The Law Society of Singapore v Lee Cheong Hoh
[2001] SGHC 23

Case Number : OS 1621/2000

Decision Date : 03 February 2001

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Simon Yuen (Tan & Lim) for the Law Society; Michael Khoo SC (Michael Khoo & Partners) for the respondent

Parties : The Law Society of Singapore — Lee Cheong Hoh

Legal Profession – Show cause action – Solicitor sharing professional fees with unqualified person – Whether payment to employee constitutes gratification or commission for procuring business for solicitor – Appropriate penalty – ss 83(2)(d) & (e) Legal Profession Act (Cap 161, 1997 Ed)

(delivering the grounds of judgment of the court): This was an application under s 98 of the Legal Profession Act (Cap 161, 1997 Ed) (`the Act`) to make absolute an order requiring the respondent to show cause, pursuant to a Disciplinary Committee`s (DC) finding that there was cause of sufficient gravity for disciplinary action under s 83 of the Act to be taken against the respondent. The misconduct in question related to the sharing of professional fees with an unqualified person. Having heard counsel for the Law Society, as well as for the respondent, we made an order absolute and also determined that he should be punished with a penalty of suspension from practice for three years. We now give our reasons.

The facts

At the time of the hearing before the DC, the respondent, Lee Cheong Hoh (Lee), was an advocate and solicitor of the Supreme Court of Singapore of some 22 years` standing. Prior to going into private practice in 1992, he was a member of the Legal Service. His last held position was that of a district judge. After resignation from the Legal Service, he practised under his own name, Cheong Hoh & Associates (`the firm`).

The events leading to the charges had their genesis in April 1993. Lee, who was then the sole proprietor of the firm, met one Raymond Mark (`Mark`), who was then working as a clerk in the firm, Sebastian & Daniel, handling motor repairers` claims against third parties. Mark was earning a monthly salary of $3,500, with additional transport and overtime allowances. Before being employed by Sebastian & Daniel, Mark was working for another firm doing the same kind of work. At the time when Mark was introduced to Lee, Mark was no longer happy working for Sebastian & Daniel and was looking for alternative employment.

Lee decided to engage Mark, who joined the firm on 1 June 1993. His terms of employment included the following:

(i) Starting salary at $3,500 per month.

(ii) In addition to the monthly basic salary, he was entitled to 10% of all professional fees collected by the firm in respect of third party claims (`the 10% payment`). This term was not stated in writing. According to Mark, this payment was also to be reviewed in three years provided he brought in business that generated a total income of more than $400,000 per annum for the years 1994 and 1995.

(iii) Mark was to be paid transport expenses incurred by him on behalf of the firm, including car park charges and Central Business District (CBD) passes.

(iv) Mark was to procure the pending files on third party claims from his then employers, Sebastian & Daniel, without the firm having to write to them for the files.

Mark`s terms of employment were not the same as those offered to the other employees of the firm.

As promised, Mark brought to the firm about 50 clients and 200 pending files from Sebastian & Daniel. Because of the large amount of work generated from these files, a separate department was set up in the firm to handle such third party claims. Before Mark joined the firm, it had only a handful of workshops as clients.

Mark made his first claim for the 10% payment in November 1993. This was based on third party claims that had been completed and professional fees paid. Thereafter, Mark made the 10% claim monthly. The 10% payment was often times labelled as `transport allowances`. Part of the 10% payment was also occasionally labelled as `bonus`.

The third party claims work which Mark brought to the firm increased significantly over time as could be seen from the following table which also indicated the quantum of the 10% payment which he had received from the firm. It would appear that he brought to the firm some two to three hundred files a month.

Year	Total net billings made by the firm on third party claims (rough figures)	Total amount of 10% payment received by Mark
1993	$200,000	$ 6,350.00
1994	$431,000	$ 43,357.20
1995	$597,000	$ 58,841.00
1996	$663,000	$ 66,655.20

He was paid more than any of the other professional staff (legal assistants and junior partners) of the firm.

