Law Society of Singapore v Chung Ting Fai
[2006] SGHC 167

Case Number : OS 866/2006, SUM 2724/2006

Decision Date : 27 September 2006

Tribunal/Court : High Court

Coram : Andrew Ang J; Chan Sek Keong CJ; Andrew Phang Boon Leong JA

Counsel Name(s) : Irving Choh Thian Chee (Rajah & Tann) for the applicant; C R Rajah SC (Tan Rajah & Cheah) for the respondent

Parties : Law Society of Singapore — Chung Ting Fai

Legal Profession – Show cause action – Respondent advocate and solicitor acting for client in divorce proceedings – Respondent failing to advise client on availability of appeal mechanism before time frame for filing appeal expiring – Respondent preparing affidavit in support of extension of time to file appeal – Respondent knowingly preparing and advising client to sign affidavit containing false details – Whether respondent's conduct amounting to misconduct unbefitting an advocate and solicitor – Appropriate sentence in light of respondent's public service – Sections 83(1), 83(2)(h) Legal Profession Act (Cap 161, 2001 Rev Ed)

27 September 2006

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 This was an application by the Law Society of Singapore ("the Law Society") under s 98(5) of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act") to make final an order to show cause. Having heard the submissions of the respective parties, we granted the application at the conclusion of the hearing and ordered the respondent to be suspended from practice for a period of one year and to bear the costs of the proceedings before us. We now give the detailed grounds for our decision.

The charge

2 The case before us involved a sole charge against the respondent pursuant to s 83(2)(*h*) of the Act. So as to set the case in its appropriate context, it would be of significance to note that two charges had initially been preferred against the respondent, though only one charge was ultimately proceeded with. The first charge, as formulated by the Law Society, reads as follows:

> You,
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> Chung Ting Fai
>
> Admission No. 95/1989
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> are charged that you, on or about 15 January 2004, whilst practising as an Advocate & Solicitor of the Supreme Court of the Republic of Singapore with Messrs Chung Tan & Partners at 50 Armenian Street #03-04 Wilmer Place, Singapore 179938, did act against the clear instructions of Mr Lim Leng Koon @ Sek Zhen Chi in that you failed to obtain his consent on the terms of the draft Order of Court before filing the same in Court and you have thereby acted in contravention of Section 83(2)(h) of the Legal Profession Act (Cap 161).

3 For reasons that we will elaborate upon later, at the start of the hearing before the

Disciplinary Committee of the Law Society ("DC"), counsel for the Law Society adopted the view that there was no basis upon which to proceed with the first charge and consequently withdrew it. Accordingly, the DC proceeded to hear evidence only in relation to the second charge, which reads as follows:

> You,
>
> Chung Ting Fai
>
> Admission No. 95/1989
>
> are charged that you, on or about early March 2004, whilst practising as an Advocate & Solicitor of the Supreme Court of the Republic of Singapore with Messrs Chung Tan & Partners at 50 Armenian Street #03-04 Wilmer Place, Singapore 179938, did prepare and advise Mr Lim Leng Koon @ Sek Zhen Chi to sign and attest a false Affidavit for use in a Court of Law and you have thereby acted in contravention of Section 83(2)(h) of the Legal Profession Act (Cap 161).

4 In the interest of completeness, it should be noted that the salient parts of s 83 of the Act read as follows:

> **Power to strike off roll or suspend or censure**
>
> **83.**—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding 5 years or censured.
>
> (2) *Such due cause may be shown by proof that an advocate and solicitor —*
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> …
>
> (*h*) *has been guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession;*
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> …
>
> [emphasis added]

5 After hearing evidence adduced on behalf of the Law Society and the respondent, the DC found that cause of sufficient gravity existed for disciplinary action to be taken against the respondent pursuant to s 83 of the Act and the present application was taken out accordingly under s 98(5) of the Act against the respondent to make absolute an order to show cause.

Background facts

6 At the outset, we note that while some parts of the factual matrix that have led to these proceedings are based on conflicting testimonies adduced by the Law Society and the respondent and therefore engender dispute, the salient facts that the charge was primarily predicated upon are straightforward and not disputed.

