A B C D E F G H I J K L M N O P Q R S T U V

CACV 485/2019
[2022] HKCA 935

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

CIVIL APPEAL NO 485 OF 2019
(ON APPEAL FROM THE DECISION OF THE SOCIAL WORKERS REGISTRATION BOARD DATED 15 JULY 2019)

BETWEEN

TANG WAI HUNG	Appellant
and	
SOCIAL WORKERS REGISTRATION BOARD	Respondent

Before: Hon Cheung, Yuen, and Au JJA in Court

Date of Hearing and Judgment: 31 August 2021

Date of Reasons for Judgment and Decision on Costs: 28 June 2022

R E A S O N S F O R J U D G M E N T
a n d
D E C I S I O N O N C O S T S

Hon Au JA (giving the Reasons for Judgment and Decision on Costs of the Court):

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A. *INTRODUCTION*

1. This is an appeal against the decision of the Social Workers Registration Board ("the Board") dated 15 July 2019 ("the Board's Decision") in which the appellant was found to have committed a disciplinary offence under section 25(1)(a) of the Social Workers Registration Ordinance, Cap 505 ("the SWRO") for which the Board issued an order of reprimand.

2. By a Notice of Appeal filed on 14 October 2019 ("the Notice of Appeal"), the appellant appealed to this court against the Board's Decision. In the Notice of Appeal, he has set out six grounds of appeal and sought the following orders: an order that the Board's Decision and the consequential disciplinary order be set aside, an order that the Board shall decide that the appellant has not committed any disciplinary offence, and an order that the Board do pay the appellant the costs of this appeal and costs of the proceedings before the Board.

3. The Board filed a Respondent's Notice on 4 November 2019 and an Amended Respondent's Notice on 6 May 2020.

4. At the end of the hearing, we dismissed the appeal and indicated that we would hand down our reasons for judgment and decision on costs later. This is what we do now.

B. *THE DISCIPLINARY REGIME UNDER THE SWRO*

5. To better understand some of the grounds of appeal, and the background leading to the Board's Decision, it is helpful to first look at the

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relevant powers of the Board and the statutory disciplinary regime in respect of registered social workers under Part IV of the SWRO.

6. The Board, established as a body corporate, is empowered by section 7(g) of the SWRO to deal with disciplinary offences in accordance with the ordinance.

7. Part IV of the SWRO sets out the regime for disciplinary proceedings. Section 25(1)(a) of the SWRO provides that a registered social worker commits a disciplinary offence if he, *inter alia*, "commits misconduct or neglect in any professional respect".

8. Under the relevant provisions of the SWRO, the complaint procedures shall run the following course:

(1) A complaint of disciplinary misconduct against a social worker shall be made in a specified form and submitted to the Registrar. The Registrar shall then submit the form to two members of the Board appointed by the Board to consider whether the complaint should be referred to the Board. It is however expressly provided that the appointed members shall *not* refer the complaint to the Board if they are satisfied that (a) the complainant has actual knowledge of the disciplinary offence for two or more years before the Registrar receives the complaint, and (b) there are no special circumstances to explain the delay (see section 25(3)(a)).

(2) If a complaint is so referred to the Board, before it makes any decision in relation to the complaint, the Board shall first

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appoint a disciplinary committee[1] "to inquire into the complaint, to advise it whether the disciplinary offence complained of has been committed and, if so, to recommend an appropriate disciplinary order" (see section 25(4)). At the hearing of the disciplinary committee the parties are entitled to attend and adduce evidence (see: sections 27(5) and (6)).

(3) After the disciplinary committee has reached a decision on the advice to be given to the Board as to whether the disciplinary offence complained of has been committed and any appropriate disciplinary order that it would recommend in respect of the complaint, it shall report to the Board accordingly (see: section 27(7)).

(4) The Board shall, after considering the disciplinary committee's decision or recommendation, the reasons in support thereof, any evidence and findings in respect thereof and all relevant circumstances relating thereto, decide whether the disciplinary offence complained of has been committed and notify the complainant concerned of the decision and the reasons therefor (see: section 27(8)).

9. A person aggrieved by a decision made under, *inter alia,* section 27(8) of the SWRO may appeal to the Court of Appeal under section 33, which provides:

> "(1) Any person who is aggrieved by—
>
> (a) any decision made in respect of him under section 19(1), 20(4) or 27(8); or
>
> (b) any disciplinary order made in respect of him,

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[1] Section 8(1)(a) of the SWRO provides, *inter alia*, for the Board to "establish committees to advise the Board on the performance of its functions and the exercise of its powers ...".

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> may appeal to the Court of Appeal.
>
> (2) The Court of Appeal may affirm, reverse or vary the decision or disciplinary order appealed against.
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> (3) Where a person appeals against a decision of the Board under section 27(8) or a disciplinary order, the Court of Appeal shall consider the reasons of the disciplinary committee and of the Board and submissions upon the findings of fact and law of the disciplinary committee made on behalf of the parties to the inquiry and may call for the original record of the evidence taken and any document put in evidence before the disciplinary committee.
>
> (4) The Court of Appeal may, upon special grounds being shown, consider any additional evidence not adduced before the disciplinary committee
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> …
>
> (8) In deciding any appeal under this section the Court of Appeal may make such order for payment of costs as it considers reasonable."

C. BACKGROUND

C1. The complainant and the appellant

10. The appellant was at all material times a registered social worker. In 2005, he attended an alumni gathering in Chinese University of Hong Kong ("CUHK") and met the complainant ("the Complainant"). The Complainant at that time was a student reading social work at CUHK. Thereafter, the appellant became the Complainant's "mentor" under an alumni scheme[2].

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[2] See paragraph 5(1) of the Board's Decision.

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11. Sometime in around May or June 2007, the appellant and the Complainant became involved in an intimate relationship.

12. Thereafter, in around mid-2007, the Complainant returned to Beijing to work in a program of a project run by a Foundation. The appellant was one of the advisors to this project from 2007 until September 2009.

13. On 26 January 2008 and 13 May 2008, the Complainant twice emailed the appellant stating her wish to end their intimate relationship.

14. Notwithstanding the Complainant's above emails, from May 2008 onwards, the appellant (amongst other acts) had sent emails to the Complainant containing matters not related to work which she found to be offensive and inappropriate. The contents and nature of those emails are discussed in greater detail below.

15. By way of an email dated 26 September 2009, the appellant was notified of the termination of his position as advisor at the program.

16. In 2010, the Complainant married her husband. According to the Complainant, the appellant stopped contacting her in 2010 when the appellant sent a message to the Complainant and received a reply instead from the Complainant's husband, warning the appellant not to contact her again.

