DT 23 OF 2021

IN THE MATTER OF RAVI S/O MADASAMY

AN ADVOCATE AND SOLICITOR

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT 1966

REPORT OF THE DISCIPLINARY TRIBUNAL

Disciplinary Tribunal:

Siraj Omar, S.C. – President

Tan Jee Ming – Advocate

Solicitors for
The Law Society of Singapore

Mr William Ong / Ms Chua Xinying /
Mr Dion Loy
(Allen & Gledhill LLP)

The Respondent in person

Dated this 26th day of April 2023

Introduction

1. The Law Society of Singapore (the "**Law Society**") brought two charges against Mr Ravi s/o Madasamy (the "**Respondent**")[1], a solicitor of approximately 23 years' standing as at the commencement of these proceedings in November 2021. The Respondent did not apply to renew his practicing certificate for the practice year 2022/2023.[2]

2. The charges stem from a complaint dated 22 August 2020 (the "**Complaint**") from the Attorney-General's Chambers ("**AGC**") in relation to certain conduct by the Respondent. AGC made the Complaint pursuant to section 85(3)(b) of the Legal Profession Act 1966 (the "**Act**") and requested that the Law Society refer the Complaint to a Disciplinary Tribunal. This Tribunal was appointed on 9 November 2021 to hear and investigate the Complaint.

3. The two charges brought against the Respondent arise from statements made by him about the President of Singapore and in relation to the appointments as Prime Minister of Mr Goh Chok Tong ("**PM Goh**") and Mr Lee Hsien Loong ("**PM Lee**"). The Law Society alleges that the statements are "*false and baseless*"[3] and that the Respondent's conduct in making these statements amounts 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 section 83(2)(h) of the Act. The Respondent admits to having made the statements[4] but denies the allegations of misconduct levelled against him.

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1 The Law Society's Closing Submissions ("**LSCS**") [1].
2 Affidavit of Evidence-In-Chief of Mr K Gopalan ("**Gopalan's AEIC**") [4].
3 LSCS [2].
4 Statement of Case ("**SOC**") [4] to [11] read with Defence [1].

4. Having carefully considered the facts of the case, the evidence of the witnesses and the parties' respective submissions, we find that, pursuant to section 93(1)(c) of the Act, cause of sufficient gravity for disciplinary action exists under section 83(2)(h) of the Act in respect of both the First and Second Charge (as defined below).

The Respondent's 'preliminary submission'

5. After the Law Society had closed its case and during his opening statement, the Respondent made what he described as a 'preliminary submission', asking that these proceedings be "*dismissed at the outset for being frivolous and vexatious*".[5]

6. The Respondent was unclear as to the basis for this submission and it appeared to us as though he had spontaneously decided to raise this point in the course of his opening statement. The crux of his argument appeared to be that an advocate and solicitor should not in any circumstances face disciplinary charges for disagreeing with Court judgments and/or question the constitutionality of government policy.[6]

7. The argument misses the point. The Respondent was not facing disciplinary proceedings for having disagreed with the decision of a Court or for questioning government policy. As we explain below, the Charges levelled against the Respondent allege that he had publicly stated that (i) the President had abdicated her constitutional duties and (ii) the appointments of PM Goh and PM Lee as Prime Minister were unconstitutional, despite knowing that both statements were false.

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5 Transcript 21 July 2022, page 15 lines 16 to 23.

6 See, for example, Transcript 21 July 2022, page 14 line 27 to page 15 line 14.

8. The Respondent stated that he did not have any questions for the Law Society's only witness Mr K. Gopalan and had no objections to Mr Gopalan's evidence being admitted into evidence.[7] Mr Gopalan's unchallenged evidence made it plain that there was no basis for us to dismiss the Charges as being frivolous and vexatious. There was therefore no basis for the Respondent's 'preliminary submission'.

