# Kosui Singapore Pte Ltd *v* Thangavelu
# [2015] SGHC 221

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| **Case Number** | : Originating Summons No 745 of 2014 |
| **Decision Date** | : 28 August 2015 |
| **Tribunal/Court** | : High Court |
| **Coram** | : Vinodh Coomaraswamy J |
| **Counsel Name(s)** | : Jonathan Yuen and Doreen Chia (Rajah and Tann Singapore LLP) for the applicant; N Sreenivasan SC and Palaniappan Sundararaj (Straits Law Practice LLC) for the respondent. |
| **Parties** | : KOSUI SINGAPORE PTE LTD — THANGAVELU |

*Legal Profession – Bill of Costs*

[LawNet Editorial Note: The appeal to this decision in CA/Civil Appeal No 76 of 2015 (CA/Summons No 236 of 2015) was struck out by the Court of Appeal on 5 October 2015. See [2016] SGCA 3.]

28 August 2015

**Vinodh Coomaraswamy J:**

1 The applicant seeks an order to refer to taxation eight bills which its solicitor issued to it in 2010 and 2011. The court's power to make that order arises under s 120 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the Act"). That section reads as follows:

> **Order for taxation of delivered bill of costs**
>
> **120.**—(1) An order for the taxation of a bill of costs delivered by any solicitor may be obtained on an application made by originating summons ... by the party chargeable therewith ... at any time within 12 months from the delivery of the bill ....

Section 120 is, however, subject to s 122:

> **Time limit for taxation of bills of costs**
>
> **122.** After the expiration of 12 months from the delivery of a bill of costs, or after payment of the bill, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the solicitor and under special circumstances to be proved to the satisfaction of the court.

2 The applicant commenced these proceedings after 12 months had expired from the delivery of the bills and after it had paid the bills. Under s 122 of the Act, therefore, the court cannot make the order sought unless the applicant is able to prove to the court's satisfaction that there are special circumstances which justify referring these eight bills to taxation.

3 The applicant has failed to satisfy me that there any such special circumstances. I have therefore dismissed its application with costs. The applicant has appealed against my decision. I now provide the grounds for my decision.

4 All references to taxation in this judgment are references only to taxation as between solicitor and client and not to taxation as between party and party.

**The facts**

***The parties***

5 The applicant is a company in the construction business. Its managing director is Mr Ito Fumiyuki ("Mr Ito"). [note: 1]

6 The respondent is an advocate and solicitor of the Supreme Court of Singapore. He was called to the Bar in 1985. In 2010, when the story in the present case begins, the respondent practised in the law firm of Wong Thomas & Leong ("WTL"). From August 2010 to July 2012, he practised in a firm known as Advocates Legal Chambers LLP ("ALC"). Since July 2012 he has practised in the firm of Thangavelu LLC.

7 The bills which the applicant seeks to refer to taxation were issued by ALC, the limited liability partnership, and not by the respondent. However, ALC has ceased to exist as a firm. For that reason, the applicant brings these proceedings against the respondent in his personal capacity. The respondent accepts for the purposes of these proceedings that he is to be treated as having responsibility for the manner in which ALC's bills were quantified, drawn, rendered and discharged.

***The applicant's litigation***

*The applicant engages WTL*

8 In 2008, the applicant was awarded a sub-contract to construct eight of the attractions at Universal Studios Singapore on Sentosa. [note: 2] By March 2010, disputes had arisen between the applicant and the main contractor on the project. Mr Ito believed that the main contractor's delays and variations had caused the applicant to suffer losses exceeding $7m under the sub-contract. He wanted to sue both the main contractor and its Japanese parent company in order to recover compensation for the applicant.

9 Mr Ito was given the name of Mr Raymond Wong ("Mr Wong"). [note: 3] Mr Wong, then as now, is a solicitor who practises as a partner of WTL. The respondent then also practised with WTL. Mr Ito had by then known the respondent for more than 20 years. He asked the respondent to introduce him to Mr Wong. [note: 4]

10 As a result, Mr Ito met Mr Wong and the respondent in March 2010. Mr Ito agreed to engage WTL to represent the applicant in litigation against the main contractor and its parent company. [note: 5]

*The applicant wins the suit and the appeal*

11 On 4 May 2010, Mr Wong commenced Suit 312 of 2010 ("Suit 312") on behalf of the applicant. The applicant's claim was initially for $7.2m. That sum was later reduced by amendment to $3.6m. On 31 October 2011, following an eight-day trial, Quentin Loh J entered judgment in favour of the applicant for just over $3m, net of the counterclaim and excluding goods and services tax, interest and costs. [note: 6] The applicant eventually recovered from the defendants $250,000, excluding

disbursements, as party and party costs for Suit 312. [note: 7]

12 On 25 November 2011, the defendants in Suit 312 filed an appeal to the Court of Appeal against Loh J's decision. That appeal was dismissed with costs on 23 July 2012.

*The respondent's involvement in Suit 312*

13 The applicant, by the terms of WTL's letter of engagement, acknowledged that Mr Wong could seek assistance from other lawyers in WTL in representing the applicant. The respondent's initial involvement in Suit 312 was in that capacity.

14 In August 2010, the respondent left WTL to join ALC. Mr Ito agreed to appoint ALC to act for the applicant in Suit 312, but only if Mr Wong continued, in Mr Ito's words, to "handle it". [note: 8] The respondent agreed. The respondent's involvement in Suit 312 now was as the applicant's solicitor instructing Mr Wong as counsel. [note: 9] The applicant was aware of the respective roles of the respondent and of Mr Wong. He was copied on letters exchanged between ALC and WTL in September 2010 confirming these new roles. [note: 10]

15 ALC filed its notice of change of solicitors in Suit 312 on 18 November 2010. [note: 11] From that point onwards, it was ALC rather than WTL who billed the applicant for the professional fees and disbursements arising from Suit 312. [note: 12]

***WTL's and ALC's bills to the applicant***

16 In September 2010, during a fruitless mediation of the dispute underlying Suit 312, Mr Ito asked Mr Wong how much the applicant would have to pay for its own professional fees if it were to take Suit 312 all the way to trial. [note: 13] Mr Wong told Mr Ito that he estimated that the fees would be $650,000, excluding goods and services tax ("GST") and disbursements, on the assumption that it was a long trial and that he and the respondent handled the case together. [note: 14] Mr Ito instructed Mr Wong to proceed to trial. [note: 15]

17 The total professional fees which the applicant actually paid to both WTL and ALC in Suit 312, up to and including trial, was $751,580. Out of that figure, WTL billed the applicant $36,000 and ALC billed the applicant $715,580. Brief particulars of the bills rendered by each firm are set out in the table which appears at the end of this judgment.

18 There are two features of these bills which ought to be noted. First, all of the bills which include an element for professional fees, whether those bills were issued by WTL or by ALC, are gross bills. They do not itemise the specific work done. Instead, they describe the work in general terms with the following standard form of words: "To our professional charges in respect of work done [to date] in connection with the above matter including other incidentals necessary to carry out the business entrusted to us [from ...]". [note: 16] The words enclosed in square brackets do not appear in all the bills.

19 Second, WTL charged GST in all of the bills which it rendered to the applicant up to September 2010; and continued to charge GST in all of the bills which it rendered to ALC after September 2010. Despite this, ALC charged no GST at all in any of the bills which it rendered to the applicant in and after December 2010. It was the respondent's belated attempt to recover this element of GST from the applicant in 2012 which triggered the chain of events which has eventually led to the present

application.

20 Between April 2010 and April 2011, the applicant paid deposits totalling $60,000 to WTL [note: 17] and $770,000 to ALC [note: 18] to be held in each firm's client account against that firm's fees and disbursements. As the respondent issued each bill, he set off the sum due on that bill against the applicant's deposit. Although there is a dispute about whether the respondent secured the applicant's approval to do this with respect to the last bill dated 15 July 2011, [note: 19] it is common ground for the purposes of these proceedings that all of ALC's bills, including its last bill, are to be treated as having been paid. [note: 20]

***The applicant queries the respondent's invoicing***

21 On 2 February 2012, the applicant asked the respondent to confirm the applicant's calculation that $24,204.59 was left of its deposits. [note: 21] The respondent said he would reply on the same day. Despite several reminders, he did not respond until six weeks later.

