, she assumed this to be so, and represented it as such to the Testator when she forwarded the Draft Last Will to him by way of the 7.08pm email on 16 December 2013 and stated without qualification that it was "the original agreed Will which ensures that all 3 children receive equal shares".[120] We therefore find that the Draft Last Will emanated from the Respondent, and not Mr LHY.

103 The Respondent also claimed in her AEIC that after she received the Draft Last Will from Mr LHY (an assertion which we have just found to be

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untrue (see [101]–[102] above)), she did not even open it before forwarding it to the Testator.[121] This was rejected by the DT, which observed that the Respondent had testified that she was "terrified" of the Testator,[122] and "wouldn't have dared send [the Draft Last Will] if [she] didn't think that it was what he wanted"[123] because if she had gotten it wrong, she would have been "shot".[124] If this were indeed the case, it beggared belief that the Respondent would have assured the Testator that the Draft Last Will was the "original agreed Will" without first *opening and checking* it to ascertain whether that was indeed the case (GD at [319]–[320]). In our judgment, it is a matter of some significance that the Respondent erroneously sent the Testator an *earlier* draft of the First Will (namely, the Draft Last Will) even though the *final* draft of that same will (namely, the Version 3 Draft) plainly did emanate from her. While we agree with the DT that it is implausible and ultimately incredible that the Respondent did not even open the Draft Last Will before forwarding it to the Testator, it does appear that there was a notable lack of diligence on her part in terms of the effort she made to establish whether she had in fact retrieved the final draft of the First Will that was in her possession. Nonetheless, on the state of the evidence that was before the DT and before us, we have no basis to think that any changes were made by the Respondent to the draft of the First Will that she retrieved before sending it to the Testator. We therefore accept and proceed on the basis that she sent the Testator the Draft Last Will in the erroneous belief that it was the final draft and actual version of the First Will. We also find that she was in no position to make any representation to the effect that the Draft Last Will was the same as the actual version of the First Will, given that the executed version of the First Will was never in her hands. Despite this, she did make such a representation, which was in fact false.

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The Respondent's position as at 7.08pm on 16 December 2013

104 Pausing here, the Respondent's position at the time she sent the 7.08pm email on 16 December 2013 can be summarised as follows:

(a) The Respondent had been told by Mr LHY that the Testator wished to revert to his First Will.

(b) The Respondent did not verify the position with the Testator. While her failure to do so would ordinarily be unsatisfactory and objectionable, we do not conclude that as at 7.08pm on 16 December 2013, a decision had already been made to proceed with the execution of the Last Will without the involvement of the Testator's regular solicitor, Ms Kwa, such that the attendant responsibilities of a solicitor tasked with preparing and seeing to the execution of a will would logically fall on the Respondent. This is because Ms Kwa had evidently been copied in the 7.08pm email, and had been specifically requested by the Respondent to see to the engrossment of the Draft Last Will. Ms Kwa would thus have been the natural port of call for verifying whether the Testator had indeed given instructions to revert to his First Will. As we put it to Mr Tan in the course of his submissions and as he accepted, the position as at 7.08pm on 16 December 2013 was that Ms Kwa would have been expected to verify the Testator's instructions and then carry out the necessary checks to ensure that the Testator would be signing the document that he actually wished to sign.

(c) On the basis of Mr LHY's instructions, the Respondent retrieved "what she understood to be the final version of the [F]irst [W]ill"[125] and forwarded it to the Testator by way of the 7.08pm email. While we do not find that she deliberately sent the Testator a wrong version of the

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First Will, it is common ground between the parties that the version of the First Will that she sent him (namely, the Draft Last Will) was not in fact identical to the executed version of the First Will. We reiterate the drafting differences outlined at [15] above to highlight that the Draft Last Will was undoubtedly different from the executed version of the First Will.

(d) Notwithstanding this, the Respondent represented in her 7.08pm email:

(i) expressly, that the Draft Last Will was the "original agreed Will"[126] (meaning the First Will); and

(ii) at least implicitly, that it could be used for execution.

On the basis of these representations, the Respondent asked Ms Kwa to engross the Draft Last Will.

105 In our judgment, the representations set out at [104(d)] above give rise to considerable concerns. We have already alluded to these facts:

(a) The Respondent did not have a copy of the executed version of the First Will.

(b) The Respondent did not know what, if any, changes had been made to the last draft of the First Will that she had in her possession.

(c) The Respondent did not make any effort at all to check the position with Ms Kwa, who she knew was the person who could verify the representations that she had made about the Draft Last Will.

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(d) The only information the Respondent had as to the Testator's instructions came from her husband, Mr LHY, and not from the Testator himself, and those instructions were to "revert to the original 2011 will".[127] This, in substance, is how the instructions were expressed in both the Respondent's and Mr LHY's AEICs as well as the MC Statements. This is significant because it indicates that the Testator wanted to revert to, specifically, the *executed version* of the First Will. It cannot possibly be suggested that the Testator was indifferent to the precise contents of his Last Will so long as it left his estate to his children in equal shares. Indeed, if our inference at [100] above (namely, that the Draft Last Will was an earlier draft of the First Will that was later superseded by the Version 3 Draft) is correct, then that is positive proof that in the course of the preparation of the First Will, the Draft Last Will, despite being in accordance with the Testator's intention to leave his estate to his children in equal shares, became unacceptable to the Testator and/or Ms Kwa for reasons which are unclear from the evidence, and was therefore replaced with a subsequent draft in the form of the Version 3 Draft.

(e) The representation set out at [104(d)(i)] above was to the effect that the Draft Last Will was precisely the First Will that the Testator had intimated a wish to re-execute, when, in fact, that was simply not the case.

106 While we do not find that the inaccuracy of the Respondent's representations about the Draft Last Will was the result of a deliberate falsehood on her part, it highlights the danger of approaching wills with anything other than meticulous care and attention. As the Court of Appeal observed in *Low Ah*

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Cheow and others v Ng Hock Guan [2009] 3 SLR(R) 1079 ("*Low Ah Cheow*") at [72]–[73], albeit in a slightly different situation from the present:

> 72 A will is one of the most important legal documents which an individual can execute. Often, it embraces assets which an individual may have taken a lifetime of effort to amass. …
>
> 73 *The preparation of a will involves serious professional responsibilities, which solicitors must uncompromisingly observe and discharge. Regrettably, it seems to us that, all too often nowadays, solicitors appear to consider the preparation of a will to be no more than a routine exercise in form filling. This is* ***wrong***. Before preparing a will, the solicitor concerned ought to have a thorough discussion with the testator on all the possible legal issues and potential complications that might arise in the implementation of the terms of the will. The solicitor ought to painstakingly and accurately document [her] discussions with and [her] instructions from the testator. [She] should also confirm with the testator, prior to the execution of the will, that the contents of the will as drafted accurately express the latter's intention. A translation, if required, must be thoroughly and competently done. Half measures or the cutting of corners in the discharge of these serious professional responsibilities will not do.
>
> [emphasis in original omitted; emphasis added in italics and bold italics]

107 The Respondent cannot reasonably claim, much less rely upon, any ignorance of these basic principles. In that light, she must have known, or, at the very least, ought to be taken to have known, that she was in no position to make the representations set out at [104(d)] above, which had the effect of assuring the Testator that the Draft Last Will sent to him was entirely in accordance with his wish to revert to his First Will and could be used for execution. The fact that these representations were ultimately shown to be false proves incontrovertibly that their veracity was something that needed to be checked, but this was not and, indeed, could not be checked by the Respondent herself, not least because she did not have a copy of the executed version of the First Will.

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108 The Respondent also did not highlight to the Testator, much less inform him, that she had not in fact checked, nor was she in a position to check, whether the Draft Last Will that she had sent him was the same as the executed version of the First Will.

109 We shall return later in this judgment to the significance of the foregoing observations on the representations made by the Respondent. For present purposes, we find that as at 7.08pm on 16 December 2013, no implied retainer had arisen between the Respondent and the Testator because the Respondent had purported to include the Testator's regular solicitor, Ms Kwa, in the list of addressees in the 7.08pm email and had asked Ms Kwa to see to the engrossing of the Draft Last Will attached to that email. Giving the benefit of any doubt to the Respondent, this suggests that she believed, at that stage, that Ms Kwa would duly confirm the Testator's instructions, check that the Draft Last Will was indeed the document that he wished to sign and resolve any outstanding issues before actually engrossing it for execution. On this basis, the representations made by the Respondent would not have been relied upon by the Testator.

The events after 7.08pm on 16 December 2013

110 What happened next is disturbing and critically important. At 7.31pm on 16 December 2013, Mr LHY sent the Testator an email which was copied to the Respondent and Ms Wong, but which simultaneously *removed* Ms Kwa from the list of addressees (see [17] above). In that 7.31pm email, Mr LHY informed the Testator that he could not contact Ms Kwa, and that he did not think it was wise for the Testator to wait until Ms Kwa was back before executing the Last Will. He also said that the Respondent could arrange for

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witnesses for the Testator's execution of the Last Will, which was all that was left to be done.