Sometime in 1997, Mark became unhappy because he felt he was not being fairly remunerated. So on 30 September 1997, Mark gave the firm two months` notice of his intention to resign. He then joined another law firm, M/s Rayney Wong & Co. However, Mark sought to recover from the firm, and Lee, the sums which were still owing to him on account of the 10% entitlement. Lee refused to make payment. Eventually, on 16 February 1998, Mark made a complaint to the Law Society. However, in the meantime, the police and the CPIB were investigating into allegations of cheating, forgery and of receiving moneys to favour a particular vehicle workshop owner, committed by Mark. He was subsequently convicted on the charges for corruption, forgery and cheating and was sentenced to three months` imprisonment and was fined.

While Mark was with the firm, he was issued business cards to distrbute to clients, both existing and potential. On the card, Mark was designated as a `claims executive`. But we must point out that the firm`s name was not stated on the card though its address was, and Lee denied that he issued Mark

with the business card. More will be said about this later.

1993		
Transport Allowance	$	6,350.00
Total:	$	6,350.00
1994		
Transport Allowance	$	43,357.20
Total:	$	43,357.20
1995		
Transport Allowance	$	58,841.00
Total:	$	58,841.00
A sum of $23,608.19, being part of the $58,841.00, is also labelled as `Bonus (TA)`.		
1996		
Transport Allowance	$	66,655.20
Total:	$	66,655.20
A sum of $29,400.00, being part of the $66,655.20, is also labelled as `Bonus`, `Bonus` and `Variable`.		
1997		
Transport Allowance	$	18,900.00
Performance Bonus	$	36,400.00
Total:	$	55,300.00

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Total:	$	55,300.00

The charges

Following Mark`s complaint, the Law Society brought two charges, in the alternative, against the respondent. The charges are somewhat lengthy, because of the particulars, and they read as follows:-

First charge

That Lee Cheong Hoh is guilty of grossly improper conduct in the discharge of his professional duty within s 83(2)(d) of the Legal Profession Act (Cap 161) in that he, between the period mid-1993 to November 1997 has tendered or given or consented to retention, out of any fee payable to him for his services, gratification to one Raymond Mark for having procured the employment of legal business.

Particulars

During the said period of mid-1993 to November 1997, has paid or retained for the purpose or payment to the said Raymond Mark the sum equivalent to 10% of the legal fees of legal work brought in by or alternatively handled and successfully conducted by the said Raymond Mark. The said payments were disguised or labelled as transport allowance/claims and/or as performance bonus as follows:

Particulars

Second charge

That Lee Cheong Hoh is guilty of grossly improper conduct in the discharge of his professional duty within s 83(2)(e) of the Legal Profession Act (Cap 161) in that he, between the period mid-1993 to September 1997 has, directly or indirectly, procured or attempted to procure the employment of himself and advocates and solicitors in his firm one Raymond Mark for whom remuneration for obtaining such employment has been given or agreed or promised to be so given.

Particulars

During the said period of mid-1993 to November 1997, has remunerated the said Raymond Mark for procuring the employment of himself and other advocates and solicitors in the following forms:

The Law Society`s case was that the 10% payment which the respondent made to Mark was a commission or gratification given in return for Mark procuring employment for the firm. Mark had really been engaged by the respondent to `tout` for business for the firm, by soliciting motor repair workshops to become clients of the firm or, if they were existing clients, to give more work to the firm. Such activities contravened s 83(2)(d) and (e) of the Act.

Respondent`s explanation

Lee explained before the DC that when he first agreed in May 1993 to employ Mark, it was on the basis that Mark would be entitled to two months` fixed bonus, like all other employees in the firm. As Mark had informed him that at Sebastian & Daniel, the former was receiving four months` bonuses, Lee agreed that Mark would be paid additionally, a performance bonus but it would be `subject to the firm`s and the employee`s performance`. It was thus intended to be a discretionary amount. However, in November 1993 Mark approached him with a list of the third party claims that had been completed, and the fees paid, and sought a 10% payment on those fees as his bonus. Noting the encouraging figures, Lee agreed to the arrangement as he felt that a bonus pegged directly to billings would motivate Mark to work harder. Lee also thought that the 10% payment would be a convenient way of rewarding Mark as it would take away the `hassle` and `headache` of having to monitor all the transport and overtime claims that Mark would be making. The bonus was for work done by Mark and nothing more. Lee asserted that the 10% payment was never intended to be a `commission` or `gratification` but a `performance bonus` for Mark. He was not employed to tout and neither was he required to procure employment for the firm.