22 On 15 March 2012, the respondent took the position that there was nothing left of the applicant's deposits because of certain unpaid disbursements. The applicant was surprised to hear this. Mr Ito and the respondent met on 20 March 2012 to reconcile the figures. They did not succeed.

23 On 3 April 2012, the respondent informed Mr Ito that not only had the applicant's deposits been entirely used up, the actual position was that the applicant owed ALC a further $60,123.50. That sum was said to comprise: (i) $22,703.00 being unpaid disbursements incurred by ALC in Suit 312; (ii) $8,662.35 being disbursements incurred by WTL in Suit 312 for which ALC had reimbursed WTL but which ALC had not yet billed the applicant; and (iii) $28,757.65 being GST which ALC had paid to WTL on its bills rendered after September 2010. [note: 22] The applicant rejected the respondent's claims. [note: 23] The respondent did not pursue any of these claims.

24 From the fact that ALC had paid $28,757.65 in GST to WTL, the applicant worked out [note: 24] that WTL must have billed ALC around $400,000 for Mr Wong's fees as the applicant's counsel in Suit 312. This in turn meant that the respondent's fees as instructing solicitor would have been over $300,000. This was the first time that Mr Ito had any insight into how Mr Wong and the respondent had split the total professional fees of $715,580 which the applicant had paid ALC. Mr Ito was dismayed. He felt that the respondent's fees were excessive and disproportionate to his contributions to the applicant's representation in Suit 312. [note: 25] In his view, Mr Wong had done most of the work and ought to have received, not just more than the respondent, but *far* more than the respondent.

25 On 11 July 2012, the respondent sent copies to the applicant of all the bills which ALC had rendered to the applicant and, for the first time, all of the bills which WTL had rendered to ALC. The applicant rejected ALC's bill dated 15 July 2011 on the grounds that this was the first time it had seen that particular bill and that it had not received that bill at or around 15 July 2011. [note: 26]

26 On 13 July 2012, the respondent offered to reimburse $129,000 to the applicant in order to settle their dispute. That sum was the difference, by the respondent's calculation, between what ALC had billed the applicant in fees for Suit 312 and the estimate of those fees which Mr Wong had given to Mr Ito in September 2010 (see [16] above). [note: 27]

27 WTL's bills to ALC confirmed that WTL had billed ALC only $402,580 in fees. That meant that out of the $715,580 in fees which the applicant had paid ALC, the respondent had apportioned to himself $313,000. [note: 28] Mr Ito was shocked: he felt that Mr Wong's contribution to the applicant's representation in Suit 312 had been worth far more than that apportionment reflected. Mr Ito formed the view that the respondent had grossly overcharged the applicant. [note: 29]

28 On 9 October 2012, after the civil appeal arising from Suit 312 had been disposed of in the applicant's favour (see [12] above), Mr Ito met the respondent and Mr Wong. Mr Ito told the respondent that he felt cheated and betrayed. He accepted that the respondent was entitled to earn a fee for his work but told the respondent that his contributions to both Suit 312 and the civil appeal justified a total fee of only $50,000, and not the $313,000 he had earned. Mr Ito asked the respondent to refund $179,334.60 to the applicant. [note: 30] The respondent rejected Mr Ito's proposal and offered to refund $50,000 instead. Mr Ito rejected the respondent's proposal. He could not understand why the respondent was now offering to refund less than the $129,000 he had earlier offered (see [26] above).

29 With that, the negotiations broke down. Mr Ito told the respondent that he would seek the assistance of the Law Society of Singapore. [note: 31]

***The respondent offers to submit his bills to taxation***

30 On 12 October 2012, the applicant received a letter from Straits Law Practice LLC ("SLP"), whom the respondent had appointed as his solicitors. [note: 32] SLP took the position that the respondent's billing had been "fair and reasonable beyond reproach". [note: 33] Nevertheless, SLP offered the applicant three options in order to resolve the dispute over the respondent's fees: (i) to have the respondent's bills taxed in the High Court; (ii) to have the fee dispute mediated or arbitrated under the Law Society's Cost Dispute Resolve process; or (iii) to appoint jointly a mediator to mediate the fee dispute. [note: 34]

31 This is the first occasion on which the applicant had a clear opportunity to submit the respondent's bills for taxation under the Act. However, the applicant did not respond to this letter. Mr Ito's explanation is as follows: [note: 35]

> 89. The Applicant did not reply to SLP's letter dated 12 October 2012. The Applicant did not wish to take up the options mentioned in SLP's letter as the Applicant believed that these involved substantial time and legal costs. The Applicant's understanding of "taxation" was purely based on what Mr Wong had told [an employee of the applicant] when the Applicant was considering going for taxation for party-and-party costs for Suit 312, i.e. that taxation required us to engage solicitors, was extremely document-intensive and would result in substantial time and legal costs. It was not until I was advised by my present solicitors in or around April 2014 that I finally fully understood what "taxation" meant in our case.
>
> ...
>
> 91. I was very frustrated with the situation. As the Applicant was not legally advised, it thought that the best recourse would be to simply make a complaint to the [Law Society] for what it believed was dishonest and unethical conduct of the Respondent. The Applicant believed that the [Law Society] complaint could be handled by its staff, as compared to taxation, which would involve even greater legal costs as the Applicant would have to engage new solicitors.

***The applicant complains to the Law society***

*The complaint of overcharging and dishonesty*

32 The applicant lodged a complaint against the respondent with the Law Society on 15 November 2012. The complaint was made under s 85(1) of the Act and stated two grievances: (i) the respondent's gross overcharging for the work he did in Suit 312; and (ii) the respondent's dishonesty in accounting for the applicant's deposits. [note: 36] The complaint did not, however, present an organised narrative of the facts or marshal the primary evidence to particularise and substantiate the applicant's two grievances. Instead, the complaint comprised a cover letter with only one substantive paragraph: [note: 37]

> Dear Sir/Madam,
>
> Complaint Against Mr Thangavelu of Advocates Legal Chambers LLP under Section 85(1) of the Legal Profession Act.
>
> This is with reference to the above-mentioned.
>
> We wish to make a complaint against lawyer Mr. Thangavelu (we address him as Mr. Velu) for grossly overcharging us for the work he did for our case, also for being dishonest about the status of our deposit balance with him and claiming that we did not pay for some of the disbursements (eventually his statement reflected these as paid). His progress billings to us indicate his client's account balance which more or less match our records.
>
> Please refer to our attached list/documents (Nos. 1 to 57) "Correspondences 2012 (MONEY MATTERS)" for details.
>
> For any clarifications, please call me at [6562XXXX].
>
> Thank you.
>
> Yours faithfully
>
> Kosui Singapore Pte Ltd
>
> [Signed]
>
> Fumiyuki Ito
>
> Managing Director

Accompanying this cover letter was 169 pages [note: 38] of primary evidence interspersed with narrative from Mr Ito.