7 The respondent is an advocate and solicitor of the Supreme Court of Singapore of about 16 years' standing, having been called to the Bar on 14 March 1990. At all material times, he was the managing partner in the firm of M/s Chung Tan & Partners ("the firm").

8 The present proceedings stem from the respondent's actions while acting for one Lim Leng Koon alias Sek Zhen Chi ("Lim") in divorce proceedings from his wife, Hay Mee Kee ("Hay"). When the respondent was initially retained by Lim, on or about 17 October 2002, he had been instructed to consent to custody and care and control of their child to be given to Hay, but to contest all the other orders that were to be made, *ie*, the division of matrimonial assets as well as the quantum of maintenance (if any) that would be payable to Hay and their child.

9 During the course of the respondent's retainer, Hay had issued an interim maintenance summons against Lim ("the summons"). In response, the respondent filed two affidavits ("the previously-filed affidavits") on behalf of Lim. The summons was eventually resolved after it was agreed between the parties that Lim would pay an agreed sum for the maintenance of their child and an agreed quantum for costs of the hearing.

10 The decree *nisi* for the divorce was eventually obtained on 23 September 2003. Consequently, the ancillary matters in relation to the divorce proceedings were scheduled to be heard on 15 January 2004 ("the hearing"). Though nothing turns upon such a factual disagreement, it may be useful to note that Lim alleges that he was not informed of the hearing beforehand while the respondent avers that Lim had been so informed. However, the respondent admits that no further instructions had been taken from Lim for the purposes of the hearing as he felt that the previously-filed affidavits would have been sufficient for the judicious disposal of the matter.

11 In any event, in accordance with Lim's *initial* instructions, at the hearing, one of the firm's then legal assistants, Toh Han Pin ("Toh"), consented to custody and care and control of the child to be awarded to Hay, but contested the division of matrimonial assets as well as the quantum of maintenance that was to be payable to Hay and their child. At the end of the hearing, District Judge Jocelyn Ong ("the trial judge") made an order in relation to the ancillary matters ("the Order"). As the actual text in para 5 of the Order played an integral role in how the dispute between the respondent and Lim arose, it would be useful, at this juncture, to reproduce the salient parts of para 5. Paragraph 5 reads as follows:

> 5. Orders Made (*By Consent*)
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> a. [Hay] to have sole custody, care and control of the child with reasonable access to [Lim];
>
> b. The matrimonial flat … be sold in the open market and the net sale proceeds if any thereof, after the payment of the outstanding loan to HDB [and other expenses], *be paid to [Hay] solely. In the event that the matrimonial flat is sold at a loss, such loss will be borne by both parties equally*.
>
> c. [Lim] to pay maintenance of $500.00 per month for the child of the marriage with effect from the date of the Order of Court. …
>
> d. [Lim] to pay maintenance of $250.00 per month for [Hay] with effect from the date of the Order of Court. …
>
> [emphasis added]

12 Given the overarching placing of the words "Orders Made (By Consent)" in para 5, a literal reading of the Order would convey the distinct, if nonetheless mistaken, impression that all the four

orders made by the trial judge had been made by consent. As already noted earlier, this was not the case and the only order that had not been contested had been the issue of sole custody, care and control. According to the respondent, the error was a result of incorrect drafting of the draft order by a secretary in the firm: apparently, the secretary concerned had relied upon Toh's notes which appeared to allude to an understanding that all the orders were made by consent. Unfortunately, neither side had noticed the mistake before the Order was engrossed and the error remained unbeknownst to either party until this matter arose.

13 Reverting to the facts that led to the drafting of the affidavit that represents the crux of the matter before us, the sequence of events between the date of the hearing and the promulgation of the said affidavit appears to be the subject of much dispute between the respondent and Lim. Accordingly, in order to place the ensuing discourse in its appropriate context, it may be useful at this juncture to set out each party's suggested version of what happened next *seriatim*, beginning with Lim's version.

Lim's version of events

14 According to Lim, he was not informed at all as to the nature of the Order, or, indeed, that an order had been given in relation to the ancillary matters. Instead, the first he even heard of the matter was when he received a letter dated 20 February 2004 from the respondent ("the 20 February letter") on 27 February 2004. This letter had detailed the import of the Order made by the trial judge at the hearing.