111 We find several aspects of this email troubling. First, Mr LHY could not have known at that stage that the Testator would agree to the exclusion of Ms Kwa, who, we reiterate, was the solicitor who had attended to all of his previous wills, and who he evidently wanted to be involved in the execution of the Last Will (see [89(b)] above). Yet, Mr LHY removed Ms Kwa from the list of addressees in this email. Second, Mr LHY said that he "[didn't] think it [was] wise to wait till [Ms Kwa was] back"[128] before executing the Last Will. However, it does not appear that Mr LHY had checked with anyone when Ms Kwa would be contactable or when she would be back. In fact, the evidence shows that Ms Kwa was very much contactable and able to respond shortly after receiving the email that the Respondent sent her at 1.16pm on 17 December 2013 *after* the execution of the Last Will earlier that day (see [29] above). Third, it is unclear *why* Mr LHY thought it was unwise for the Testator to wait for Ms Kwa to be back before he executed the Last Will. As to this, the Respondent testified that the Testator was in a rush to execute the Last Will because he "had a strong sense of his own mortality … and … was anxious to put his affairs in order".[129] But, this is contradicted by the objective evidence, which shows that the Testator had been perfectly content to engage in discussions with Ms Kwa between 30 November 2013 and 13 December 2013 about changing some aspects of his Sixth Will. In all of those discussions, there was no intimation that the Testator had been in any particular rush to execute a codicil to his Sixth Will to effect the changes which he had in mind.

112 Leaving aside Mr LHY's conduct for the time being, the spotlight is then cast on the Respondent, who would have been aware that with the exclusion of Ms Kwa from the 7.31pm email, the Testator was being asked to proceed with

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the execution of the Last Will *on the basis of the representations that she had earlier made* in her 7.08pm email (namely, that the Draft Last Will was the First Will and could be used for execution).

113 Despite the exclusion of Ms Kwa, the Respondent, a senior solicitor with a wealth of experience, aligned herself with her husband's position that all that remained to be done was for the Testator to sign the Last Will before two witnesses. This was despite the fact that the Respondent must have known or appreciated, or, at the very least, must be taken to have known or appreciated, that had Ms Kwa been involved as the Testator had originally intended, there were a number of things that Ms Kwa would have had to do as the Testator's solicitor, as outlined at [109] above. These were quite basic and essential steps that could not reasonably have escaped the attention of an experienced solicitor. The most basic of these was verifying that the Testator was being presented with the document that he actually wished to sign, something that the Respondent must have known she could not be sure of, especially since she had not even checked whether the Draft Last Will was the final draft of the First Will that she had in her possession. At this stage, and in these circumstances, it is simply untenable that the need for caution, restraint and circumspection did not strike the Respondent. In addition to the points which we have noted at [104]–[108] above and which we reiterate here, there was a further concern stemming from the fact that the Last Will was a document under which the Respondent's husband was, to her knowledge, a significant beneficiary. Regardless of whether or not the Respondent specifically knew that he was going to get a larger share of the Testator's estate under the Last Will (because it removed the extra 1/7 share granted to Dr LWL under the Sixth Will), what is inescapable is that he was a significant beneficiary. This meant that the Respondent should not have continued to see to or assist with the preparation and execution of the Last Will

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without Ms Kwa's involvement. As the Court of Appeal explained in *Low Ah Cheow* ([106] *supra*) at [74], a solicitor:

> … should … conscientiously seek to avoid being in any situation where a potential conflict of interest may appear to exist. If the solicitor might be perceived as anything less than a completely independent adviser to the testator, [s]he ought not, as a matter of good practice, to be involved in the explanation, the interpretation and the *execution* of the will. In particular, exceptional restraint and care are called for if the solicitor concerned has a pre-existing relationship and/or past dealings with the sole beneficiary under a will, and all the more so if the will has been prepared urgently and executed in unusual circumstances with that sole beneficiary's active involvement. When such a case occurs, the solicitor involved must be prepared to have [her] conduct microscopically scrutinised and, perhaps, even [her] motives called into question. [emphasis added]

114 By standing by the representations that she had made in her 7.08pm email even *after* her husband had proposed that Ms Kwa be excluded from the arrangements pertaining to the preparation and execution of the Last Will, the Respondent was effectively assuring the Testator that the requisite due diligence checks to ensure that the Draft Last Will accurately reflected his wishes had been carried out, and that all that remained to be done was for him to sign the engrossed version of the draft before two witnesses.

115 Before us, Prof Woon asserted that the First Will and the Draft Last Will were similar *in substance*. He submitted that the Respondent had therefore acted in the Testator's interests, and that it would have been "meaningless" and "insulting" for her to have advised the Testator to seek independent advice. He submitted on this basis that the charges against her ought not to stand. In essence, Prof Woon's submission was that it was sufficient that the Draft Last Will, which the Respondent had represented as being the "original agreed Will", was *broadly similar* to the First Will. We find this submission wholly ill-conceived and contrary to the most basic principles governing the preparation

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and execution of wills. It suggests that it is unimportant to ensure that the will that is put forward for execution accurately reflects the testator's intentions. Given that the Respondent did not have a copy of the executed version of the First Will, she could not have known whether or not the Draft Last Will was in fact the document that the Testator wished to sign; nor could she even have known whether or not it was broadly similar to the First Will. Prof Woon's submission also reflects the sort of attitude to wills that invited the Court of Appeal's warning in *Low Ah Cheow* in the passage reproduced at [106] above. The particular reason why it is so important for a solicitor to be meticulous even to the point of fastidiousness when preparing a will is that, as we explained to Prof Woon, by the time a will is read, the testator cannot come back to clarify his intentions or the importance or relevance to him of changes made to a previous version of his will. There is no evidence at all to suggest that the Testator, who was in every way plainly meticulous with his wills, would have been content to sign a will that was, in Prof Woon's view, broadly similar to the First Will if he had wanted specifically to revert to the latter. We also reiterate the observation that we made at [105(d)] above, namely, that the only inference open to us is that the Draft Last Will was an earlier iteration of the First Will that had been rejected for reasons which are unclear from the evidence. We therefore have no hesitation in rejecting Prof Woon's submission that it was sufficient that the Draft Last Will and the First Will were broadly similar.

116 Further, it appears from the contemporaneous note prepared by Ms Kong after the signing of the Last Will[130] (see [26] above) that the Testator did not have the First Will before him at the time of signing. Hence, although he did read the Last Will before he signed it, it is idle, if not misleading, to suggest that he would have known whether or not it was a true and faithful reproduction of the First Will. In truth, he was not in a position to compare it with the First Will to check whether there were any differences between them,

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and if there were, to consider whether any of the differences were material to him.

117 This is relevant because Prof Woon made much of the fact that the Testator was legally trained, had a brilliant legal mind and was lucid at the time he signed the Last Will. While all this is true, Prof Woon's submission that the Testator could therefore himself have corrected any errors in the Last Will or any divergences from the First Will that were material to him was simply fanciful, given that the Testator could not possibly have been expected to recall from memory the contents of the First Will, and, thus, would not have been able to tell whether there were any differences between the terms of the Last Will and those of the First Will.

118 In the absence of any evidence to show that the Testator even knew that there were differences between the First Will and the Last Will, there is no basis at all for concluding that he would have been content with signing a will that was merely *broadly similar* to the First Will if he had wanted specifically to revert to the First Will, and all the more so without having had the opportunity to discuss this with his regular solicitor, Ms Kwa. Without Ms Kwa's involvement, the Testator only had the Respondent's representation in her 7.08pm email on 16 December 2013 that he was being presented with a document that was *identical* to the First Will. The Respondent herself accepted that he would have believed her when she told him that the Draft Last Will was the "original agreed Will",[131] that is to say, the First Will:[132]

> Q Will it be fair to say that [the Testator] would have trusted that what you told him was true? Namely, that the draft was the original agreed will?
>
> A Yes, I think he would have assumed it to be true.

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119 This leads to a further point. In the light of this evidence, we cannot accept the submission that the representations made by the Respondent to the Testator in her 7.08pm email were merely descriptive in nature and did not amount to legal advice.[133] While that might have been the case as at 7.08pm on 16 December 2013, *after* Ms Kwa's exclusion from the email chain at 7.31pm, those representations became the sole basis on which the Testator would have concluded that the Draft Last Will was indeed the First Will. Hence, while brief, those representations were crucial in assuring the Testator that his instructions to revert to the First Will were being given effect to, and, in our judgment, they did amount to legal advice. From an objective viewpoint, the Respondent's subsequent failure to qualify the crucial representations which she had made indicates that she knew, or must have known, that she was taking on the role and responsibility of being the Testator's solicitor for the preparation and execution of the Last Will, at least to the limited extent of locating a copy of the executed version of the First Will, checking the Draft Last Will against it and ensuring that the Draft Last Will was ready for execution. That the Respondent did not in fact attend to these tasks does not detract from this finding because what is pertinent is whether, from an *objective* viewpoint, the Respondent's conduct warrants the imputation of a solicitor-client relationship. Her failure to discharge the relevant responsibilities is irrelevant to whether she should be taken in law to have undertaken those responsibilities in her capacity as the Testator's solicitor for the preparation and execution of the Last Will (*Malcolm Tan* ([61] *supra*) at [11]).