The First Charge

9. The First Charge reads:[8]

> "*You, MR RAVI S/O MADASAMY, an Advocate and Solicitor of the Supreme Court of Singapore, did on 4 August 2020 publish and post on your Facebook page (http://www.facebook.com/ravi.mravi.7) your letter to the President dated 4 August 2020 wherein you alleged that the appointments of Mr Goh Chok Tong (as the former Prime Minister) and Prime Minister Lee Hsien Loong are "*unconstitutional*" as there were "*racial considerations*" and requested Her Excellency to refer to the Supreme Court to convene a Constitutional Tribunal under Article 100 of the Constitution, and after having been informed by the Principal Private Secretary to the President by way of letter on 14 August 2020 (the "**President's Letter**") that "*the President must act on the advice of the Cabinet when referring any question to a constitutional tribunal under Article 100 of the Constitution*", did on 14 August 2020 publish on your Facebook pages (http://www.facebook.com/mravihrn and http://www.facebook.com/ravi.mravi.7) together with the President's Letter a post which carried, inter alia, the following statement:*
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> > "The President ... has clearly abdicated her responsibility under her Constitutional Oath to defend, preserve and protect the Constitution ... Nowhere in Article 100 does it say that she requires the Cabinet's mandate for her to refer a question to the court of three judges which she says in this letter ..." *(the "**First Statement**")*"
>
> *You had made the First Statement notwithstanding that you are aware, or in any event ought reasonably to have been aware, that the First Statement is false and*

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7 Transcript 21 July 2022, page 5 lines 10 to 30.

8 SOC page 13.

baseless. By making the First Statement which is a baseless and unwarranted attack against the integrity of the President, you are thereby guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(h) of the Legal Profession Act (Cap. 161)."

10. The First Statement must be read in the context in which it was published. This context is found in the First Charge:

(a) On 4 August 2020, the Respondent had written a letter to the President entitled "Request to Convene a Constitutional Tribunal under Article 100 of the Constitution of the Republic of Singapore – the Unconstitutional Appointments of PM Goh and PM Lee as Prime Minister" (the "**4 August Letter**").

(b) In the 4 August Letter, the Respondent alleged that the respective appointments of PM Goh and PM Lee as Prime Minister had been unconstitutional and requested that the President convene a constitutional tribunal under Article 100 of the Constitution to examine these appointments.

(c) That same day, the Respondent published the 4 August Letter on one of his Facebook pages in a post captioned "Here is my humble Petition presented today to the Honourable Excellency, the Elected President" (the "**4 August Post**").

(d) On 14 August 2020, the Principal Private Secretary to the President wrote to the Respondent stating (among other things) that the President "*must act on the advice of the Cabinet when referring any question to a constitutional tribunal under Article 100 of the Constitution*" (the "**President's Letter**").

(e) That same day, the Respondent published the President's Letter on both his Facebook pages together with a post that included the First Statement.

11. The meaning of the First Statement, when read in this context, is plain: the Respondent alleged that the President had the power under Article 100 of the Constitution to convene a constitutional tribunal independently of the advice of the Cabinet, and her failure to do so meant that she had "*clearly abdicated her responsibility ... to defend, preserve and protect the Constitution*".

12. The Law Society contends that the First Statement "*constitutes baseless and false allegations against the President and amounts to an attack on the integrity of the President*".[9]

Does the President have discretion under Article 100?

13. In considering whether the First Statement does in fact contain "*baseless and false allegations*", the critical question to be answered is whether the President has the power to refer a question to a constitutional tribunal on her own initiative or whether she can only do so on the advice of the Cabinet.

14. This question has been squarely addressed and answered by the Court of Appeal. In *Tan Eng Hong v Attorney-General*,[10] the Court of Appeal noted that:

> "*... **reading Art 100 with reference to Art 21 of the Constitution, it is clear that the President has no power to convene the Constitutional Tribunal on his own initiative**. Article 21(1) directs the President, in exercising his functions, to 'act in accordance with the advice of the Cabinet or of a Minister*

[9] LSCS [16].

[10] [2012] 4 SLR 476; Law Society's Bundle of Documents ("**LSBOD**") Tab 3.

acting under the general authority of the Cabinet', unless expressly specified otherwise in the Constitution. ***The power to convene the Constitutional Tribunal is not among the expressly specified functions listed in Art 21(2) in respect of which the President may act in his own discretion.***" [Our emphasis]

15. This observation echoed an earlier decision in *Yong Vui Kong v Attorney-General*.[11] In that case, then Chief Justice Chan Sek Keong made the following observations about the exercise of the President's powers under the Constitution:

