Law Society of Singapore v Seah Li Ming Edwin and Another
[2007] SGHC 35

Case Number : OS 2272/2006, SUM 5913/2006

Decision Date : 22 March 2007

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ; Kan Ting Chiu J; Andrew Phang Boon Leong JA

Counsel Name(s) : Wong Siew Hong (Infinitus Law Corporation) and Ganesh S Ramanathan (Karuppan Chettiar & Partners) for the applicant; Subhas Anandan and Sunil Sudheesan (Harry Elias Partnership) for the respondents

Parties : Law Society of Singapore — Seah Li Ming Edwin; Teo Kim Soon Danny

Legal Profession – Show cause action – Lawyers acting in conflict of interests – Lawyers enabling unauthorised person to undertake or carry on legal work at premises – Whether lawyers' conduct amounting to misconduct unbefitting advocate and solicitor – Appropriate sentence in light of lawyers' public service – Sections 83(1), 83(2)(h) Legal Profession Act (Cap 161, 2001 Rev Ed)

22 March 2007

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") pursuant to s 94(1) read with s 98 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act") for the respondents to show cause as to why they should not be dealt with under s 83(2)(*h*) of the Act. Having heard the submissions of the respective parties, we granted the application at the conclusion of the hearing and ordered both respondents to be suspended from practice for a period of 18 months. We now give the detailed grounds for our decision.

The charges

2 Four charges were initially preferred against the respondents. These were subsequently consolidated by the Law Society into two charges, which read as follows:

> First Charge:
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> That [the respondents], each of them as partners of Messrs Edwin Seah & K S Teo ("the Firm"), having acted for one Mr Alvin Yeo Ying Bao in or about September 2003 in relation to a road traffic accident along Sembawang Road on 29th August 2003, thereafter acted for one Mr Nanthakumar Baduil against the said Mr Alvin Yeo Ying Bao in the same matter while the said Mr Alvin Yeo Ying Bao was still a client of the Firm, and they have each of them thereby contravened Rule 31(1) of the Legal Profession (Professional Conduct) Rules and each of the Respondents are guilty of misconduct unbefitting an Advocate and Solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap. 161).
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> Second Charge:

That [the respondents], each of them as partners of Messrs Edwin Seah & K S Teo ("the Firm") on or about September 2003, knowing that one Mr Alvin Yeo Ying Bao was to attend at the Firm's premises with a view to instructing the Firm to act for the said Mr Alvin Yeo Ying Bao in relation to a road traffic accident along Sembawang Road on 29th August 2003 and being aware that one Mr Victor Chew Kia Heng would be present at the meeting, did not attend the said meeting, thereby leaving the said Mr Alvin Yeo Ying Bao to be attended by the said Mr Victor Chew Kia Heng, an unauthorized person within the meaning of the Legal Profession Act (Cap. 161) and thereby enabled the said Mr Victor Chew Kia Heng to undertake or carry on legal work in the premises of the Firm, to wit, by interviewing and photographing the said Mr Alvin Yeo Ying Bao, when the said Mr Victor Chew Kia Heng was not an employee of the Firm nor under the direct and immediate control of the Respondents, and each of the Respondents are thereby guilty of misconduct unbefitting an Advocate and Solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Cap. 161).

3 It would be apposite to highlight the salient parts of s 83 of the Act, which 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 —

…

(*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;

…

The facts

4 The first and second respondents are advocates and solicitors of the Supreme Court of Singapore of some eight and ten years' standing, respectively, at the date of the complaint resulting in the present proceedings against them. At all material times, both respondents were partners at M/s Edwin Seah & K S Teo ("the Firm").

5 At this juncture, it would be convenient to highlight that the respondents had admitted without qualification all the facts set out in the Law Society's statement of facts dated 24 March 2006, the relevant portions of which are summarised below.

6 The Firm acted for, *inter alia*, a group of family-owned and managed motor workshops, which included Southern Motor Pte Ltd ("Southern Motor"). The Firm represented the workshops' customers in accident claims involving property damage and/or personal injury suffered by these customers. Mr Victor Chew Kia Heng ("Mr Chew"), a representative from the workshops, regularly attended at the Firm's premises where he would review the files pertaining to the workshops' customers.

7 Mr Alvin Yeo Ying Bao ("the Complainant") had suffered personal injuries and consequential losses arising out of a road traffic accident on 29 August 2003 involving his motorcycle and two other

vehicles, including another motorcycle. Following the accident, the Complainant contacted Southern Motor, which referred the Complainant to the Firm to act for the Complainant in respect of his claims for personal injuries and for consequential losses, including damage to his motorcycle, as a result of the said accident.