120 The events subsequent to Mr LHY's 7.31pm email fortify our conclusion that after Ms Kwa's exclusion from the email chain at 7.31pm on 16 December 2013, the Respondent firmly positioned herself as the Testator's solicitor for the preparation and execution of the Last Will. First, before the Testator had even agreed to Mr LHY's suggestion to proceed with the execution

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of the Last Will without waiting for Ms Kwa to be back, the Respondent went ahead to make arrangements for Mr Lui to attend to the execution process (see [18] above).

121 The Respondent subsequently assisted in coordinating the execution of the Last Will, and remained in close contact with Mr LHY, Mr Lui, Ms Kong and Ms Wong throughout, even while she was on her flight to Paris (see [22] above).

122 At 12.25pm on 17 December 2013, about one and a half hours after the execution of the Last Will, Ms Kong wrote to the Respondent, stating that the Testator had asked Mr Lui "who drafted the will, twice … and [Mr Lui] wasn't entirely sure but mentioned it was primarily [the Respondent] and Ms Kwa".[134] Mr Tan submitted that the proper inference to be drawn from the Testator's questions as to who had drafted the Last Will is that he was concerned with establishing that he was indeed being presented with a document that was in the terms of the First Will.

123 It is unclear what, if any, inference may be drawn from the Testator's questions to Mr Lui. Mr Tan's hypothesis may be one. But it ultimately does not assist the Respondent. If what Mr Tan suggested was indeed what the Testator was seeking to ascertain, then the only real assurance he had at that point consisted of the representations made by the Respondent in her 7.08pm email. Unfortunately, even after being apprised of the Testator's questions, the Respondent never took steps to check whether the Last Will was indeed the First Will.

124 At 1.16pm on 17 December 2013, the Respondent notified Ms Kwa that the Last Will had been signed (see [29] above). Notably, in her email to

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Ms Kwa, the Respondent did not include any of the emails from which Ms Kwa had been excluded, beginning with Mr LHY's 7.31pm email the previous day, in which he said that (among other things) he thought it was unwise to wait for Ms Kwa to be back before proceeding with the execution of the Last Will.[135] Therefore, Ms Kwa would not have known of the circumstances surrounding the execution process, including the fact that an attempt had supposedly been made to contact her, and that the Testator had been encouraged by Mr LHY to execute the Last Will without waiting for her to be back.

125 The Respondent then saw to the safekeeping of an *original* copy of the Last Will, whereas the original copies of the Testator's previous six wills had all been kept by his regular solicitor, Ms Kwa.

126 Summarising the foregoing, the Respondent:

(a) put forward the Draft Last Will as being ready for execution by the Testator;

(b) represented that the Draft Last Will was the "original agreed Will"[136] that the Testator evidently wished to sign, despite knowing that she was unable to verify this key fact on her own, and that she had not checked with the Testator's regular solicitor, Ms Kwa, whether this representation was true;

(c) made arrangements for the Last Will to be executed before her colleagues, while personally monitoring the arrangements closely;

(d) saw to the safekeeping of an original copy of the Last Will after it was executed; and

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(e) subsequently presented the fact of the execution of the Last Will to Ms Kwa without alerting her at all to the circumstances under which it had been executed. As a result, any cause for concern pertaining to, for example, the accuracy of the Respondent's representations about the Draft Last Will would not have been evident to Ms Kwa. Instead, the Respondent merely wrote Ms Kwa an innocuous "quick note to say that [the signing of the Last Will] has been dealt with already",[137] unmistakeably leaving Ms Kwa with the impression that there was nothing left for her to do.

127 Viewing all these matters objectively, we find it implausible that the Respondent could reasonably think that there was no implied retainer between the Testator and her. We do not accept that the Respondent, who knew or must have known that the Testator wanted confirmation that the Last Will was indeed the First Will (see [118] above), saw herself as merely assisting the Testator with the administrative task of finding witnesses for its execution. Despite the fact that further checks needed to be carried out to ascertain whether the Last Will was indeed the First Will as she had represented, and that she could not undertake such checks herself since she did not have a copy of the executed version of the First Will, the Respondent proceeded nonetheless to facilitate the execution of the Last Will. We do not accept that a solicitor with the Respondent's level of seniority could reasonably think in these circumstances that there was no implied retainer, at least to the limited extent of locating a copy of the executed version of the First Will, checking the Draft Last Will against it and ensuring that the Draft Last Will was ready for execution.

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The analysis from the Testator's perspective

128 This, however, is only part of the relevant inquiry. In assessing whether an implied retainer ought to be imputed, the court must also undertake an "objective inquiry of whether ***the putative client*** *reasonably considered* that the putative solicitor was acting for him" [emphasis added in italics and bold italics] (*BOM v BOK* ([69] *supra*) at [109]).

129 We have noted that as at 7.08pm on 16 December 2013, it remained the Testator's expectation that Ms Kwa would attend to the execution of the Last Will (see [89(b)] and [94] above), which he believed, pursuant to the Respondent's representation, to be the First Will. The eventual decision to have the execution process witnessed by the Respondent's colleagues arose out of *Mr LHY's* intimation to the Testator that: (a) Ms Kwa was uncontactable and appeared to be away; (b) it was unwise to wait for her to be back before proceeding with the execution of the Last Will; and (c) the Respondent could make arrangements to find witnesses for the Testator's signing of the Last Will, which was *all that was left to be done*. In direct response to Mr LHY's suggestion, the Testator replied:[138]

> OK. Do not wait for [Ms Kwa].
>
> Engross and I will sign it before a solicitor in [the Respondent's] office, or from any other office.

130 It is clear from this short exchange that the Testator's shift in position was initiated by Mr LHY, and not by the Respondent or the Testator himself. Hence, while it is true that the Testator decided, at Mr LHY's behest, to proceed with the execution of the Last Will without waiting for Ms Kwa to be back, there is insufficient evidence before us to conclude that he did so *because he considered that the Respondent was acting for him*. Rather, the better view is that the Testator had been encouraged by Mr LHY to sign the Last Will without

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waiting for Ms Kwa to be back, and he did so believing the Respondent's representation that the Draft Last Will was identical to the First Will, such that all that remained to be done was for him to sign the engrossed version of the draft before two witnesses. The Testator could have come to this view either because he did not imagine that the Respondent, as his daughter-in-law, would have misrepresented the position to him, or because he considered that she had made the representation in her capacity as his lawyer for the preparation and execution of the Last Will. On balance, we prefer the former view. This is because, first, we do not think the Testator ever ceased to regard Ms Kwa as his solicitor, at least where matters pertaining to his estate were concerned, even though he, like Ms Kwa, was not fully apprised of the situation. Second, it seems to us that the Testator proceeded as he did essentially because Mr LHY had assured him that he could proceed in that way, and that the Respondent would assist with only the *administrative* task of finding witnesses for the execution of the Last Will. While this was an inaccurate portrayal by Mr LHY, on the limited evidence before us, we think that the Testator proceeded as he did because of the advice of his son, and not because he reasonably regarded the Respondent as his solicitor for the preparation and execution of the Last Will.

131 In coming to the above conclusion, we also have regard to the Testator's interactions with Mr Lui. In his AEIC dated 1 July 2019, Mr Lui said that before the Testator signed the Last Will, the Testator asked him who had drafted the document. He told the Testator that it was the Respondent. The Testator then asked him the same question a second time. On this second occasion, he told the Testator that it was the Respondent *and* Ms Kwa who had drafted the Last Will. Thereafter, the Testator read the Last Will himself before proceeding to sign it.[139] As we have said, while we do not think this exchange affords us a firm basis to draw any inference, it does seem to suggest that the Testator drew some assurance from the indication of Ms Kwa's involvement.

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132 In *BOM v BOK* ([69] *supra*) at [109], we stated (citing *Cordery on Solicitors* (Anthony Holland gen ed) (LexisNexis UK, 9th Ed, 1995, 2004 release) at para E 425) that "[a] retainer may be implied where, on an objective consideration of all the circumstances, an intention to enter into a contractual relationship *ought fairly and properly to be imputed* ***to all the parties***" [emphasis in italics and bold italics in original]. Here, while we accept that the Respondent should objectively have appreciated that she was acting as the Testator's solicitor for the preparation and execution of the Last Will, we are not satisfied that the same can be said of the Testator. Hence, we hold that no implied retainer arose from the Testator's perspective.

133 In the circumstances, we respectfully disagree with the DT that an implied retainer can be imputed to *both* the putative solicitor *and* the putative client, such that a solicitor-client relationship arose between the Respondent and the Testator.