17. Subsequent to the warning from the Complainant's husband, there was no contact between the appellant and the Complainant until the

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events described below in 2017. In the intervening years, the Complainant's husband passed away in 2015.

18. In 2017, through a common friend, the appellant came to know that the Complainant was taking part in an art exhibition to be held on 14 March 2017. He inquired, through the common friend, with the Complainant as to his attending the exhibition. The Complainant rejected the idea of his attendance. He did not attend the exhibition.

19. The Complainant then filed a complaint against the appellant, first with CUHK. On 30 January 2018, she filed another written complaint with the Board ("the Complaint").

B2. The Complaint

20. The Complaint was lengthy and unfocused, attaching evidence and various statements in a piecemeal fashion. In substance, the Complainant complained that the appellant had been persistently harassing her with emails and communications which contained offensive and disturbing contents, despite the termination of their relationship and the Complainant's repeated requests asking him to stop contacting her. The Complainant said these continued harassments had caused her immense mental and psychological stress and disturbances.

21. On 30 January 2018, following the required procedure, the Complainant further filed a Complaint Form ("the Complaint Form") with the Board, attaching various copies of emails and statements. In the Complaint Form, she included her explanation for the delay in respect of

those parts of the appellant's conduct that occurred more than two years prior to the Complaint. According to the Complainant, she felt agitated by the appellant's attempt to reappear in her life, and also that she was spurred by the recent "Me Too" movement as well:

> "1. 2017.3 [The appellant] 再次試圖出現在我生活中，給我和家人帶來很大的恐懼、滋擾、不安全感。
>
> 2. 'Me Too Movement'中近期越來越多女性的勇敢站出來，這也刺激和激勵我站出來，投訴 [the appellant] 多年對我的'性騷擾'"

22. In the Complaint Form, the Complainant also specified, under the section of "Major issue(s) complaint *(sic)* of", *inter alia* the following issue:

> "2 在我反應過來，明確表示不能與他保持親密關係的情況下，[the appellant] 持續透過電郵、短訊、電話，不請自來，突然出現等方式，對我進行長達一年半的性騷擾，給我造成巨大痛苦。精神壓力和摧殘。(2008 年初-2009.9)"

23. The attachments to the Complaint Form included, *inter alia*, various emails undersigned by the appellant and sent to the Complainant from various email accounts: some sent in 2008 and 2009 were from his staff email account provided by his employer ("the Staff Email Account"), some in 2008 and 2009 were from his personal email accounts. The majority of those emails were sent from the Staff Email Account.

24. The Complaint Form was considered by two members of the Board appointed by the Board pursuant to section 25(3)(a) of the SWRO. They later issued a document entitled "投訴個案第 479 號" summarizing

the Complaint ("the Summary of Complaint")[3]. The Summary of Complaint stated that the two members accepted the Complainant's explanation for the delay in making the Complaint[4] and decided to refer the Complaint to the Board ("the Referral Decision").

25. The parts of the Summary of Complaint relevant for the present purpose are as follows:

> "投訴人 [the Complainant]，於 2018 年 1 月 30 日書面投訴 [the appellant]，事發時為香港青年協會的註冊社工('[the appellant]')。[the Complainant] 投訴 [the appellant] 長時間騷擾她及/或對她作出與性有關的騷擾，使 [the Complainant] 深受傷害。經《社會工作者註冊條例》(香港法例第 505 章）第 25(3)條委任的兩名註冊局成員考慮後，接納 [the Complainant] 解釋延誤投訴的理由：即她曾以為騷擾停止了，然而她發現類似的騷擾約於 2017 年 3 月再度復萌。兩名成員認為此等行為可能涉及在專業方面有失當或疏忽而構成違紀行為。遂轉介予註冊局，委出紀律委員會對投訴進行研訊。以下的「投訴事件」，乃根據投訴人提交的投訴表格及資料繕寫，並經投訴人確認屬實無誤 :-
>
> 被投訴人 [the appellant] 騷擾及/或性騷擾 [the Complainant] 的細節:-
>
> 當 [the Complainant] 仍是香港中文大學社會工作系的學生時，在一個校友年度聚會中認識 [the appellant] 。約於 2007 年 3 月至 6 月期間， [the appellant] 帶 [the Complainant] 及其他同學到不同的社會福利機構參觀學習，並介紹同學們及 [the Complainant] 為他的 mentee，冒稱他是中文大學的 mentor，以獲得 [the Complainant] 的信任。
>
> 2007 年 6 月，他便私下接觸 [the Complainant] 問她知否「關你椿事」的含意，並向她解說這詞語在性方面的含意並披露自己與妻子的性生活不調。當時 [the Complainant] 是隻身來港求學的留學生，而她以為 [the appellant] 是他的

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[3] The Summary of Complaint was also signed by the Complainant confirming its contents.

[4] In gist, she explained that, as the appellant had stopped contacting her for some time, she thought the harassments had ended. However, after the death of her husband, the appellant had since March 2017 sought to repeatedly harass her again, which caused her great distress and thus to make the Complaint.

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> mentor，與 [the appellant] 處於不平等位置。在同月他邀請 [the Complainant] 到酒店，提她要買比堅尼泳衣共泳，後與 [the Complainant] 發生性行為，[the Complainant] 反思，認為 [the appellant] 是利用其身份親近 [the Complainant] 博取同情以達成他的私慾。
>
> 2007 年 7 月，[the Complainant] 畢業後返北京工作，之後 [the appellant] 持續的運用其工作上的顧問身份，多次接觸履新不久的 [the Complainant]，甚至要求造訪其家，更提出性方面的要求。[The Complainant] 開始了解到 [the appellant] 的行為的侵犯性，於 2008 年 1 月、4 月、5 月，[the Complainant] 連續多次透過口頭和書面等方式要求他停止。[The appellant] 口頭同意但卻仍然不斷發電郵、短訊、和打電話予 [the Complainant]。此等行為令該女士深受騷擾，感到恐懼和憤怒。
>
> 除無數的電郵、短訊、電話外，[the appellant] 不少於兩次，不請自來，突然出現在 [the Complainant] 的工作地點（下見），此等行為令 [the Complainant] 深受騷擾。
>
> …
>
> 直至 2017 年 3 月 14 日，[the Complainant] 在丈夫去世後開畫展舒發哀傷，[the appellant] 企圖出現接觸 [the Complainant]，並且發信息給 [the Complainant] 的朋友，轉達他是賑明會理事，想跟 [the Complainant] 交流學習關於哀傷的相關事宜。再次展示他的權力和背後的資源，對喪失丈夫不久的 [the Complainant] 毫不尊重，觸動起 [the Complainant] 多年來受 [the appellant] 騷擾及/或性騷擾所壓抑的情緒，使她再感到恐懼和憤怒，警覺需要出聲，及防止有其他可能受害的人。
>
> （以上各項指控詳情及進一步資料，見內附 [the Complainant] 2018 年 1 月 30 日的文件及其他的文件。）
>
> 上述行為經研訊後，倘證明屬實，可能違反《社會工作者註冊條例》第 25(1)(a)條，而構成被投訴人 [the appellant] 在專業方面有失當或疏忽的違紀行為。” (emphasis added)

26. Following the referral, on 17 September 2018, the Complainant filed a “Form For Complainant’s Case” (known as a “Form 1”). The attachments to the Form 1 again included various emails

undersigned by the appellant and sent to the Complainant from the Staff Email Account, and from his personal email accounts during the period between 2008 and 2009.