8 Pursuant to the aforesaid referral, the Complainant visited the Firm in early September 2003 and was attended to by Mr Chew, who was at the Firm's premises attending to and reviewing the workshops' matters that day. The respondents were aware that Mr Chew was present, that the Complainant had an appointment with a view to instructing the Firm, and that Mr Chew might interact with the Complainant.

9 The respondents were not available and this enabled Mr Chew to proceed to interview the Complainant and to take instructions from him in the absence of the respondents. The Complainant narrated the events surrounding the accident and gave his instructions to Mr Chew, who proceeded to photograph his injuries after the Complainant agreed to engage the Firm's services.

10 In a letter to the Complainant dated 10 September 2003 signed by the second respondent, the Firm confirmed that it was acting for the Complainant in his claims relating to the said accident against the motorists or the insurers of the other two vehicles and that it had applied for the relevant documents from various parties. In a letter to the Complainant's insurer, Mitsui Sumitomo Insurance (S) Pte Ltd, dated 15 September 2003, the Firm informed the insurer that it was acting for the rider of the other motorcycle, one Mr Nanthakumar Baduil ("Mr Baduil"), in respect of the same aforesaid accident, claiming damages on behalf of Mr Baduil against the Complainant. The Complainant was unaware of the Firm's letter of demand, which was handled by the insurer. On 17 September 2003, the Firm sent a letter to the Complainant discharging itself from acting for him.

11 On or about 7 October 2003, the first respondent filed a writ of summons on behalf of Mr Baduil against the Complainant. The Firm served the writ on the Complainant on or about 9 October 2003. The Complainant then visited the Firm on or about 10 October 2003, when he was advised by Mr Chew to check with the Complainant's insurer. The Complainant then contacted his insurer and it was only then that he learnt and understood from his insurer that the Firm was acting for Mr Baduil against him in respect of the accident. The Complainant felt that he had been prejudiced as he had earlier given his instructions to Mr Chew, and he subsequently lodged a complaint against the respondents.

The Disciplinary Committee proceedings

12 Based on the above facts, a Disciplinary Committee ("DC") was appointed pursuant to s 90 of the Act to hear and investigate the complaints against the respondents on 5 November 2004.

13 At the hearing before the DC on 11 and 12 August 2005, the respondents pleaded guilty to the charges (at [2] above) and confirmed that they understood the nature and consequences of their guilty plea to both charges. They also admitted without reservation the Law Society's statement of facts dated 24 March 2006. The respondents were accordingly found guilty of both charges and the DC proceeded to determine, under s 93 of the Act, whether cause of sufficient gravity for disciplinary action existed under s 83 of the Act.

14 In mitigation, and in relation to the first charge of acting in conflict of interests, the respondents urged the DC to take account of the fact that the Firm was then relocating and upgrading its computer systems. Their online conflict search program was therefore not fully operational, thus precluding a computerised conflict search. The respondents also claimed to be of

the sincere belief that the Firm could continue acting for Mr Baduil as no detailed instructions were obtained from the Complainant, and submitted that their actions were not borne out of dishonesty or reckless disregard of the Complainant's interest, but rather out of a genuine belief that they were doing no wrong.

15 As for the second charge of enabling an unauthorised person to undertake or carry on legal work at their premises, the respondents admitted they did not properly supervise the actions of Mr Chew and admitted to their error unreservedly. However, in mitigation, they urged upon the DC that, without detracting from the offence, Mr Chew was essentially taking statements of fact from the Complainant in his role as "instructing client" for the purpose of instructing the Firm, and that they accordingly felt no need to overly supervise him.

16 After due consideration of all the facts and circumstances of the case, the DC concluded that the matters raised in the mitigation plea did not materially assist the respondents. Considering the first charge, the DC took the view that the incapacity of the online conflict search program was irrelevant to the charge and only served to explain why the conflict was not picked up sooner. Instead, the DC observed the crux of the matter to be the impropriety of continuing to act for one client after having been in conflict by acting for both parties in the same contentious matter. The DC expressed some concern regarding the respondents' failure to appreciate what should have been the proper course of action in a conflict situation such as the one that arose.