134 On this basis, we proceed to consider whether any of the charges against the Respondent is made out.

Whether the Respondent is guilty of grossly improper conduct or improper conduct or practice

135 Charges 1 and 1A allege that the Respondent breached rr 25(*a*) and/or 25(*b*) of the PCR because, in preparing and arranging for the execution of the Last Will, she failed to advance the Testator's interest unaffected by her own interest and/or her husband's interest. Charges 2 and 2A allege that the Respondent also breached r 46 of the PCR because she acted for the Testator in connection with a significant gift to her husband under the Last Will, and failed at the same time to advise the Testator to seek independent legal advice in respect of that gift.[140] These breaches, it is alleged, amount to "grossly improper

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conduct" in the case of Charges 1 and 2, and "improper conduct or practice" in the case of Charges 1A and 2A. What underlies a conflict of interest charge is the danger that "a solicitor prefers [her] own interests to that [*sic*] of [her] client" (*Law Society of Singapore v Ezekiel Peter Latimer* [2019] 4 SLR 1427 ("*Peter Ezekiel*") at [37]). The Respondent's breaches were said to be particularly egregious because her conduct was found by the DT to be "quite dishonest" (GD at [588]), and to demonstrate "a calculated attempt" (GD at [588]) to ensure that the Testator would execute the Last Will as quickly as possible without having access to his usual lawyer, Ms Kwa, and without due regard for his wishes.[141]

136 The relevant parts of rr 25 and 46 of the PCR provide as follows:

> **Conflict of interest**
>
> **25.** During the course of a retainer, an advocate and solicitor shall advance the *client's* interest unaffected by —
>
> (*a*) any interest of the advocate and solicitor;
>
> …
>
> (*b*) any interest of any other person; …
>
> …
>
> …
>
> **Gift by will or inter vivos from client**
>
> **46.** Where a *client* intends to make a significant gift by will or inter vivos, or in any other manner, to —
>
> …
>
> (*d*) any member of the family of the advocate and solicitor,
>
> the advocate and solicitor shall not act for the *client* and shall advise the *client* to be independently advised in respect of the gift.
>
> [emphasis added]

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137 As encapsulated in rr 25(*a*) and 25(*b*) of the PCR, a solicitor is required to advance her *client's* interest unaffected by her own interest and/or the interest of any other person. This duty of unflinching loyalty "requires a solicitor to place [her] client's interests above those of [her] own as well as those of third parties", and "go[es] beyond the avoidance of actual conflicts of interest, and extend[s] to proscribe perceived or ostensible conflicts as well" (*Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 at [62]).

138 Rule 46(*d*) of the PCR contains an absolute prohibition against a solicitor acting for a *client* who intends to make a "significant gift" to "any member of the family" of the solicitor. In such circumstances, the solicitor is also mandated to advise the client to seek independent advice in respect of the gift.

139 As is readily apparent, a breach of rr 25(*a*), 25(*b*) and 46(*d*) of the PCR may be found where *there is a solicitor-client relationship*, and the solicitor: (a) prefers her own interest and/or another person's interest to that of the *client* (rr 25(*a*) and 25(*b*) of the PCR); or (b) acts for the *client* in respect of a significant gift to a family member of the solicitor and does not advise the client to seek independent advice in respect of that gift (r 46(*d*) of the PCR). As we have found that no solicitor-client relationship arose between the Respondent and the Testator on the present facts, the Law Society is unable to establish that rr 25 and 46 of the PCR, which form the gravamen of Charges 1, 1A, 2 and 2A, have been breached. Ms Koh in fact accepted that this would follow if we concluded that there was no implied retainer and, hence, no solicitor-client relationship between the Respondent and the Testator. Accordingly, we find that those charges are not made out and acquit the Respondent of those charges.

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Whether the Respondent is guilty of misconduct unbefitting an advocate and solicitor

140 That, however, is not the end of the inquiry. Under Charges 1B and 2B, the misconduct complained of consists of: (a) the Respondent's failure, in preparing and arranging for the execution of the Last Will, to advance the Testator's interest unaffected by her own interest and/or her husband's interest (Charge 1B); and (b) the Respondent's conduct in acting in connection with the significant gift that the Testator intended to give to her husband by will and failing to advise the Testator to be independently advised in respect of that gift (Charge 2B). Ms Koh submitted that in respect of these charges, *even if* the Respondent was not the Testator's solicitor for the preparation and execution of the Last Will, her conduct in that connection was sufficient to amount to misconduct unbefitting an advocate and solicitor under s 83(2)(*h*) of the LPA.

141 We reiterate our key findings which are pertinent in determining whether Charges 1B and 2B are made out:

(a) The Respondent was told by her husband, whom she knew had been a significant beneficiary under the First Will, that the Testator wished to revert to that will.

(b) To that end, the Respondent was tasked to locate a copy of the First Will, and to send it to the Testator with a view to having it re-executed.

(c) The Respondent was told that this was to be done urgently (see [93] above).

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(d) The Respondent proceeded to locate a draft of the First Will without first verifying with the Testator whether he did indeed wish to revert to that will.

(e) The Respondent retrieved a draft of the First Will from her own records, evidently without checking whether the draft that she retrieved (namely, the Draft Last Will) was the final draft of the First Will that she had in her possession (which was in fact the Version 3 Draft). She then forwarded the draft that she retrieved to the Testator, making the representations that it: (i) was the First Will (and not just a broadly similar version of it); and (ii) could be used for execution.

(f) The Draft Last Will was not in fact the document that the Respondent thought it was and represented it to be, and that the Testator evidently wanted. It follows that the Respondent's representations about the Draft Last Will were not in fact correct or true.

142 When the Respondent made the aforesaid representations:

(a) She knew or ought to have known that she was not in a position to make the representations. First, she had not checked whether the Draft Last Will was the final draft of the First Will that she had in her records, as is evident from the fact that the Version 3 Draft, which also emanated from her, was a later draft and bore some significant differences from the Draft Last Will. Further, even if the Respondent had retrieved the Version 3 Draft, she would not have known whether it was the same as the executed version of the First Will as she had not attended to the execution of that will and did not have a copy of the executed version of it. As far as the Respondent knew, it was the Testator's regular solicitor, Ms Kwa, who had the original copy of the First Will. There was thus no

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conceivable way for her to check the veracity of her representations without Ms Kwa's assistance. Yet, she acquiesced in Ms Kwa being excluded from the arrangements pertaining to the preparation and execution of the Last Will from the time of Mr LHY's 7.31pm email on 16 December 2013 onwards.

(b) Given her wealth of experience as a solicitor of some 37 years' standing, and given, especially, the signal importance of a person's will, the Respondent could not have failed to know that the veracity of her representations was something that absolutely needed to be checked. From her 7.08pm email on 16 December 2013, which was apparently copied to Ms Kwa, it appeared that she expected that Ms Kwa would undertake the work of checking that the Draft Last Will accurately reflected the Testator's wishes and was indeed the document that he wished to sign.

143 The situation changed materially after Mr LHY's 7.31pm email to the Testator on 16 December 2013, which was copied to the Respondent and Ms Wong, but not to Ms Kwa, who was removed from the list of addressees. In that email, Mr LHY informed the Testator that Ms Kwa appeared to be away, and expressed his view that it was unwise for the Testator to wait for her to be back before executing the Last Will. Mr LHY also told the Testator that the Respondent could arrange for witnesses for the signing of the Last Will, and held out to the Testator that this was all that remained to be done. At that point, the Respondent, as a senior and experienced solicitor, ought to have discerned the need for extreme caution, restraint and circumspection that we alluded to earlier. In our judgment, there is no doubt at all that the only proper course for the Respondent, as a solicitor, was to intervene and tell her husband that the execution of the Last Will could not be rushed through as he evidently wished.

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It was also incumbent on the Respondent to inform her husband that if he was unwilling to await Ms Kwa's response to her earlier 7.08pm email, then she simply could not continue to be involved in the preparation and execution of the Last Will. She should, in any case, also have made it clear to the Testator that she could not be sure whether the Draft Last Will that she had sent him was the same as the executed version of the First Will which he wished to reinstate, and that because she could not act as his solicitor, he needed to either await Ms Kwa's return or get independent advice from some other solicitor. There is simply no other reasonable way to see the situation given:

(a) the fact that the Respondent had been relying entirely on her husband's instructions and directions as to what the Testator wished to do and how his wishes should be given effect;

(b) the fact that the Respondent's husband had been a significant beneficiary under the First Will, which the Draft Last Will was intended to reinstate;

(c) the fact that the Testator was in the dark as to the state of: (i) the Respondent's actual knowledge of the status of the Draft Last Will (in terms of whether it was the same as the First Will); and (ii) her ability (or lack thereof) to check the veracity of the representations that she had made about it; and

(d) the critical importance of accuracy and meticulous care when dealing with a will, as highlighted at [106] above.

144 The Respondent did not take any of the steps spelt out at [143] above, and was content to allow the Testator to proceed to execute the Last Will on the basis of her unconfirmed and ultimately untrue representation that it was the

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First Will which he wished to re-execute. At no point did the Respondent even seem to pause to reconsider the position after her husband sent the 7.31pm email. On the contrary, *before* the Testator had even responded to Mr LHY's suggestion in that email to proceed with the execution of the Last Will without waiting for Ms Kwa to be back, the Respondent had already gone ahead to act on Mr LHY's wish that the Last Will be executed expeditiously by making arrangements for Mr Lui to attend to the execution process.

145 The Respondent's conduct was especially unsatisfactory because there was in fact no reasonable basis for concluding that Ms Kwa would remain uncontactable. On the contrary, as we noted at [111] above, the evidence shows that Ms Kwa was very much contactable, as she responded within a short time of receiving the email which the Respondent sent her at 1.16pm on 17 December 2013 *after* the execution of the Last Will (see [29] above). Ms Kwa also said in her response to the Respondent's email that she had not received the Respondent's 7.08pm email the previous day, but as no evidence was led as to whether or not Ms Kwa had received the latter email, we make no finding on this.