> "*The principle that under the Singapore Constitution, the President must act on the advice of the Cabinet in all matters in the discharge of his functions, except where discretion is expressly conferred on him, is [a] fundamental principle of constitutional law. This principle is set out in Art 21(1) read with Art 21(2) of the Singapore Constitution, and has been part of our constitutional order ever since Singapore attained internal self-governance in 1959.*" [Our emphasis]

16. The Respondent argues that the decision in *Yong Vui Kong* is irrelevant "*since it deals with the power of clemency and not Article 100*".[12] We disagree that the decision is irrelevant. While the Court in *Yong Vui Kong* was considering whether the President has a discretion in the exercise of clemency powers contained in Article 22P of the Constitution, Chan CJ's observations clearly apply generally to the other powers which the Constitution confers on the President.

17. The legal position is therefore clear and well-established – the President must act on the advice of the Cabinet in the exercise of the powers conferred by the Constitution except where discretion is expressly conferred. There is no such express discretion in respect of the powers to convene a constitutional tribunal under Article 100 of the Constitution.

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[11] [2011] 2 SLR 1189; LSBOD Tab 2.

[12] Respondent's Written Submissions [38(a)].

18. The First Statement is therefore false given that it asserts that the President could exercise her powers under Article 100 of the Constitution independent of the advice of the Cabinet. It must also follow that the assertion that the President had abdicated her responsibility to defend, preserve and protect the Constitution by failing to act under Article 100 of the Constitution without the advice of the Cabinet is completely baseless.

Did the Respondent know the First Statement was false?

19. The Respondent was counsel for the appellant in both *Tan Eng Hong* and *Yong Vui Kong*. There can therefore be no doubt that he was aware of these two cases and the matters discussed and decided by the Court of Appeal in those cases. Specifically, given that both decisions pre-date the First Statement, the Respondent must have known at the time he made the First Statement that it was an established principle of Singapore law that the President must act on the advice of the Cabinet in the exercise of the powers set out in Article 100 of the Constitution.

20. Further, the Respondent based his assertion that the President had "*abdicated her responsibility*" on the assertion that the President need not act on the advice of the Cabinet in exercising her powers under Article 100 of the Constitution. Given that he must have known that the latter assertion was false, it follows that he must also have known that the former assertion was also baseless and false.

21. We are therefore of the view that there can be no doubt that the Respondent knew, at the time he made the First Statement, that it was false.

The Respondent's defence

22. The Respondent raises various arguments in this Defence and his closing Written Submissions. First, he claims that his "*opinion that [the President] had neglected her constitutional duty was not false or baseless*".[13] He asserts that this neglect is reflected in the President's alleged failure to "*initiate any attempts to request the convening of the Constitutional Tribunal under Article 100 of the Constitution*"[14] by seeking the advice of the Cabinet on the Respondent's petition for the President to convene a constitutional tribunal[15] and the President's alleged "*failure to take the petition seriously*".[16]

23. This is a non-starter. As we explained above, the meaning of the First Statement is clear – the Respondent alleged that the President had failed to convene a constitutional tribunal on the pretext that she could only do so on the advice of the Cabinet and had thereby "*abdicated*" her responsibilities. Indeed, the Respondent appears to accept this in his Written Submissions.[17] This key allegation, as we also explained above, is plainly false and baseless. Nowhere in the First Statement does the Respondent refer to a purported failure by the President to seek the Cabinet's advice on the petition or to take it seriously.

24. Second, he relies on a "*defence of fair criticism*".[18] Unfortunately, he does not explain the basis and ambit of this purported defence. It would appear from a plain reading of the Defence that the Respondent is referring simply to an alleged right of a citizen to "*cite any failures on the part of the President*".[19]

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13 Respondent's Written Submissions [35].
14 Defence [2].
15 Respondent's Written Submissions [35(d)].
16 Respondent's Written Submissions [35(f)].
17 Respondent's Written Submissions [34].
18 Defence [2].
19 Defence [2].

25. This cannot be sustained for the same reason as the Respondent's first argument above – the 'failure' that the Respondent refers to in the First Statement was not a failure at all. The President acted within the ambit of her powers under the Constitution.