27. The appellant filed a "Form for Respondent's Case" (known as a "Form 2") dated 19 October 2018 in response to the allegations of the Complainant.

28. The Board summarized in the Board's Decision the matters set out in the Complaint into three "phases" as follows[5].

29. Phase 1 concerns the period from September 2005 to January 2008, when the parties became acquainted, the appellant became the mentor of the Complainant, and the two entered into an intimate relationship. It suffices to note, in respect of the events of Phase 1, that the Board held that those events did not constitute any disciplinary offence.

30. Phase 2 concerns matters which occurred from January 2008 to March 2010. The crux of the complaint was that the appellant continued to harass the Complainant via emails and visits even after she had indicated in her emails in January and May 2008 that she wished to end their intimate relationship. Notwithstanding the Complainant ending the relationship, the appellant still sent her various emails containing contents which were unrelated to work and which were offensive to her ("the Offending Emails"). The Offending Emails (some of which were submitted by the Complainant, not as attachments to the Complaint Form or Form 1, but as

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[5] See paragraph 5 of the Board's Decision.

supplementary evidence during the hearing, see [34] below) included images of naked persons; images of persons exposing the lower body; and images depicting jokes relating to nudity and/or the genital area.

31. Paragraph 5(2)(a) of the Board's Decision highlights the fact that when the Offending Emails were sent, the appellant was the advisor to the organisation which employed the Complainant:

> "投訴人在第二階段主要對答辯人提出如下指控：
>
> -答辯人在投訴人數次表示分手和不願意繼續保持性關係後，持續向投訴人發出帶有不雅和侮辱性內容的電郵。當其時答辯人是投訴人工作機構的顧問，而投訴人是該機構受僱職員。答辯人在專業及教學上，有督導/指導的角色。" (emphasis added)

32. As set out later, the Board ultimately held the appellant to be guilty of a disciplinary offence on the basis of these Offending Emails[6].

33. Phase 3 concerns the events when the appellant indicated to the Complainant, through a common friend, that he intended to come to her exhibition which was to be held on 14 March 2017. The Complainant informed the appellant, through the common friend, that he should not attend the exhibition. The Board ultimately found that the events of Phase 3 did not constitute a disciplinary offence.

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[6] The Complainant also complained of further harassment in that during that same period, the appellant made unwelcome visits to the Complainant including at her workplace and at a campsite area, and he also arranged for flowers to be delivered to her workplace. The Board ultimately did not rely on the visits and the flowers to make any finding of disciplinary offence.

B3. The decisions of the disciplinary committee and the Board

34. After the referral by the two members, the Board appointed a disciplinary committee to investigate the Complaint ("the Committee"). On 20 February 2019 and 22 February 2019 respectively, the Committee conducted a hearing of inquiry, during which it received supplementary evidence filed by the respective parties (which, as noted at [30] above, included further Phase 2 email evidence) and also *viva voce* evidence from the appellant. At the hearing, the appellant was unrepresented while the Complainant had legal representation.

35. After the hearing, the Committee issued for the Board's consideration a written recommendation on 11 April 2019 ("the Recommendation Report") recommending that the appellant should be found guilty of professional misconduct under section 25(1)(a) of the SWRO on the basis of the Offending Emails in Phase 2. The Committee found, *inter alia*, that the Offending Emails had inappropriate, insulting and sex-related contents, and that such emails disrespected his co-worker and disrespected his organization. The Recommendation Report also referenced to the appellant's use of his Staff Email Account to send out inappropriate email(s). The relevant passages of the report are as follows:

> "5(2)…
>
> a. 投訴人在第二階段主要對答辯人提出如下指控:
>
> -答辯人在投訴人數次表示分手和不願意繼續保持性關係後，持續向投訴人發出帶有不雅和侮辱性內容的電郵。當其時答辯人是投訴人工作機構的顧問，而投訴人是該機構受僱職員。答辯人在專業及教學上，有督導/指導的角色。
>
> -答辯人出現在投訴人所在的營地等待投訴人至深夜。

-答辯人在投訴人生日時不請自來出現在投訴人辦公室，此後還託人送上鮮花到投訴人辦公室。

b. 紀律委員會審閱了答辯人發送給投訴人的相關電郵，認爲任何一個合理的普通人都會認爲該等電郵的內容不雅、具侮辱性和性意味。而答辯人對所有呈上委員會的電郵及訊息之真實性沒有任何異議。紀律委員會因此接納投訴方的陳詞與證據作出事實判斷，即答辯人從2008 年 5 月起，用其於香港受雇機構的工作電郵郵箱，向投訴人發送了一系列附有不雅內容、具有侮辱性和性意味的電郵。答辯人的行爲極爲不專業，亦不尊重同工和所屬機構。

c. 答辯人承認他清楚知道投訴人不願和他保持親密的男女關係。答辯人亦承認自己明白發送的電郵內容和持續發送此類電郵的行爲不妥。答辯人辯稱自己當時‘傻傻哋’,希望與投訴人重修舊好。至於爲何用工作電郵郵箱發送內容不恰當的電郵，答辯人辯稱他不熟悉電腦，沒有自己的私人郵箱。

d. 紀律委員會在考慮所有相關證據后一直認爲，答辯人罔顧投訴人的意願，發送內容使人反感的涉及性的電郵，令投訴人感到冒犯、侮辱或威嚇，屬於騷擾。即使答辯人認爲自己與投訴人曾經是戀人，且當其時受失戀困擾，但這些理由不能將答辯人的行爲合理化。

e. 鑒于上述原因，紀律委員會一致認爲，答辯人用其於香港受雇機構的電郵郵箱向投訴人發送附有不雅內容、具有侮辱性和性意味的電郵，此等行爲不符合社工與其同工、所屬機構、專業及社會建立專業關係時的道德行爲標準，其嚴重性已構成在專業方面有失當或疏忽，屬於社會工作者注冊條例第 25（1）（a）條所規定的違紀行爲。

…

6. 綜上所述，答辯人使用當其時於香港受僱機構的電郵向投訴人發送不雅、具有侮辱性和性意味內容的電郵的行為，屬於社會工作者註冊條例第 25(1)(a)條所規定的違紀行為。紀律委員會建議註冊局裁定投訴人針對該行為的投訴成立，而針對其他行為的投訴不成立。” (emphasis added)

36. Further, the Committee recommended acquittal of the alleged offences in respect of the events in Phases 1 and 3.

37. After the Recommendation Report, on 28 April 2019, the appellant's solicitors, Wat & Co, raised through a letter to the Board five matters for the Board's consideration and urged the Board to depart from the Recommendation Report ("the Letter"). The five matters in the letter are effectively the same as the five grounds of appeal set out under Grounds 2 to 6 of the Notice of Appeal in this appeal.