146 After the Last Will was executed, the Respondent was informed by Ms Kong that the Testator had asked twice who had drafted the document. Mr Lui was evidently unsure, and twice said that it was the Respondent, adding a reference to Ms Kwa on the second occasion. If nothing else, and taking Mr Tan's suggestion that the Testator, in asking those questions, wanted the assurance that the Last Will was the First Will (see [122] above), this should have signalled to the Respondent the importance of ensuring that the Testator was fully apprised of the state of her knowledge as to whether or not the Last Will was indeed the First Will. Yet, the Respondent did not see fit to correct any misapprehension that the Testator might have had as a result of the confidence

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with which she had represented in her 7.08pm email that the Draft Last Will was the First Will and could be used for execution in accordance with his wishes.

147 The Respondent also did not alert Ms Kwa to the true circumstances surrounding the preparation and execution of the Last Will, and in effect, whether intentionally or otherwise, removed any sign for any cause for concern on Ms Kwa's part. As we have noted (see [124] above), in her email to Ms Kwa at 1.16pm on 17 December 2013 after the execution of the Last Will, the Respondent did not include any of the emails from which Ms Kwa had earlier been excluded, starting from Mr LHY's 7.31pm email the previous day. As a result, from Ms Kwa's perspective, there was no reason to suspect that anything was amiss with respect to the execution of the Last Will. Ms Kwa was never apprised of the fact that a decision had been made by the Testator on Mr LHY's encouragement to go ahead with its execution without her because Mr LHY thought it was unwise to wait until she was back. The Respondent might have mitigated her culpability if she had briefed Ms Kwa fully and frankly on all that had transpired. This might have conveyed some of the sudden urgency with which matters had proceeded, and thereby prompted further inquiry on Ms Kwa's part. However, none of this was done.

148 The Respondent also facilitated the execution of the Last Will in an unseemly rush, even though the Testator had not previously intimated that there was any particular urgency in the matter. Indeed, from the 7.31pm email that Mr LHY sent the Testator on 16 December 2013 (see [17] above), the Respondent ought to have been alive to the real danger that it was her husband – rather than the Testator – who was in a rush to have the Last Will executed. Further, all of this occurred against the backdrop of the clear conflict of interest that would have existed had there been a solicitor-client relationship between

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the Respondent and the Testator, given the significant gift which the Respondent's husband stood to receive under the Last Will. Although the Respondent might not have been aware of the precise effect of the Last Will on her husband's interest under the immediately preceding will (namely, the Sixth Will), it is patently clear that she knew he would be a significant beneficiary under the Last Will, as can be seen from her representation in her 7.08pm email that under the Draft Last Will, "all 3 children receive equal shares".[142]

149 In our judgment, the essence of what is objectionable about the Respondent's actions and why they constitute misconduct unbefitting an advocate and solicitor despite the absence of an implied retainer may be summarised as follows:

(a) The Respondent put forth the Draft Last Will, a critically important legal document, to the Testator and represented to him that it reflected his testamentary wishes and could be executed as his will, even though she had not herself verified his instructions, and had not advised him that she was in no position to make those representations.

(b) The Respondent acted in the manner outlined at sub-para (a) above even though, as she conceded, the Testator would have believed and relied on her representations about the Draft Last Will.[143]

(c) The Respondent's actions were compounded by the fact that her husband was, to her knowledge, a significant beneficiary under the Last Will.

(d) Had there been a solicitor-client relationship between the Respondent and the Testator, the Respondent's conduct would have

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constituted a grave breach of her duties as the Testator's solicitor, even without regard to the conflict of interest that would have arisen.

(e) The Respondent allowed the Testator to proceed to execute the Last Will despite all the aforesaid circumstances, and, in particular, despite knowing that Ms Kwa, the only person who could check and verify the representations which she had made to the Testator and which he was relying on, had been excluded from the process.

(f) Even after Ms Kong informed the Respondent that the Testator had deemed it necessary to ask twice about the drafter of the Last Will, the Respondent did not take any steps to clarify the position with the Testator. This was in spite of the Respondent's own submission that the Testator's questions demonstrated a desire on his part to ensure that the Last Will was indeed the First Will (see [122] above).

(g) After the Last Will was executed, the Respondent did not apprise Ms Kwa fully and frankly of all that had transpired.

(h) The Respondent's conduct must be assessed in the light of her divided loyalties. On the one hand, she was loyal to her husband, who was a significant beneficiary under the Last Will, and who was evidently keen to rush its execution. On the other hand, she had a responsibility to act honourably and to ensure that the Testator, who *she would reasonably have regarded as her client*, was fully apprised of the factual position before he proceeded to execute the Last Will. Even in the absence of an implied retainer, the potential conflict of interest presented by these divided loyalties must have been patent to the Respondent.

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150 As the High Court observed in *Uthayasurian* ([63] *supra*) at [44], in conflict of interest situations, "[a] risk avoidance approach is to be preferred. The rule of thumb for a prudent solicitor is this – '*when in doubt, don't*'" [emphasis in original]. In this case, the Respondent not only failed to act with prudence, but in fact acted with complete disregard for the interests of the Testator, and failed at all stages to alert him to the fact that the representations which she had made about the Draft Last Will and which he was relying on were unverified. In those circumstances, the Respondent's failure to put a stop to her husband's efforts to procure the execution of the Last Will with unseemly haste can only be described as improper and unacceptable. To put it at its highest for the Respondent, she blindly followed the directions of her husband, a significant beneficiary under the very will whose execution she helped to rush through. We are amply satisfied that a reasonable person, on hearing what the Respondent had done, "would have said without hesitation that as a solicitor[,] [she] should not have [acted as she did]" (*Peter Ezekiel* ([135] *supra*) at [38]). Accordingly, we find that the Respondent's conduct amounted to misconduct unbefitting an advocate and solicitor, and that Charges 1B and 2B, which are *not* premised on the existence of a solicitor-client relationship between the Respondent and the Testator, are made out.

151 Before moving on to the question of sanctions, we note that after the disciplinary proceedings were initiated, the Respondent adopted the position, which the DT rejected and which we too have rejected as false, that it was her husband who had forwarded the Draft Last Will to her (see [97]–[102] above). To understate her participation in the preparation and execution of the Last Will, the Respondent also said in her AEIC that her involvement in the process was limited to forwarding the Draft Last Will to the Testator, enlisting Mr Lui's help to see to its execution and introducing Mr Lui to Ms Wong, and that she ceased to be involved thereafter (see [97] above).[144] Like the DT, we do not accept these

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assertions, some of which were also contradicted by Mr Lui's AEIC. That was filed about three weeks *after* the Respondent had filed her AEIC, and after Mr Lui had been subpoenaed by the Law Society. In Mr Lui's AEIC, he exhibited documents which included emails before the Last Will was executed. These emails ("the BL Documents") showed the Respondent's active involvement in coordinating the arrangements with Mr Lui, Ms Wong and Mr LHY to ensure the expeditious execution of the Last Will *after* she had introduced Mr Lui to Ms Wong. As the DT observed (GD at [188]–[190]), many of the BL Documents consisted of correspondence that had been sent to or by the Respondent. Despite having possession of the BL Documents and being aware of them, the Respondent failed to disclose them, ostensibly because she did not think that they were relevant. This was untenable, given the importance of the BL Documents in demonstrating the true extent of the Respondent's participation in the preparation and execution of the Last Will, and, in particular, in contradicting her own account that she had ceased to be involved in the process after introducing Mr Lui to Ms Wong.

The appropriate sanction to impose

152 We turn finally to the appropriate sanction to impose on the Respondent. While we accept that the present case is not a typical conflict of interest case because of the absence of a solicitor-client relationship between the Respondent and the Testator, we agree with Ms Koh's submission that it is nonetheless analogous to the Category 1 conflict of interest cases set out in *Peter Ezekiel* at [58(a)]. Such cases involve a solicitor preferring her own interests over those of a client.[145]

153 Upon being told that the Testator wished to revert to the First Will, the Respondent was well aware that she was in a position of potential conflict as

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her husband had been a significant beneficiary under that will. Despite this, she set about locating a draft of that will and sent it to the Testator, telling him that it was the First Will. In so doing, she represented to the Testator, at least implicitly, that the draft sent to him (that is to say, the Draft Last Will) had been checked against the First Will and could be used for execution. As the DT observed at [531] of its GD, the Respondent "focused primarily on what her husband wanted done", and "worked together with Mr LHY, with a singular purpose, of getting [the Testator] to execute the Last Will quickly". In the result, the checks required to ensure that the Testator achieved his wish of re-executing his First Will were simply not carried out. The Respondent's lack of due diligence is demonstrated most clearly by her sending the Draft Last Will to the Testator without even checking whether it was the final draft of the First Will that she had in her possession (that draft being the Version 3 Draft) (see [102]–[103] above). In essence, the Respondent simply focused on doing what Mr LHY wanted her to do without considering the Testator's interest at all. This is reinforced by the fact that after the Last Will was executed, the Respondent asked Mr LHY, rather than the Testator, what she should do with the two original copies of it. The Respondent's failure to have due regard to the Testator's interest is a grave failure on her part even in the absence of an implied retainer.

