Law Society of Singapore v Mahadevan Lukshumayeh and Others
[2008] SGHC 106

Case Number : OS 149/2008, SUM 926/2008

Decision Date : 08 July 2008

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ; Chao Hick Tin JA; Andrew Phang Boon Leong JA

Counsel Name(s) : Han Wah Teng and Tan Cheow Hung (Keystone Law Corporation) for the applicant; Vergis S Abraham and Clive Myint Soe (Drew & Napier LLC) for the first respondent; Thangavelu (Straits Law Practice LLC) for the second respondent; Rajan Nair (Rajan Nair & Partners) for the third respondent; Fourth respondent in person

Parties : Law Society of Singapore — Mahadevan Lukshumayeh; Bhaskaran Shamkumar; Leo Chin Hao; Jasvendar Kaur d/o Avtar Singh

Legal Profession – Show cause action – Practising as advocate and solicitor without valid practising certificate – Appropriate sanction to be meted out – Whether s 82A or s 83 of the Legal Profession Act (Cap 161, 2001 Rev Ed) applicable – Sections 82A and 83 Legal Profession Act (Cap 161, 2001 Rev Ed)

8 July 2008 Judgment reserved.

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

Introduction

1 This application by the Law Society of Singapore ("the Law Society") arose from disciplinary proceedings against the respondents which were commenced on 19 April 2007 by an application to the Chief Justice (via Originating Summons No 608 of 2007 ("OS 608/2007")) for leave to be granted for a disciplinary committee to be appointed to investigate complaints of misconduct against the respondents. Leave was granted on 18 May 2007. The disciplinary committee appointed on 25 July 2007 ("the Disciplinary Committee") heard the Law Society and the respondents on 17 October 2007. In its report dated 27 December 2007 ("the DC Report"), the Disciplinary Committee stated that cause of sufficient gravity for disciplinary action against all four respondents existed. This led to the Law Society's application in the present originating summons (*ie*, Originating Summons No 149 of 2008 ("OS 149/2008")) for an order that the respondents be called to show cause as to why they should not be struck off the roll of advocates and solicitors ("the roll"), prohibited from applying for a practising certificate, censured or otherwise punished pursuant to s 82A(10) of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act"). An order to show cause was made on 14 February 2008 ("the Show Cause Order"). The Law Society then filed the present summons (*ie*, Summons No 926 of 2008) for a final order to be made pursuant to the Show Cause Order.

2 The Law Society argues that the respondents are guilty of practising without valid practising certificates, and that this constitutes conduct unbefitting advocates and solicitors as officers of the Supreme Court or as members of an honourable profession (see s 82A(3)(*a*) of the Act). This is the first time that misconduct of this nature has been brought before this court. All four respondents admitted to the charges against them, and the only issue here is the appropriate sanction that ought to be meted out to each respondent. At the end of the hearing on 16 May 2008, we reserved our judgment to give consideration to the particular circumstances of each of the four respondents. We have come to the conclusion that the appropriate sanction for each respondent would be a prohibition

from applying for a practising certificate for the following lengths of time:

(a) in respect of the first respondent, 18 months;

(b) in respect of the second respondent, nine months;

(c) in respect of the third respondent, six months; and

(d) in respect of the fourth respondent, 15 months.

3 We now give the reasons for our decision with respect to each respondent separately. Indeed, as counsel for the Law Society, Mr Tan Cheow Hung ("Mr Tan"), correctly pointed out in his submissions to this court, it is clear that the severity of each respondent's misconduct "appears to vary substantially and the penalties ought to differ accordingly".[note: 1]

The jurisdictional point

4 Before turning to consider each respondent's situation *seriatim*, we deal with a point which was raised by counsel for the third respondent, Mr Rajan Nair ("Mr Nair"). This was that the present proceedings should have been initiated, not under s 82A of the Act, but, rather, under s 83 of the Act. Mr Nair did not, however, press the point and none of the other respondents raised this particular issue at all. Indeed, as the Disciplinary Committee noted at para 9 of the DC Report, "[d]uring the hearing before the Disciplinary Committee … the Law Society and *all the [r]espondents accepted* that the proceedings against [the respondents] should be governed by the *s 82A* … procedure" [emphasis added].Mr Nair's argument to the effect that proceedings ought not to have been commenced under s 82A of the Act was premised almost wholly on the decision of the disciplinary committee of the Law Society in *The Law Society of Singapore v Nadarajan Theresa* [1994] SGDSC 9 ("*Nadarajan Theresa*"). In that case, the respondent lawyer had practised as an advocate and solicitor without a valid practising certificate between April 1993 and May 1993. The Law Society brought against her two charges of being in breach of s 32(1) of the Legal Profession Act (Cap 161, 1994 Rev Ed) ("the 1994 LPA") by holding herself out as being qualified to practise as an advocate and solicitor of the Supreme Court although she did not have in force a practising certificate during the material period. For such misconduct, the respondent was liable to be struck off the roll or suspended from practice or censured as provided for under s 83(1) of the 1994 LPA read with s 83(2)(*j*) of that statute. The detailed facts were set out by the disciplinary committee as follows (see *Nadarajan Theresa* at [12]):

> It was not disputed by the Respondent that she had by letters written from 6th April 1994 to 26th May 1994 relating to 2 property transactions carried out the acts of an advocate and solicitor in writing to the Commissioner of Residential Property and the Land Dealings (Approval) Unit as solicitor for a purchaser and [had] also inter alia [written] to a bank as its solicitor, a law firm as solicitors for purchasers, to the purchasers as their solicitor, and to the Management Corporation as solicitor for purchasers. However the Respondent by her affidavit dated 26.9.94 explained that she had with effect from 7th May 1993 transferred her law practice to M/s Salehah & Co.; that since 15th March 1993, she was bereaved over the death of her adopted infant daughter and went through periods of depression; that arising out of her grief and depression she was not fully responsible for her acts; that she had nothing to gain by her action and that she had not caused any loss to anyone.

5 In so far as the preliminary point relating to the jurisdiction of the disciplinary committee was concerned, the majority of the disciplinary committee was of the view that it did possess jurisdiction

in the matter, notwithstanding s 82A of the 1994 LPA (which is substantially similar to s 82A of the Act). In particular, s 82A(1) of the 1994 LPA read as follows:

> This Part [*ie*, Pt VII of the 1994 LPA, which is headed "Disciplinary Proceedings"], with the exception of this section and sections 82, 90, 91, 98 to 102, 104, 105 and 106, shall not apply to any legal officer or any advocate and solicitor who does not at the time of the misconduct have in force a practising certificate (referred to in this section as a non-practising solicitor).

6 There was, however, a minority view in *Nadarajan Theresa* which held that the respondent did indeed fall within s 82A(1) of the 1994 LPA, but that, because of the relevant savings provision in s 31(1) of the Legal Profession (Amendment) Act 1993 (Act 41 of 1993) ("the 1993 Amendment Act"), the matter could nevertheless be heard by the disciplinary committee pursuant to s 83 of the 1994 LPA. The disciplinary committee then proceeded to decide (at [13] of *Nadarajan Theresa*) that:

> [I]n normal circumstances, the Respondent's action in doing the work of an advocate and solicitor without a practising certificate would be improper conduct warranting disciplinary action. However, having regard to the mitigating circumstances of the case, the Committee is of the view that no cause of sufficient gravity exists for disciplinary action under Section 83(1) of the [1994 LPA]; that such improper conduct merits a severe reprimand of the Council [of the Law Society] under Section 94(3) of the [1994 LPA]. The Committee is fortified in coming to this conclusion by the decision of the court in [*Re Advani* [1988] SLR 258] where it was held that in disciplinary proceedings under the [Legal Profession Act (Cap 161, 1985 Ed)], in considering the penalty to be imposed for grossly improper conduct, the emotional state of the respondent, and whether the offending action was made for gain or whether it ha[d] caused loss [were] pertinent factors. In the present case, the offending events took place during the period when the Respondent was going through a phase of grief and depression arising out of the death of her adopted infant daughter; furthermore the Respondent had during that period taken steps to close her law practice by transferring her files to another law firm. It was noted that nobody suffered any loss nor did the Respondent gain anything from this breach.