17 Regarding the second charge, the DC failed to see how the respondents could reasonably take the view that Mr Chew was the "instructing client", given that neither the workshops nor Mr Chew had any legal rights in respect of the claim to be made. The respondents had failed to ensure proper representation and had deprived the client of their qualifications and experience. They made no effort to be present despite being aware that Mr Chew might interact with the Complainant, who had an appointment with a view to instructing the Firm, and, moreover, acquiesced in the odd practice of enabling Mr Chew, who was neither an employee nor a lawyer, to review legal files comprising privileged information.

18 It was further noted by the DC that the Firm sent out a letter to the Complainant on 10 September 2003 confirming that it was acting for him, notwithstanding that the respondents had not even met or taken instructions personally from the Complainant, who had in effect engaged the Firm through Mr Chew without even having met the respondents. Finally, the DC astutely observed that the respondents' mitigation plea indicated awareness of the requirement of supervision and yet reflected a conscious decision not to "over supervise". In the light of the foregoing, the DC concluded that the respondents had in effect delegated part of their duties and functions as lawyers to Mr Chew, who was not an advocate and solicitor, thus constituting a dereliction of the respondents' duties as advocates and solicitors to their client, the Complainant.

19 Consequently, the DC found that cause of sufficient gravity existed for disciplinary action to be taken against both respondents pursuant to s 83 of the Act and the present application was taken out accordingly under s 98 of the Act against the respondents to make absolute an order to show cause.

The respondents' arguments with regard to sentence

20 In his written submissions on behalf of the respondents, Mr Anandan reiterated the mitigating factors canvassed before the DC. The unique circumstances of the case, the lack of antecedents, the lack of premeditation and the absence of any element of dishonesty were proffered as factors to support the suggestion of censure as an appropriate penalty. In addition, we were urged to take into

account and to give due weight to the background of the respondents, which included, *inter alia*, the following public service contributions:

(a) The first respondent was a volunteer lawyer with the Criminal Legal Aid Scheme ("CLAS") and did his part for the under-privileged whenever the need arose to do so. He was a founding member of the Association of Criminal Lawyers of Singapore ("ACLS"), sat on the committee of the ACLS and contributed greatly to ACLS's *pro bono* assistance scheme with the Community Court in the Subordinate Courts. Besides these contributions in the legal sphere, the first respondent assisted a Member of Parliament with his "Meet-The-People" sessions in 2000, and was a member of Singapore's softball team from 1988 to 2000.

(b) The second respondent was also a volunteer lawyer with CLAS from 1998 to 2000 and assisted the first respondent in CLAS matters whenever necessary. In addition, he had been a small claims mediator since 1996 and a mediator with the Ang Mo Kio Mediation Centre from 1998 to 2001. He had also been approached to act as a mediator at the Woodlands Community Mediation Centre.

21 Pursuant to the foregoing, and in his oral submissions before us, Mr Anandan further stressed that the respondents were very remorseful.

22 In so far as the first charge (relating to a conflict of interests) was concerned, Mr Anandan reiterated that the respondents thought that they were legally entitled to continue to act on behalf of Mr Baduil and that this was borne out of a genuine error of judgment rather than a reckless disregard of the Complainant's interest. They ought, he further conceded, to have consulted senior colleagues at the Bar or the Law Society.

23 In so far as the second charge (in relation to enabling an unauthorised person to practise law) was concerned, Mr Anandan stated that whilst Mr Chew, as the manager of the workshop, had some legitimate interest, it was wrong for the respondents to have permitted him (Mr Chew) to act in the way he did and that the respondents accepted that this was wrong. Mr Anandan further stated that this was the only instance when such misconduct had taken place.

The appropriate sentence

The public interest

24 Whilst it is true that the respondents' misconduct did not in fact result in any substantive damage or loss and did not relate to a situation as egregious as that found in other cases (for example, *Law Society of Singapore v Subbiah Pillai* [2004] 2 SLR 447, where the lawyer concerned was involved in a conflict of interests situation twice over and was generally in serious dereliction of his duties in a great many respects), we are nevertheless mindful of the *rationale* underlying the prohibition of such misconduct. In particular, we are unable to agree with Mr Anandan that the first charge was slightly less serious than the second. The first charge involved a breach of the rule proscribing a conflict of interests. The underlying rationale for such a rule is to ensure that the *trust* between lawyer and client is not compromised and that, on the contrary, the confidence of the client is in fact maintained. There is, indeed, a larger public interest that underscores such a rule. The legitimacy of the law in general and the confidence of clients in their lawyers in particular are of fundamental importance and will be undermined if such a rule is not observed. Indeed, the fact that a client may feel that he or she is let down or betrayed by his or her lawyer can be very damaging to the standing of the profession as a whole.