154 Prof Woon submitted that any potential conflict of interest in this case had been waived by the Testator. As Prof Woon himself accepted, before any conflict of interest can be waived, the principal must be fully apprised of all the material facts (*Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 at [137]).[146] In our judgment, there is no question of any waiver of a potential conflict of interest in this case. Because the Respondent simply followed her husband's wishes without considering the Testator's interest, the Testator ended

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up signing the Last Will without being aware that it was in fact not the First Will which he had evidently expressed a wish to re-execute. The Respondent's inaccurate representations about the Draft Last Will (as outlined at [104(d)] above) contributed to the Testator's decision to proceed with its execution without waiting for Ms Kwa to be back, in the belief that in executing the Last Will, he was in effect re-executing the First Will. Having failed to apprise the Testator of all the material facts prior to the execution of the Last Will, the Respondent cannot now assert that he had waived any potential conflict of interest.

155 As we noted in *Peter Ezekiel* at [67], the breach of duty in Category 1 conflict of interest cases:

> … will be treated severely. This is because such cases will often if not always involve an abuse of trust inimical to the solicitor's foundational duty of undivided loyalty to a client and correspondingly also reveal a serious character defect. Thus, striking off would be the presumptive penalty, unless truly exceptional circumstances exist which render it disproportionate.

The above observations were made in the context of a solicitor-client relationship, where a solicitor who prefers her own interests over those of a client "*inevitably* abuses the trust and confidence that has been reposed in [her]" [emphasis in original] (*Peter Ezekiel* at [63]).

156 In this case, we have found that no solicitor-client relationship existed between the Respondent and the Testator, but only because, for the reasons canvassed above, we are of the view that the Testator did not consider the Respondent to be his solicitor for the preparation and execution of the Last Will. In our judgment, given the absence of a solicitor-client relationship, the presumptive penalty of striking off would be disproportionate, notwithstanding the otherwise clear conflict between Mr LHY's and, as a corollary, the

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Respondent's interests on the one hand and the Testator's interests on the other hand. Nonetheless, the sanction that is imposed on the Respondent should reflect both her culpability and the harm caused by her misconduct (*Peter Ezekiel* at [49]).

The Respondent's culpability

157 In *Peter Ezekiel*, this court identified the following factors listed in the UK Solicitors Disciplinary Tribunal, *Guidance Note on Sanctions* (6th Ed, 2018) as being relevant when examining a solicitor's culpability (at [51]):

(a) the solicitor's motivation for the misconduct;

(b) whether the misconduct arose from actions which were planned or spontaneous;

(c) the extent to which the solicitor acted in breach of a position of trust;

(d) the extent to which the solicitor had direct control of or responsibility for the circumstances giving rise to the misconduct;

(e) the solicitor's level of experience; and

(f) whether the solicitor deliberately misled the regulator, which is the Law Society in our local context.

158 Considering these factors, we are satisfied that the following culpability factors weigh *in favour of* a heavier sentence:

(a) **The Respondent's motivation for the misconduct**, in particular, her singular focus in achieving what her husband wanted,

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oblivious to the interests of the Testator: As the Court of Appeal observed in *Low Ah Cheow* ([106] *supra*) at [72]–[74], the preparation of a will is not just a routine exercise in form filling as it entails the preparation of "one of the most important legal documents which an individual can execute". A solicitor who is tasked to prepare and attend to the execution of a will is thus impressed with serious responsibilities, and should conscientiously avoid being in any situation where even a *potential* conflict of interest may appear to exist. A solicitor who fails to act with exceptional care and, where appropriate, as it is here, with restraint and circumspection must be prepared to have her conduct scrutinised and, perhaps, even her motives called into question.

(b) **Planning and coordination**: Relatedly, there was considerable involvement on the Respondent's part in seeing to the numerous details to ensure the expeditious execution of the Last Will. By contrast, there was a remarkable lack of diligence on her part in ensuring that the Testator's wishes were properly ascertained and carried out, and that he was fully apprised of all the facts. She also did not attempt to contact Ms Kwa, who had been excluded from all the emails pertaining to the preparation and execution of the Last Will starting from Mr LHY's 7.31pm email on 16 December 2013, until *after* the execution of the Last Will. Further, in her correspondence with Ms Kwa, the Respondent failed to highlight the communications that Ms Kwa had been excluded from, with the result that there was no reason for Ms Kwa to have been concerned about the circumstances surrounding the execution of the Last Will.

(c) **Level of experience**: The Respondent was, at the material time, a solicitor of more than 30 years' standing. While this was the first

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blemish in the course of a long career, her significant experience rendered her conduct wholly unacceptable and inexcusable.

159 As against the above, the following factors weigh *against* a heavier sentence:

(a) **The extent to which the Respondent acted in breach of a position of trust**: Given that there was no implied retainer between the Respondent and the Testator, the degree of trust which the Testator placed in the Respondent could be said to be somewhat attenuated. Nonetheless, this factor is of limited weight because the Testator was ultimately led by Mr LHY, with the Respondent's knowledge, to rely solely on the Respondent's crucial representations that the Draft Last Will was the First Will and could be used for execution, which representations turned out to be untrue.

(b) **Lack of dishonesty in her dealings with the Testator**: On the evidence, we do not find that the Respondent actually knew that she was making false statements to the Testator when she put forward the representations that she did about the Draft Last Will. In *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("*Udeh Kumar*"), we held that making a statement recklessly (meaning not caring whether it was true or false) would amount to *subjective dishonesty*. The focus of the test is on "the *absence of an honest belief* in the truth of what is being stated" [emphasis in original], and, hence, a statement which is false, but which was honestly believed to be true at the time it was made, can only be said to have been made carelessly, but not recklessly (*Udeh Kumar* at [36], citing *Derry v Peek* (1889) 14 App Cas 337 at 361). In the present case, there is no

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doubt that it was clearly imprudent and grossly negligent for the Respondent to have held out the representations that she made about the Draft Last Will as true. However, we note that she had testified that she "wouldn't have dared send [the Draft Last Will] if [she] didn't think that it was what [the Testator] wanted",[147] and that she expected that "[i]f it wasn't the right document, [the Testator] … or [Ms Kwa] would have said so".[148] Her evidence about her *subjective* belief in this regard was not directly challenged, and it was not put to her in the course of the hearing before the DT that she had made the representations without an honest belief in their truth. In the circumstances, we do not think it fair for us to make a finding to this effect (see [103], [104(c)] and [106] above). Hence, we find that she did not act dishonestly in her dealings with the Testator. This can be contrasted with the cases of *Law Society of Singapore v Khushvinder Singh Chopra* [1998] 3 SLR(R) 490 and *James Wan* ([4] *supra*), where the solicitors concerned were struck off for acting with deliberate deceit and dishonesty in their dealings with their clients so as to advance their personal interests (*Peter Ezekiel* ([135] *supra*) at [64]–[66]). However, the weight to be placed on this factor is lessened by the fact that the Respondent did act with a degree of dishonesty in the disciplinary proceedings, in that she sought to downplay her participation in the preparation and execution of the Last Will by giving a contrived and ultimately untrue account of her role, in particular, as regards the circumstances which led her to send the 7.08pm email on 16 December 2013 and how she obtained the Draft Last Will attached to that email. She also failed to disclose the BL Documents despite their clear relevance, with the result that the extent of her participation only became evident when the BL Documents were disclosed by Mr Lui (see [151] above).

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160 Considering all the factors outlined at [158]–[159] above, we are of the view that the Respondent's culpability was at least moderately high.

The harm caused

161 As for the harm caused in this case, the material harm was that the Testator ended up signing a document which was in fact not that which he had indicated he wished to sign. The fact that the Last Will and the First Will were materially similar was fortuitous, and does not discount the fact that the *potential harm* could have been far more severe than the actual harm that eventuated.

162 That *potential harm* is relevant in determining the sanction to impose on an errant solicitor was established in *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 ("*Chia Choon Yang*"). There, the court gave weight to the considerable *potential* harm that could have been caused by the solicitor's failure to witness the donor's signature of a power of attorney which gave the donee wide powers that *could* have been abused, and suspended the solicitor from practice for a period of 15 months (*Chia Choon Yang* at [50] and [54]). A similar approach was taken in *Law Society of Singapore v Seah Li Ming Edwin and another* [2007] 3 SLR(R) 401, where the solicitors, who acted for two clients involved in the same accident, were each sanctioned with a term of suspension of 18 months. In rejecting the submission that a mere censure would be sufficient as there was no evidence that the solicitors' misconduct had resulted in any substantive damage or loss to the clients, the court explained that a severe penalty was warranted by the underlying rationale for the rule proscribing a conflict of interest (at [24]):

> … There is, indeed, a larger public interest that underscores such a rule. The legitimacy of the law in general and the confidence of clients in their lawyers in particular are of

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> fundamental importance and will be undermined if such a rule is not observed. Indeed, the fact that a client may feel that he or she is let down or betrayed by his or her lawyer can be very damaging to the standing of the profession as a whole.