7 The reasoning of both the majority as well as the minority in *Nadarajan Theresa* with regard to the preliminary point on jurisdiction is encompassed within the following extracts from the case (*id* at [3]–[11]), as follows:

> 3 The issue is whether the Respondent who was charged with holding herself out as qualified to practise as an advocate and solicitor when she did not hold a practising certificate is an "advocate and solicitor who does not at the time of the misconduct have in force a practising certificate" ("a [non-practising] solicitor"). The … Committee came to the view that it ha[d] jurisdiction in the matter. However, the Committee members differed in their reasoning in coming to this conclusion. The majority Committee view (Ms Ruth Kao and Mr Khoo Oon Soo) was that Section 82A of the [1994 LPA] did not apply to the Respondent. [The majority's] reasoning is that under Section 82A(1) a non-practising solicitor is defined as "any advocate and solicitor who does not at the time of the misconduct have in force a practising certificate".
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> 4 The definition contemplates a situation where: –
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> (a) a misconduct has been committed by an advocate and solicitor and
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> (b) when the misconduct was committed, the advocate and solicitor did not have in force a practising certificate.

The misconduct must therefore arise from circumstances other than not having in force a practising certificate. Not having in force a practising certificate should not be the misconduct and should therefore not amount to a [misconduct].

5 It is only those advocates and solicitors who are not required to apply for practising certificates who would not be guilty of misconduct in not having practising certificates. Section 82A applies to: –

(1) legal officers;

(2) non-practising solicitors.

Legal officers do not hold practising certificates because they are not required to hold them. The non-practising solicitors must be in an analogous position, i.e. they are also not required to hold practising certificates.

6 Under Section 41(1), any advocate and solicitor who does not have in force a practising certificate may apply to be admitted to the Law Society as a non-practitioner member. Clearly the words "who does not have in force a practising certificate" in Section 41(1) must mean "who is not required to have in force a practising certificate". The same meaning must be given to the similar words in Section 82A(1).

7 The Respondent therefore does not fall within the definition of "[non-practising] solicitor". Section 82A is not applicable and the … Committee has jurisdiction.

8 The minority Committee view (Dr Thio Su Mien) [is] that the Respondent falls within Section 82A(1) of the [1994 LPA] because she is an advocate and solicitor who did not at the time of the misconduct have in force a practising certificate (referred to in Section 82A(1) as a non-practising solicitor.) A non-practising solicitor so defined is by virtue of Section 32(1) of the [1994 LPA] an unauthorised person. An unauthorised person may not do any act as an advocate and solicitor and if such act falls within Section 33(1), (2) and [(3)] of the [1994 LPA], the unauthorised person shall be guilty of an offence. Such an offence will constitute misconduct under Section 82A(3) of the [1994 LPA]. If Section 82A(1) is construed to exclude the Respondent on the ground that the misconduct referred thereto must arise from circumstances other than not having in force a practising certificate, then all unauthorised persons who are advocates and solicitors but [who] do not hold a practising certificate (i.e. non-practising solicitors as defined in Section 82A[(1))] will be excluded from the ambit of Section 82A(1). Yet it is precisely this category of non-practising solicitors that Section 82A(1) seeks to cover. On this reasoning, it is clear that the Respondent falls within Section 82A(1) and she may only be charged with misconduct under Section 82A(3) and not [that] stipulated under Section 83(2).

9 However the Legal Profession (Amendment) Act [1993 (Act 41 of 1993)] ("the Amendment Act") [*ie*, the 1993 Amendment Act mentioned at [6] above] contains a "savings" provision which saves disciplinary proceedings commenced before 1st January 1994 from the operation of Section 82A. Section 31(1) of the Amendment Act provides: –

> "This Act, with the exception of Section 29(c), shall not apply to any inquiry, investigation, application or other proceeding of a disciplinary nature commenced before the date of commencement of this Act and the principal Act in force immediately before that date [*ie*, the Legal Profession Act (Cap 161, 1990 Rev Ed)] shall continue to apply to that inquiry, investigation, application or proceeding as if this Act had not been enacted."

> 10 The minority Committee view is that the words "inquiry[,] investigation, application or other [proceeding] of a disciplinary nature" describe the many processes in disciplinary proceedings under the [1994 LPA] and that under Section 31(1) of the Amendment Act, as long as any part of the disciplinary proceedings has commenced before the commencement date of the Amendment Act (gazetted as 1.1.1994) the savings provision of Section 31(1) will apply. Since the disciplinary proceedings in the instant case commenced before 1.1.1994, although the … Committee was appointed in May 1994 (after 1.1.94) Section 82A does not apply to the case.
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> 11 Thus, on the preliminary point, the Committee (albeit on different reasoning by its members) held that it had jurisdiction over the matter.

8 The explanatory statement to the Legal Profession (Amendment) Bill 1993 (Bill 34 of 1993) ("the LPA Amendment Bill"), which introduced (via cl 13) the provision which later became s 82A of the 1994 LPA, states thus:

> Clause 13 inserts a new section 82A to provide a new procedure for the disciplining of legal officers and non-practising solicitors. The Law Society will have no jurisdiction over such persons. The new section 82A provides that an application to show cause may be made with the leave of the Chief Justice where any legal officer or non-practising solicitor has been guilty of such misconduct unbefitting a legal officer or an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession or has been adjudicated a bankrupt. Upon such application, the Chief Justice may grant leave and appoint a [d]isciplinary [c]ommittee to inquire into the complaint if he is of the opinion that there is a prima facie case for an investigation into the complaint. Where the [d]isciplinary [c]ommittee finds that there is a prima facie case of misconduct against a legal officer or non-practising solicitor, the matter will be heard by a court of 3 Supreme Court judges. Upon completion of the hearing, the court may strike the person off the roll, prohibit him from applying for a practising certificate for up to 5 years, censure him or order him to pay a penalty of up to $5,000.

As s 82A of the 1994 LPA is substantially similar to s 82A of the Act, the above passage applies equally to the latter provision (and, for ease of discussion, references to "the 1994 LPA" in the ensuing analysis at [9]–[13] below should be read as encompassing the corresponding sections of the Act as well).

9 More importantly, the main rationale underlying s 82A of the 1994 LPA (which was enacted by s 13 of the 1993 Amendment Act) was set out by the Minister for Law, Prof S Jayakumar, during the second reading of the LPA Amendment Bill, as follows (see *Singapore Parliamentary Debates, Official Report* (12 November 1993) vol 61 ("*Singapore Parliamentary Debates* (vol 61)") at cols 1163–1164):

> Clause 13 [of the LPA Amendment Bill] provides for a new section 82A setting out a new procedure for disciplining … legal officers (meaning members of the Legal Service) and non-practising lawyers. The Law Society henceforth will have no jurisdiction over such persons. This amendment results from a recent case involving a senior legal officer in the Service where the Court of Appeal ruled that the Law Society could take disciplinary proceedings under Part VII of the [Legal Profession Act (Cap 161, 1990 Rev Ed)] against such an officer if he had been admitted to the Bar.
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> Sir, that decision created an anomalous situation in that legal officers who are admitted to the Bar and non-practising lawyers are subject to the disciplinary control of the Law Society while those officers who are not admitted are not. To correct this, the Bill provides that both legal officers and non-practising lawyers will be subject to the direct disciplinary control of the Court

> and not of the Law Society, which means that the Law Society's control is with respect to those who are practising advocates and solicitors. There will be a special procedure for disciplinary action against such persons involving a show cause application to the Chief Justice. The Chief Justice may grant leave for the appointment of a [d]isciplinary [c]ommittee to look into the complaint. Only when a prima facie case of misconduct is established … would the case be referred to a court of three judges who are empowered to impose certain punishment against the errant legal officer or non-practising lawyer, for example, striking off the [roll], prohibiting him from applying for a practising certificate for up to five years, or censuring him or ordering a penalty of up to $5,000.

10 The rationale for enacting s 82A of the 1994 LPA is clear. It was to *exclude* from the direct disciplinary control of the Law Society not only legal officers who had not been admitted to the Bar (*ie*, who were not on the roll), but *also* legal officers as well as advocates and solicitors who *had* been admitted to the Bar *but who did not have in force practising certificates at the time of the misconduct* ("non-practising solicitors"). (Indeed, there would, in a situation involving a legal officer who had been admitted to the Bar, be an overlap inasmuch as such a legal officer would simultaneously constitute an "advocate and solicitor who [did] not at the time of the misconduct have in force a practising certificate" within the meaning of s 82A(1) of the 1994 LPA.) This is also the rationale underlying s 82A of the Act, which (as we noted earlier at [8] above) is substantially similar to s 82A of the 1994 LPA. As Prof Jayakumar put it, the result of enacting s 82A of the 1994 LPA (and, likewise, s 82A of the Act), in so far as the broader category of advocates and solicitors was concerned, was that "the Law Society's control [was] with respect to those who [were] *practising* advocates and solicitors" [emphasis added] (see *Singapore Parliamentary Debates* (vol 61) at col 1163 (reproduced at [9] above)).