38. By way of the Board's Decision, the Board adopted and endorsed the Recommendation Report and found the appellant guilty of professional misconduct in respect of the Offending Emails.

39. The Board's Decision first sets out the content of the Recommendation Report in its entirety, and then states in the following concluding paragraphs the Board's decision to adopt the Recommendation Report, find the appellant guilty, and make a disciplinary order of reprimand:

> "註冊局的最後裁決
>
> （甲）註冊局於 2019 年 7 月 15 日舉行的會議，審議上述報告。當中，紀律委員會主席鄧之皓先生出席會議，闡述報告內容及回答註冊局成員查詢。註冊局認為紀律委員會已依照「紀律程序規則」就個案 479 號有關 [the appellant] 的投訴進行了紀律聆訊，應用了恰當的法律原則處理並考慮各項指控、事實和雙方所提出的證據及陳詞，以致所達成的結論，與證據相符，<u>註冊局對報告內容並無異議；故此，註冊局在會議上通過及同意採納上述紀律委員會的地告，並作出最後裁決，裁定 [the appellant] 在投訴中有關他使用當其時於香港受僱機構的電郵向投訴人發送不雅、具有侮辱性和性意味內容的電郵的行為</u>，<u>屬於社會工作者註</u>

> 冊條例第 25(1)(a)條所規定的違紀行為裁定投訴人針對該項行為的投訴成立，而針對其他行為的投訴不成立。
>
> （乙）註冊局並裁定作出《社會工作者註冊條例》（第 505 章）第 30(1)(d)條規定的紀律制裁命令，使註冊局的主席口頭訓誡答辯人。
>
> …"

D. THIS APPEAL

40. As mentioned above, the appellant brought this appeal against the Board's Decision under section 33 of the SWRO.

D1. Grounds of appeal

41. In his Notice of Appeal, the appellant advanced the following six grounds of appeal:

(1) The Board failed to take into account relevant considerations, specifically that the Board failed to take any or sufficient account of matters set out in the Letter ("Ground 1");

(2) The Committee and the Board lacked jurisdiction "*to make a finding and decision that the [appellant] has committed the Convicted Offence [as defined in the Notice of Appeal] based on the alleged act*" ("Ground 2"). This ground relates to the contention that the conviction was in substance based on the appellant using the Staff Email Account (as opposed to a personal account) to send out the relevant email(s) [*called "the Relevant Act" in the Notice of Appeal*];

(3) The proceedings before the Committee and the Board are time-barred ("Ground 3"). This ground relates to the effect of section 25(3)(a) of the SWRO;

(4) The appellant was deprived of the right to be heard ("Ground 4") as the Relevant Act was not a part of the Complaint Form;

(5) The Relevant Act did not engage any professional respect ("Ground 5"); and

(6) The Relevant Act did not amount to misconduct or neglect ("Ground 6").

D2. Relevant principles

42. There is no dispute that the approach of this court in hearing an appeal from a disciplinary order is as summarized in *Fong Yiu v Chinese Medical Council of Hong Kong* [2018] 2 HKLRD 439[7] at [3.2] - [3.5]:

> "3.2 Under s.103(1) of the Chinese Medicine Ordinance, any person who is not satisfied with an order made by the CMPB may appeal to the Court of Appeal. The Court of Appeal may "affirm, reverse or vary" the order of the CMPB: s.103(2).
>
> 3.3 In *Lau Koon Leung v Medical Council of Hong Kong* [2006] 3 HKLRD 225, the Court of Appeal cited the following two authorities to explain the legal principles adopted by the Court of Appeal in respect of an appeal against a decision made and a penalty imposed by a disciplinary committee of a professional body: The Court of Appeal will accord an appropriate measure of respect to the decision of the disciplinary committee on whether a professional's failings amount to professional misconduct and on the penalty necessary to maintain professional standards and provide protection to the public interest. However, the Court of Appeal will not defer to the disciplinary committee's decision more than what is warranted by the circumstances. The Court of Appeal is entitled to consider all the matters to decide whether the penalty imposed by the disciplinary committee was necessary and appropriate in the public interest or was

7 A case concerning a similar provision as to appeal against orders of the Chinese Medicine Practitioners Board ("the CMPB") under the Chinese Medicine Ordinance, Cap 549.

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> excessive and disproportionate, and in the latter event to substitute an appropriate penalty for the original order (see *Ghosh v. General Medical Council* [2001] 1 WLR 1915). Examples of penalty imposed by disciplinary committee being reversed by the Court of Appeal include one that is out of tune with the evidence or is wrong in principle (see *Preiss v. General Dental Council* [2001] 1 WLR 1926).
>
> 3.4 ...
>
> 3.5 The legal principles of *Ghosh* and *Preiss* were approved by the Court of Final Appeal in *A Solicitor (24/07) v. The Law Society of Hong Kong* (2008) 11 HKCFAR 117 and *Sin Chung Yin Ronald v. Dental Council of Hong Kong* [2016] 19 HKCFAR 528." (emphasis added)

43. Further, it has also been held in *Benjamin Mark Herbert v Veterinary Surgeons Board of Hong Kong* [2018] 3 HKLRD 133 (CA)[8] that the meaning of "misconduct … in a professional respect" includes personal behaviour which falls short of standards and reflects adversely on the profession, is not restricted to transgressions of matters expressly set out in the relevant Code of Practice issued by the subject professional board, and is not restricted to conduct occurring within the practitioner's practice only. As observed by Yuen JA at [18] - [19]:

> "18. In my view, there is nothing in this ground of appeal. First, s.17(1)(a) provides that a registered veterinary surgeon commits a disciplinary offence if he is guilty of misconduct in any professional respect. There is no definition of the words 'misconduct … in any professional respect' in the Ordinance. Section 18(9) provides that the IC 'may, in deciding whether a person has committed a disciplinary offence, have regard to any rules of professional conduct or Code of Practice made or issued by the Board'. These words make it clear that in deciding whether a registered veterinary surgeon has been guilty of misconduct in any professional respect, the IC is not restricted to determining only whether there has been a transgression of only those matters set out expressly in the Code. It has a broad

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[8] A case related to whether a veterinary surgeon had committed a disciplinary offence under the relevant statutory provision for "misconduct … in any professional respect". The wording of the statutory offence is the same as section 25(1)(a) of the SWRO.