25 The second charge involved the proscription of the practice of law by unauthorised persons. Here, again, there is a larger public interest in ensuring that clients receive legal advice only from those duly qualified and authorised to carry on legal work. And here, too, public confidence in the legal profession as well as the legal process will be undermined if such misconduct is permitted. This larger public interest was also compromised by the respondents' misconduct in this regard in the present case.

26 In this regard, the following observations by Yong Pung How CJ, delivering the judgment of this court in *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696 at [11]–[12], are particularly apposite:

> 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.

27 This court has also observed, in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308 at [5], that:

> The *legitimacy* of the administration of justice in the eyes of the public cannot be gainsaid. Respect for the law as viewed through the lenses of the public is an indispensable element in the fabric of the system of justice. Indeed, the public constitutes the ultimate body of individuals for whose benefit the law and the legal system exist. To this end, anything which undermines public confidence in the competence and/or professionalism of lawyers must not – indeed, cannot – be permitted. [emphasis in original]

28 The respondents' conduct undoubtedly (and adversely) impacted on the public interest aspect of the profession and must be duly dealt with by the imposition of a sanction appropriate to the general and specific elements of deterrence aforementioned. However, without compromising the public interest element, this concern with deterrence should as far as practicable be tempered by due consideration of the mitigating factors unique to the respondents.

Mitigating factors

29 We note, however, that although their misconduct cannot be condoned, there was no evidence of dishonesty on the part of the respondents. Indeed, the respondents were charged under s 83(2)(*h*) of the Act. This is to be contrasted with a situation where charges are brought under other

provisions in s 83(2) of the Act (for instance, s 83(2)(*b*), which involves far more serious misconduct and which would traditionally include dishonest conduct that would, in turn, justify striking the lawyer concerned off the roll). Indeed, in this court's decision in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* ([27] *supra*), it was observed thus (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]:
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> > 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].

Reference may also be made to this court's decision in *Law Society of Singapore v Chung Ting Fai* [2006] 4 SLR 587 at [36].

30 The respondents also did not attempt to qualify their guilt (unlike, for example, the lawyer in *Law Society of Singapore v Subbiah Pillai* ([24] *supra*) who, whilst ostensibly pleading guilty at the first available opportunity, nevertheless attempted to qualify his guilt at several points before the Disciplinary Committee).

31 We also note the public service rendered by the respondents as enumerated above. Their contributions to the community in the legal and non-legal sphere (see above at [20]) are relevant in considering the appropriate sanction to be meted out to the respondents. As this court observed in *Law Society of Singapore v Chung Ting Fai* in the following passages that merit quotation in full ([29] *supra* at [39]–[44]):

> 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 [was put] recently in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* … 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. …
>
> 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* [[2005] 3 SLR 583] at [70]–[71], applied in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* ... at [89].

[emphasis in original]

The type of sanction to be meted out

32 In so far as guidance as to the specific sanction to be administered is concerned, the following (and oft-cited) guidance furnished by Sir Thomas Bingham MR (as he then was) in the English decision of *Bolton v Law Society* [1994] 1 WLR 512 at 518 is apposite:

Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him … Lapses from the required high standard may, of course, *take different forms and be of varying degrees*. The *most serious* involves *proven dishonesty, whether or not* leading to criminal proceedings and criminal penalties. In such cases the tribunal has *almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors*. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom *serious dishonesty* had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. *If a solicitor is not shown to have acted dishonestly, but is*

shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension. [emphasis added]

33 Given the fact (as was noted at [29] above) that there was no evidence of dishonesty, that the charges against the respondents were brought under s 83(2)(*h*) of the Act as well as the pertinent observations just quoted, it is our view that it would not be appropriate to strike the respondents off the roll. However, we cannot agree with Mr Anandan that the appropriate remedy is a mere censure – especially taking into account the considerations *vis-à-vis* the public interest noted above (at [24]–[28]). We agree with Mr Wong Siew Hong, counsel for the Law Society, that the appropriate sentence should be a period of suspension from practice.

3 4 Indeed, these proceedings constitute a stark reminder of the expense and trouble that arise from adopting a lax view of the strict ethical codes of conduct that govern the legal profession and provide a timely reminder to practising lawyers to familiarise themselves with the basic rules of professional conduct, as well as to either seek counsel or to err on the side of caution when in doubt.

Conclusion

35 For the reasons set out above and after having taken all the relevant factors into account, we deemed it to be appropriate to order that each of the respondents be suspended from practice for a period of 18 months and that they bear the costs of these proceedings which are to be either agreed or taxed.