15 As he was unable to understand the import of the letter, Lim contacted the respondent, who purportedly explained, *inter alia*, that the Order dictated that the property be sold and that the proceeds be shared equally by both parties. As would be clear from para 5 of the Order, as reproduced at [11] above, such an elaboration would not be technically accurate, for the Order had dictated that *any profits* be given to Hay, while *any losses* would be shared equally by both parties. At that juncture, Lim accepted the Order (as he understood it from what the respondent had represented it to be) since the respondent had informed him that the firm had tried its best in contesting the matters as instructed.

16 However, a few days later, when Lim consulted a housing agent with a view to selling the matrimonial home in compliance with the Order, the agent read the contents of the letter and highlighted the inaccuracies in the respondent's purported description of the import of the Order.

17 When confronted with the housing agent's interpretation of the Order, Lim decided to go to the respondent's office on 1 March 2004 to clarify matters. As the respondent was not around, one of the firm's then-legal assistants, Rosina Lau ("Lau") attended to him. According to Lim, she admitted that the respondent had explained the 20 February letter wrongly and she eventually gave him a copy of the draft order for clarification. It would be useful to note that the draft order was, for all intents and purposes, *in pari materia* with the Order. As such, given the inadvertent mistaken placing of the words "Orders Made (By Consent)" as already alluded to earlier, Lim unsurprisingly became upset after reading the draft order, for it evoked the distinct possibility that the respondent had lied in suggesting that his firm had contested the matters for which the various orders had been made.

18 Accordingly, Lim made an appointment to see the respondent the next day to clarify matters. In the meeting, the respondent purportedly accepted that he had been negligent over the matter. He then asked to be given a chance to rectify matters and purportedly assured Lim that he would resolve the matter without any further charge by appealing against the Order on Lim's behalf. As Lim did not wish to further exacerbate matters, he eventually agreed to such a proposal, though he remained of

the view that since the matter had been the result of the respondent's negligence, the respondent should file the affidavit on his own.

The respondent's version of events

19 The respondent, unsurprisingly, denies the veracity of a significant proportion of the version of events as articulated by Lim. Instead, he averred that a few days after the Order had been given, he had called Lim and informed him over the telephone as to the contents of the Order, though he was unable to confirm whether Lim had fully appreciated the full import of the Order at that time. He had even asked Lim to come to his office to discuss the Order, during which the latter expressed his unhappiness over the failure on the respondent's part to inform him to attend the hearing and similarly expressed his deep disquiet with the concept that he could be bound by an order he did not endorse (via the affixing of his signature). After it was explained to him by the respondent that the firm had done its best to contest the matters as instructed, Lim eventually, albeit begrudgingly, accepted the Order.

20 It was only after he had obtained the 20 February letter that Lim once again complained as to its import and indicated that he was considering not complying with the Order, reverting once more to the position that an order to which he had not affixed his signature should not be binding on him. At that juncture, the respondent raised, *for the first time*, the possibility of an appeal which Lim eventually agreed to. The respondent agreed to waive the charges that may be incurred in filing for an extension of time as a goodwill gesture, but when Lim was told that he would be required to file an affidavit to achieve that end, he insisted that the respondent should be the one doing so as he had not done "a good job". In relation to the purported suggestion that Lau had admitted that the respondent had explained the 20 February letter wrongly to Lim, while the respondent admitted that Lau had given a copy of the draft order to Lim for clarification, this was solely to correct Lim's own misinterpretation of what the respondent had told Lim earlier.

21 The respondent then asked Lau to prepare a draft affidavit in support of the application for the extension of time for appeal ("the Affidavit") which he vetted for typographical mistakes but not in relation to mistakes in substantive content. While the respondent deviated from such a stance before us, it would be useful to note that before the DC, he averred that while he was aware that the Affidavit contained inaccuracies in relation to its substantive contents at the time, he was willing to retain such details in the Affidavit that had been passed to Lim as the Affidavit represented no more than a draft that was to be used to obtain further instructions. To that end, there had been no intention to file the Affidavit *as is*.