> purview with no restriction to conduct occurring within a veterinary surgeon's practice only.
>
> 19. A number of Hong Kong and UK cases support this view that misconduct in a professional respect includes personal behaviour which falls short of standards and reflects adversely on the profession." (emphasis added)

44. The Court of Appeal in *Benjamin Mark Herbert* at [20.4] - [20.5] also referred to relevant passages in *Albert Wou v Medical Council of Hong Kong* [1988] 1 HKLR 388 and further stated that misconduct not carried out within the pursuit of the practitioner's practice could still be relevant insofar as it damages the reputation of his profession by reason of having been committed by a practitioner of the profession (footnotes omitted):

> "20.4. … Clough JA (with whom the other members of the Court agreed) held that these words must be wide enough in their context to include misconduct by such a practitioner otherwise than in the pursuit of his practice which the Council, as his disciplinary body, reasonably determines to be misconduct of such a character and degree of seriousness that it tends to damage the reputation of his profession because it has been committed by such a practitioner.
>
> 20.5. It is correct that Clough JA did refer to the doctor as being a 'member of a profession whose primary purpose is to heal humanity' but the rationale of the decision was that the doctor had attacked his wife with a knife in circumstances amounting to an offence of unlawful wounding, and on that basis the court held that the MC was entitled to come to the 'reasonable conclusion that it was conduct of such a character and degree of seriousness that it tended to reflect adversely on the profession in which the appellant practised'." (emphasis added)

45. Bearing these principles in mind, we now turn to examine the respective grounds of appeal.

D3. Discussion

D3.1 Ground 1

46. Ground 1 challenges the Board's failure to take into account the matters stated in the Letter, which (as accepted by the appellant's counsel, Mr Fan) are matters effectively identical to Grounds 2 - 6. It is therefore unnecessary to deal with Ground 1 separately, as the viability of this ground stands and falls with the merits of Grounds 2 - 6, which we will now turn to.

D3.2 Grounds 2 and 4

47. As these two grounds are based on the same underlying premise, it is convenient to consider them together.

48. In substance, the appellant's contentions under Grounds 2 and 4 are both fundamentally premised upon the contention that he was convicted by the Board on the principal basis that he had used *his service agency's staff email account*, ie, the Staff Email Account, to send the Offending Emails to the Complainant. The appellant however argues that the fact of his using the Staff Email Account to send the emails was not part of the Complaint and was also not particularized in the Complaint Form as a basis in support of the charge and therefore had not been made clear to him.[9] This was therefore a new case made against him, which he was not properly prepared for and was not given a proper opportunity to respond to. In the premises:

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[9] Notice of Appeal at paragraphs 2(1) and 6(1).

(1) The Board had "no jurisdiction" to make the finding of commission of a disciplinary offence based on this (Ground 2); and

(2) The appellant "has been deprived of the right to be heard" in that there was a failure to provide him with an opportunity to challenge, rebut or respond to that part of the case against him (Ground 4).

49. There are no merits in these grounds.

50. Mr Fan's arguments in support of these two grounds are premised entirely on the submission that the material basis of the appellant's "culpability" was "about [the appellant] using service agency's staff email account to send out indecent, insulting or sexually related email, but **NOT** about harassment, fear or anger caused by [the appellant] to [the Complainant]"[10]. As Mr Fan has accepted at the hearing, the fundamental underlying complaint of these two grounds is that the professional misconduct of which the appellant was found guilty was in gist and in substance the appellant's use of the Staff Email Account to do what he did. The Board or the Committee therefore "altered the basis" of its case.[11]

51. Mr Fan therefore submits that the Board ought to have amended the particulars of the complaint against the appellant (who was unrepresented), and that the appellant might have adduced further evidence or witnesses to answer the "shifted" basis of the complaint[12] and the "new

[10] See paragraph 12 of the appellant's skeleton submissions.
[11] See paragraph 21 of the appellant's skeleton submissions.
[12] Paragraph 20 of the appellant's skeleton submissions.

and different" allegation[13] of the use of the Staff Email Account. It is submitted that the potential evidence that could be called included adducing practice guideline or employee handbooks of the organization on the use of office email accounts[14].

52. This fundamental premise is plainly misplaced.

53. The Board's reasons for conviction are premised on its adoption of paragraph 5(2) of the Committee's Report (which has been incorporated in full into the Board' Decision). For the present purpose, it is worth re-quoting those parts as follows:

> "5(2)…
>
> a. 投訴人在第二階段主要對答辯人提出如下指控：
>
> -答辯人在投訴人數次表示分手和不願意繼續保持性關係後，持續向投訴人發出帶有不雅和侮辱性內容的電郵。當其時答辯人是投訴人工作機構的顧問，而投訴人是該機構受僱職員。答辯人在專業及教學上，有督導/指導的角色。
>
> -答辯人出現在投訴人所在的營地等待投訴人至深夜。
>
> -答辯人在投訴人生日時不請自來出現在投訴人辦公室，此後還託人送上鮮花到投訴人辦公室。
>
> b. 紀律委員會審閱了答辯人發送給投訴人的相關電郵，認爲任何一個合理的普通人都會認爲該等電郵的內容不雅、具侮辱性和性意味。而答辯人對所有呈上委員會的電郵及訊息之真實性沒有任何異議。紀律委員會因此接納投訴方的陳詞與證據作出事實判斷，即答辯人從2008 年 5 月起，用其於香港受 [僱] 機構的工作電郵郵箱，向投訴人發送了一系列附有不雅內容、具有侮辱性和性意味的電郵。答辯人的行爲極爲不專業，亦不尊重同工和所屬機構。

[13] Paragraph 21(1) of the appellant's skeleton submissions.