163 The court must therefore assiduously set its face against solicitors acting in a conflict of interest, even if no *actual* harm is ultimately caused. In this case, there was, of course, actual harm because even if one accepts that the Last Will was *broadly similar* to the First Will, it was conceded by the Respondent that the former was in fact not the document that the Testator had indicated he wished to sign. As against this, we take into consideration the fact that while the Testator had previously changed his wills several times, after the Last Will was signed, he was content with it. He lived for more than a year after executing it and did not revisit it, apart from providing for the bequest of two carpets to Mr LHY in the Codicil.

164 In all the circumstances, we consider that the harm caused in this case was at the lower end of the moderate range. We therefore consider that a substantial period of suspension is warranted in this case.

Conflict of interest precedents

165 Before determining the appropriate period of suspension to impose, we have regard to three cases involving a conflict of interest.

166 The first is *Peter Ezekiel* ([135] *supra*). There, the respondent solicitor was engaged to represent two accused persons. The first accused person, Sunil, was charged with making a false declaration in his application for a work permit by stating a salary higher than what he was to receive. The second accused person, Dipti, was Sunil's employer, who had counter-signed Sunil's work permit application. Sunil instructed the solicitor that he was unaware at the time he signed the application that the declared salary was false, and that he had been

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deceived by Dipti into believing that his salary was as stated in the application. The solicitor did not reflect Sunil's instructions in his representations to the AGC, and instead indicated that Sunil had asked Dipti about the discrepancy between his actual salary and the declared salary, and had accepted Dipti's explanation before signing the application. Sunil was convicted of the offence and fined $6,000. The court observed that the solicitor's preference of Dipti's interests over those of Sunil led to a relatively high level of harm to Sunil, who was ordered to pay what would have been, to him, a hefty fine. He was also repatriated to India as a result. The harm, compounded by the solicitor's 21 years' standing and the fact that this was not the first time that disciplinary proceedings had been brought against him, warranted a period of suspension of three years.

167 The second case is *Ahmad Khalis* ([4] *supra*), which we discussed earlier in analysing whether there was an implied retainer between the Respondent and the Testator (see [57]–[63] above). The respondent solicitor in *Ahmad Khalis* was instructed by Rasid, who became the sole administrator of his late father's estate. The solicitor was found to have an implied retainer with the remaining surviving beneficiaries, who had interests that were opposed to Rasid's. Not only did the solicitor fail to extricate himself from the position of conflict, he also did not inform the remaining surviving beneficiaries of Rasid's intention to mortgage the Property (as defined at [57] above) to secure a bank loan for his own purposes. In the circumstances, although there was no dishonesty on the solicitor's part, and notwithstanding that the disciplinary proceedings against him were the first blemish in the course of a fairly lengthy period of practice at the Bar, the court held that a period of suspension of two years was warranted.

168 The third case is *Law Society of Singapore v Sum Chong Mun and another* [2017] 4 SLR 707 ("*Sum Chong Mun*"). There, the second solicitor

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("Kay") asked the first solicitor ("Sum") to "re-certify" a form creating a Lasting Power of Attorney ("LPOA"), under which Kay's sister was to be the donee. Kay had earlier signed the form as a certificate issuer and also as a witness, but the form had been rejected by the Office of the Public Guardian as a certificate issuer cannot be related to a donee under the LPOA concerned. Kay assured Sum that she had explained the legal effect of the LPOA to the donor and had witnessed his signature on the form creating the LPOA, and that the form had been rejected only because Kay was the sister of the named donee. Based on Kay's representations, Sum "re-certified" the form as a certificate issuer without even meeting the donor to confirm his understanding of the LPOA, or to witness his signature on the form. Kay's conduct in that case may be analogised to a Category 1 conflict of interest, in that she procured Sum's participation to help her sister become a donee under a LPOA, with blatant disregard for the donor's interests. Kay was suspended from practice for 30 months because she: (a) had procured Sum's assistance despite her knowledge of the duties which Sum was obliged to discharge as a certificate issuer; (b) had sought to deny all liability and to pin the blame on Sum in a desperate attempt to exonerate herself, and had failed to express even a modicum of remorse throughout the disciplinary proceedings; and (c) was "a senior member of the Bar whose deliberate and knowing misconduct cast a pall over the integrity and honour of the profession" (*Sum Chong Mun* at [63], [72] and [74]).

The appropriate sanction in this case

169 We accept that the actual harm caused in *Peter Ezekiel*, where the client, Sunil, suffered a criminal penalty and was repatriated, exceeded that in the present case. Further, although we have found that the Respondent's culpability was at least moderately high (see [160] above), we are of the view that it did not

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reach the level of culpability of Kay in *Sum Chong Mun*, considering that Kay had actively procured Sum's breach of his duties as a certificate issuer of a form creating a LPOA, notwithstanding her clear knowledge of Sum's duties in that respect.

170 In our judgment, the degree of culpability in this case is most akin to that in *Ahmad Khalis*, where the solicitor, who was found not to have acted dishonestly, knowingly preferred the interests of one client (namely, Rasid) despite the clear conflict between that client's interests and the interests of his other clients (namely, the remaining surviving beneficiaries).

171 Nonetheless, we have regard to the fact that in this case, unlike the position in *Ahmad Khalis*, the Respondent was ultimately *not* in a solicitor-client relationship with the Testator. Also, unlike the remaining surviving beneficiaries in *Ahmad Khalis*, who were "generally unschooled in the law and therefore relied upon the respondent for legal advice" (*Ahmad Khalis* at [68]), the Testator was not an unsophisticated client.

172 This, however, is countered by the grave nature of the potential conflict of interest that the Respondent was faced with, which, because it concerned her husband's interest, is treated as akin to a situation where the solicitor's own interest is engaged.

173 In all the circumstances, having regard to the moderate degree of culpability and harm in this case, as well as the sanctions imposed in the three cases discussed at [166]–[168] above, we consider that a period of suspension of 15 months is appropriate.

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Conclusion

174 For the foregoing reasons, we order that the Respondent be suspended from practice for a period of 15 months. The parties are to make written submissions, limited to ten pages each, on the question of costs for both the proceedings before us and the proceedings before the DT within 14 days of this judgment.

Sundaresh Menon Chief Justice	Judith Prakash Judge of Appeal	Woo Bih Li Judge

Koh Swee Yen and Queenie Angeline Lim Xiaoyan (WongPartnership LLP) for the applicant;
Kenneth Tan SC, Soh Wei Chi (Kenneth Tan Partnership) and Walter Woon SC (RHTLaw Asia LLP) (instructed), Vergis S Abraham and Asiyah binte Ahmad Arif (Providence Law Asia LLC) for the respondent.

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1 Applicant's Skeletal Arguments at paras 4 and 39 to 43.
2 Record of Proceedings Vol III p 34, S/N 1.
3 First Will, clause 4(a).
4 First Will, clause 8.
5 First Will, clause 5.
6 Compare clause 4(a) of the Second Will with clause 4(a) of the First Will.
7 Third Will, clauses 6 and 7.
8 Compare clause 6 of the Second Will with clause 5 of the Fourth Will.
9 The Valuation Clause is clause 5 of the First, Second and Third Wills. There is no equivalent clause in the Fourth Will.
10 Compare clause 4(a) of the First Will with clause 4(a) of the Fifth Will.

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[11] The Demolition Clause is clause 8 of the First and Second Wills, clause 9 of the Third Will and clause 7 of the Fourth Will. There is no equivalent clause in the Fifth Will.
[12] Sixth Will, clause 6.
[13] See Record of Proceedings Vol I (Part C) pp 230 to 238, especially p 235.
[14] Record of Proceedings Vol III pp 34 to 35, S/N 1.
[15] Record of Proceedings Vol III p 35, S/N 2.
[16] Record of Proceedings Vol III p 35, S/N 3.
[17] Record of Proceedings Vol III p 45, S/N 35.
[18] Record of Proceedings Vol III p 36, S/N 4.
[19] Record of Proceedings Vol IV (Part B) p 7, lines 3 to 4; p 54, lines 1 to 4.
[20] Record of Proceedings Vol I (Part C) pp 245 to 249.
[21] Record of Proceedings Vol IV (Part A) p 250, lines 18 to 20; Record of Proceedings Vol IV (Part B) p 67, lines 23 to 24.
[22] Record of Proceedings Vol III p 37, S/N 5.
[23] Record of Proceedings Vol III p 37, S/N 6.
[24] Record of Proceedings Vol II (Part A) p 73.
[25] Record of Proceedings Vol III p 37, S/N 7.
[26] Record of Proceedings Vol III p 38, S/N 8.
[27] Record of Proceedings Vol II (Part A) p 99, para 21.
[28] Record of Proceedings Vol IV (Part A) p 148, lines 20 to 22; p 235, lines 6 to 12; Record of Proceedings Vol III pp 39 to 45.
[29] Record of Proceedings Vol II (Part A) p 73.
[30] Record of Proceedings Vol III p 38, S/N 9.
[31] Record of Proceedings Vol III p 38, S/N 10.
[32] Record of Proceedings Vol III p 39, S/N 11.
[33] Record of Proceedings Vol III p 39, S/N 13.
[34] Record of Proceedings Vol III p 39, S/N 14.
[35] Record of Proceedings Vol III p 40, S/N 16.
[36] Record of Proceedings Vol II (Part A) p 207.
[37] Record of Proceedings Vol III p 47, S/N 39.
[38] Record of Proceedings Vol III p 47, S/N 39; Record of Proceedings Vol IV (Part A) p 160, lines 2 to 17.
[39] Record of Proceedings Vol III p 41, S/N 22.
[40] Record of Proceedings Vol III pp 43 and 44, S/N 26, 29 and 31.
[41] Record of Proceedings Vol III p 45, S/N 34.
[42] Record of Proceedings Vol III p 45, S/N 35.
[43] Record of Proceedings Vol III p 45, S/N 36.
[44] Record of Proceedings Vol III p 46, S/N 38.
[45] Record of Proceedings Vol III p 47, S/N 40.
[46] Record of Proceedings Vol III p 48, S/N 42 and 43. It is undisputed that "if" is a typo, and that "is" was intended instead: see Record of Proceedings Vol IV (Part A) p 274, line 9 and Record of Proceedings Vol IV (Part B) p 84, line 14.
[47] See the page marked "1 RP (Part D) 80" in the Bundle of Documents Subjected to Redaction Order; see also Record of Proceedings Vol IV (Part B) p 78, lines 13 to 14.
[48] Record of Proceedings Vol I (Part D) p 31.
[49] Record of Proceedings Vol IV (Part B) p 80, line 28.
[50] Record of Proceedings Vol 1 (Part A) p 12, para 17.
[51] Record of Proceedings Vol I (Part C) pp 15 to 16.