26. Third, he denies that the First Statement was false or baseless as he had "*made specific reference to the Constitutional Oath*".[20] He elaborates on this argument in his Written Submissions.[21] The Respondent refers to a paper authored by Justice Datuk Dr Haji Hamid Sultan bin Abu Backer entitled 'Social Justice: Constitutional Oath, Rule of Law and Judicial Review Malaysian Chapter', where the author sets out his view that the Malaysian King (as Head of State) "*may take action to protect the constitution and constitutional rights where even the courts have failed ... because [he has] sworn a constitutional oath to defend and protect the constitution*".[22] The Respondent argues that the same is true of the President who, as the Head of State in Singapore, has similarly sworn an oath to defend the Constitution.

27. The Respondent's argument appears to be that the President derives power from the Constitutional Oath to act unilaterally to defend the Constitution. The obvious response to this argument is that it has nothing to do with the First Statement. It is apparent from a plain reading of the First Statement that the Respondent objects to the President saying she could only exercise her powers under Article 100 on the advice of the Cabinet. The Respondent expressly states that there is no such restriction in the wording of Article 100. While the First Statement does contain the words "Constitutional Oath", it does not refer to any powers emanating from or based on the Constitutional Oath.

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[20] Defence [2].
[21] Respondent's Written Submissions [29] to [34].
[22] Respondent's Written Submissions [30].

28. The Respondent's argument is, in any event, inherently contradictory. While it is not for this Tribunal to determine whether the President has such powers to act unilaterally, even if we take the Respondent's argument at its highest and accept that such powers exist, such powers must (on the Respondent's argument) be used only to preserve, protect and defend the provisions of the Constitution. They surely cannot be used to circumvent the very limits imposed by the Constitution on the President's discretion.

29. Fourth, the Respondent claims that the assertions contained in the First Statement were merely "*a matter of interpretation*"[23] and therefore not properly the subject of disciplinary proceedings. He expands on this in his Written Submissions, saying that he disagreed with the decision in *Tan Eng Hong* and was entitled to voice his own legal interpretation.[24]

30. We disagree. It is one thing for the Respondent to disagree with the decision of the Court of Appeal in *Tan Eng Hong*, and even to state publicly that he disagreed with the Court of Appeal. It is quite another for him to state to the world at large that the legal position in Singapore is something other than what has been conclusively stated by the apex court in *Tan Eng Hong* – which is what he did by way of the First Statement.

31. The Law Society argues that the Respondent's conduct is particularly egregious given that he holds himself out as an expert on matters of Singapore constitutional law, and that his statements on this topic may mislead the public given that it is an area of law

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[23] Defence [2].

[24] Respondent's Written Submissions [38(d)].

with which the general public is not likely to be familiar.[25] We accept the Law Society's submissions in this regard.

32. Fifth, the Respondent says that "*all relevant documents were available so that viewers and readers could decide for themselves what they thought about [his] posts and his comments about the President*".[26] This argument misses the point.

33. The First Statement is clearly framed as a positive statement of fact. The Respondent did not, in making the First Statement, refer to any documents and/or invite readers to review any such other documents and form their own views. The First Statement was not the opening salvo in a discussion. It was a statement of a position that the Respondent knew (for the reasons set out above) to be false.

34. Sixth, the Respondent asserts his right to freedom of expression, which he says "*includes the freedom to sometimes express a point less than adequately or, even inadvertently get things wrong*".[27]

35. The right to freedom of expression is not unfettered. Its ambit certainly does not extend to the making of false statements that would, in the eyes of any reasonable person, impugn the integrity of the President. For the reasons stated above, and contrary to what the Respondent now contends,[28] he did deliberately misstate the law in respect of the nature and scope of the President's powers under Article 100 of the Constitution. Given that the First Statement alleges that the President has abdicated her

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[25] Law Society's Written Submissions [40].
[26] Respondent's Written Submissions [38(e)].
[27] Respondent's Written Submissions [38(g)].
[28] Respondent's Written Submissions [38(g)].

Constitutional duties, there can be no doubt that it was calculated to impugn the integrity of the President.

36. We therefore find that the arguments raised by the Respondent in his defence of the First Statement are without merit.

Has Section 83(2)(h) of the Act been satisfied?

37. Section 83(2)(h) of the Act relates to conduct that amounts to misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession.