[14] Examples mentioned at paragraph 21(2) of the appellant's skeleton submissions.

c. 答辯人承認他清楚知道投訴人不願和他保持親密的男女關係。答辯人亦承認自己明白發送的電郵內容和持續發送此類電郵的行爲不妥。答辯人辯稱自己當時‘傻傻哋’,希望與投訴人重修舊好。至於爲何用工作電郵郵箱發送內容不恰當的電郵，答辯人辯稱他不熟悉電腦，沒有自己的私人郵箱。

d. 紀律委員會在考慮所有相關證據后一直認爲，答辯人罔顧投訴人的意願，發送內容使人反感的涉及性的電郵，令投訴人感到冒犯、侮辱或威嚇，屬於騷擾。即使答辯人認爲自己與投訴人曾經是戀人，且當其時受失戀困擾，但這些理由不能將答辯人的行爲合理化。

e. 鑒于上述原因，紀律委員會一致認爲，答辯人用其於香港受 [僱] 機構的電郵郵箱向投訴人發送附有不雅內容、具有侮辱性和性意味的電郵，此等行爲不符合社工與其同工、所屬機構、專業及社會建立專業關係時的道德行爲標準，其嚴重性已構成在專業方面有失當或疏忽，屬於社會工作者注冊條例第 25（1）（a）條所規定的違紀行爲” (emphasis added)

54. Upon adopting this, the Board then concluded in the Board Decision as follows:

“註冊局的最後裁決

註冊局於 2019 年 7 月 15 日舉行的會議，審議上述報告。當中，紀律委員會主席鄧之皓先生出席會議，闡述報告內容及回答註冊局成員查詢。註冊局認為紀律委員會已依照「紀律程序規則」就個案 479 號有關 [the appellant] 的投訴進行了紀律聆訊，應用了恰當的法律原則處理並考慮各項指控、事實和雙方所提出的證據及陳詞，以致所達成的結論，與證據相符，註冊局對報告內容並無異議；故此，註冊局在會議上通過及同意採納上述紀律委員會的地告，並作出最後裁決，裁定 [the appellant] 在投訴中有關他使用當其時於香港受僱機構的電郵向投訴人發送不雅、具有侮辱性和性意味內容的電郵的行為，屬於社會工作者註冊條例第 25(1)(a)條所規定的違紀行為裁定投訴人針對該項行為的投訴成立，而針對其他行為的投訴不成立” (emphasis added).

55. These parts of the Board's Decision must be read objectively together and as a whole. Once so read, in particular those parts underlined in the above quotes, it is clear to us that the appellant's "culpability" as found by the Board is fundamentally based on the inappropriate *nature* of the emails which were sent by the appellant *when he was an advisor to the organization employing the Complainant*[15]. The reference to the fact that those emails were sent from the Staff Email Account is no more than a reference to the background fact as to the source of the emails. The finding of professional misconduct, properly understood, is *not* based on in any material or substantive way the use of the Staff Email Account *per se*.

56. At the hearing, Mr Fan has also relied heavily on the part of paragraph 5(2)(b) of the Board's Decision, which stated "紀律委員會因此接納投訴方的陳詞與證據作出事實判斷，即答辯人從 2008 年 5 月起，用其於香港受 [僱] 機構的工作電郵郵箱，向投訴人發送了一系列附有不雅內容、具有侮辱性和性意味的電郵", to support his contentions that the conviction was based primarily on the use of the Staff Email Account.

57. This does not assist him, since (as explained above) he has again taken the reference to the use of the Staff Email Account in this paragraph out of context. Even simply reading this paragraph by itself, and not as a whole (as it should be), the Board in fact concluded that, in view of the emails that were sent by the appellant which the Committee considered to be inappropriate in nature ("紀律委員... 認爲任何一個合理

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[15] There is no dispute that the appellant was an advisor to the organization (ie, the Foundation) which also employed the Complainant. See: Form 2 submitted by the appellant during the disciplinary proceedings.

的普通人都會認爲該等電郵的內容不雅、具侮辱性和性意味”), the appellant’s actions were therefore unprofessional (“答辯人的行爲極爲不專業”), disrespectful to his co-worker (“亦不尊重同工”), and disrespectful to his organization (“亦不尊重... 所屬機構”).

58. Further and in any event, we would also reject these two grounds of appeal for the following reason.

59. Even if we had agreed (which we do not) that the conviction was also premised materially on his use of the Staff Email Account in sending out the Offending Emails, and that was a basis that had not been made clear to him in the charge, the appellant had to show that he was prejudiced as a result of this before he could validly challenge the Board’s Decision. *Cf*: *Leung Fuk Wah Oil v Commissioner of Police* [2002] 3 HKLRD 653 at [36] - [41] and [75].

60. However, as confirmed by Mr Fan at the hearing, there is simply no evidence, and the appellant also has not sought to adduce any such evidence, to show that at the time of the complained conduct his service agency would permit or condone the appellant to use the Staff Email Account to send out emails containing those objectionable contents as contained in the Offending Emails. In other words, the appellant’s preparation for his defence against the charge would not have been any different. When pressed, Mr Fan is also unable to pinpoint what other specific prejudice the appellant had suffered by reason of the alleged “new” case made against him.

61. In the premises, and for the above reasons, we reject Grounds 2 and 4.

D3.3 Ground 3

62. The appellant's complaint under this ground is related to the Referral Decision whereby the two members decided to refer the Complaint to the Board despite the 2-year time bar under section 25(3)(a) and (b).

63. We agree with Ms Lau, counsel for the Board, that this ground is without merit as the Referral Decision is not part of the Board's Decision that is the subject of this appeal.

64. The present appeal is brought under section 33 of the SWRO, pursuant to which this Court is restricted to hearing only appeals against "(a) any decision made in respect of him under section 19(1), 20(4) or 27(8); or (b) any disciplinary order made in respect of him". The Board's Decision and the consequential disciplinary order are ones made under section 27(8) of the SWRO.

65. However, the Referral Decision is not a decision made under section 19(1) or 20(4) of the SWRO but made under section 25(3)(a). There is no provision in the SWRO to allow an appeal from the two members' decision to extend time, whether to the Board or to this court.

66. At the hearing, Mr Fan argued that there is implied jurisdiction for the Board to decide on the extension of time. We cannot

agree. The relevant provisions on the powers of the Board and disciplinary committee are clear, which are restricted to advising or deciding on "whether the disciplinary offence complained of has been committed." See: sections 25(4), 27(7) and 27(8) of the SWRO. There is also no necessity to imply such a jurisdiction, as it must be open to the appellant to seek to judicially review the Referral Decision (if such public law grounds exist) given the absence of an appeal procedure as explained above.

67. In the premises, the Referral Decision is not and cannot be part of the Board's Decision, which is the only subject matter of this appeal. This court has no jurisdiction to deal with it. Ground 3 should be rejected on this basis alone.

68. For completeness, we shall also briefly deal with Mr Fan's argument based on legitimate expectation advanced under this ground in the Notice of Appeal and his skeleton submissions without any further elaborations at the hearing.