11 It should also be noted that one of the possible sanctions with regard to proceedings brought pursuant to s 82A of the Act is that the court may "*prohibit [the legal officer or non-practising solicitor concerned] from applying for a practising certificate* for such period not exceeding 5 years as it may specify" [emphasis added] (see s 82A(12)(*b*) of the Act), whereas the corresponding sanction for proceedings brought pursuant to s 83 of the Act states that the (practising) advocate and solicitor concerned may be, *inter alia*, "*suspended* [by the court] *from practice* for any period not exceeding 5 years" [emphasis added] (see s 83(1) of the Act).

12 Bearing in mind the rationale underlying s 82A of the 1994 LPA and looking at the plain language of s 82A(1) thereof (reproduced above at [5]) itself, it is clear that that provision was intended to encompass, *inter alia*, advocates and solicitors who, at the time the alleged misconduct was committed, did not have in force practising certificates (*ie*, non-practising solicitors). This is likewise the ambit of s 82A(1) of the Act. The majority in *Nadarajan Theresa* ([4] *supra*) appear to have placed a gloss on the interpretation of s 82A of the 1994 LPA by characterising the misconduct referred to in that section as misconduct that has no linkage whatsoever to the fact that the non-practising solicitor concerned did not have in force a practising certificate at the material time. In our view, this not only constitutes a strained reading of the language of s 82A(1) of the 1994 LPA, but also (as Dr Thio Su Mien, representing the minority of the disciplinary committee in *Nadarajan Theresa*, pertinently pointed out) undermines the very *raison d'etre* of the provision in the first place. All that s 82A(1) of the 1994 LPA (and, equally, s 82A(1) of the Act) states, in our view, is that any advocate and solicitor who does not have in force a practising certificate at the time the alleged misconduct occurs would fall within its purview; the alleged misconduct of that solicitor should not be conflated with the issue of whether the section (*ie*, s 82A of the 1994 LPA) applies to him or her (which issue relates to the question of the disciplinary entity that is to have jurisdiction over the solicitor concerned). The "misconduct" in s 82A(1) of the 1994 LPA must surely encompass *any* misconduct which falls within the ambit of, *inter alia*, s 82A(3)(*a*) of that statute, which refers to a

situation where the legal officer or non-practising solicitor concerned "has been guilty in Singapore or elsewhere of such misconduct unbefitting a legal officer or an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession" (see also s 82A(3)(*a*) of the Act). Misconduct of this nature would include doing any act that falls within the ambit of s 33 of the 1994 LPA (which corresponds to s 33 of the Act).

13 In our view, it was, with respect, not helpful for the majority in *Nadarajan Theresa* to define a "non-practising solicitor" for the purposes of s 82A(1) of the 1994 LPA as a solicitor "who [is] not required to apply for [a] practising [certificate]" (see *Nadarajan Theresa* at [5]). This is because no lawyer (not even one who has been admitted as an advocate and solicitor of the Supreme Court) is *required* to hold or have in force a practising certificate (see s 25(1) of the 1994 LPA and s 25(1) of the Act as to when an advocate and solicitor "shall" apply for a practising certificate; see also, generally, Pt III of the 1994 LPA and Pt III of the Act for the provisions relating to practising certificates). Only those advocates and solicitors whose names are on the roll and *who wish to* "*practise as … advocate[s] and solicitor[s] or do any act as … advocate[s] or … solicitor[s]*" [emphasis added] (see s 32(1) of the 1994 LPA and s 32(1) of the Act) *must* apply for practising certificates. Under the 1994 LPA, a person whose name is not on the roll *and/or* who does not have in force a practising certificate is "an unauthorised person" within the meaning of s 32(1) (which corresponds to ss 32(1) and 32(2) of the Act) and is subject to criminal sanctions if he or she does any act which falls within the purview of s 33. (Indeed, as we shall see, all four respondents in the present proceedings were convicted of offences under s 33(1) of the Act.)

14 In the circumstances, we cannot accept the interpretation of s 82A of the Act proffered by Mr Nair. The Law Society was therefore correct in initiating the present proceedings pursuant to this section.

15 We turn now to consider each respondent's situation *seriatim*.

The first respondent

16 The first respondent's last valid practising certificate expired on 1 April 2002. The Law Society brought the following charges against the first respondent arising out of his actions after that date:

(a) The first charge is that the first respondent, while not holding a valid practising certificate, acted as an advocate and solicitor for Jenny Wee May Ling ("Wee") and, in that connection, prepared documents relating to Wee's divorce proceedings in the Family Court between 2 April 2002 and 23 April 2002. Specifically, it is said that:

(i) on 2 April 2002, the first respondent, as an advocate and solicitor of his firm ("M L Mayeh & Co"), signed a praecipe addressed to the Registrar of the Subordinate Courts seeking leave to search court files; and

(ii) on 23 April 2002, the first respondent filed an affidavit in support of an application for the decree nisi in Wee's divorce matter to be made absolute, in which affidavit he stated that he was an advocate and solicitor of M L Mayeh & Co.

(b) The second charge is that the first respondent, while not holding a valid practising certificate, acted as an advocate and solicitor for Hamzillah bte Hamid and Zakhir bin Mohd Nor and, in that connection, prepared correspondence and court documents relating to their adoption proceedings in the Family Court between 6 August 2002 and 22 August 2003. Specifically, it is said that the first respondent wrote to the superintendent of Changi Women's Prison as well as

the Attorney-General's Chambers ("AGC") between 6 August 2002 and 22 August 2003 in relation to this adoption matter.

(c) The third charge is that the first respondent, while not holding a valid practising certificate, acted as an advocate and solicitor for Park Kyeung Min and, in that connection, prepared letters and mitigation submissions relating to criminal proceedings against the latter between 8 August 2002 and 18 November 2002. Specifically, it is said that the first respondent:

(i) attended court on 5 September 2002, 21 September 2002, 21 October 2002 and 18 November 2002;

(ii) wrote to the AGC on 30 August 2002 and 15 October 2002 to make representations for his client; and

(iii) wrote to the superintendant of Queenstown Remand Prison on 8 August 2002 to make arrangements to take instructions from his client.

(d) The fourth charge is that the first respondent, while not holding a valid practising certificate, acted as an advocate and solicitor for Iskandar bin Ahmad Jamali and, in that connection, prepared letters and mitigation submissions relating to criminal proceedings against the latter between 14 April 2003 and 17 June 2003 as well as attended court on behalf of his client on three occasions during the same period.

(e) The fifth charge is that the first respondent wilfully sent letters using his firm's letterhead, which bore the description "Advocates & Solicitors", to:

(i) his client, Shore Restaurant Pte Ltd ("Shore"), for which he acted as company secretary despite the expiry of his practising certificate, between 24 July 2002 and 5 May 2003; and

(ii) Kuek & Kuek Pte Ltd on 5 May 2003 to refer it to Shore's secretarial records.

The charge states that the first respondent, in doing the above, implied that he was duly authorised to act as an advocate and solicitor when that was not in fact the case.

(f) The sixth charge is that the first respondent wilfully sent letters using his firm's letterhead, which bore the description "Advocates & Solicitors", to:

(i) his client, Senior Hydraulic & Hardware Supply Pte Ltd ("Senior Hydraulic"), for which he acted as company secretary despite the expiry of his practising certificate, between 27 June 2002 and 7 October 2003; and

(ii) the above-mentioned Kuek & Kuek Pte Ltd on 7 October 2003 to refer it to Senior Hydraulic's secretarial records.

The charge states that the first respondent, in doing the above, implied that he was duly authorised to act as an advocate and solicitor at a time when he was in fact not thus authorised.

17 The first respondent admitted to all six of the above charges at the hearing before the Disciplinary Committee on 17 October 2007.

Factual background

18 The first respondent was admitted to the Bar on 13 February 1991 at the age of 33. He had previously worked as a passenger service assistant at Singapore Airport Terminal Services Ltd for about four years before attaining an external law degree from the University of London. He began his legal career at M/s Rayney Wong & Co as a legal assistant after being called to the Bar and was made a junior partner in 1994. In 1997, the first respondent left Rayney Wong & Co to set up M L Mayeh & Co.