33 In its reply on 20 November 2012, the Law Society pointed out to the applicant that s 85(1) was directed towards punishing a solicitor for professional misconduct by imposing professional sanctions on him. Even if the complaint were upheld, therefore, it would not result in the complainant being compensated or in the complainant's grievances being rectified. The Law Society's letter then informed the applicant that a recent ruling of the Court of Three Judges required a client who wished to complain of overcharging as professional misconduct to first refer the solicitor's bills to taxation:

[note: 39]

> Lastly, we note you are complaining of overcharging. Please note that you are required to first seek a determination by the Court through taxation of the bill(s) rendered by your lawyer. The requirement was made in a ruling by the Court of 3 Judges. You can then decide after the taxation of the bill(s) if you wish to file a complaint of overcharging. For more information on taxation, please visit the Society's' website…
>
> [emphasis in original]

34 The ruling of the Court of Three Judges in question is *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184 ("*Andre Arul*"). In that case, the court censured and imposed a monetary penalty of $50,000 on an advocate and solicitor for grossly improper conduct in overcharging a client. The court concluded its decision by saying this (at [41]):

> This is an appropriate juncture for us to mention that in future cases involving complaints of overcharging, the Law Society, instead of embarking on an investigation into the complaint without more, should first advise or require the aggrieved party to apply to court to have the bill of costs taxed ... . As alluded to above ..., taxation is the most objective and conclusive way of determining the amount of fees a solicitor is entitled to. The opinion of another solicitor (called as an expert witness for the Law Society) on the matter, regardless of how eminent he may be, would ultimately still be a personal opinion and, thus, would not have the same degree of objectivity as a taxation done by the court. Further, it can be invidious for a solicitor to give expert evidence on the monetary value of another solicitor's professional services. For these reasons, we would advise that *vis-à-vis* future complaints of overcharging, the Law Society should not pursue such complaints without more (not even with the aid of expert evidence) if the bill in question is taxable. Instead, it should advise or require the aggrieved party to have the bill taxed first. The amount of fees awarded by the court on taxation would then enable the law Society to assess whether the aggrieved party's complaint of overcharging merits investigation ...

35 At the time the applicant received the Law Society's letter dated 20 November 2012, all of ALC's bills were still taxable because of the respondent's offer to consent to taxation (see [30] above). This is therefore the second occasion on which the applicant had a clear opportunity to submit the respondent's bills for taxation under the Act.

36 The applicant replied to the Law Society's letter on 11 December 2012. It stated that it had decided not to pursue taxation or the Law Society's Cost Dispute Resolve process because both were tedious and involved further legal costs. The applicant concluded as follows: [note: 40]

> Our original complaint was for overcharging and dishonesty.
>
> We would like to refile our case under Section 75(B) [*sic*] and 85(1) under dishonesty.

37 The only way in which to read this letter is that the applicant thereby maintained its complaint of dishonesty against the respondent, withdrew its complaint of overcharging and advanced in its place a complaint of inadequate professional services under s 75B of the Act. This is an important point: by this voluntary act of the applicant, the Law Society had no complaint of overcharging before it from 11 December 2012 onwards. The fact that the applicant continued to rely on the same 169 pages of mixed primary evidence and narrative to support the new complaint, and that that supporting evidence contained allegations of overcharging, does not affect the fundamental point that the applicant expressly withdrew its complaint of overcharging on and from 11 December 2012.

38 On 13 December 2012, the Law Society responded to the applicant. It noted that the applicant had decided not to proceed with a complaint of overcharging under s 85(1) or to refer its fee dispute with the respondent to taxation or to the Law Society's Costs Dispute Resolve procedure. It asked the applicant to provide specific details of the respondent's alleged failures to meet the standards of adequate professional services to support its s 75B complaint. [note: 41] On 19 December 2012, the applicant informed the Law Society that that complaint was based on the respondent's breach of the following two standards: (i) his failure to provide diligent legal services and (ii) his failure to ensure as a lawyer that he was competent to represent his client. [note: 42] The applicant invited the Law Society to find the specific details of these allegations in the same 169 pages it had submitted in support of its initial complaint.

39 The applicant's new complaint of inadequate professional services under s 75B of the Act was distinct from and less serious than the accompanying complaint of dishonesty under s 85(1) of the Act. But both complaints arose from the same facts. Quite understandably, therefore, the Law Society decided to refer the applicant's s 85(1) complaint to the Chairman of the Inquiry Panel immediately and adjourned the inquiry into the less serious s 75B complaint until the s 85(1) complaint had been determined. [note: 43] It notified the applicant of this decision on 21 January 2013. [note: 44]

*The complaint of dishonesty*

40 Between January and October 2013, the applicant's s 85(1) complaint followed the prescribed statutory procedure. An Inquiry Committee was constituted in March 2013 and convened a hearing for 15 August 2013. The Inquiry Committee received written representations from both the applicant and the respondent both before and after the hearing. Mr Ito and another employee of the applicant attended the hearing. The respondent and his solicitors were unable to attend the hearing due to a conflicting engagement in court.

41 The Inquiry Committee's report dated 23 October 2013 found that the applicant had failed to make out a *prima facie* case of dishonesty. It therefore recommended unanimously that the Council of the Law Society dismiss the applicant's s 85(1) complaint. [note: 45] In arriving at its decision, the Inquiry Committee took into account the fact that: (i) the applicant had been directed by letter on 5 July 2013 to produce or identify all documents which supported its allegation of dishonesty but had failed to do so; and (ii) Mr Ito had admitted at the hearing on 15 August 2013 that the applicant's complaint of dishonesty was not based on concrete evidence of dishonesty but on Mr Ito's personal feeling that the respondent had been dishonest. [note: 46]

42 The Council accepted the Inquiry Committee's recommendation. The Law Society informed the applicant by letter on 15 November 2013 of the Council's decision and that no further action would accordingly be taken on the applicant's s 85(1) complaint. [note: 47] The Law Society also enclosed a copy of s 96 of the Act and informed the applicant that he had the right under that section to have the Council's decision on the complaint reviewed by the High Court. The Law Society concluded by informing the applicant that its s 75B complaint would now be referred to the Council.

43 The applicant did not pursue its complaint of dishonesty through an application under s 96 of the Act.

*The complaint of inadequate professional services*

44 On 19 November 2013, the Law Society informed the applicant that, if the applicant wished the

Law Society to investigate its s 75B complaint, it was not sufficient simply to refer the Law Society to the 169 pages of material it had submitted in support of the s 85(1) complaint as the applicant had done (see [32] above). The Law Society asked the applicant instead to particularise properly how it alleged that the respondent had breached the two standards of adequate professional service on which it had chosen to rely for its s 75B complaint (see [38] above). The Law Society also pointed out that the Council would consider the s 75B complaint for different purposes and towards different ends as compared to the s 85(1) complaint. As a result, the applicant was told, it should not try to use the s 75B complaint as an alternative platform to revisit the issue of dishonesty which had already been determined against the applicant on the s 85(1) complaint. [note: 48]

45 In December 2013 [note: 49] and January 2014, [note: 50] the applicant forwarded to the Law Society a file of documents stating, particularising and supporting its s 75B complaint.

46 On 14 January 2014, [note: 51] the Law Society informed the applicant that its s 75B complaint would be referred to the Council at its meeting in February 2014. It pointed out to the applicant that the Council would take three factors into consideration when dealing with the complaint:

(a) whether there are any remedies available to the applicant in civil proceedings;

(b) where the applicant has not begun any such proceedings, whether it is reasonable to expect the applicant to do so; and

(c) whether the respondent had responded to the applicant in an attempt to resolve the matter.

This is a summary of the factors enumerated in paragraph 1(3) of the Second Schedule of the Act as factors which the Council may have regard to when inquiring into a complaint under s 75B and in determining whether it is appropriate to make directions against a solicitor for inadequate professional services.

47 In the same letter, the Law Society pointed out that the applicant had available to it the option of having ALC's bills taxed and that a failure to take up this option would go to each of the three statutory factors. On the first factor, the Law Society drew the applicant's specific attention to the decision of the Court of Three Judges in *Andre Arul* by name and pointed out that that case had strongly endorsed a solicitor and client taxation as the best way to assess the fees that a solicitor is entitled to charge his client. On the second factor, the Law Society pointed out that the applicant had conceded that the respondent was entitled to be remunerated for his work, but asserted that $50,000 was the reasonable fee. As a result, determining the applicant's complaint would require ascertaining what work the respondent did and assessing what would be a reasonable fee for that work. The Court of Three Judges had held that the most appropriate method for determining those questions was through taxation by the court. On the third factor, the respondent's offer of taxation meant that he had indeed engaged the applicant in an attempt to resolve the matter and had specifically proposed not only resolving it through taxation but also through two alternatives (see [30] above). [note: 52]

48 The Law Society concluded its letter with the following paragraphs: [note: 53]

8. In the light of the aforementioned, I urge you to reconsider the offer of the Respondent to proceed to taxation or mediation/arbitration via the Cost Dispute Resolve or Singapore Mediation Centre. If you wish to adopt any of these methods of dispute resolution, please let me know

within 7 days.