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[52] Record of Proceedings Vol I (Part C) pp 16 to 17.
[53] Record of Proceedings Vol IV (Part A) p 125, lines 20 to 26.
[54] GD at [425]; Record of Proceedings Vol IV (Part B) p 215, line 29 to p 216, line 2; p 218, lines 8 to 10.
[55] Record of Proceedings Vol IV (Part A) p 56, line 28 to p 57, line 4.
[56] Record of Proceedings Vol I (Part H) pp 196 to 234.
[57] Applicant's Written Submissions at para 20.
[58] Applicant's Written Submissions at paras 90 to 91; Applicant's Skeletal Arguments at para 15.
[59] Applicant's Written Submissions at para 92; Applicant's Skeletal Arguments at para 28.
[60] Applicant's Written Submissions at paras 96 to 97; Applicant's Skeletal Arguments at paras 30 and 32.
[61] Applicant's Written Submissions at para 98.
[62] Applicant's Written Submissions at para 99.
[63] Applicant's Written Submissions at paras 102 to 103.
[64] Applicant's Written Submissions at paras 111 and 178; Applicant's Skeletal Arguments at paras 39 to 40.
[65] Applicant's Written Submissions at paras 106, 111 and 114.
[66] Applicant's Written Submissions at paras 133 to 134.
[67] Applicant's Written Submissions at paras 139 to 146.
[68] Respondent's Written Submissions at paras 66 to 69.
[69] Respondent's Written Submissions at para 72.
[70] Respondent's Written Submissions at paras 7, 8 and 72(b).
[71] Respondent's Written Submissions at paras 9 and 146 to 147.
[72] Respondent's Written Submissions at para 127.
[73] Respondent's Written Submissions at para 78.
[74] Respondent's Written Submissions at paras 143 to 144.
[75] Respondent's Written Submissions at para 215.
[76] Respondent's Written Submissions at p 116, para 216(c).
[77] Respondent's Written Submissions at p 116, para 216(c).
[78] Respondent's Written Submissions at para 230.
[79] Respondent's Written Submissions at paras 235 and 262.
[80] Respondent's Written Submissions at para 176.
[81] Record of Proceedings Vol 1 (Part D) p 270, para 62.
[82] Record of Proceedings Vol I (Part D) pp 176 to 178.
[83] Record of Proceedings Vol I (Part D) p 192, para 33 and p 194, para 50.
[84] Record of Proceedings Vol I (Part D) pp 193 to 194.
[85] Record of Proceedings Vol I (Part D) pp 194 to 195.
[86] Record of Proceedings Vol I (Part D) pp 210 to 229.
[87] Record of Proceedings Vol I (Part D) p 263, para 29.
[88] Record of Proceedings Vol I (Part D) pp 262 to 263.
[89] Record of Proceedings Vol I (Part D) pp 268 to 270.
[90] Record of Proceedings Vol I (Part F) p 57, para 2 to p 58, para 8.
[91] Record of Proceedings Vol I (Part F) pp 78 to 79.
[92] Record of Proceedings Vol I (Part F) pp 84 to 88.
[93] Record of Proceedings Vol I (Part H) p 19.
[94] Record of Proceedings Vol I (Part H) p 23, para 10.

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95 Record of Proceedings Vol I (Part D) p 270, para 62.
96 Record of Proceedings Vol IV (Part A) p 193, lines 7 to 26.
97 Mr LHY's AEIC: Record of Proceedings Vol II (Part A) p 15, para 34 to p 16, para 38; the Respondent's AEIC: Record of Proceedings Vol II (Part A) p 96, para 13 to p 99, para 20.
98 Record of Proceedings Vol II (Part A) pp 15 to 16, para 36.
99 Record of Proceedings Vol II (Part A) p 96, para 13 to p 98, para 16.
100 Record of Proceedings Vol I (Part D) p 270, para 61.
101 Record of Proceedings Vol IV (Part B) p 58, line 23.
102 Record of Proceedings Vol IV (Part B) p 30, lines 17 to 26; p 58, line 23; p 114, line 29 to p 115, line 1.
103 Record of Proceedings Vol IV (Part B) p 58, lines 8 to 13.
104 Record of Proceedings Vol IV (Part B) p 23, line 5; p 58, lines 8 to 13; p 116, lines 4 to 8.
105 Record of Proceedings Vol IV (Part B) p 31, line 14.
106 Record of Proceedings Vol IV (Part B) p 110, lines 23 to 26.
107 Record of Proceedings Vol II (Part A) p 15, para 34.
108 Record of Proceedings Vol I (Part D) p 216.
109 Record of Proceedings Vol I (Part D) p 270, para 62.
110 Record of Proceedings Vol II (Part A) p 15, para 34.
111 Record of Proceedings Vol II (Part A) p 16, para 36.
112 Record of Proceedings Vol IV (Part A) p 286, lines 3 to 12.
113 Record of Proceedings Vol III p 36, S/N 4.
114 Record of Proceedings Vol II (Part A) p 96, para 13 to p 99, para 20; Record of Proceedings Vol IV (Part A) pp 249 to 250.
115 Record of Proceedings Vol I (Part D) p 155.
116 See the pages marked "1 RP (Part D) 156" and "1 RP (Part D) 160" in the Bundle of Documents Subjected to Redaction Order.
117 Compare the First Will with the document set out on the pages marked "1 RP (Part D) 156" to "1 RP (Part D) 160" in the Bundle of Documents Subjected to Redaction Order.
118 Record of Proceedings Vol III p 36, S/N 4.
119 Record of Proceedings Vol I (Part D) p 270.
120 Record of Proceedings Vol III p 36, S/N 4.
121 Record of Proceedings Vol II (Part A) p 98, para 16.
122 Record of Proceedings Vol IV (Part A) p 229, line 9.
123 Record of Proceedings Vol IV (Part A) p 265, line 6.
124 Record of Proceedings Vol IV (Part B) p 91, line 20.
125 Record of Proceedings Vol I (Part D) p 270, para 62.
126 Record of Proceedings Vol III p 36, S/N 4.
127 Record of Proceedings Vol II (Part A) p 96, para 13.
128 Record of Proceedings Vol III p 37, S/N 5.
129 Record of Proceedings Vol IV (Part B) p 93, lines 18 to 20.
130 Record of Proceedings Vol III p 47, S/N 39.
131 Record of Proceedings Vol III p 36, S/N 4.
132 Record of Proceedings Vol IV (Part A) p 206, lines 30 to 32.
133 Respondent's Written Submissions at para 199.
134 Record of Proceedings Vol III p 44, S/N 30.

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135 Record of Proceedings Vol I (Part H) pp 72 to 73.
136 Record of Proceedings Vol III p 36, S/N 4.
137 Record of Proceedings Vol III p 45, S/N 34.
138 Record of Proceedings Vol III p 37, S/N 7.
139 Record of Proceedings Vol II (Part A) p 183, para 25 to p 184, para 26.
140 Applicant's Written Submissions at paras 81 to 97.
141 Applicant's Written Submissions at paras 98 to 101.
142 Record of Proceedings Vol III p 36, S/N 4.
143 Record of Proceedings Vol IV (Part A) p 206, lines 30 to 32.
144 Record of Proceedings Vol II (Part A) p 99, para 20.
145 Applicant's Written Submissions at para 111.
146 Respondent's Written Submissions at para 217.
147 Record of Proceedings Vol IV (Part A) p 265, line 6.
148 Record of Proceedings Vol IV (Part A) p 205, lines 8 to 9.

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