Our observations

22 While we note the existence of material distinctions between the testimonies that have been proffered by either party, we are of the view that nothing in the proceedings before us is predicated upon the acceptance of one version or the other. Accordingly, given that the DC did not consider the matter of which version of events to adopt, it would suffice for us to merely note that notwithstanding the veracity of either version, it is undisputed by either party that the matter of a possible appeal against the Order had not been raised by the time such time frame for appeal had lapsed on 29 January 2004.

23 In any event, reverting to the sequence of events, sometime in March 2004, Lim was asked to drop by the respondent's office so as to endorse the Affidavit. When Lim did so, he was attended to by Lau, who went through the import of the Affidavit with him. When the Affidavit prepared by the respondent was passed to Lim for his approval, Lim noted that paras 4 to 7 of the Affidavit ("the

disputed paragraphs") contained numerous inaccuracies. As the disputed paragraphs represent the pith of the proceedings before us, they merit setting out in full and they read as follows:

> 4. I did not instruct my solicitors to appeal within 14 days after the date of the Judge's decision as I misinterpreted the Order of Court. It was also during Chinese New Year time when I received the letter. I did not pay much attention as I do not understand English and I have to rely on a friend, a layman who is not legally trained to explain the contents of the letters from my solicitors for me.
>
> 5. When I received my solicitors' letter informing me of the outcome of the hearing, I asked my friend what is stated inside and he told me that the matrimonial flat is to be sold in the open market and after deductions of all the items mentioned in Paragraph 3 above, I am entitled to half share of the net sale proceeds.
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> 6. I did not seek clarification from my solicitors upon receipt of their letter as it was Chinese New Year and their firm was close [*sic*] for a week from 21 January 2004.
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> 7. It is only until recently when I had the chance to speak to my solicitors that I realize I have been misinformed of the terms in the Order.

24 It would be convenient at this point to highlight the fact that, notwithstanding the conflicting testimonies on both sides, neither party disputes the fact that the disputed paragraphs represent an inaccurate encapsulation of the events that had taken place after the hearing.

25 When Lim noted the presence of the inaccuracies inherent in the disputed paragraphs, he refused to endorse the Affidavit and took a copy of it back with him when he left on the basis that he wanted a third party to take a look at it.

26 Based on the above factual matrix, Lim lodged a complaint with the Law Society on 5 July 2004 in relation to the respondent's conduct in respect of the following matters:

> (a) a complaint of misconduct under s 85(1) of the Act in that the respondent had, contrary to express instructions, entered into a consent order in relation to all the ancillary matters and continued to insist that arguments had been made in relation to those matters, as well as preparing an affidavit with false particulars to support an application for the extension of time; and
>
> (b) a complaint of inadequate professional services under s 75B of the Act for, *inter alia*, failing to keep the complainant informed of the progress of the matters for which the respondent had been instructed.

Findings of the Disciplinary Committee

27 As alluded to earlier, two charges had been initially preferred against the respondent. However, at the commencement of the DC hearing, the respondent was able to adduce the notes of evidence from the Family Court which confirmed that the only part of the Order that had been entered into by consent was the matter of care and control of the children of the marriage. In the circumstances, the Law Society did not proceed with the first charge. The focus of the DC proceedings was therefore primarily in relation to evidence *vis-à-vis* the second charge.

28 At the end of the hearing, the DC found that cause of sufficient gravity existed for

disciplinary action in relation to the second charge. In light of the respondent's admission that he knew that the disputed paragraphs were inaccurate, the DC found that the fact that Lau had initially drafted the Affidavit was irrelevant, for the respondent was given the opportunity to, and indeed did, check and amend the document that she had drafted. Similarly, it was found that the absence of explicit advice to sign the Affidavit *as is* was irrelevant for it was implicit in the arrangement between the parties that the respondent would have carefully prepared an appropriate affidavit that would best facilitate the securing of an extension of time to appeal. Instead, the DC found that the respondent wanted to "lock" Lim in to a version of the history between the parties that would ensure that there would be no risk of a claim being made against him or his firm for negligence for failing to advise on the availability of the appeal mechanism. Accordingly, in the circumstances, the DC was of the view that the charge had been made out in that the respondent had prepared and advised Lim to sign what the respondent knew was an affidavit containing false details.