9. Please be assured that if you should decide to proceed on [*sic*] with the complaint, the matter will be referred for Council's consideration at it's [*sic*] meeting in February 2014.

49 At this point in time, in January 2014, all of ALC's bills remained taxable because of the respondent's offer to consent to taxation (see [30] above). [note: 54] This is therefore the third occasion on which the applicant had a clear opportunity to submit the respondent's bills for taxation under the Act.

50 The applicant's response to this letter was clear and firm: [note: 55]

We refer to your letter of 14 January 2014 ... which we received today.

Thank you very much for all the advise [*sic*] and information given in this letter.

PLEASE BE INFORMED THAT WE WANT TO PROCEED ON WITH OUR COMPLAINT [*sic*]. Thus, please refer our case to your Council at it's [*sic*] February 2014's [*sic*] meeting as originally scheduled.

51 The Council of the Law Society considered and dismissed the applicant's s 75B complaint. In its letter dated 17 February 2014 [note: 56] conveying its decision to the applicant, the Law Society gave two reasons for its decision.

52 First, the Law Society dealt with the applicant's allegation that the respondent had failed to provide diligent service to the applicant and that the respondent had failed to ensure that he was competent to represent the applicant. In support of these allegations, the applicant had relied on tables setting out the applicant's subjective evaluation of the respondent's performance in representing the applicant in Suit 312 as compared to Mr Wong's performance. The Council found that this subjective evaluation was insufficient to substantiate these two aspects of the applicant's s 75B complaint.

53 Second, on the allegation that the respondent had failed to explain to the applicant the manner in which he would charge for his services, the Council noted that Mr Ito clearly understood what it meant for the applicant to engage ALC to represent it in Suit 312 and for ALC to instruct Mr Wong as counsel. Mr Ito had even asked for an explanation of this from Mr Wong and had been satisfied with it. Further, and more importantly, the nub of the applicant's unhappiness was a fee dispute. The Council noted that taxation is the most objective and conclusive way of determining the respondent's entitlement to fees and that the applicant was aware of this from previous correspondence with the Law Society. In the Council's view, an Investigative Tribunal dealing with a complaint under s 75B would be ill-equipped to deal with the assessment of fees.

***The applicant commences these proceedings***

54 On 1 August 2014, the applicant commenced these proceedings against the respondent. In it, he prays that all eight of ALC's bills (out of the 11 bills listed in the table below) be referred to taxation. Both of the events specified in s 122 of the Act (see [2] above) have been triggered. The applicant has paid – or is to be treated for the purposes of s 122 as having paid – all of these bills. In addition, the applicant commenced these proceedings more than 12 months after the delivery of these bills. That is so even if I accept the applicant's contention that ALC's bill dated 15 July 2011 was delivered only on 11 July 2012 (see [25] above). It is therefore common ground that, in order to succeed in its application, the applicant must prove to my satisfaction that there are special

circumstances in the present case within the meaning of s 122.

55 Whether special circumstances exist in a particular case is a question of mixed fact and law. It is useful to establish a few general principles from the cases before I turn to consider the specific special circumstances on which the applicant relies in the present case.

**Special circumstances**

***General principles from the case law***

56 The right of a client under s 120 of the Act to refer his solicitor's bills to taxation is a powerful right and is the client's only protection against overcharging: *Ralph Hume Garry (a firm) v Gwillim* [2003] 1 WLR 510 ("*Garry*") per Ward LJ at [31] and [56]. Taxation is the only judicial process designed specifically to assess and fix the reasonable fees which a solicitor is entitled to charge a client. In addition, the outcome of a taxation not only establishes the solicitor's right to be paid the fees as taxed, it also relieves the client of any obligation he might have undertaken to pay more than the taxed fees.

57 A well-founded complaint of overcharging lodged with the Law Society undoubtedly carries serious disciplinary and reputational consequences for the solicitor. But as the Law Society pointed out to the applicant (see [35] and [48] above), it is not the intended or even an incidental goal of a disciplinary complaint of overcharging to rectify the consequences of the overcharging for the client. Only taxation under s 120 can yield for the client a refund or a remission of overcharged fees.

58 To that extent, the legal profession is unique. The members of every profession subscribe to a self-imposed ethical limit on the fees which they can charge their clients: *Lim Mey Lee Susan v Singapore Medical Council* [2013] 3 SLR 900 ("*Susan Lim*") at [52]. Only members of the legal profession, however, are subject in this way to an extra-contractual judicial procedure for resolving civil disputes over the reasonableness of their fees. This procedure is not a mere creature of statute but comprises part of the court's inherent jurisdiction: *Wee Harry Lee v Haw Par Brother International Ltd* [1979-1980] SLR(R) 603 ("*Harry Wee*") at [12] and [16]. Solicitors are subject to this unique procedure for resolving fee disputes for two reasons. First, because of their singular position as officers of the very institution – the court – which is entrusted with the duty and the power to resolve civil disputes. Second, because the court is uniquely placed, without any need for expert evidence, to assess the reasonable value of legal services as compared to any other type of professional services.

59 The client's *prima facie* right to have its fees taxed under s 120 of the Act is not, however, absolute. A client may give up that right by entering into a fee agreement which complies with s 111. Section 112(4) provides that a client who is party to such an agreement is not entitled to have his solicitor's fees taxed under s 120 but is instead subject to the separate judicial procedure set out in s 113.

60 Similarly, a client who has a right of recourse to s 120 of the Act but who applies to have his solicitor's bill taxed either after 12 months have elapsed from delivery of the bill or after paying the bill – or indeed after both events – cannot proceed to taxation unless he is able to prove to the court's satisfaction that there are special circumstances within the meaning of s 122.

61 There is no rigid rule as to what kind of circumstances are sufficiently special to justify taxation of a solicitor's bill when one or both of the disqualifying events under s 122 have been triggered. It is for the court to determine on the facts of each case whether there are special circumstances which

make it right to refer the solicitor's bill for taxation: *Harry Wee* at [15] citing the headnote to *Re Cheeseman* [1891] 2 Ch 289. It is therefore not possible to compile an exhaustive list of special circumstances. The following, however, are examples of circumstances which have been found to be sufficiently special on the facts of specific decided cases:

(a) Prolonged negotiation over fees between solicitor and client after which the client applies for taxation: see *Harry Wee* at [14].

(b) A disciplinary committee's finding that the solicitor has in fact overcharged: see *Ho Cheng Lay v Low Yong Sen* [2009] 3 SLR(R) 206 ("*Ho Cheng Lay*") at [5].

(c) An impecunious client who requires time to secure a grant of legal aid in order to apply under s 120: see *Ho Cheng Lay* at [6].

(d) A bill which fails to provide sufficient information, even when supplemented by what is subjectively known to the client, to enable the client to take an informed decision on whether or not to seek taxation: *Ho Cheng Lay* at [17]; see also *Harry Wee* at [13].

(e) The fact that the solicitor, without his client's knowledge or consent, appropriated funds belonging in equity to the client in order to pay the bill: *Ho Cheng Lay* at [23].

(f) Duress, pressure or fraud by the solicitor: *Sports Connection Pte Ltd v Asia Law Corporation and another* [2010] 4 SLR 590 ("*Sports Connection*") at [35], citing *In re Hirst & Capes* [1908] 1 KB 982 at 996.

62 Proving to the court's satisfaction that there are special circumstances within the meaning of s 122 does not simply entail showing that a given case contains one or more of the special circumstances set out above. Much less does it entail advocating the recognition of additional and analogous categories of special circumstances. First of all, as I have said, the list set out above is not a list of categories but a list of examples. More importantly, special circumstances in any given case cannot be asserted or proved in a vacuum but must, in some rational way, address the fundamental question which s 122 poses: Why is it right to refer the solicitor's bill for taxation even though the client has allowed one or both of the disqualifying events under s 122 to be triggered?