To demonstrate that the 10% payment made was bona fide, Lee drew the DC`s attention to the fact that the 10% was paid even for files that were not brought in by Mark. Thus, the 10% payment could not mean to be a reward to Mark for bringing new clients/files to the firm. Lee further highlighted the fact that the 10% payments were not made surreptitiously but openly. There were proper accounting records reflecting the same and CPF contributions were duly made in respect thereof.

Lee also pointed out an essential difference between the position of Mark and that of a normal tout. Here, Mark was a bona fide employee of the firm. He worked for a monthly salary and was entitled to bonus.

As for the name card, Lee denied that his firm issued Mark with any such card. It was in May 1995 when Mark asked for name cards to be printed for him with the firm`s name on it. Lee refused the request. Mark had then mentioned that he was running out of his personal name cards and asked if the firm could reimburse him for the cost of printing new personal name cards. Lee did not object to the reimbursement as he felt the sum involved was very small.

Disciplinary Committee`s findings

In coming to its findings the DC took note of the following:-

(i) 200 pending files of Sebastian & Daniel were brought by Mark to the firm without the latter having to write to Sebastian & Daniel for them nor to pay anything for work already done on those files.

(ii) A substantial number of the workshop clients of the firm were brought in by Mark.

(iii) There was a significant increase in the fees earned by the firm for workshop claims work during the period when Mark was there.

(iv) When Mark left the firm, the number of workshop clients and files on such claims dropped by half.

(v) That after Mark lodged his complaint with the Law Society, he was himself convicted of the offences of corruption, forgery and cheating and sentenced to imprisonment and fine.

In addition, the DC had also borne in mind that in making the complaint, Mark was not prompted by any noble objective and was really trying to get even with Lee. However, the DC held, considering all the circumstances and admissions made by Lee, that:

(i) Pending Mark joining the firm, the name card of Mark was issued by the firm to him.

(ii) Mark was employed by Lee to procure business for the firm.

(iii) The letter of appointment of Mark was different from the standard letter of appointment adopted by the firm. In making the determination, the DC drew an adverse inference against Lee for failing to produce the duplicate copy of the letter of appointment.

(iv) The 10% payment was in substance a gratification or commission though it was given a different label in the record. It was not truly a payment for performance bonus.

Accordingly, the DC was satisfied beyond a reasonable doubt that the charges preferred against Lee were made out and that cause of sufficient gravity existed for disciplinary action to be taken against him.

Show-cause hearing

Before us, counsel for Lee, Mr Khoo, made the following submissions:

(i) That the DC in making its finding, failed to give sufficient consideration to the fact that Mark was of a bad character and out to seek revenge.

(ii) That the DC erred in drawing an adverse inference against Lee for not producing the duplicate copy of the appointment letter and in finding that Mark`s letter of appointment was not identical to the standard letter of appointment used by the firm.

(iii) That there was insufficient basis, and that the DC had ignored the explanations offered by Lee, in coming to its conclusion that the 10% payment was a gratification or commission and not a performance bonus.

(iv) That the facts as found by the DC did not come within the prohibition prescribed in s 83(2)(d) or

(e).

Alleged errors on the part of DC

We will now turn to consider each of these grounds in turn. From the report it was clear that the DC was very conscious, when assessing the evidence of Mark, that he had been convicted of the offences of corruption, forgery and cheating and that his aim for making the complaint was far from noble. Nevertheless, we would agree with the DC that the fact that Mark was convicted of certain criminal offences did not necessarily mean that thereafter he would be incapable of ever telling the truth. Of course, the evidence of such a person has to be scrutinized carefully. Here the DC, having examined the evidence of Mark in the light of other undisputed facts, came to the conclusion that the version given by Mark had a `ring of truth`. For reasons which will appear later, we endorsed the findings of the DC.

As regards the non-production of the original or duplicate copy of the letter of appointment, the explanation given by Lee was that Mark had not returned to him the original copy of the letter of appointment. As for Mark himself, he said he could not produce the original because he misplaced it. The DC found that the onus was on Lee, as the employer, to produce the duplicate signed copy of the letter of appointment or a photocopy thereof to substantiate his assertion that the letter of appointment issued to Mark was the same as the standard letter. In the normal course, when an employer issues a letter of appointment (original and duplicate) to an employee, the employee would be asked to indicate his acceptance on the duplicate copy and return it to the employer. The employer would, in the normal course, retain a copy, or a photocopy of it, in his file. It is inconceivable that an employer would issue such an appointment letter without retaining a copy (or a photocopy) for the file. So even if it were true that Mark did not return the duplicate, Lee should still have a copy in the file. We felt this probably was the reason why the DC drew an adverse inference against Lee.