19 When the time came for the first respondent to renew his practising certificate in April 2002, he could not do so because he had not paid for his professional indemnity insurance. Nonetheless, he continued to practise as an advocate and solicitor until 6 October 2003 when he closed his firm. On 16 October 2003, he reported himself to the Law Society and the Commercial Affairs Department ("CAD").

20 On 25 April 2005, the first respondent pleaded guilty to six criminal charges, which were based on the same facts as those set out in the charges in the present proceedings. (In the criminal proceedings, the first respondent was charged under s 33(1)(*a*) of the Act in respect of the matters set out in the first four charges listed at [16] above, and under s 33(1)(*b*) of the Act in respect of the matters set out in the last two charges enumerated in that paragraph.) He also consented to 43 other charges of a similar nature being taken into consideration for the purposes of sentencing. On 31 May 2005, the district judge hearing the case ("the District Judge") sentenced the first respondent to a total of nine months' imprisonment (see *PP v Mahadevan Lukshumayeh* [2005] SGDC 129 ("*Mahadevan Lukshumayeh*") at [34]–[35]). The first respondent has since served this sentence.

The first respondent's submissions

21 Before this court, counsel for the first respondent, Mr Abraham Vergis ("Mr Vergis"), explained why the first respondent had not renewed his practising certificate in April 2002 as follows. He submitted that the first respondent had intended all along to renew his practising certificate, and had taken all the necessary steps to this end with the exception of paying for his professional indemnity insurance. This was due to financial constraints. Business at M L Mayeh & Co had not been good because of the Asian financial crisis which started in 1997. For the years 1997–1999, the firm had made a total loss of $159,877, and the first respondent had paid himself a total of only $26,543. Although business at the firm began picking up in 2000 and 2001, the profits from those two years (totalling $49,680) were mostly used to settle debts that the first respondent and his practice had incurred during the previous loss-making years. During the same period (*ie*, the loss-making years from 1997 to 1999), the first respondent had also moved his office many times, each time to a smaller office at a lower rent.

22 In March 2002, a month before the first respondent was due to renew his practising certificate, he had to pay various sums of money for rental arrears to his past and present landlords. At the time, he had thought that he would have sufficient funds to meet his financial obligations to the Law Society, the Singapore Academy of Law ("SAL") and his professional insurance brokers, which obligations he had to discharge before he could obtain a practising certificate. As far as payment for professional indemnity insurance was concerned, the first respondent had assumed that he would only need to have sufficient funds to cover the first two monthly instalments, which was the sum ordinarily required by the insurance brokers to be paid upfront.

23 In April 2002, when the time came for the first respondent to renew his practising certificate, he duly submitted his completed application for renewal together with his firm's audited accounts for the previous year ending 31 December 2001 to the Law Society. His application and his firm's audited

accounts were found to be in order by the Law Society and were duly approved. Thereafter, the first respondent obtained a certificate from the SAL stating that he had paid all the moneys, contributions and subscriptions due from him under the Singapore Academy of Law Act (Cap 294A, 1997 Rev Ed) and the rules made thereunder.

24 As for the final step of obtaining the necessary professional insurance cover, the first respondent attempted to make payment of between $700 and $1,000 (which was approximately the equivalent of two monthly instalments) to his insurance brokers. However, he was told that, because he had defaulted on his monthly instalment payments in the previous year, he had to pay the annual premium upfront in full. This amounted to a sum of approximately $4,000 to $6,000. The first respondent was unable to pay that amount, even though his total receipts from his clients for the month of April 2002 came up to some $11,000, as he had used up the money to pay various overheads, including sums due to his firm's auditor, the SAL and the Law Society, totalling $11,566. Mr Vergis submitted that the misfortune of the first respondent lay in his not knowing or not anticipating that he would have to incur the extraordinary expense of paying an entire year's worth of insurance premium upfront by the end of April 2002, with the result that he had prioritised his cash flow wrongly. Other than that, the first respondent had taken all the other necessary steps to renew his practising certificate.

25 When the first respondent failed to pay the insurance premium demanded by his insurance brokers within the month of April 2002, he thought that he was irretrievably out of time and that it was no longer possible for him to renew his practising certificate. This understanding was apparently based on a circular dated 2 February 1996 issued by the Law Society, which stated (at para 2.2) that "[n]either the Law Society nor the Registrar, Supreme Court ha[d] the power to grant extension of time to file applications for Practising Certificates".[note: 2] Because of that, the first respondent did not attempt to renew his practising certificate after April 2002.

26 Mr Vergis also explained why the first respondent decided to carry on business as usual despite not having a valid practising certificate – *viz*, the latter felt responsible for his various continuing obligations and ongoing commitments to his clients and his secretary, whom he felt obliged to keep employed. It was argued that it was easier for the first respondent to continue his practice, rather than to stop, by that time.

27 Where mitigating factors were concerned, Mr Vergis raised the following points. First, the first respondent knew that what he was doing was wrong, and had been miserable and guilt-ridden throughout the material period. This was borne out by the fact that the first respondent eventually voluntarily ceased practice on 6 October 2003 and reported himself to the CAD and the Law Society on 16 October 2003. Subsequently, he rendered his full co-operation to the CAD in the ensuing investigations into his misconduct. Mr Vergis stressed that up to the time of the first respondent's voluntary confession, no one had been aware that the first respondent had been practising without a practising certificate. The latter thus had the real option of lying low after closing his firm and of not confessing his wrongdoing. The fact that he had not done so but had instead owned up was, it was submitted, evidence of his intrinsic moral character.

28 This last-mentioned argument was contrary to the District Judge's assumption in *Mahadevan Lukshumayeh* ([20] *supra*) at [24] that:

> Even if [the first respondent] did not own up to these offences, it was a matter of time [before] the authorities would discover them. Hence, in these circumstances, the weight to be given to his guilty plea would have to be much less …

Mr Vergis, however, asserted that the fact that the first respondent was able, after the expiry of his last valid practising certificate, to practise for some 18 months without detection showed that there was no basis for the District Judge's assumption.

29 Second, Mr Vergis pointed out that none of the first respondent's clients had suffered any harm or loss as a result of the first respondent's actions. There had been no complaints about the conduct of the first respondent as legal counsel; nor had any clients sought a refund from him. At all times, the first respondent had been a fully-qualified, competent and experienced advocate and solicitor. The first respondent, so it was asserted, had also refunded to some of his clients the fees which they had paid to him.

30 Third, Mr Vergis referred this court to evidence of the first respondent's alleged good character. The first respondent had been actively involved in the Law Society's Criminal Legal Aid Scheme ("CLAS") from 1992 to 2002 and had served on the committee of CLAS from 1993 to 2002 despite his financial troubles during that period. He had also been involved in free legal counselling at Chong Pang Community Club from 1991 to 2001 and had acted *pro bono* on six occasions. Mr Vergis cited all this as evidence of his client's inclination to help the less privileged without any thought of personal gain.

31 Other examples of community service performed by the first respondent were also given. For instance, the first respondent had joined the Singapore Police Force's Volunteer Special Constabulary in 1991 as a constable and had received awards for giving lectures on law to junior police officers. By 2001, he had been promoted to the rank of Inspector. He had also served in the Singapore Hockey Federation from 1994 to 2003, being its president from 1997 to 2003. He had been the first chairman of the Youth Development Committee from 1994 to 1996. He had also been involved in other sporting bodies such as the Singapore Cricket Club and the Asian Hockey Federation. In addition, a number of instances of volunteerism were cited. In support of the above, a large number of testimonials from various individuals attesting to the first respondent's good character, and, in particular, his integrity and trustworthiness, were produced.

32 Fourth, Mr Vergis pointed to the hardships suffered by the first respondent after the latter ceased practice. He had been unemployed or under-employed for some time, in part apparently due to his status as an ex-convict.

33 At the hearing before the Disciplinary Committee, the first respondent broke down and asked for a personal statement of remorse to be recorded. The DC Report noted (at para 50) that the Disciplinary Committee believed the first respondent to be sincere in his remorse.

34 Apart from highlighting the above mitigating factors, Mr Vergis urged this court to take into account two other matters. The first was that the first respondent had not been practising for close to five years since he voluntarily ceased practice in October 2003. Counsel submitted that this period should be taken into account if this court were minded to impose on the first respondent a prohibition from applying for a practising certificate.

35 The second matter was the nine months' imprisonment meted out to the first respondent in the criminal proceedings against him (see [20] above). It was argued that the District Judge, in imposing such a punishment, had treated the criminal proceedings against the first respondent as being akin to disciplinary proceedings. It was submitted that the District Judge had proceeded on the erroneous assumption that the first respondent would not be subjected to disciplinary proceedings as an advocate and solicitor, as evinced by his comments in *Mahadevan Lukshumayeh* ([20] *supra*) at [20], as follows:

> Even though the [first respondent] may have the legal and personal ability to practice, he is immune from control, regulation and, in the case of misconduct, from discipline by the Law Society for any ethical or disciplinary matters.