38. The standard of unbefitting conduct is met if a solicitor's conduct is such as would render him unfit to remain as a member of an honourable profession, and the relevant test is whether reasonable people, on hearing what the solicitor had done, would have said without hesitation that as a solicitor he should not have done it: *The Law Society of Singapore v Ezekiel Peter Latimer* ("***Ezekiel Peter***").[29]

39. It is undoubtedly a serious matter for anyone to publicly allege that the President has abdicated her Constitutional responsibility. It is even more so for an advocate and solicitor to do so. We accept the Law Society's submission that the Respondent's conduct is particularly egregious because the general public is likely to accord a degree of credence and credibility to statements made by the Respondent on constitutional law matters given that he holds himself out, and is considered by some in the public, to be an expert on Singapore constitutional law. We have no doubt that any reasonable

[29] [2019] 4 SLR 92, [38].

person would unhesitatingly say that the Respondent, as an advocate and solicitor, should not have made the First Statement.

40. We therefore find that the First Charge has been made out.

The Second Charge

41. The Second Charge reads: [30]

> *"You, MR RAVI S/O MADASAMY, an Advocate and Solicitor of the Supreme Court of Singapore, did:*
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> *(1) on 4 August 2020 publish and post on your Facebook page (http://www.facebook.com/ravi.mravi.7) your letter to the President dated 4 August 2020 wherein you alleged that the appointment of Mr Goh Chok Tong (as the former Prime Minister) and Prime Minister Lee Hsien Loong was "*unconstitutional*" as there were "*racial considerations*" and requested Her Excellency to refer to the Supreme Court to convene a Constitutional Tribunal under Article 100 of the Constitution.*
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> *(2) On 4 August 2020 publish and post a video which lasted for around 13 minutes on your Facebook page at http://www.facebook.com/ravi.mravi.7 and subsequently re-posted on another of your Facebook page http://www.facebook.com/mravihrn where you again alleged,* inter alia, *that the appointment of Prime Minister Lee Hsien Loong is "*unconstitional*" because of "*racial considerations*"; and*
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> *(3) On 14 August 2020 publish on your Facebook pages (http://www.facebook.com/mravihrn and http://www.facebook.com/ravi.mravi.7) a post which contained,* inter alia, *the following statement:*
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> > *"...* [T]he unconstitutional appointment of PM LHL ... is based on racial consideration that is prohibited under Article 12 of the constitution that prohibits any appointment to public office on account of race unless expressly authorized by the constitution ..." *(the "**Second Statement**")"*

[30] SOC page 13.

You had made the Second Statement notwithstanding that you are aware, or in any event ought reasonably to have been aware, that the Second Statement is false and baseless and by making the Second Statement which is racially-charged, you are thereby guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(h) of the Legal Profession Act (Cap. 161)."

42. The Second Statement therefore contains a positive assertion by the Respondent that the respective appointments of PM Goh and PM Lee as Prime Minister (collectively, the **PM Appointments**") were unconstitutional because they had been "*based on racial considerations*".

43. The Respondent denies that the Second Statement is false and baseless. He refers to statements made by Deputy Prime Minister Heng Swee Keat ("**DPM Heng**") at a public forum at the Nanyang Technological University in March 2019, where DPM Heng "*said that a certain section of the public was not ready for a non-Chinese prime minister and that race* 'becomes an issue' *when choosing prime ministerial candidates*".[31] He claims that the Second Statement was "*a direct response*"[32] to DPM's comments, which he says "*clearly indicated that race* can *and* does *play a part in the selection of [Prime Ministerial] candidates*".[33]

44. This does not assist him. Even if we accept the Respondent's contention that DPM Heng's comments support his assertion that there were racial considerations involved in the PM Appointments, it does not support his assertion that the appointments were <u>therefore</u> unconstitutional. We note that the Respondent claims that the point of his

[31] Respondent's Written Submissions [13].
[32] Respondent's Written Submissions [17].
[33] Respondent's Written Submissions [16].

posts "*was not to state the appointment of the Prime Ministers was unconstitutional*".[34] However, that is untenable on a plain reading of the Second Statement.

45. On the issue of unconstitutionality, the Respondent argues that the burden is on the Law Society to prove that the PM Appointments were not unconstitutional even if there were racial considerations involved and says that "*no argument has been put forth to show that if racial considerations did indeed play a role in the selection of prime minister that this [would not] breach Article 12*".[35]

46. This argument is misconceived. The issue of the constitutionality of the PM Appointments is not before us – we are concerned only with whether the Respondent's conduct in making the Second Statement is deserving of any sanction. To that end, the Respondent has not adduced any evidence in support of his assertion in the Second Statement that the PM Appointments were unconstitutional.