29 As to whether the respondent's act amounted to misconduct under s 83(2)(*h*) of the Act, it was found that the mere fact that the Affidavit had not been filed or signed was immaterial, for the duties of a solicitor to his client and to the court do not commence only when an affidavit is filed. Given the breach of the accepted standards of conduct as statutorily evidenced by rr 2(2), 25(*a*) and 59(*a*) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) as well as the patent conflict of interests that the respondent, in the circumstances, had placed himself in, the respondent had undermined the integrity of the profession in disregarding his client's best interests and contriving facts which were based on the self-serving desire to protect himself and mislead others – acts which amounted to misconduct unbefitting of an advocate and solicitor or as a member of an honourable profession.

Arguments before this court

30 Before us, counsel for the applicant, Mr Irving Choh, reiterated the findings of the DC, placing considerable emphasis on the DC's finding that the respondent's surreptitious conduct had been primarily motivated by the self-serving desire to fend off any possible negligence suit against himself and/or his firm. In a related vein, Mr Choh emphasised that the respondent had placed himself in a position of irreconcilable conflict of interest and instead of extricating himself from the matter when his position became untenable, he took steps to immunise himself from the possibility of any such suit in blatant disregard of his duties to his client. Mr Choh also highlighted that in doing so, the respondent not only attempted to mislead his client, but attempted to mislead the court and Hay as well. In summary, Mr Choh noted that the respondent's behaviour, seen in its totality, clearly undermined the integrity of the profession and clearly constituted misconduct under s 83(2)(*h*) of the Act.

31 Much unlike the stance taken by the respondent before the DC, counsel for the respondent, Mr C R Rajah SC, informed us at the commencement of these proceedings that the respondent had now accepted that he had knowingly drafted the false details in the Affidavit and that it was done with the aim of procuring Lim's authorisation for its attendant filing. Accordingly, in light of the respondent's variation in argument from the one that had been advanced before the DC, Mr Rajah, quite rightly in our opinion, admitted that there was only one course open for us to take and that was that the respondent should be dealt with under s 83(1) of the Act.

32 Notwithstanding that, Mr Rajah pleaded for leniency for the respondent *vis-à-vis* our determination of the attendant matter of the appropriate sanction to be imposed. Apart from an irrelevant allusion to the possibility that Lim's primary motivation to lodge the complaint had been his erroneous perception that para 5 of the Order in its entirety had been obtained by consent, such a plea appeared to have been predicated upon a two-fold consideration: first, that, contrary to the

DC's findings, the respondent was bereft of any self-serving objective when drafting the false details and had done so purely with the aim of preparing an affidavit that would best advance his client's (*ie*, Lim's) case, and second, that we take into account the numerous and significant contributions by the respondent in various capacities in society which, he argued, would serve as mitigating factors in our determination as to the appropriate sentence to be meted out here.

Our decision

33 In our view, it is, at the outset, crucial to consider the respondent's intentions in drafting the Affidavit as he did. If, as counsel for the Law Society appears to suggest, it had been proved that the respondent had drafted the Affidavit with the intention of avoiding a potential action by Lim against him and/or his firm in negligence, then there would, in our view, have arisen an inference that the respondent had drafted the Affidavit with dishonest intent in order to "lock in" his client as well as to deceive the court. If, however, the respondent had not drafted the Affidavit on the back of such an intention, this, in our view, would militate against a key plank in the case on behalf of the Law Society.

34 On a close perusal of the evidence that is before us, we find ourselves in agreement with Mr Rajah that the respondent had not been motivated by the desire to avoid a potential action by his client (Lim) in negligence in drafting the Affidavit in the manner he did. This is apparent even if we accept Lim's testimony at face value: according to him, he had no desire to appeal against the Order and had only done so, as we mentioned, reluctantly, after the respondent had advised him to do so.[note: 1] It was also his testimony that the respondent had told him that he (*ie*, the respondent) was in error but that it was still possible for him (the client) to lodge an appeal. In the circumstances, it appears to us to be highly unlikely that the respondent would have advised the appellant to appeal the matter if the motivations predicating such actions had been self-serving in nature. Indeed, in our view, especially given the context of the strained relationship between the parties, if the aim had been to further his own interest, what the respondent would have logically done in the circumstances would be to accept his client's instructions not to appeal (thereby making it more difficult for his client to bring a successful action against him and/or his firm). Alternatively, the respondent could have downplayed the chances of any such appeal in a bid to have Lim overlook his failure to inform his client (*ie*, Lim) of his right of appeal, or alternatively, to have filed an affidavit in his own name on behalf of his client.