36 Mr Vergis argued that the District Judge might have imposed a harsher sentence than the sentence which he might otherwise have meted out had he known that the first respondent was also subject to disciplinary proceedings. It was further suggested that the prison sentence imposed on the first respondent served, to some extent, the same purpose as the punishments which could be imposed in the present proceedings. Finally, Mr Vergis submitted that the "clang of the prison gates"[note: 3] [emphasis in original omitted] principle should be applied to disciplinary proceedings such as the present proceedings, in that the first respondent's spell in prison would have been a sufficiently grave punishment for a person of his otherwise unblemished character.

The Law Society's submissions

37 Counsel for the Law Society highlighted the following aggravating factors:

(a) The first respondent had continued to practise for some 18 months after the expiry of his last valid practising certificate. This was a significant length of time which encompassed two "years" as defined in s 25(6) of the Act (*ie*, the "years" 1 April 2002–31 March 2003 and 1 April 2003–31 March 2004).

(b) While not holding a valid practising certificate, the first respondent had not merely carried out duties for his existing clientele. Out of the 49 cases handled by him during the material period, 32 had been new cases.

(c) The first respondent had acted for the clients in the above 49 cases without the necessary professional indemnity insurance.

(d) The first respondent had benefited financially through his misconduct in that he had collected a total of $119,485 in clients' fees.

(e) The first respondent, as an "unauthorised person" within the meaning of s 32(2) of the Act, had attended court on numerous occasions and had continued to file court documents, including an affidavit made on oath (see [16] above), thereby indicating that he was authorised to act as an advocate and solicitor (when he was in fact not so authorised). He had also submitted numerous letters of representation and correspondences bearing the description "Advocates & Solicitors" to various authorities such as the AGC (see [16] above). Such acts constituted a deception perpetrated on his clients, other lawyers, the Government, the AGC and the court.

Our decision

38 The first respondent knew throughout the material period that it was wrong of him to carry on the practice of an advocate and solicitor without a valid practising certificate. As Mr Vergis was at pains to point out (both in his written submissions as well as in his oral submissions before this court), the first respondent had not only possessed this knowledge, but had also been very guilt-ridden during this period (see also above at [27]).

39 However, it bears emphasis that, notwithstanding such knowledge and such feelings of guilt, the first respondent continued to practise law without a valid practising certificate for the very lengthy period of 18 months, exposing his clients to possible loss in the process because he did not

possess the necessary professional indemnity insurance cover. That this possibility did not materialise was fortuitous. Indeed, during the relevant period, the first respondent took on 49 cases, of which 32 were new cases, and the total fees which the first respondent collected from these 49 cases amounted to a sum of $119,485 (see [37] above). Indeed, Mr Vergis was unable to furnish us with a satisfactory explanation as to why the first respondent did not check with the Law Society about the proper procedure for making a late application to renew a practising certificate, bearing in mind that this was a simple inquiry to make. Instead, the first respondent simply claimed that he had thought that he was irretrievably out of time (see [25] above). More importantly, given the fact that the first respondent knew that what he was doing was wrong, why did he continue to practise law without a valid practising certificate for *18 months*? Indeed, as we shall see, when compared to the conduct of the other respondents in the present proceedings, the first respondent's conduct stands in a category of its own.

40 There is therefore no excuse for the first respondent's conduct. Mr Vergis submitted that credit ought to be given to the first respondent for voluntarily confessing to his misconduct at the end of 18 months as the latter would not otherwise have been caught (see above at [27]). One has only to state such an argument in order to dismiss it as being absurd (see also the District Judge's view at [24] of *Mahadevan Lukshumayeh* ([20] *supra*), which is reproduced above at [28]).

41 In respect of the mitigating factors which Mr Vergis raised on his client's behalf, we accept that the first respondent had encountered severe financial difficulties that were not of his own making. However, dire financial straits can never be an excuse for wrongful conduct. This is a point of general principle which is applicable to everyone, regardless of one's walk of life. Indeed, countless persons have faced not only financial but also other personal difficulties, and yet have nevertheless demonstrated fortitude and moral perseverance notwithstanding such difficulties. What is clear is that wrongful conduct is never an option.

42 It must also be borne in mind that, as stated in *Law Society of Singapore v Ganesan Krishnan* [2003] 2 SLR 251 at [46]:

> [C]onsiderations which usually weigh in mitigation of punishment have less effect on the exercise of the disciplinary jurisdiction than on sentences imposed in criminal cases as show cause proceedings are primarily civil and not punitive in nature …

The above principle is borne out by, *inter alia*, the English Court of Appeal case of *Bolton v Law Society* [1994] 1 WLR 512 at 519, as well as the Singapore High Court cases of *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168 at [22], *Law Society of Singapore v Wee Wei Fen* [2000] 1 SLR 234 at [39] and *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR 477 ("*Tan Phuay Khiang*") at [110].

43 With regard to the nine-month imprisonment term imposed on the first respondent in the criminal proceedings against him, although Mr Vergis argued that that sentence was already sufficient punishment for the first respondent (see [36] above), we reiterate that disciplinary proceedings are separate and distinct from criminal proceedings, even if both proceedings arise from the same facts (see also the authorities cited in the preceding paragraph). Further, although Mr Vergis argued that the District Judge had erroneously assumed that the first respondent would not be subject to disciplinary proceedings as an advocate and solicitor (see [35] above), it is our view, examining the District Judge's decision in *Mahadevan Lukshumayeh* ([20] *supra*) as a whole, that that was not the case.

44 In so far as public service on the professional front was concerned, Mr Vergis pointed to the

fact that the first respondent had, *inter alia,* undertaken *pro bono* work on six occasions between 1991 and 2001 (see [30] above). And, with regard to service to the wider community, we have earlier mentioned (at [31] above) the numerous instances of community service and volunteer work cited by Mr Vergis. This court, in *Law Society of Singapore v Chung Ting Fai* [2006] 4 SLR 587, observed thus (at [39]–[43]) *vis-à-vis* the relevance of public service as a mitigating factor in disciplinary proceedings against an errant lawyer:

> 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 … [stated] recently in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [[2006] 4 SLR 308] at [86], to be "especially relevant in the light of the fact that [it has] enhanced the public well-being and [does] 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 … 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] … 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.

[emphasis in original]

45 Having regard to these observations and applying them to the first respondent's case, we are of the view that, whilst the first respondent's contributions to society have been considerable and speak well of his *internal* qualities as well as potential (since his contributions were *not* "primarily designed to promote his legal practice" (*per* V K Rajah JA in *Tan Phuay Khiang* ([42] *supra*) at [110])), we cannot ignore the detrimental effect of his actions on the (*external*) public interest, which far outweighed his contributions.

46 In the circumstances, we are of the view that prohibiting the first respondent from applying for a practising certificate for a period of three to four years would be an appropriate sanction. However, we are cognisant of the fact that there was a relatively long delay on the part of the Law Society in initiating the present proceedings. Having regard to this fact as well as taking into account the mitigating factors which we can validly consider in the first respondent's favour, we decide that the first respondent should be prohibited from applying for a practising certificate for a period of 18 months.

The second respondent

47 The second respondent's last valid practising certificate expired on 1 April 2003. The Law Society brought the following charges against the second respondent arising from his actions after that date:

(a) The first charge is that the second respondent, while not holding a valid practising certificate, acted as an advocate and solicitor for Meilina Chandra ("Chandra") in Magistrate's Court Suit No 3958 of 2003 ("MC 3958/2003") between 5 May 2003 and 19 September 2003, and, in that connection, prepared documents related to those proceedings and attended court sessions in the Magistrates' Courts. Specifically, the second respondent is said to have:

(i) attended before a deputy registrar in chambers on 4 September 2003 and 18 September 2003 for the hearing of an application to set aside a default judgment entered against Chandra;

(ii) prepared three letters and two affidavits in relation to the case; and

(iii) received remuneration of $1,000 from Chandra.