In any event, this question whether the letter of appointment issued to Mark was or was not identical with the firm`s standard form of letter of appointment was, at best, only of marginal significance as both Mark`s and Lee`s evidence in court were that the 10% payment was not stated therein and it was the question of the nature of this payment that was at the heart of the matter.

Nature of the 10% payment

It was not in dispute that the duties of Mark at the firm included the preparation of correspondence, collection of reports of motor accidents, preparation of discharge vouchers, collection and payment of cheques to clients, interviewing witnesses and the preparation and affirmation of affidavits by witnesses. As mentioned before, Mark was paid a salary of $3,500 per month. The 10% payment, according to Lee, was intended to be a performance bonus. Also subsumed in the 10% payment was his transport and overtime claims. Basically, what he said was that he agreed to this broad simple arrangement in order to avoid the hassle of verifying such claims and to motivate Mark to perform better.

We entirely agree that a law firm is permitted to pay its non-professional staff bonus, or performance bonus. But, by its very nature, a bonus payment is discretionary, the quantum of which is to be decided by the employer in the light of the profitability (net of overheads and other expenses) of the firm in the preceding year. However, in this instance, the following features stood out:

(i) Mark did not just join the firm like any other staff. He brought with him about 200 pending files from his previous firm, Sebastian & Daniel, without Lee having to write for the files and to pay for the work already done by Sebastian & Daniel on those files.

(ii) After joining the firm, Mark continued to bring in new workshop clients and new businesses. This was evident from the significant increase in billings, which the firm raised on such work and in respect of which Mark was paid his 10%.

(iii) The 10% payment to Mark was based on the net fees collected for work done on third party claims.

(iv) Mark was the only employee in the firm who was being paid on this basis.

(v) The total emoluments earned by Mark at the firm exceeded even those of the legal assistants and junior partners of the firm.

(vi) Upon Mark leaving the firm, about 50% of the files/clients also left with him.

Viewed in the light of the foregoing, we had no doubt that the DC was amply justified to have come to the conclusion that the 10% payment was really a payment in the nature of a commission or gratification. Mark was employed by Lee to procure business for the firm. We noted the explanations offered by Lee as to how the bonus payments came about to be made. But looking at the objective facts, especially factor (i) enumerated in the immediately preceding paragraph, the conclusion was irresistible that the arrangement with Mark was reached right at the beginning and not in November 1993, as claimed by Lee. November 1993 was the time when Mark made his first claim under the arrangement. Like the DC, we were satisfied that Mark was engaged not so much to do the office work relating to motor accident claims but really to bring in the business for the firm and for that he would be paid 10% of the fees collected on such work. In so saying, we must not be taken to suggest that Mark did no office work at all. But for such work he was remunerated by the fixed salary. In all the circumstances, Lee`s claim that Mark was not engaged to tout, or to procure employment for the firm, sounded extremely hollow.

Scope of s 83(2)(d) and (e)

We shall now turn to examine the law. First, it is necessary that we set out s 83(1) and s 83(2)(d) and (e):

> *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.*
>
> *83(2) Such due cause may be shown by proof that an advocate and solicitor -*
>
> *(d) has tendered or given or consented to retention, out of any fee payable to him for his services, of any gratification for having procured the employment in any legal business of himself or any other advocate and solicitor;*
>
> *(e) has, directly or indirectly, procured or attempted to procure the employment of himself or any advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such*

employment has been given by him or agreed or promised to be so given;

Mr Khoo submitted that limb (d) is aimed at the solicitor who pays gratification for clients introduced to him. There must be a correlation between the payment and the introduction of the client. Here, the payment was made to an unqualified staff member for work done for the firm and not for the procurement of legal business. He contended that so long as the sole object of the payment was not for the introduction of clients to the firm, it would not come within limb (d).

As for limb (e), Mr Khoo similarly argued that it only applies where there is a connection between the payment and the introduction of a client. It would not cover the situation where payment is made to an employee of the firm.