35 As such, we are inclined to accept Mr Rajah's suggestion that the respondent had drafted the Affidavit in the manner that he did out of a misplaced zealousness in order to obtain an extension of time to appeal on behalf of his client. It is important to note that this by no means exonerates the respondent's conduct *vis-à-vis* the charge that had been put forth by the Law Society. While there was no evidence, in our view, of dishonest intent, given Mr Rajah's candid admission that the respondent had been "stupid and foolish" to draft the Affidavit in the manner he did, it appears to us to be painstakingly clear that the respondent's conduct amounted to improper conduct that bordered on recklessness. In the circumstances therefore, it is evident that the charge pursuant to s 83(2)(*h*) of the Act was made out and that due cause for disciplinary action had been shown.

The appropriate sentence

36 While disciplinary action must therefore be taken against the respondent for his transgression, in the absence of any countervailing considerations, it is important that the punishment meted out be proportionate to the degree of culpability on the part of the respondent. To that end, it is significant, in our view, that the charge against the respondent was premised (as we have seen at [3] above) on s 83(2)(*h*) of the Act (reproduced at [4] above); the other charge against the

respondent, which was ultimately dropped, was also premised on s 83(2)(*h*) of the Act. The clear implication of the preferring of the charge under this particular paragraph of s 83(2) appears to be that the alleged conduct of the respondent was not, in the view of the Law Society, beyond the pale. Indeed, as this court observed in the recent decision of *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] SGHC 143 at [79]:

> Turning, now, to s 83(2)(*h*), it will be seen that this particular provision is even broader than s 83(2)(*b*). As was pointed out by this court in *Law Society of Singapore v Ng Chee Sing* [2000] 2 SLR 165 at [40]:
>
> > Section 83(2)(h) of the Legal Profession Act is a catch-all provision which can be invoked when the conduct does not fall within any of the other enumerated grounds but is nevertheless considered unacceptable. It was stated in *Law Society of Singapore v Khushvinder Singh Chopra* [1999] 4 SLR 775 that unlike 'grossly improper conduct' in s 83(2)(b), 'conduct unbefitting an advocate and solicitor' is not confined to misconduct in the solicitor's professional capacity but also extends to misconduct in the solicitor's personal capacity. It follows that the standard of unbefitting conduct is less strict and, as stated in *Re Weare* [1893] 2 QB 439, a solicitor need only be shown to have been guilty of 'such conduct as would render him unfit to remain as a member of an honourable profession'.
>
> Reference may also be made, in this regard, to *Law Society of Singapore v Arjan Chotrani Bisham* [2001] 1 SLR 684 at [35].

It is, in fact, clear that s 83(2)(*b*), for example, is not only more specific but also relates to far more serious misconduct. The provision itself reads (in context) as follows:

> **Power to strike off roll or suspend or censure**
>
> **83.**—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding 5 years or censured.
>
> (2) Such due cause may be shown by proof that an advocate and solicitor —
>
> …
>
> (*b*) *has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as amounts to improper conduct or practice as an advocate and solicitor*;
>
> …
>
> [emphasis added]

37 Consideration should also be had to the fact that while the respondent did draft an affidavit that was inaccurate in some of its material particulars, the Affidavit remained in draft form and had not been filed. Needless to say, if it had been filed, the respondent's foolish action would have been consummated, and the result (albeit probably unintended) would have been a deception of the court. Looked at in this manner, the respondent's conduct was preparatory. While it would be mere conjecture to speculate as to whether the respondent would have had a change of heart and decide

eventually to file the Affidavit or otherwise, in the circumstances, having regard to the fact that the respondent is facing serious charges that have therefore to be proved beyond a reasonable doubt (see, for example, *Re an Advocate and Solicitor* [1978–1979] SLR 240 at 249, [21]; *The Law Society of Singapore v Lim Cheong Peng* [2006] SGHC 145 at [12]; and *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* ([36] *supra*) at [6]), it is, in our view, only fair to the respondent that we take into account (in his favour) the fact that the Affidavit had not been finalised and filed.