63 One of the ways in which a client can answer this fundamental question is by showing how the special circumstances explain and excuse his conduct in allowing the disqualifying event to set in. How the special circumstances do that will, to a large extent, depend on the particular disqualifying event which is in play. That is because each disqualifying event serves a distinct underlying purpose.

64 The requirement that the client apply for taxation within 12 months of the bill's delivery has much the same purpose as a limitation period. "Limitation statutes are intended to prevent stale claims, to relieve a potential defendant of the uncertainty of a potential claim against [him] and to remove the injustice of increasing difficulties of proof as time goes by": *Teh Siew Hua v Tan Kim Chiong* [2010] 4 SLR 123 at [25] per Steven Chong J, citing Mummery LJ in *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd* [2005] 1 WLR 2871 at [31], who was in turn citing from the arguments of Anthony Mann QC in *Lowsley v Forbes* [1999] 1 AC 329 at 333. On the other hand, the requirement that the client apply to tax the bill before paying it serves to discourage the client from approbating and reprobating and upholds the solicitor's interest in security of receipt for his fees.

65 So, for example, if a client does not pay his solicitor's bill but allows the 12-month period to elapse, he is likely to satisfy the court that it is right to refer the bill to taxation if he can show that

he failed to apply in time because he was engaged in prolonged negotiations over the bill with the solicitor. However, if a client pays his solicitor's bill and then applies to tax it within the 12-month period, it would be quite immaterial for the client to show that he paid the bill after a period of prolonged negotiations with the solicitor. Those negotiations do not even begin to explain the only disqualifying event which is in play on these facts: the fact that the bill has been paid. He must instead advance special circumstances which explain or excuse his decision to pay the bill. These could be circumstances which show why the client is not, in fact, approbating or reprobating or why the solicitor is not entitled to security of receipt. There must typically be a rational connection between the special circumstances and the disqualifying event which is in play. If both disqualifying events are in play, then the special circumstances which the client advances must have a rational connection to both events.

66 The final point I make is that the Act draws a clear distinction between the procedure for resolving a complaint of professional misconduct and the procedure for resolving a fee dispute. Professional misconduct is the province of the disciplinary procedure under the Act. A fee dispute is the province of taxation. This distinction influences the scope of the special circumstances envisaged by s 122. Thus, a client who accepts that the fee which a solicitor has charged him is reasonable is unlikely to establish special circumstances within the meaning of s 122 simply by alleging or even showing that the solicitor has misapplied the client's deposit against those fees. The special circumstance advanced has nothing to do with the object of taxation.

67 With these principles in mind, I now turn to consider the specific special circumstances relied on by applicant in the present case.

***The applicant's submissions***

68 The applicant relies on the following five special circumstances to argue that it is right to refer the respondent's bills to taxation out of time and after payment: [note: 57]

(a) There were prolonged negotiations between the applicant and the respondent over the quantum of the respondent's fees.

(b) The respondent failed to provide the applicant with itemised or particularised bills despite the applicant's repeated requests.

(c) ALC's bills were gross bills for the significant total sum of $715,580 in professional fees.

(d) The respondent has indisputably overcharged the plaintiff because standard form of words in ALC's bills dated 2 December 2010 and 7 February 2011 show that the two bills cover, in part, the same period.

(e) The respondent has failed to show that the taxation which the applicant seeks would cause the respondent any prejudice.

I now explain why none of these are special circumstances justifying an order for taxation.

***No special circumstances***

*Applicant accepts that the fees as a whole are reasonable*

69 I begin by noting that the applicant accepts three overarching points which, in my view,

undermine each and every one of the special circumstances which the applicant puts forward. First, the applicant accepts that the total professional fees of $715,580 which it has paid on ALC's bills is, taken as a whole, a reasonable amount for the work covered by those bills. [note: 58] Second, the applicant accepts that the respondent did indeed render to the applicant *some* professional services in connection with Suit 312 and is entitled to be remunerated for those services. Finally, the applicant accepts that its real and only objection is that the respondent allocated to himself too much out of the $715,580 in fees which ALC received and allocated to Mr Wong too little. [note: 59]

70 Even if the plaintiff had not accepted these points, I would have been prepared to infer them from the facts. I say that for three reasons.

71 First, the amount of $715,580 which ALC billed the applicant is consistent with Mr Wong's estimate given in September 2010 (see [16] above). From the time of that estimate, Mr Ito understood that the fees payable for representing the applicant in Suit 312 up to and including trial would be in the region of $650,000. Mr Wong's figure being only an estimate, Mr Ito accepts also that he understood that the actual professional fees could be higher or lower than $650,000. [note: 60] Mr Ito expressly disavows any reliance on the variance between Mr Wong's estimate of $650,000 and ALC's fees of $715,580 billed from September 2010 onwards as a ground justifying taxation.

72 Second, as ALC's bills were rendered, the applicant allowed without objection [note: 61] each bill to be paid out of the applicant's deposit with ALC. The applicant was intimately aware throughout of the overall work being done to represent the applicant in Suit 312. If it had thought that ALC's bills were unreasonably high, either taken as a whole or in respect of any individual bill, it would have raised objection then. It did not. Mr Ito's explanation for his failure to take objection to the fees as they were billed is that being in the construction industry, his immediate focus is always on completing the project and he deals with fees after the project is completed. That may be so as between a sub-contractor like Mr Ito and a main contractor. But in that situation, it is the main contractor who is the pay-master and who therefore controls the relationship. In a solicitor-client relationship, it is the client who is the paymaster and who is in a position to insist on transparency as to fees.

73 The final reason is that the applicant raised overcharging only when it gained insight for the first time in April 2012 into exactly how much of the $715,580 the respondent had apportioned to himself. [note: 62] As Mr Ito says: [note: 63]

> 57. Up to this point [April 2012], the Applicant had no idea as to what arrangement ALC and WTL had between them in relation to professional fees and other costs. The Applicant had duly deposited monies with ALC as instructed by the Respondent and the entire relationship had been based on trust. We had assumed that most of the monies deposited by the Applicant was going to Mr Wong's professional fees for his substantive work done.
>
> 58. By this time, the Applicant had paid approximately S$800,000 in total professional fees both to WTL and ALC. However, according to [the applicant's] estimates, the total amount of professional fees that WTL had billed ALC was less than S$500,000. This meant that ALC had taken approximately S$300,000 of the professional fees which the Applicant had paid. [The Applicant] felt that if this estimate of the apportionment of professional fees was accurate, ALC's professional fees were excessively high and unjustified given the work actually performed by the Respondent.

74 In April 2012, the applicant merely suspected it had been overcharged. But even though it

entertained that suspicion, the applicant did not express any unhappiness about the $715,580 figure as a whole. After all, the applicant knew all along how much it had paid. The applicant's unhappiness was solely about the apportionment of the fees between the respondent and Mr Wong.

75 Later, in July 2012, the applicant drew the firm conclusion that it had been overcharged. But again it did not conclude that ALC had overcharged the applicant by billing it $715,580. It concluded only that the respondent had overcharged the applicant in apportioning to himself $313,000 out of the $715,580 that that the applicant had paid ALC.

76 The bills that the applicant now seeks to refer to taxation are ALC's bills dated from 2 December 2010 to 15 July 2011. Taxation of those bills will assess whether the fees which ALC charged are reasonable fees for work reasonably done. Taxation will not address whether those fees were reasonably apportioned between the respondent as the instructing solicitor and Mr Wong as counsel. So long as the overall amount billed was a reasonable sum – and the applicant continues to accept that the total amount was reasonable – the reasonableness of the apportionment is a matter entirely between solicitor and counsel.