In relation to both limbs, Mr Khoo relied heavily upon the following two passages in ***Tan Yock Lin`s The Law of Advocates & Solicitors in Singapore and Malaysia*** (1st Ed) (at p 407):

> *Another is where a solicitor agrees to pay his clerk commission on business introduced by him. Provided the commission is in reality a remuneration, there will be no infringement of paragraph (d). Whether intended or not, it seems clear, however, that even if the commission is not gratification but represents in truth the clerk`s remuneration, paragraph (e) will be infringed if the commission is conditioned upon the amount of business procured.(first quotation).*

and at p 82:

> *Touting is also different from an agreement between the solicitor and his managing clerk whereby the latter agrees that he will share in the profits in a manner proportionate to the number of successful clients which he introduces to the solicitor. In such an agreement, the solicitor will exercise supervision over the managing clerk. The tout is his own master. (Second quotation.)*

We ought to add that there is a second edition to this work. In the new edition, these two passages have substantially remained, except for some slight changes of wording.

We ought to mention that the author Tan Yock Lin has also stated in the second edition of the work that (at p 814):

> *where a solicitor contracts with his managing clerk for the latter`s remuneration to be reckoned on a commission basis instead of a salaried basis. This means that the clerk will be paid out of the fees earned by the solicitor from a client introduced to him by the clerk. Yet that is a perfectly legitimate mode of remuneration (provided that the payment is a genuine remuneration and not at all a mode of gratification or reward.) The key word is gratification. The disciplinary offence is only committed when a solicitor pays gratification for clients introduced.(Third quotation.)*

Mr Khoo further cited a few English authorities in support of his contention that a solicitor who agrees

to remunerate his staff on the basis of the amount of work done by that staff does not contravene limbs (d) and (e): **Galloway v Corporation of London** [1867] LR 4 Eq 90; **Harper v Eyjolfsson** [1914] 2 KB 411 and **Lake v Bartlett & Gluckstein** [1921] 37 TLR 316.

It is clear that the views of author Tan Yock Lin were based very much on ***Galloway*** and ***Harper*** . Both these cases were cited to the DC but they were distinguished on the basis that the fact situations and the applicable statutory provisions there were different. We will now examine these two cases as well as ***Lake*** .

The facts in ***Galloway*** were unusual. There, the solicitor agreed not to carry on business for anybody except the Corporation of London (Corporation) for a fixed yearly salary. The solicitor was to account to the Corporation for all costs recovered by him in excess of his disbursements and salary. The question that arose was whether the agreement between the solicitor and the Corporation contravened s 32 of the Attorneys & Solicitors Act. Page Wood VC ruled that there was no contravention. This was how he described the arrangement:

> *The agreement before me is virtually this: A client with much work to be done arranges with a solicitor that he shall be the solicitor`s only client; he undertaking to employ the solicitor in all his legal business, and, with regard to that business, he undertakes to pay the solicitor a fixed yearly salary as a compensation for his trouble and services; the solicitor rendering an account at the end of the year of all his payments and receipts.*
>
> *To describe an agreement of that kind as an engagement to carry on the business of a client for the profit of the client, would be, I think, a perversion of language. The agreement is simply this: that the solicitor, instead of charging his client with all those sums which he would be entitled to put down to his debit, charges the client with a fixed sum per annum, and agrees that he shall be remunerated in that way. When the client is ordered to be paid costs, the bill is to be taxed in the ordinary way, and the certified amount is to go in relief of the salary engaged to be paid, and the surplus, if any, is to be carried over.*

In ***Harper*** , the solicitor there agreed to engage an unqualified person to be his managing clerk at a salary of o3.10s per week. In addition, the clerk was to get a bonus of 25% on all gross costs and other profits (exclusive of all disbursements) received by the solicitor on all business introduced by the clerk, either directly or indirectly. A further clause of the agreement provided that on the clerk ceasing to be so employed, he would still be paid the 25% bonus less o3.10s. The court ruled that there was nothing illegal in the employment by a solicitor of an unqualified person upon the terms that he would receive a share of the profits of business introduced by him to the solicitor. However, the court held that the further clause providing that the clerk was entitled to the 25% even after he ceased to be so employed contravened s 32 of the Solicitors Act 1843 which prohibited a solicitor from permitting his name to be used in any action, suit or matter for the profit of an unqualified person. While the arrangement between the clerk and the solicitor (during the period of employment) was similar to our present case, it must be borne in mind that the statutory provision there (s 32) was quite different from our s 83(2)(d) and (e). This is evident from the following explanation offered by Ridley J (at p 417):