38 We also note the glowing testimonials that have been submitted on behalf of the respondent, testimonials which evidence the respondent's considerably positive impact in so far as the sphere of public service is concerned. All this was not controverted by Mr Choh, who in fact left the issue of sanction, in the event that the respondent was found liable, to the court itself.

39 It is our view that public service, in particular, ought, *ceteris paribus*, to be a mitigating factor. Even if it takes place outside the legal arena (as it often does), the fact of the matter is that such service tends, as I put it recently in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* ([36] *supra*) at [86], to be "especially relevant in the light of the fact that they have enhanced the public well-being and do therefore correspondingly mitigate any harm that might result to the public interest as a result of the respondent's conviction under the [charges concerned]". That the public interest is of especial importance in the context of the legal profession is a fact that is indelibly etched into the legal landscape. Again, in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani*, it was observed (at [3]) that "the public interest in deterring both the individual solicitor and other like-minded solicitors from similar conduct is paramount". That case had cited, in support, the following observations by Yong Pung How CJ (as he then was) in *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696 at [11]–[12]:

> It is not simply a question of punishing the solicitor concerned. A further consideration must be what course should the court take to protect the public and to register its disapproval of the conduct of the solicitor. In the relevant sense, the protection of the public is not confined to the protection of the public against further default by the solicitor in question. It extends also to the protection of the public against similar defaults by other solicitors through the court publicly marking the seriousness of what the instant solicitor has done. The orders made must therefore accord with the seriousness of the default and leave no doubt as to the standards to be observed by other practitioners. In short, the orders made should not only have a punitive, but also a deterrent effect.
>
> There are also the interests of the honourable profession to which the solicitor belongs, and those of the courts themselves, to consider. The administration of justice can only proceed on the basis that solicitors can place reliance upon the honesty of the solicitors with whom they deal. The public too must be able to repose confidence in a profession which plays so indispensable a part in the administration of justice. Similarly, the courts of this country must be able to depend on the honesty and integrity of all practitioners appearing before them and to expect that they will maintain the highest standards of personal honesty and integrity in their dealings with the courts.

In a similar vein, it was also observed in *Law Society of Singapore v Ong Ying Ping* [2005] 3 SLR 583 at [63] that "[t]here is, in fact, an inherent, irreducible and non-negotiable public interest in the administration of justice in its multifarious forms".

40 Given the importance of the question of public interest, as just set out above, it would only be right and fair that any conduct by the lawyer concerned that had the effect of *enhancing* the public interest ought also to be taken into account when deciding the appropriate sanction that

should be imposed on the errant lawyer. Caution should nonetheless be exercised in considering whether the enhancement of public interest can constitute a mitigating factor. In order to straddle the competing considerations of the need to protect the integrity of the legal profession and the weight to be given to the performance of public good, we are of the view that such factors can, and should, only be taken into account where doing so would not derogate from the paramount considerations of the protection of the public and the preservation of the good name of the profession: see, for example, *Re Knight Glenn Jeyasingam* [1994] 3 SLR 531 at 537, [18]. Simply put, this is only a factor and can indeed be rendered less significant or even nugatory should other more important factors dictate otherwise.

41 There is a *second* aspect for taking into account a lawyer's contributions *vis-à-vis* public service when ascertaining whether his or her sanction ought to be reduced. In a nutshell, such public service is simultaneously evidence of not only good character on the part of the lawyer concerned but also evidence of the (positive) potential that resides in him or her. The greater this good character and, hence, potential, the more likely the court is to accord a less severe sanction. Again, however, we would reiterate that this represents but one factor and would only be of probative value in the absence of other more compelling (negative) factors.

42 Indeed, whilst the first aspect might be said to focus on the positive consequences emanating *vis-à-vis* the *external public interest*, the second aspect might be said to focus on the positive consequences emanating *vis-à-vis* the *internal qualities and potential of the lawyer concerned*.