77 I do not, of course, suggest that the applicant's positions set out at [68] above preclude it as a matter of law from seeking to refer ALC's bills to taxation. Mr Wong's estimate of professional fees in September 2010 and the applicant's acceptance and reliance upon that estimate cannot in any way be elevated into contentious fee agreement within the meaning of s 112 of the Act. That is what it would have to be if it were to preclude taxation as a matter of law. Nevertheless, the applicant's position reveals its true motivation in this application and casts an entirely different light upon each of the special circumstances upon which it attempts to rely.

*Prolonged negotiations*

78 The first special circumstance upon which the applicant relies is that there were prolonged negotiations between the respondent and the applicant over the quantum of the respondent's fees. The negotiations started in April 2012 when the applicant first queried the respondent's bills and received no satisfactory answer (see [23] above) and carried on until the negotiations broke down on 9 October 2012 (see [28]–[29] above).

79 The applicant relies on *Harry Wee* to submit that these prolonged negotiations are a special circumstance. In *Harry Wee*, a solicitor presented 27 bills claiming a total of $610,000 in professional fees. The client paid about one-fifth of the fees and then refused to pay any more on the grounds that the solicitor was guilty of overcharging. At first instance, Wee Chong Jin CJ was satisfied that there were special circumstances within the meaning of what is now s 122. The Court of Appeal dismissed the solicitor's appeal giving two independent reasons. One of those reasons was the prolonged negotiations over fees between the parties. The Court of Appeal found that it was only when those negotiations broke down that the client applied to have his solicitor's bills taxed (*Harry Wee* at [14]).

80 It is easy to see why prolonged negotiations are capable of constituting special circumstances. A consensual resolution of a civil dispute through negotiation is generally a preferred alternative to an adversarial resolution imposed by a court. A fee dispute between a solicitor and a client is no different from any other dispute. It is obvious that s 122 should be interpreted and applied so as not to penalise a client who fails to apply within time under s 120 because he was attempting a negotiated resolution of his fee dispute.

81 But to constitute special circumstances within the meaning of s 122, the prolonged negotiations

must go towards explaining the client's delay in applying for taxation. In the present case, the negotiations between the parties broke down on 9 October 2012 when Mr Ito told the respondent that he would be seeking the assistance of the Law Society (see [28]–[29] above). I am prepared to assume in the applicant's favour that the prolonged negotiations were special circumstances which would have justified referring ALC's bills to taxation if the applicant had applied under s 120 soon after 9 October 2012. In any event, from 12 October 2012, the applicant had available the respondent's unqualified offer to consent to having ALC's bills taxed. But the applicant did not apply to have ALC's bills taxed or accept the respondent's offer to consent to taxation. It applied to have those bills taxed only on 1 August 2014, almost two years after the prolonged negotiations broke down.

82 The only explanation offered for the applicant's delay from October 2012 to August 2014 is that it was pursuing its complaints under s 85(1) and s 75B of the Act during this period. I do not accept that as special circumstances within the meaning of s 122. A prolonged disposal of a complaint to the Law Society is not the same as a prolonged negotiation over a fee dispute: a complaint to the Law Society is not an alternative to taxation. The two procedures, albeit interrelated, operate on separate planes. The Law Society put the applicant on express notice of this on 20 November 2012 (see [33] above). In the same letter, it put the applicant on notice that taxation is, following *Andre Arul*, a prerequisite to a complaint of overcharging. The applicant therefore knew from November 2012 that taxation – if that is what it actually wanted – should come before a complaint of overcharging and not after it.

83 The applicant responded to the Law Society on 11 December 2012, not by accepting the Law Society's suggestion and applying for taxation, but by withdrawing its complaint of overcharging and proceeding instead with a complaint of dishonesty and of inadequate professional services (see [36] above). That to my mind suggests very strongly that the applicant took a conscious, tactical decision to abandon any challenge arising from the overall quantum of fees which ALC had charged it – whether by way of a complaint of overcharging or by way of taxation – and instead to pursue its grievance with the respondent by challenging how he had apportioned the fees and had handled the applicant's deposits. The applicant concedes as much, but submits that it took this decision because it was not legally advised at that time and wished to pursue the respondent at the Law Society's expense (see [91] of Mr Ito's first affidavit, quoted at [31] above). I do not consider that the applicant's tactical decision to be special circumstances capable of justifying the applicant's decision not to proceed to taxation then.

84 Indeed, the fact that the applicant was not legally advised counts against it, not in its favour. The Law Society presented taxation to the applicant as a legal prerequisite to a complaint of overcharging and not as an option. An unadvised lay person intent on pursuing an allegation of overcharging would therefore have accepted the Law Society's position and proceeded to taxation. It was still open then to the applicant to proceed to taxation by consent. Yet, the applicant did not.

85 The applicant's conduct strongly suggests to me that the objective of taxation – assessing whether the fees charged by ALC to the applicant for representing it in Suit 312 were reasonable – has never been the applicant's objective. Instead, it seems to me that its sole objective from the outset has been to find some grounds on which to persuade the Law Society to sanction the respondent and to have all of that done at the Law Society's expense. It is only when that objective has failed that the applicant has returned to reconsider s 120.

86 In my view, neither the prolonged negotiations which took place from April 2012 to October 2012 nor the disciplinary proceedings which took place from November 2012 to February 2014 are special circumstances within the meaning of s 122. Neither suffices to satisfy me that it is right to refer ALC's bills for taxation out of time and after payment.

*Lack of particularisation or itemisation*

87 The applicant submits that there is a complete lack of particularisation or itemisation in each of ALC's bills. On the authority of *Sports Connection*, it submits that this alone constitutes special circumstances within the meaning of s 122.

88 The applicant's complaint is indeed true in point of fact: each of the respondent's bills supports its claim for fees with nothing more than the standard description which I have set out at [18] above. It is also true that a solicitor's failure to particularise or itemise his bill can constitute special circumstances within the meaning of s 122. But as ever, whether it does constitute special circumstances depends on the facts of the case. The applicant's difficulty again is in establishing a rational connection between the manner in which the respondent drew up ALC's bills and its failure to apply to have the bills taxed within time and before payment.

89 It is useful to begin the analysis of this aspect of the applicant's submissions by examining why the fact that a solicitor's bill lacks particularisation or itemisation is capable of constituting special circumstances within the meaning of s 122. In *Garry*, the English Court of Appeal had to consider whether a document delivered by a solicitor to his client was "a bill *bona fide* complying with this Act" within the meaning of the English equivalent of s 118(3) of the Act. Ward LJ held that to comply *bona fide* with the English Solicitors Act 1974, a bill must contain sufficient particulars for the client to identify what he is being charged for and to enable him, when those particulars are taken together with his own knowledge, to take advice on whether to have that bill taxed. As Ward LJ said at [70]:

> This review of the legislation and the case law leads me to conclude that the burden on the client ... to establish that a bill for a gross sum in contentious business will not be a bill "*bona fide* complying with this Act" is satisfied if the client shows: (i) that there is no sufficient narrative in the bill to identify what it is he is being charged for, and (ii) that he does not have sufficient knowledge from other documents in his possession or from what he has been told reasonably to take advice whether or not to apply for that bill to be taxed. The sufficiency of the narrative and the sufficiency of his knowledge will vary from case to case, and the more he knows, the less the bill may need to spell it out for him. The interests of justice require that the balance be struck between protection of the client's right to seek taxation and of the solicitor's right to recover not being defeated by opportunistic resort to technicality.

This statement of the level of particularisation and itemisation required of a solicitor's bill was accepted in the context of s 122 in *Ho Cheng Lay* at [16] and in *Sports Connection* at [42].

90 But in order to establish special circumstances within the meaning of s 122, it is not enough for a client simply to show that a solicitor's bill falls short of the requirements set out in *Garry*. The client must connect the solicitor's failure to particularise or itemise the bill to the fundamental question posed by s 122. That connection can be established in many ways. It suffices to set out two by way of example. First, the lack of necessary detail could have left the applicant unable to take an informed decision on whether to apply for taxation as a result of which the client let the 12-month period expire. Without the information, the client can argue, he could not analyse accurately whether he would succeed in having at least one-sixth of the bill taxed off, and thereby avoid having to pay the costs of taxation under s 128 of the Act. Alternatively, the lack of detail could lead the client to pay the bill in ignorance of what work it actually covered.