69. The appellant cites the doctrine of legitimate expectation in support of his argument under Ground 3 at paragraph 4(4) as follows[16]:

> "Further, by publishing Case No. 13 of *Rethinking on Professional Conduct of Social Workers - Casebook of Disciplinary Inquiries* in 2009, the Board has created a legitimate expectation that the Board will not accept and entertain a complaint of any act giving rise to a disciplinary offence upon expiry of 2 years from the date on which the complainant has had actual knowledge of the disciplinary offence complained of in the absence of any special

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[16] Notice of Appeal at paragraph 4(4).

> circumstances which explain the delay in making the complaint."

70. This ground has been further advanced in the written submissions at paragraph 25 as follows:

> "In Case No. 13 ('**Case No. 13**) of [**A#9**] Rethinking on Professional Conduct of Social Workers – Casebook of Disciplinary Inquiries ('the **Casebook**'), the Board accepted the Disciplinary Committee's recommendations and dismissed the complaint on the ground of the 2-year time bar. Admittedly, the Casebook does not enjoy the status as a rule of law. However, by publishing the Casebook, the Board being **the prosecuting authority** effectively **represented to public** (including RSWs and Tang), and **created a legitimate expectation**, that:-
>
> (1) The Board would consider the time bar of 2 years under section 25(3).
>
> (2) The Board would not accept and entertain a complaint of any act giving rise to a disciplinary offence upon expiry of the limitation period of 2 years without special circumstances."

71. This is again a plainly misconceived contention.

72. No authority or material has been advanced by Mr Fan at all to support the argument that the "Case No. 13" somehow created a legitimate expectation that the Complaint would not be referred to the Board notwithstanding the Complaint's explanations for the delay. But more importantly, and in any event, "Case No. 13" is plainly distinguishable on the facts from the Referral Decision: as stated in the Case Summary of "Case No. 13", the complainant in that case "failed to provide a clear explanation of his delay in filing the complaint". This is totally different from the present case where the Complainant had provided

the reason for her delay, which reason had been accepted by the two members based on the facts of the present case[17].

D3.4 Ground 5

73. Ground 5 argues that the sending of the Offending Emails did not engage a professional respect in the context of a registered social worker. In support, Mr Fan has advanced the following arguments.

74. First, he says the finding of misconduct was based on the appellant's use of the service agency's email account, ie, the Staff Email Account, but the service agency for which the appellant was working had not made any complaint about that.

75. Second, the Committee and the Board have overlooked that, at all material times, the appellant was *not* dealing with the Complainant in the capacity of a registered social worker or in the professional social work context, in that:

(1) When the appellant was committing the complained acts, the appellant and the Complainant were a former couple. In any event, the Offending Emails were merely private correspondence between the appellant and the Complainant. At all material times, the appellant was acting in his private capacity which was entirely unrelated to the professional respect of a registered social worker.

(2) The Complainant was not a client of the appellant or the appellant's service agency at all. Nor was the Complainant

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[17] See [24] above.

A B C D E F G H I J K L M N O P Q R S T U V margin letters omitted

the appellant's colleague. The Complainant did not co-work with the appellant in the professional context or was not otherwise in professional contact with the appellant. *Benjamin Mark Herbert*, which involved sexual harassment by the registered veterinary surgeon against his employee by sending mobile phone text, should be distinguished.

(3) The Complainant was not a supervisee, student or trainee or a person in some other capacity over whom the appellant exercised professional authority as a registered social worker. The appellant had no professional authority over the Complainant at all.

(4) When the appellant sent the Complainant those emails in May 2008, the Complainant had just unilaterally ended her relationship with the appellant in January 2008, unlike the victim (Ms Mendoza) in *Benjamin Mark Herbert* who had no such relationship with the veterinary surgeon at all.

76. Third, the Committee and the Board have failed to recognise that the commission of the complained acts is not in breach of any of the provisions under the Code of Practice as approved by the Board under section 10 of the SWRO or the Guidelines on the Code of Practice for Registered Social Workers ("the Guidelines"):

(1) The complained acts did not involve the professional requirements related to the profession prescribed by the Code and the Guidelines in specific relation to professional responsibilities (paragraphs 37 - 39 of the Code), competence (paragraphs 40 - 42 of the Code), respect (paragraph 43 of the Code), representation (paragraph 44 of the Code), independent practice (paragraph 45 of the Code), professional

development (paragraphs 46 - 47 of the Code) and call to duty (paragraph 48 of the Code).

(2) The complained acts did not involve the professional requirements related to society prescribed by the Code and the Guidelines (paragraphs 49 - 53 of the Code).

77. There are no merits in these contentions.

78. In relation to the first contention, it falls away for the reasons we have explained above in rejecting Grounds 2 and 4.

79. In relation to the second and third contentions, they are also misconceived for the following reasons.

80. The appellant was charged to have committed a disciplinary offence under section 25(1)(a) of the SWRO in having committed misconduct or neglect in "*any professional respect*."

81. As mentioned at [43] - [44] above, it has been established in *Benjamin Mark Herbert* that, for that purpose, the professional body dealing with a disciplinary complaint is vested with a broad purview to decide whether certain complained conduct is misconduct in a professional respect. The professional body is not restricted to only looking at or taking into account conduct occurring within the practitioner's work only, nor is it restricted to transgressions of matters set out expressly in the relevant professional code of practice. Further, in deciding whether certain conduct is misconduct in a "professional respect", it can also look into conduct

which in its professional view would damage the reputation of the profession[18].

82. In the present case, the appellant was the advisor of the Foundation which also employed the Complainant at the material time when the Offending Emails were sent. The appellant's appointment as advisor was obviously made on the basis of his social work experience and expertise.

83. In any reasonable view, on that basis, it must be open to the Board to find that the appellant's conduct in sending the Offending Emails to another person working for the organization of which he was advisor was misconduct in a professional respect.

84. Further, as observed in *Benjamin Mark Herbert,* the mere fact that there was no breach of the Code of Practice does not absolve the appellant from being found to have committed professional misconduct[19]. This is particularly so in the present case, since (as pointed out by Ms Lau) the Code of Practice and the Guidelines are only intended to be a practical guide but not a complete framework providing for all professional conduct (and thus what amount to misconduct) of a social worker. See section 10(1) of the SWRO[20], and the Foreword of the Guidelines[21]. The

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[18] Mr Fan's attempt to distinguish *Benjamin Mark Herbert* on the facts is neither here nor there, since what have been observed by Yuen JA as quoted at [43] and [44] above are matters of principles relating to what, as a matter of construction, do the statutory words "in a professional respect" mean and include.

[19] See [43] above.