43 We would add that it would be both artificial as well as unfair to divorce the contributions of the lawyer concerned in his professional capacity from those in his extra-legal capacity. Apart from the fact that both types of contributions are equally important, the fact of the matter is that the law does not exist in a vacuum. Its very heart – focused as it is on the attainment of justice and fairness – is inextricably connected with the wider society. The practice of law, in other words, constitutes an interaction between the legal and the extra-legal, between the relevant legal rules and principles and the wider society for which they exist.

44 On a more *general* level, it is clear that *past* conduct can – and ought – to be taken into account in order to determine what order should be made: see *Law Society of Singapore v Ong Ying Ping* ([39] *supra*) at [70]–[71], applied in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* ([36] *supra*) at [89].

45 With these principles in mind, we now turn to consider the parties' respective submissions as to the appropriate punishment to be meted out. When asked about what would amount to a fair sentence to be imposed in this case, Mr Rajah suggested that, in the circumstances, a censure would be appropriate, hinging such a submission on the back of the decision of *Re An Advocate & Solicitor* [1962] MLJ 125, in which an advocate's indiscretions arising from a similar factual matrix had attracted the imposition of a censure. On his part, Mr Choh (as we have already observed) proffered no suggestion as to what, in the Law Society's view, would constitute a fair sentence, and left the determination of the matter open to us.

46 Turning to Mr Rajah's recommendation, it is evident that on a superficial analysis, the decision of *Re An Advocate & Solicitor* ([45] *supra*) appears to be of similar currency as the matter before us. Nonetheless, with respect, we are not inclined to agree with Mr Rajah that a censure would represent an appropriate punishment in these circumstances. Two reasons underlie our hesitance.

47 First, as the court in *Re An Advocate & Solicitor* ([45] *supra*) appeared to rightly appreciate,

the sentence meted out by the court there had been exceedingly low and would, in our view, be of little, if any, utility as a benchmark to follow. Indeed, upon a close perusal of *Re An Advocate & Solicitor*, it would appear to be distinctively clear that any such transgression should, in general, attract the more draconian penalty of a suspension or striking off. As Rose CJ commented in that case, at 126:

> As has been said so often, an advocate or solicitor is an officer of the Court and as such he owes a duty not only to himself and to his client but also to the Court. *And there is no doubt that in some cases of this kind the appropriate penalty would be either to strike off the offender (if it was a very bad case) or to suspend him for a period*. [emphasis added]

48 Second, and perhaps more importantly, the imposition of a mere censure in these circumstances would, in our view, send the wrong signal to the legal profession at large. Solicitors are entrusted by their clients to draft all sorts of documents, including affidavits on behalf of their clients. Indeed, it is common knowledge that many, if not most, affidavits of evidence-in-chief are prepared by solicitors. Whatever the vices and virtues of such a practice, given its undoubted prevalence, a more severe sentence (than that of a mere censure) would be warranted in this case so as to impress upon the legal profession not to put words into the mouth of their clients in order to mislead the court or to state untruths not borne out by the available evidence. We cannot emphasise enough that solicitors owe a duty to the court and they must discharge their duties in a manner consonant with their standing as officers of the court. On this ground alone, we are not minded to endorse the proposition that any attempt by an advocate and solicitor to mislead the court, even though it is a misguided attempt to assist a client, which in this case was aborted through the intervention of the client, should be punished with a mere censure. In any event, we note that *Re An Advocate & Solicitor* was decided in 1962 when the social conditions applicable to the practice of law were quite different. In the legal profession today, we expect the highest standards of conduct from officers of the court.

Conclusion

49 For the reasons above, and after having taken all the relevant factors into account, we deemed it to be appropriate, in the circumstances, to order that the respondent be suspended from practice for a period of one year and that he bear the costs of the proceedings before us.

50 On a concluding note, it perhaps warrants reiteration that if it were not for the exceptional circumstances that exist in the present proceedings, we would have been minded to impose a more severe sentence. Indeed, we should take this opportunity to make it clear that if we had found, instead, that the respondent had deliberately drafted the inaccurate affidavit in order to pre-empt legal proceedings against himself and/or his firm, or for some other self-serving reason, we would have had no hesitation to find the presence of a dishonest act which would, in all probability, warrant a striking off from the roll of advocates and solicitors.

[note: 1] See generally the Notes of Evidence at pp 16–17.

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