47. The Law Society contends that the Respondent knew or ought to have known that there was no truth to the Second Statement. It points to the fact that this was not the first time that the Respondent had made allegations similar to the Second Statement.

48. On 10 February 2015, the Respondent recorded and published a video in which he alleged (among other things) that the appointment of Mr Lee Hsien Loong as the Prime Minister was unconstitutional as he had been elected because he was Chinese.[36] This statement (among others) formed the basis of a charge against the Respondent in disciplinary proceedings brought by the Law Society. The Law Society alleged that the Respondent had been guilty of misconduct unbefitting an advocate and solicitor, placing

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[34] Respondent's Written Submissions [23].
[35] Respondent's Written Submissions [18].
[36] *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141, [7] & [8]; LSBOD Tab 5.

particular emphasis on the racially sensitive nature of the statement above and one other statement.[37] The Respondent did not contest the charge. He says in his written submissions that this was because he "*accepted that his illness had meant that he had not conducted himself in the manner in which he would normally behave*".[38]

49. On 22 May 2017, the Respondent filed Originating Summons No. 548 of 2017 ("**OS 548**")[39] seeking declarations that the Elected Presidency Scheme was inconsistent with Article 12 of the Constitution. He subsequently filed Summons No. 2710 of 2017 ("**SUM 2710**")[40] seeking to add prayers to OS 548, including for declarations that:-

> "*(d) the appointment of Mr Lee Hsien Loong as the third Prime Minister (12 August 2004 to present) contravened Article 12(2) of the Constitution, in that it was done pursuant to a policy that was discriminatory on the ground of race;*
>
> *(e) the appointment of Mr Goh Chok Tong as the second Prime Minister (28 November 1990 to 12 August 2004) contravened Article 12(2) of the Constitution, in that it was done pursuant to a policy that was discriminatory on the ground of race. ...*"

50. SUM 2710 was heard before the Honourable Justice See Kee Oon on 15 June 2017. Having considered the affidavits and submissions filed by the Respondent and the Attorney-General,[41] the Judge dismissed the application to add the above two prayers to OS 548. In doing so, the Judge accepted the submissions made on behalf of the

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[37] *Ibid.*, [9]; LSBOD Tab 5.
[38] Respondent's Written Submissions [27].
[39] Law Society's Supplemental Bundle of Documents ("**LSSBOD**") Tab 1.
[40] LSSBOD Tab 9.
[41] See the Order of Court dated 15 June 2017; LSSBOD Tab 6.

Attorney-General, including the contention that there was no factual basis for these prayers.[42]

51. While the Respondent claims in his closing submissions that the issue of constitutionality "*was not, in fact, properly ventilated since the amendment to the prayer was refused*",[43] he had accepted during cross-examination that his argument that the PM Appointments had been racially-motivated, as well as the evidence on which he relied in support of this argument, had been before the Court in OS 548 and had been rejected.[44]

52. On 31 July 2017, the Attorney-General commenced Originating Summons No. 866 of 2017 ("**OS 866**")[45] seeking (among others) an order that the Respondent be prohibited from commencing any proceedings against the Government, the Attorney-General or the Public Prosecutor without the leave of Court. One of the grounds on which the Attorney-General relied in support of OS 866 was the Respondent's statements in OS 548 and SUM 2710 impugning the PM Appointments for alleged racial discrimination.[46] Tellingly, the Respondent consented to the prayers sought in OS 866.[47] The Respondent did not deal with OS 866 in his submissions.

53. It is clear from the various legal proceedings outlined above that the Respondent has made the same or similar allegations to the Second Statement on several occasions. He has, in the course of these various legal proceedings, had the opportunity of making arguments and adducing evidence in support of these statements. He only chose to do

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42 *Ravi s/o Madasamy v Attorney-General & other matters* [2017] 5 SLR 489, [22] & [23]; LSSBOD Tab 9.