(b) The second charge is that the second respondent, while not holding a valid practising certificate, acted as an advocate and solicitor for Mitheleyshvary @ Sarah Joan Dale ("Dale") in Magistrate's Court Suit No 22762 of 2002 ("MC 22762/2002") between 5 May 2003 and 19 September 2003, and, in that connection, prepared documents related to those proceedings and attended court sessions in the Magistrates' Courts. Specifically, it is said that the second respondent:

(i) attended court on, *inter alia*, 17 July 2003 and 31 July 2003 for settlement

conferences before a district judge;

(ii) prepared three letters and one affidavit in relation to the case; and

(iii) received remuneration of $5,000 from Dale.

Factual background

48 The second respondent is a lawyer of some 12 years' standing. Together with the third respondent, he commenced legal practice under the name M/s Leo & Sham ("the Firm") sometime around November 1999. The Firm ran a small practice, with an average monthly income of approximately $3,000 to $5,000 for each partner. In early 2003, the second respondent and the third respondent decided that their partnership was no longer viable and that the Firm should be wound up. When the last valid practising certificate of the second respondent expired on 1 April 2003, he and the third respondent were in the process of winding up the Firm. The second respondent was aware that he had practised as an advocate and solicitor without a valid practising certificate after 1 April 2003. This was because an audit of the Firm's accounts, which had to be done before the second respondent could obtain the accountant's report needed in an application to renew a practising certificate, was not carried out until 15 September 2003. The Firm was finally wound up on or around October 2003. On 30 April 2004, the second respondent and the third respondent wrote to the Law Society disclosing their misconduct.

49 On 15 March 2005, the second respondent pleaded guilty to two criminal charges under s 33(1)(*a*) of the Act, which were based on the same facts as those set out in the charges in the present proceedings (see [47] above). Two charges under s 33(1)(*b*) of the Act and another charge under s 33(1)(*a*) of the Act were taken into consideration for the purposes of sentencing. On 30 June 2005, the District Court sentenced the second respondent to a total of one month's imprisonment (see *PP v Bhaskaran Shamkumar* [2005] SGDC 147 at [31]).

The second respondent's submissions

50 Counsel for the second respondent, Mr Thangavelu, explained that, in 2003, the Firm was left with about $500,000 as unpaid professional charges owed by an American company ("Vortex") (see also [62] below). The second respondent and the third respondent were unable to carry on with their legal practice and decided to terminate their partnership. When the respective practising certificates of the second respondent and the third respondent were due for renewal in March 2003, there were insufficient funds in the Firm's office account to pay the premium for professional indemnity insurance, which was a substantial component of the costs of renewing a practising certificate. To ensure that the ongoing matters of the Firm were sufficiently covered by insurance and that his clients' interests would not be compromised, the second respondent used $8,000 from his personal funds to pay the insurance premium for both himself and the third respondent.

51 Mr Thangavelu submitted that the second respondent's involvement in MC 3958/2003 had only been for a limited period of slightly over four months from 5 May 2003 to 19 September 2003. The legal work undertaken for that suit was relatively minor. The judgment sum which Chandra was ordered to pay was within the jurisdiction of the Magistrates' Courts, and the two affidavits which the second respondent filed in support of the application to set aside the default judgment entered against Chandra raised only one issue, namely, that relating to the service of the writ of summons on Chandra. No complex issues of law or fact were argued before the deputy registrar at the hearing of that application.

52 In so far as the second charge against the second respondent was concerned, it was argued that the second respondent's work for Dale in respect of MC 22762/2002 had begun before the expiry of the second respondent's practising certificate on 1 April 2003. A substantial part of the work had been completed before that date, which was also the date on which Dale's affidavit of evidence-in-chief for the suit was filed.

53 Mr Thangavelu submitted that his client had no ulterior motive in terms of gaining personal or financial advancement by his misconduct. The sums of $1,000 and $5,000 which the second respondent had charged Chandra and Dale, respectively, were just and equitable payments for work done by the Firm. Moreover, the second respondent had subsequently returned the sums to the respective clients.

54 At all material times, so Mr Thangavelu pointed out, the second respondent had been a "qualified person" as defined in s 2(1) of the Act, albeit one without a valid practising certificate. The accountant's report on the Firm, which was obtained in late September 2003, had disclosed no discrepancies in the Firm's accounts. There had also been no complaints to the Law Society against the second respondent.

55 Finally, counsel urged this court to consider that the second respondent had voluntarily disclosed his wrongdoing to the Law Society (see [48] above) and had co-operated fully with the CAD in the ensuing investigations into his misconduct. The second respondent, so Mr Thangavelu submitted, was not a dishonest person and had already been punished with a term of imprisonment (see [49] above), which was itself a sufficiently crushing sanction as there had been no dishonesty on the part of the second respondent and no loss had been suffered by his clients.

The Law Society's submissions

56 The Law Society asked this court to consider the following facts:

(a) The second respondent had continued to practise for a period of almost six months after the expiry of his last valid practising certificate.

(b) During that period, the second respondent had:

(i) appeared in court on at least four occasions;

(ii) taken on one new client (*ie*, Chandra); and

(iii) filed various court documents.

(c) Even though the second respondent had paid the premium for his professional indemnity insurance, he had nevertheless been uninsured at the material time because he did not have a valid practising certificate then.

(d) In engaging in the above conduct, the second respondent had perpetrated a deception on his clients.

57 However, the Law Society also noted that the Disciplinary Committee had in the DC Report (at para 50) also recorded the second respondent's sincere remorse.

Our decision

58 The second respondent had continued practising law for almost six months after his last valid practising certificate expired. What is significant, in our view, is the fact that both the second respondent and the third respondent were in the process of winding down their practice by then. As a result, the second respondent was involved in relatively few legal matters.

59 In the circumstances, we are of the view that, taking into account the Law Society's delay in initiating the present proceedings, the second respondent should be prohibited from applying for a practising certificate for a period of nine months (whereas a period of 18 months would have been more appropriate had such delay not occurred).

The third respondent

60 The third respondent is an advocate and solicitor of 12 years' standing. As mentioned earlier (at [48] above), he was one of the two partners of the Firm. His last valid practising certificate expired on 1 April 2003. He faces one charge by the Law Society, namely, that, between 16 April 2003 and 6 May 2003, while not holding a valid practising certificate, he acted for Leong Wymin ("Leong") and, in that connection, wilfully sent letters and invoices bearing the description "Advocates & Solicitors" in relation to a matter concerning the property situated at unit No 01-K1, Hougang MRT Station. The Law Society asserts that the third respondent, by such conduct, implied that he was duly authorised to act as an advocate and solicitor when that was not in fact the case.

61 On 24 February 2005, the third respondent pleaded guilty in the District Court to one criminal charge under s 33(1)(*b*) of the Act, which was based on the same facts as those set out in the preceding paragraph. Three other charges under s 33(1)(*b*) of the Act were also taken into consideration for sentencing purposes. The District Court imposed a fine of $1,000 on the third respondent (no written judgment was delivered).

The third respondent's submissions

62 Before this court, counsel for the third respondent, Mr Nair, raised the following mitigating factors. First, it was submitted that the conduct of the third respondent had not arisen out of a plan to evade applying for a practising certificate or to blatantly disregard the requirement of obtaining a practising certificate before doing any act as an advocate and solicitor. The circumstances surrounding the third respondent's failure to renew his practising certificate in April 2003 were said to be as follows. At or around the beginning of 2003, the second respondent and the third respondent decided to terminate their legal practice once they had collected the outstanding sums due to the Firm, especially those in respect of work carried out for Vortex, which was the Firm's main debtor. When the time came for the second respondent and the third respondent to file their applications to renew their respective practising certificates in March 2003, they did not have sufficient funds to pay the requisite sums and thus decided to file their applications only when they had obtained the necessary funds. However, in the second half of 2003, Vortex ceased operations and it was clear that the debt owing to the Firm would not be paid. The second respondent and the third respondent then decided to terminate their partnership immediately. The second respondent took charge of all aspects of terminating the Firm's operations.

63 Second, Mr Nair argued that the third respondent's misconduct was relatively less serious as compared to that of the other three respondents in the present proceedings. The third respondent faced only one charge. That involved sending two letters (one of which had an invoice attached to it) to Leong; the third respondent had not dealt with any person other than Leong *vis-à-vis* the matter referred to at [60] above. In respect of the other criminal charges under s 33(1)(*b*) of the Act which were taken into consideration for sentencing purposes in the criminal proceedings against the third

respondent, two charges were in respect of draft tenancy agreements. The third respondent, however, had neither witnessed the execution nor attended to the stamping of these agreements. As for the third charge which was taken into consideration, that related to a letter which the third respondent had drafted for a client. These various acts were done for old clients and were likened to favours done by the third respondent for his friends. It was further argued that the third respondent had not actively practised as an advocate and solicitor after the expiry of his last valid practising certificate.