91 In the present case, however, the applicant fails to connect the failure to particularise or itemise ALC's bills to the fundamental question under s 122. There is no suggestion that the lack of detail in the bills led the applicant either to allow the 12-month period to elapse or to misapprehend

the work done in Suit 312 which was covered in each of ALC's bills.

92 On the contrary, it is clear that the applicant knows exactly what work ALC's bills covered. At the meeting between the applicant, the respondent and Mr Wong on 9 October 2012, the applicant prepared and tendered a table dated 2 October 2012. [note: 64] The applicant set out in that table in 11 stages the legal work done in Suit 312 and in the ensuing appeal. The 11 stages are:

(a) March 2010: Writ of summons.

(b) 5 May 2010: Further and better particulars.

(c) 21 July 2010: Reply to defence and counterclaim, mediation on 7 September 2010.

(d) 15 September 2010: Discovery and exchange of documents.

(e) 2 December 2010: Amendment of statement of claim, payment of costs to the defendants for amendment, security for costs, interviews for affidavits of evidence in chief.

(f) 7 February 2011: Interviews for affidavits of evidence in chief, etc.

(g) 8 March 2011: Affidavits of evidence in chief finalisation, preparation for trial.

(h) 19 April 2011: Trial.

(i) 4 May 2011: Post trial, closing submissions.

(j) 15 July 2011: Oral judgment and grounds of decision, preparing for appeal.

(k) 27 June 2012: Appeal hearing, post-appeal up to 2 October 2012.

The applicant not only knew enough to draw up this table, he had enough information at hand to set out figures in this table showing that, by the applicant's estimation, Mr Wong was entitled to $488,580 for his contributions at each of these 11 stages and the respondent was entitled to $50,000 for his contributions.

93 By the time the applicant made its submissions to the Law Society in support of its s 75B complaint, it had sufficient information to prepare a different table, now five pages long, in which these 11 stages were broken down further into 34 stages. At each stage, the applicant set out the legal work done and the applicant's estimation of the relative contribution in percentage terms of Mr Wong and the respondent to the legal work at that stage. [note: 65] The applicant also had sufficient information to break down the fees charged by the respondent and Mr Wong at each stage of Suit 312 and of the ensuing civil appeal. [note: 66]

94 The submissions filed on behalf of the applicant confirm this: [note: 67]

> ... The Applicant is of course aware of the work done on its case as the Applicant was involved in preparing for its case as well. However, what the Applicant has no knowledge of is the contributions of the Respondent to the Applicant's case. The table prepared by the Applicant ... was prepared based on the Applicant's own limited knowledge and estimates of the Respondent's contributions to the Applicant's case, from what it could perceive of the work distribution between the Respondent and Mr Wong.

95 The nub of the applicant's complaint is that the respondent did not specify how much of the fees comprised in each bill he was allocating to himself and how much he was allocating to Mr Wong. There is no authority to support the proposition that an instructing solicitor's failure to provide in his bills an apportionment of his own fee and the instructed counsel's fee amounts to special circumstances within the meaning of s 122. That is not surprising. It is not the purpose of taxation to redress a client's unhappiness with any perceived misallocation of fees between the fee-earners whose combined work is comprised in a single bill if the client otherwise accepts that the total fee comprised in that bill is reasonable.

96 The fact that ALC's bills are not particularised or itemised is indisputable. However, that lack of particularisation and itemisation does not, for the reasons set out above, constitute special circumstances within the meaning of s 122.

*Overcharging or double-charging*

97 *Sports Connection* stands for the proposition that where overcharging is relied upon as special circumstances within the meaning of s 122, a general allegation of overcharging by reference to the quantum of fees is not sufficient in itself. The applicant must go further and point to evidence which enables the court to draw the inference of overcharging (at [37]–[38]).

98 The applicant accepts this proposition but points to the following as evidence of overcharging to support this part of its submissions:

(a) ALC's bills failed to particularise or itemise the work done;

(b) ALC's bills dated 2 December 2010 and 7 February 2011 (see [16] above) contain exactly the same description of work done, including the start date of the work covered by the bill, *ie*, 16 September 2010. The applicant has therefore been billed twice, once in each of these two bills, for work done from 16 September 2010 to 2 December 2010; and

(c) the respondent overcharged the applicant for the respondent's work.

99 I have dealt with the first ground at [87]–[96] above. The second ground is a technical point and is devoid of merit. It is telling that no assertion was ever made that this amounted to overcharging by double or overlapping billing until the applicant felt a need after July 2012 to mount a case of overcharging. The allegation is an afterthought. Further, the applicant's concession that ALC's professional fees of $715,580 taken as a whole were reasonable precludes any inference of overcharging in a general sense, whether arising from the lack of particularisation or itemisation, from the alleged double or overlapping billing or otherwise.

100 The principal reason relied upon by the applicant under this head is therefore its subjective evaluation that the respondent's legal services were worth less than the $313,000 which he apportioned to himself out of the total fees of $715,580 billed by ALC. The bulk of the applicant's submissions under this head are thus aimed at justifying the applicant's subjective evaluation, [note: 68] or devaluation, of the respondent's legal services.

101 In *Sports Connection*, Chong J warned against turning an application under s 122 into a taxation of the bill in question (at [39]):

It would be neither productive nor appropriate for the court hearing the application [under s 122]

to determine whether the bill taken as a whole is excessive. Otherwise, every application for taxation under s 122 ... , on the basis that there has been overcharging, would effectively and necessarily require the court to conduct a taxation of the bill. That is the role of taxation and not the court hearing the application on whether to grant the order for taxation. …

102 The point made by Chong J is an even stronger point in the present case. In the first place, the applicant accepts that the $715,580 which ALC charged it is reasonable. There is therefore nothing for me to inquire into at that level. Moreover, it is not the role of taxation to assess the reasonableness of the respondent's self-apportioned share of the professional fees billed in each of ALC's bills. It is therefore quite inappropriate for me to enter into an assessment of the applicant's subjective evaluation of the respondent's contributions in order to determine whether special circumstances exist within the meaning of s 122.

103 It would, of course, be different if the applicant's case were that the respondent had deliberately drawn up ALC's bills so as to give the false impression that he was passing on Mr Wong's fees to the applicant as charged, *ie*, without any additional component of fees for his own legal services (*cf Susan Lim* at [133]–[134]). But that is not the applicant's case and that is not what the respondent did.

*No prejudice to the respondent*

104 The final point which the applicant relies on is that the taxation of ALC's bills will not cause prejudice to the respondent. In making this point, the applicant does not suggest that lack of prejudice amounts to special circumstances within the meaning of s 122. It makes the point instead to rebut the respondent's assertion that he will suffer prejudice if ALC's bills are now referred to taxation.

105 I accept that it is hard to see what prejudice the respondent would suffer if ALC's bills were now to be taxed. However, the statutory prerequisite for an order for taxation out of time and after payment is not a showing that the respondent will suffer no prejudice but a showing of special circumstances. For all of the reasons I have set out above, the applicant has failed to prove to my satisfaction that any special circumstances exist.

*The applicant's additional grounds*

106 The applicant also points to certain facts, not so much as special circumstances, but as additional grounds for me to consider in assessing the applicant's arguments that special circumstances do exist. These include the following discrepancies in the respondent's accounting:

(a) First, the respondent's accountants' calculation of professional fees does not match the sum derived by adding the professional fees charged in all of ALC's bills.

(b) Second, there are discrepancies in ALC's computation of the amount of money standing to the applicant's credit in ALC's client account.

(c) Third, the respondent's attempts to explain the discrepancy in disbursements during the discussions in April 2012 were internally contradictory.

(d) Fourth, the applicant unilaterally deducted money from the applicant's deposit in ALC's client account for its professional services on 18 July 2011, which was more than a year before the bill ostensibly dated 15 July 2011 was actually issued to and received by the applicant, *ie*, on

11 July 2012 (see [25] above).

107 The additional grounds raised by the applicant are not matters which taxation can resolve and are not material to the fundamental question posed by s 122 (see [61] above). That is, no doubt, why the applicant does not rely on these additional facts as special circumstances within the meaning of that section.