43 Respondent's Written Submissions [26].

44 Transcript 21 July 2022, page 72 lines 6 to 31.

45 LSBOD Tab 7.

46 Affidavit of Ng May filed in support of OS 866 [11(c)]; LSBOA Tab 8.

47 Order of Court dated 11 October 2017; LSBOA Tab 9.

so on one occasion – in SUM 2710, where his arguments were rejected. The Respondent did not appeal against the dismissal of SUM 2710.

54. Even when the Attorney-General sought to have him declared a 'vexatious litigant' in OS 866 and expressly relied on his allegations impugning the PM Appointments, the Respondent chose to consent to OS 866 rather than defend the truth and validity of his allegations.

55. Having considered all the facts, we are satisfied that the Respondent did not have any reasonable basis for believing, and in fact did not believe, that the Second Statement was true. In coming to this conclusion, we note in particular that the Respondent:

(a) had conceded that there "*may be reasons to justify the unequal treatment of potential candidates on grounds of race*",[48] which means he accepts that even if racial considerations factored in the PM Appointments, this alone would not necessarily have rendered the appointments unconstitutional;

(b) had not brought proceedings to challenge the constitutionality of the PM Appointments despite having expressly said that he would do so;[49] and

(c) had not provided us with any explanation as to why he believed, at the time he made the Second Statement, that the PM Appointments were unconstitutional, choosing instead to rely on the argument that it was for the Law Society to address us on why the appointments were not unconstitutional. We explained above why we found this argument misconceived.

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[48] Respondent's Written Submissions [19].

[49] *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141, [8(d)]; LSBOD Tab 5.

Has Section 83(2)(h) of the Act been satisfied?

56. It is undoubtedly a serious matter for anyone to publicly impugn the constitutional validity of the appointment of the Prime Minister, particularly when that person does so despite knowing that he/she has no basis for doing so. That is precisely what the Respondent did.

57. Indeed, the Respondent's conduct in relation to the Second Charge is particularly egregious because he sought to introduce the potentially divisive and incendiary topic of racial bias and discrimination. Any reasonable person would surely say that the Respondent should not have done so even as an ordinary citizen, much less as an advocate and solicitor.

58. We therefore find that the Respondent's conduct as set out in the Second Charge also crossed the threshold required under Section 83(2)(h) of the Act, and that the Second Charge has therefore been made out.

The appropriate sanction

59. Our role is to determine if there is 'cause of sufficient gravity' that could, on a finding by the Court of Three Judges, be ascertained to constitute 'due cause' that merited the imposition of one of the range of sanctions prescribed in Section 83(1) of the Act: *Law Society of Singapore v Jasmine Gowrimani d/o Daniel* ("***Jasmine Daniel***").[50] There are three options open to us pursuant to Section 93(1) of the Act:

    (a) Determine that no cause of sufficient gravity for disciplinary action exists;

[50] [2010] 3 SLR 390, [37].

(b) Determine that while no cause of sufficient gravity for disciplinary action exists, the legal practitioner should be reprimanded or ordered to pay a penalty sufficient and appropriate to the misconduct committed; or

(c) Determine that cause of sufficient gravity for disciplinary action exists, in which case the Law Society is obliged pursuant to Section 94 of the Act to make an application under Section 98 of the Act to the Court of Three Judges.

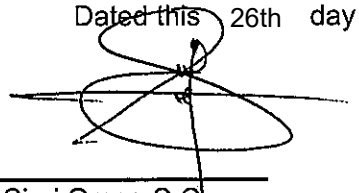
60. We find that cause of sufficient gravity for disciplinary action exists in respect of both the First and Second Charges. It surely cannot meaningfully be argued that the Respondent's conduct in knowingly making false statements in respect of (i) the President's discharge of her constitutional duties and (ii) the constitutional validity of the PM Appointments is insufficient to cross the requisite threshold.

Conclusion

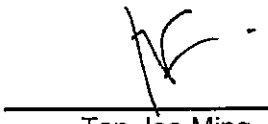
61. We therefore find and determine, pursuant to Section 93(1)(c) of the Act, that cause of sufficient gravity for disciplinary action exists under Section 83(2)(h) of the Act in respect of the First and Second Charges.

62. We order, pursuant to Section 93(2) of the Act, that the Respondent pays the Law Society's costs in relation to these proceedings, such costs to be assessed by the Registrar if not agreed.

Dated this 26th day of April 2023.



Siraj Omar, S.C.
President



Tan Jee Ming
Advocate