64 Third, Mr Nair pointed out that the third respondent had voluntarily confessed his wrongdoing to the Law Society and had co-operated fully with the CAD in the ensuing investigations thereafter. The third respondent had refunded his clients the fees (amounting to $3,913) which the latter had paid him for work done, and his clients had not suffered any loss as a consequence of his misconduct.

65 Fourth, Mr Nair submitted that the third respondent had suffered considerably since the discovery of his misconduct. As the second respondent and the third respondent were the first qualified persons to have been charged with offences under s 33(1)(*b*) of the Act, both the criminal proceedings and the disciplinary proceedings against them had been well publicised in the local newspapers. The third respondent had suffered because his case was also referred to whenever the cases of the other respondents in the present proceedings were reported. This made the third respondent's relatively minor transgressions seem far more serious than they actually were. The adverse publicity had affected not only the third respondent, but also his family as well.

66 Mr Nair further highlighted that there had been considerable delay between the date on which the third respondent first disclosed his misconduct to the Law Society (*ie*, 30 April 2004) and the date of his appearance before this court in the present proceedings. The Law Society had commenced disciplinary proceedings against him (via OS 608/2007) only in April 2007 (see [1] above). Thereafter, the proceedings before the Disciplinary Committee and those in the present originating summons (*ie*, OS 149/2008) had taken a further year despite the fact that none of the four respondents concerned had contested the charges against them. There was no allegation that the third respondent had contributed in any way to the delay in these proceedings. In the meantime, the third respondent's life had been in limbo. He had not sought regular employment because he had been uncertain as to when criminal proceedings and disciplinary proceedings against him would be commenced. Throughout this period, he had been working part-time on a freelance basis.

The Law Society's submissions

67 The Law Society highlighted to this court the following aspects of the third respondent's misconduct:

(a) the third respondent had advised a client on a tenancy and had drafted a tenancy agreement at a time when his practising certificate had expired; and

(b) the third respondent had represented to his clients that he was duly authorised to act as an advocate and solicitor on their behalf and, in doing so, had perpetrated a deception on his clients.

Our decision

68 We will not rehearse the facts relating to the third respondent which have already been set out above (at [48] and [60]–[64]). The third respondent is, by all accounts, clearly the least culpable of all the four respondents involved in the present proceedings. Not surprisingly, this was reflected in the

submissions made by Mr Tan on behalf of the Law Society. We also note that the Disciplinary Committee believed that the third respondent was "sincerely remorseful" (see para 50 of the DC Report) for his actions.

69 In the circumstances, we are of the view that, taking into account the Law Society's delay in initiating the present proceedings, the third respondent should be prohibited from applying for a practising certificate for a period of six months (whereas a period of 12 months would have been more appropriate had such delay not occurred).

The fourth respondent

70 The last valid practising certificate of the fourth respondent expired on 1 April 2005. Arising from her conduct after that date, the Law Society formulated five charges against her (collectively referred to as "the Charges"), which are as follows:

(a) The first charge is that the fourth respondent, while not holding a valid practising certificate, acted as an advocate and solicitor for Ganesan Subra Mani and, in that connection, attended a pre-trial conference in the Subordinate Courts on 25 May 2005 for the proceedings in Magistrate's Arrest Case No 7218 of 2004.

(b) The second charge is that, on 22 April 2005, the fourth respondent, while not holding a valid practising certificate, wilfully sent a letter bearing the description "Advocates & Solicitors" to the Commissioner for Labour, Ministry of Manpower ("the Commissioner for Labour"), in respect of a client named Hanef Mezbauddin Molla, thereby implying that she was duly authorised to act as an advocate and solicitor even though she was in fact not so authorised.

(c) The third charge is that, on 16 June 2005, the fourth respondent, while not holding a valid practising certificate, wilfully sent a letter bearing the description "Advocates & Solicitors" to the Commissioner for Labour with regard to a client named Md Faruq Ahmed Md Ibrahim Kuhallil, thereby implying that she was duly authorised to act as an advocate and solicitor when that was not the case.

(d) The fourth charge is that, on 4 May 2005, the fourth respondent, while not holding a valid practising certificate, wilfully sent a letter bearing the description "Advocates & Solicitors" to the Commissioner for Labour concerning a client named Mosharaf Hossain Abdur Rashid, thereby implying that she was duly authorised to act as an advocate and solicitor even though she was in fact not so authorised.

(e) The fifth charge is that, on 1 June 2005, the fourth respondent gave false information orally when questioned by a public servant, District Judge Yeow Ping Lin of the Subordinate Courts ("District Judge Yeow"), on whether she had renewed her practising certificate. According to the charge, the fourth respondent told District Judge Yeow that she had applied for renewal late but had since obtained her practising certificate, knowing the information to be false and intending by her reply to cause District Judge Yeow to omit reporting her to the relevant authorities.

Factual background

71 The fourth respondent is a lawyer of some 11 years' standing. Her personal history is summarised in *PP v Jasvendar Kaur d/o Avtar Singh* [2006] SGDC 216 ("*Jasvendar Kaur*") at [4], as follows:

> The [fourth respondent] is married with two young children, aged 2 and 4. Her husband is working as a cabin crew with Singapore Airlines (SIA). She is currently working as a part-time tutor. She has practised law … since August 1996 and has worked as a legal assistant with 3 law firms. In the year 2000, she became a partner in the firm of Bannir Jyah & Co. which then changed its name to Jyah & Jas.

72 The fourth respondent was the sole proprietor of her firm (*viz*, the above-mentioned Jyah & Jas) from June 2003 to March 2005.

73 The fourth respondent pleaded guilty in the District Court to five criminal charges, which were based on the same facts as those set out in the Charges (see [70] above). Specifically, the criminal charges related to the following offences:

> (a) in respect of the matters set out in the first of the Charges, the offence under s 33(1)(*a*) of the Act;
>
> (b) in respect of the matters set out in the second, third and fourth of the Charges, the offence under s 33(1)(*b*) of the Act; and
>
> (c) in respect of the matters set out in the last of the Charges, the offence under s 182 of the Penal Code (Cap 224, 1985 Rev Ed) ("the s 182 offence").

On 29 September 2006, the fourth respondent was fined $1,000 for each of the four charges brought under the Act, and was sentenced to two weeks' imprisonment for the charge under s 182 of the Penal Code. The Prosecution successfully appealed to the High Court (via Magistrate's Appeal No 166 of 2006) against the sentence imposed for the s 182 offence and, on 17 November 2006, the fourth respondent's sentence for that offence was enhanced to four weeks' imprisonment.

74 The facts surrounding the s 182 offence are contained in the statement of facts tendered in the criminal proceedings against the fourth respondent (see *Jasvendar Kaur* ([71] *supra*) at [3]):

> **Statement of Facts**
>
> a. On 1 June 2005, the accused [*ie*, the fourth respondent] appeared in the Subordinate Courts of Singapore before … District Judge Yeow … as an advocate and solicitor representing the respondents, one Na Boon Kwang and Kizz Club Pte Ltd, under the proceeding PSS 765-5 of 2004 for a hearing-in-chambers.
>
> b. During the hearing-in-chambers, District Judge Yeow had asked the accused to confirm [whether] she had renewed her practising certificate. The accused replied in the affirmative and informed District Judge Yeow that she had applied late but had since obtained her practising certificate. The accused then proceeded to apply for an adjournment of the matter.
>
> c. The accused, being aware that her practising certificate had expired at the material time and that she had yet to renew her practising certificate, had therefore knowingly furnished false information to the effect that she had obtained her practising certificate to District Judge Yeow.
>
> d. The accused was aware at the material time that if District Judge Yeow had known that she did not have in force a practising certificate, District Judge Yeow would have reported her to the relevant authorities.

e. The accused had thus furnished the said false information to … District Judge Yeow, with the intention of causing District Judge Yeow to omit reporting her to the relevant authorities, which District Judge Yeow ought not to omit if she had known that the accused's practising certificate had expired and had yet to be renewed.

f. The accused has thereby committed an offence punishable under Section 182 of the Penal Code, Cap 224.

g. The accused has been charged accordingly.