[20] Which provides that the code of practice is for the purpose of "providing *practical guidance* in respect of professional conduct of registered social workers (including ethical matters relating to such conduct". (*emphasis* added)

[21] Providing relevantly that as the Guidelines is "a reference document, it cannot exhaust all possible circumstances or scenarios".

appellant's submission that the use and sending of the Offending Emails were not in breach of the Code of Practice does not take him anywhere. As explained in paragraphs 20.4 - 5 of *Benjamin Mark Herbert*, misconduct in a professional respect includes personal behaviour of such a character and degree of seriousness that his disciplinary body reasonably determines would damage the reputation of his profession when it is committed by a person of that profession.

85. Finally, the appellant's contention that the Board had "overlooked" the fact that the parties were formerly a couple is simply factually wrong. The Board was clearly aware of that and had taken it into account, but concluded that the prior relationship could not justify the complained conduct. Paragraph 5(2)(d) of the Board's Decision states:

> "d. 紀律委員會在考慮所有相關證據 [後] 一 [致] 認爲，答辯人罔顧投訴人的意願，發送内容使人反感的涉及性的電郵，令投訴人感到冒犯、侮辱或威嚇，屬於騷擾。即使答辯人認爲自己與投訴人曾經是戀人，且當其時受失戀困擾，但這些理由不能將答辯人的行爲合理化。" (emphasis added)

86. In any event, one simply cannot see how a former relationship could in any objective and reasonable view justify the appellant's repeatedly sending out emails with contents which are rightly held to have caused the Complainant to feel violated (感到冒犯)、insulted (侮辱) or threatened (威嚇), in particular when the Complainant had repeatedly asked him to stop doing so. It is plainly open to the Committee and the Board to arrive at that conclusion despite the former relationship.

87. Ground 5 must also fail.

D3.5 Ground 6

88. The appellant contends, in Ground 6, that the sending of the Offending Emails did not amount to misconduct or neglect as (a) the Board (and the Committee) had misunderstood the proper context, (b) there was a failure to specify which emails that were said to be indecent, insulting and sexually related, and (c) insufficient reasons had been given for the conclusion that the emails were of such nature.

89. There is no merit in these contentions. As mentioned above at [42], this court in hearing an appeal from a professional disciplinary decision should accord an appropriate measure of respect to the professional body's decision on whether the failings amount to professional misconduct, although it ought not defer to the professional body's decision more than what is warranted.

90. Bearing this principle in mind, in our view, given the undisputed facts that (a) the contents of the Offending Emails sent by the appellant to the Complainant included images of naked persons; images of persons exposing the lower body; and images depicting jokes relating to nudity and/or the genital area, (b) the Complainant had on no uncertain terms ended their prior intimate relationship, (c) during the period when the appellant sent her the Offending Emails, the appellant was an advisor to the social work organization which employed the Complainant, in any reasonable view, the Board was plainly entitled to come to the conclusion that the sending of the Offending Emails was conduct of such a character and degree of seriousness that it reflected adversely on the appellant's profession, to the extent that it constituted misconduct.

E. CONCLUSION

91. We rejected Grounds 2 - 6 for the above reasons. In the premises, Ground 1 must similarly fail. It is therefore also not necessary for us to deal with the Amended Respondent's Notice.

92. We accordingly dismissed the appeal.

93. There is no reason why costs should not follow the event, and we ordered that costs of the appeal shall be paid by the appellant to the Board, and be summarily assessed.

94. The Board has asked for a total sum of $351,800 in its statement of costs[22].

95. Of the $351,800: (a) $231,800 represents costs incurred by the solicitors in preparing for the appeal (including professional works for communications, preparation of documents, perusal of documents, preparation for and attending the hearing) and disbursements; and (b) $120,000 represents counsel's fees (with $80,000 as counsel's brief and $40,000 as her fee for drafting and amending the Respondent's Notice).

96. At the hearing, Mr Fan objected to the statement of costs on these bases. He contended that, as the solicitors had been involved since the disciplinary hearing, the amounts now claimed by the Board's solicitors for incurring 33 hours for communication ($128,700) and 26 hours for

[22] Dated 23 August 2021.

professional work ($101,400) are plainly excessive. He submitted that these should be halved.

97. As to counsel's costs, Mr Fan took issue with her fee incurred for amending the Respondent's Notice ($40,000). He submitted that it was unnecessary. Ms Lau in response submitted that the amendments to the Respondent's Notice were due to the fact that the transcript of the hearing of the inquiry was only made available to her shortly before she was asked to amend and she had to spend time on it.

98. We agree that the time spent by the solicitors for communication and professional work is on the high side, given that this case is not unduly complex and they would have had a certain degree of familiarity with the papers by the time the matter came on appeal. We would summarily reduce it to a total of $134,300[23].

99. We accept the explanation of Ms Lau in respect of the fees incurred for amending the Respondent's Notice. We therefore allow counsel's fee in full[24].

100. We accordingly summarily assess the Board's costs to be $254,300 ($134,300 + $40,000 + $80,000).

[23] $132,600 (34 hours) for communications and professional work, and the full claimed amount of $1,200 for manual work and $500 for disbursements.

[24] Brief fee of $80,000 and drafting fee of $40,000.

F. APPOINTMENT OF A LEGAL ADVISOR IN FUTURE DISCIPLINARY PROCEEDINGS

101. There is one last thing we would like to mention.

102. In this appeal, the grounds of appeal and the submissions made in support thereof arise from the context that the charges as drafted against the appellant were not well particularized, and the Complaint was laden with voluminous documents and annexures[25]. These might have contributed to the appellant's arguments as advanced that the finding of professional misconduct was premised on matters not covered by the charges.

103. In this respect, we understand from the parties that the Board was not assisted by a legal adviser in the present case. We however note that section 28 of the SWRO provides that the Board may appoint a legal practitioner to advise on law and procedure in disciplinary proceedings.

104. There could be grave implications arising from disciplinary proceedings, and the outcome of such proceedings unquestionably will affect the professional livelihood and reputation of a practitioner. Therefore, serious consequences are at stake.

105. In the premises, in our view, it is in the best interest for all parties to have clear and concise formal charges formulated by the Board, particularizing the bases of the charges and pinpointing the principal documents that it is to rely on to support the charges, so as to avoid any

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[25] See [20] - [23], [26] and [34] above.

potential confusion or misunderstanding between the parties on what is the case that a respondent has to answer.

106. We therefore urge that the Board should in the future seriously consider appointing a legal adviser to advise it in relation to disciplinary proceedings to ensure that well formulated charges can be presented against a respondent to avoid wasting unnecessary time and costs in arguing on what are or are not included in the relevant charges that a respondent is required to answer.

(Peter Cheung)	(Maria Yuen)	(Thomas Au)
Justice of Appeal	Justice of Appeal	Justice of Appeal

Mr Alex Fan, instructed by Wat and Co, for the appellant

Ms Queenie Lau, instructed by Chan and Cheng, for the respondent