108 As I have rejected each of the special circumstances on which the applicant does rely, these additional facts cannot in themselves advance the applicant's case.

**Conclusion**

109 The outcome in this case may appear harsh on the applicant. Its complaint of inadequate professional services failed because the Council held that taxation was an alternate and more appropriate remedy. Yet, now that it has applied for taxation, I have held that it has failed to prove to my satisfaction that there are special circumstances within the meaning of s 122.

110 The outcome is in fact not harsh on the applicant. First, the applicant is not seeking to refer ALC's bills to taxation for a proper purpose. The proper purpose of taxation is to assess what are reasonable fees for work reasonably done. The applicant accepts that it has been charged by its legal team reasonable fees for work reasonably done. Second, the applicant rejected three chances to have its bill taxed when it could still do so by consent. Its conduct from October 2012 onwards shows that its objective has been to persuade the Law Society to impose professional sanctions on the respondent. That is why it is only now, when the applicant believes that all further avenues for professional sanctions against the respondent are closed, that it belatedly seeks to refer ALC's bills to taxation. It appears to me that in seeking to refer the respondent's bills to taxation, the applicant is simply seeking to pursue the subject-matter of its complaints to the Law Society by other means. It suffices for me to conclude simply that this militates against any finding of special circumstances within the meaning of s 122. But it appears to me also that it could be said that the applicant is seeking to pursue taxation for a collateral purpose and is therefore abusing the process of the court.

111 Given that no special circumstances exist within the meaning of s 122, I have dismissed the applicant's application for an order referring ALC's bills to taxation. The costs of this application should follow the event. I have therefore ordered that the applicant pay the respondent the costs of and incidental to the application, fixed at $7,500 including disbursements.

**Table: List of bills rendered to the applicant in Suit 312 with brief particulars**

| **Date** | **Firm** | **Period covered** | **Professional fees** | **Disbursements** | **GST** |
|---|---|---|---|---|---|
| 5 May 2010 | WTL | "...work done..." | $8,000.00 | $1,157.20 | $570.39 |
| 21 Jul 2010 | WTL | "...work done ... from 6 May 2010 | $8,000.00 | $607.20 | $569.52 |
| 15 Sep 2010 | WTL | "...work done ... from 22 July 2010" | $20,000.00 | $10,256.60 | $1,413.10 |
| 2 Dec 2010 | ALC | "...work done to date ... from 16 September 2010" | $60,000.00 | $406.60 | Nil |
| 7 Feb 2011 | ALC | | $159,880.00 | $120.00 | Nil |

| | | | | | |
|---|---|---|---|---|---|
| 8 Mar 2011 | ALC | "...work done to date ..." | $159,900.00 | $100.00 | Nil |
| 7 Apr 2011 | ALC | | Nil | $32,000.00 | Nil |
| 7 Apr 2011 | ALC | | Nil | $1,213.60 | Nil |
| 19 Apr 2011 | ALC | | $159,900.00 | $100.00 | Nil |
| 4 May 2011 | ALC | | $159,900.00 | $100.00 | Nil |
| 15 Jul 2011 | ALC | | $16,000.00 | $204.59 | Nil |
| **Total** | | | **$751,580.00** | **$46,265.79** | **$2,553.01** |

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[note: 1] Ito Fumiyuki's 1st affidavit 1 August 2014 at paragraph 1.

[note: 2] Ito's 1st affidavit 1 August 2014, page 67 at [2].

[note: 3] Ito's 1st affidavit at pages 425 and 572.

[note: 4] Ito's 1st affidavit at paragraph 8.

[note: 5] Ito's 1st affidavit Tab 3 at page 98.

[note: 6] Ito's 1st affidavit Tab 2 at page 94.

[note: 7] Ito's 1st affidavit at paragraph 151, pages 423, 681 and 682.

[note: 8] Ito's 1st affidavit at paragraphs 24 and 25.

[note: 9] Thangavelu's 1st affidavit at paragraph 25.

[note: 10] Ito's 1st affidavit, at paragraph 26; at pages 151153.

[note: 11] Ito's 1st affidavit at paragraph 27.

[note: 12] Ito's 1st affidavit at paragraph 27.

[note: 13] Ito's 1st affidavit at page 425.

[note: 14] Ito's 1st affidavit at paragraph 19, page 422.

[note: 15] Ito's 1st affidavit at page 425.

[note: 16] Ito's 1st affidavit at pages 147149.

[note: 17] Ito's 1st affidavit at paragraph 20.

[note: 18] Ito's 1st affidavit at paragraph 34.

[note: 19] Ito's 1st affidavit at paragraph 32.

[note: 20] Thangavelu's 1st affidavit at TV-11.

[note: 21] Ito's 1st affidavit, page 264.

[note: 22] Ito's 1st affidavit at paragraphs 50–51 and pages 186188.

[note: 23] Ito's 1st affidavit at paragraphs 52.

[note: 24] Ito's 1st affidavit at paragraph 56.

[note: 25] Ito's 1st affidavit at paragraph 58.

[note: 26] Ito's 1st affidavit at paragraph 68.

[note: 27] Ito's 1st affidavit at paragraph 69.

[note: 28] Ito's 1st affidavit at paragraph 78.

[note: 29] Ito's 1st affidavit at paragraph 77.

[note: 30] Ito's 1st affidavit at paragraphs 83–84.

[note: 31] Ito's 1st affidavit at paragraph 86.

[note: 32] Ito's 1st affidavit at paragraph 88 and page 372.

[note: 33] Thangavelu's 1st affidavit at page 373, paragraph 7.

[note: 34] Thangavelu's 1st affidavit at TV-1.

[note: 35] Ito's 1st affidavit at paragraphs 8991.

[note: 36] Ito's 1st affidavit at paragraph 94.

[note: 37] Ito's 1st affidavit at page 254.

[note: 38] Ito's 1st affidavit, pages 258426.

[note: 39] Thangavelu's 1st affidavit at TV-2.

[note: 40] Ito's 1st affidavit at page 431.

[note: 41] Thangavelu's 1st affidavit at page 45.

[note: 42] Ito's 1st affidavit at page 437.

[note: 43] Ito's 1st affidavit at Tab 21.

[note: 44] Ito's 1st affidavit, page 440.

[note: 45] Thangavelu's 1st at page 50.

[note: 46] RCB page 30 at paragraph 5.4.

[note: 47] RCB at page 32.

[note: 48] Ito's 1st affidavit at page 588.

[note: 49] Ito's 1st affidavit at page 591.

[note: 50] Ito's 1st affidavit at page 604.

[note: 51] Ito's 1st affidavit at page 641.

[note: 52] Ito's 1st affidavit at pages 642643.

[note: 53] Ito's 1st affidavit at page 643.

[note: 54] Notes of argument, page 19 lines 1114.

[note: 55] Ito's 1st affidavit at page 646.

[note: 56] Ito's 1st affidavit at page 648.

[note: 57] Applicant's written submissions, paragraph 110.

[note: 58] Notes of argument, 18 March 2015 page 16 lines 1426, page 22 lines 22–26.

[note: 59] Notes of argument, 18 March 2015, page 3 lines 1214.

[note: 60] Ito's 2nd affidavit, paragraphs 15, 16 and 18.

[note: 61] Notes of argument, page 2 lines 2733; page 3 lines 911.

[note: 62] Ito's 1st affidavit, paragraphs 77 and 81.

[note: 63] Ito's 1st affidavit paragraphs 57 and 58.

[note: 64] Ito's 1st affidavit pages 353–355.

[note: 65] Ito's 1st affidavit, pages 607–611.

[note: 66] Ito's 1st affidavit, pages 616–622.

[note: 67] Applicant's submissions at [133].

[note: 68] Applicant's written submissions, paragraphs 149–166.

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