The fourth respondent's submissions

75 The fourth respondent, who represented herself at the hearing before this court, stated that she had undertaken the legal work described in the Charges only out of a sense of moral obligation towards her clients. She had not done so for financial reasons or for personal gain, and had not collected any fees from the clients concerned. None of these clients constituted new clients. Furthermore, three of the Charges related to work done for clients who were foreign workers. Her work for these clients involved sending letters to the Ministry of Manpower to obtain extensions of special passes for the clients. According to the fourth respondent, it was difficult for her to pass on these three matters to other lawyers on short notice because of the nature of the clients involved. She emphasised her remorse for her actions.

The Law Society's submissions

76 The Law Society pointed out the following facts to this court:

(a) the fourth respondent had continued to practise as an advocate and solicitor for a period of a few months after the expiry of her last valid practising certificate;

(b) during that period, she had attended court on two occasions and had written to the Commissioner for Labour on three occasions; and

(c) she had lied to a district judge when questioned about whether she had a valid practising certificate.

Our decision

77 Although the period for which the fourth respondent continued practising law after the expiry of her last valid practising certificate was short, and although she was winding down her practice by then, we cannot ignore the very serious fact that she had, *inter alia*, *lied* to a district judge. When asked by District Judge Yeow whether she had renewed her practising certificate, the fourth respondent replied that she had, *knowing this answer to be untrue*. As we have noted, the fourth respondent was originally sentenced to two weeks' imprisonment for the s 182 offence (see [73] above). Significantly, in our view, this sentence was enhanced by the High Court to four weeks' imprisonment on appeal (see, likewise, [73] above). The fourth respondent submitted that her deception of the court had been effected out of fear and trepidation. Even if that were indeed the case, the fourth respondent's misconduct was not excusable and this is reflected in the criminal sanction that was imposed on her. Indeed, no deception – let alone the deception of the court – is ever excusable, especially when that deception is practised by one who is *an officer of the court*. In the present case, the fourth respondent was effectively caught red-handed practising without a valid practising certificate. Instead of coming clean and telling District Judge Yeow the truth, she lied

instead. This is clearly unacceptable conduct. In this regard, the following observations by V K Rajah J in the Singapore High Court decision of *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR 449 (at [26]–[31] and [34]–[36]) bear repeating:

> 26 All solicitors are officers of the court: see s 82(1) of the [Act]. The label "officer of the court" goes well beyond being a catchy or fancy turn of phrase. By definition it presupposes and connotes that those so appointed have obligations and responsibilities in upholding the legal framework …
>
> 27 One of the most crucial duties imposed on the solicitor is the duty not to mislead the court. Indeed this long-standing and incontrovertible obligation is now statutorily embedded in r 56 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) ("LPPCR") which unequivocally states:
>
> > An advocate and solicitor *shall not knowingly deceive or mislead the Court*, any other advocate and solicitor, witness, Court officer, or other person or body involved in or associated with Court proceedings. [emphasis added]
>
> 28 This broad duty which has its origins in the common law has been evaluated and expounded upon in numerous decisions …
>
> 29 While the solicitor (the term is used here to include advocates) is expected to make all plausible honest endeavours to further his client's cause, he should not mislead the court on either the facts or the law. Without misleading the court he is entitled to present his client's cause in a manner which is most favourable or advantageous to the client …
>
> 30 Misleading or deceptive conduct can be passive or active or a combination of both. It is passive when material facts are concealed and/or there has been economy with the truth. It is active when untruths are deliberately articulated and/or facts misrepresented. Given the broad spectrum of activity it encompasses, it would be pointless to attempt to precisely or exhaustively define it: see rr 55 to 63 of the LPPCR. What can be asserted with confidence, however, is that the solicitor's duty of candour to the court in any given matter is indivisible, uncompromising and enduring. The failure to be candid with the court can lead to misleading and/or deceptive conduct on the part of a solicitor.
>
> 31 The reputable badge of an officer of the court should never be compromised on the pretext that one is acting in the client's best interests. Admittedly, solicitors do from time to time find themselves caught between two conflicting tensions: that is, the duty to their clients on the one hand and to the court on the other. There is, however, usually a clear demarcation delineating the boundaries of appropriate conduct when such conflicting tensions surface. The following incisive observations made by Whyatt CJ in *Shaw & Shaw Ltd v Lim Hock Kim (No 2)* [1958] MLJ 129 at 130–131 are apposite and ought to be the lodestar by which all solicitors practise:
>
> > The Court appreciates fully the difficulties which confront counsel from time to time in the discharge of their dual duty to their clients and to the Court, and it may be of assistance to them in the solution of such difficulties when they arise, to recall the guiding principles laid down in this matter by Judges of great learning and wisdom. Of the duty of an advocate to his client, it will suffice to quote the eloquent language of Chief Justice Cockburn cited by McCardie J. in an address delivered in the Middle Temple:—

> My noble and learned friend Lord Brougham, … said that an advocate should be fearless in carrying out the interests of his client, but I couple that with this qualification and this restriction, that the arms which he wields are to be the arms of the warrior and not of the assassin. It is his duty to strive to accomplish the interests of his clients *per fas* and not *per nefas*. It is his duty to the utmost of his power to seek to reconcile the interests he is bound to maintain and the duty it is incumbent upon him to discharge with the eternal and immutable interests of truth and justice.

The advocate's duty to the Court is perhaps more difficult to define but it has nevertheless been well expressed by an eminent Law Lord, Lord Tomlin in an address to the Canadian Bar Association in these words:—

> There is, besides, the advocate's obligation to the Court owed by reason of his being engaged in assisting the Court properly to perform its functions. It is an obligation of frankness and candour founding that confidence reposed by the Bench in the Bar which is the most effective of all accelerators of the quick flow of justice. *By virtue of this obligation the advocate must with regard to facts be careful to display accuracy in his description of the materials before the Court, while presenting them in the light which seems to him most favourable to his client*.
>
> The advocate's obligation of disclosure in matters of law has not always been so clear. At any rate it can, I think, be said today that it is the duty of the advocate to call the attention of the court to any case or statute which is clearly against him. This doctrine has recently received support from the words of a distinguished member of the House of Lords. It satisfies conscience and is in accordance with the view of the advocate's position which I have already indicated. …

These, then, are the two principles laid down by Chief Justice Cockburn and Lord Tomlin for the assistance of both the Bench and the Bar in dealing with the problems which arise from the double aspect of an advocate's duty; they are indeed *two lamps of advocacy which both illuminate the difficulties and at the same time provide a safe and sure guide to their solution.*

[emphasis added]

…

34 I must state emphatically that these statutory obligations [*ie*, the obligations set out in r 60 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed)] are not exhaustive. They are indicative of a wider responsibility that solicitors assume as officers of the court. The responsibilities and obligations of an officer of the court embrace all direct or indirect facets of his interaction with the court. Solicitors in doubt as to whether to make disclosure to the court should invariably choose to err in favour of completeness rather than inadequacy. …

35 A solicitor's duty to act in his client's interests must therefore take into account prevailing standards of conduct prescribed by the LPPCR, ethical rules and practices prescribed by the Law Society as well as general professional and ethical conventions and practices established through the effluxion of time. If a client insists on a course of action which is inimical to the prevailing professional standards prescribed for or expected of a solicitor, that solicitor has no option but to discharge himself from the matter: r 58 of the LPPCR. All solicitors *qua* officers of court have an absolute and overriding duty first and foremost to the court to serve public interest by ensuring

that there is proper and efficient administration of justice. They should never mislead the court either actively or passively. Nor should they consciously furnish to the court erroneous or incomplete information or for that matter incorrect advice that may subvert the true facts. This is a sacred duty which every court is entitled to expect every solicitor appearing before it to unfailingly discharge. So overwhelming is the public interest in maintaining the dignity and honour of the legal profession through the preservation of the highest ethical and moral standards amongst solicitors that the courts cannot risk allowing it to be compromised by even a few recalcitrant individuals within the profession. If and when any such breaches come to light, they must be dealt with swiftly and severely.

36 In summary, the solicitor's obligation is to pursue his client's interests only in so far as it does not compromise or interfere with the administration of justice.

[emphasis in original]

78 In the circumstances, we are of the view that, since there has been no significant delay by the Law Society in initiating the present proceedings as far as the fourth respondent is concerned, the fourth respondent should be prohibited from applying for a practising certificate for a period of 15 months.

Conclusion

79 For the reasons given above, we impose the sanctions outlined at [2] above on the respondents in the present proceedings. The costs of these proceedings are awarded to the Law Society.

[note: 1] See para 32 of the Law Society's written submissions filed on 16 May 2008.

[note: 2] See p 144 of the first respondent's affidavit filed on 14 May 2008.

[note: 3] See para 24 of the first respondent's written submissions filed on 14 May 2008.