> *During the first period when the plaintiff was still managing clerk to Mr Nimmo it appears to me that it might properly be said that the business was introduced by him as agent for his employer, and therefore he could not be said to be practising as an unqualified person, although the persons he was introducing were his clients and the business he introduced was his business, because he*

was acting as agent only for Mr Nimmo. That would be the common case where the managing clerk merely introduces clients and business to his employer as his agent.

Finally, in ***Lake*** the fact-situation there was very similar to that in ***Harper*** . A solicitors firm`s managing clerk was to be paid, besides his fixed salary, a sum equal to one-third of the gross profit costs received on business done by the firm for clients introduced by the clerk. The firm denied there was any agreement to pay the clerk one-third of the gross profit and asserted that those payments made to the clerk were voluntary gifts. The judge rejected the denial. Shearman J held that as the bargain between the clerk and the firm was not to share profits, but to pay something for introducing work, it did not infringe s 32 of the Solicitors Act 1843. On Shearman J`s reasoning, what was held to be infringing in ***Harper*** (that part relating to the 25% payment after employment ceased) was probably not so.

These English cases should thus be viewed with circumspection as there was no English equivalent to our s 83(2)(d) and (e). These English cases seemed to countenance touting, an activity limbs (d) and (e) are meant to prohibit. As rightly observed by the DC, these two provisions are special to us, having first been introduced into our law by the Courts Ordinance of 1908. Accordingly, we do not think what was stated by author Tan Yock Lin in the quotation set out in [para] 30 above is applicable here in Singapore.

There are also other professional rules which have a bearing on s 83(2)(d) and (e). Rule 39 of the Legal Profession (Professional Conduct) Rules provides that `an advocate and solicitor shall not share his fees with or pay a commission to any unauthorized personnel for any legal work performed.` The Singapore Practice Circular No 2, Chapter 7 also provides that it would be improper and unprofessional to divide or agree to divide either costs received or the profits of the business of a solicitor with any unqualified person or the payment of any commission to an unqualified person for having agreed to procure or who procured legal business.

So the true nature of the 10% payment made to Mark was critical. Was it genuinely a remuneration for work done? While we would not say that an unqualified staff of a law firm may not be paid on the basis of per piece of work done, instead of a fixed salary, much would have to depend on the surrounding circumstances. While a genuine payment of wages on such a basis should not be penalised, the court must be vigilant to ensure that the arrangement was not an attempt at getting round the prohibitions in limbs (d) or (e). There is nothing in either limb to suggest that it cannot apply to a situation where the person procuring the business for, or receiving the gratification/commission from, the firm is an employee. It depends on the fact-situation.

In the present case, taking into account the factors enumerated in [para] 25 above, the inescapable conclusion was that the 10% payment was not for work done by Mark in relation to the third party claims but was really a commission/gratification to Mark for bringing the clients/files to the firm. To think otherwise would be to view the matter with blinkers. The fact that 50% of the clients/files left the firm upon Mark`s departure was clear proof that the 10% payment was paid because of the business Mark brought in. It also seemed to us that the contention that the 10% was also intended to cover Mark`s transport and overtime claims, was merely a camouflage. Those were put in for the purposes of appearance and to create room for argument. We did not see what real difficulties there would be to process transport and overtime claims. This was just an excuse. To permit such an arrangement would perpetuate the very mischief limbs (d) and (e) were enacted to overcome. It would severely undermine legislative intent.

What Lee had done clearly fell within limb (d). Lee had given to Mark gratification, for having procured the employment of his firm, out of fees paid to him for his services. What Lee had done also came within limb (e) because he had directly procured the employment of his firm through Mark to whom he had promised and paid a commission of 10% for obtaining such employment.

Mr Khoo argued that in view of the fact that the charges preferred against Lee were in the alternative, the DC should have found Lee guilty of only one charge. What the DC found was that what he did infringed both limbs and both charges were made. There was no reason why the DC could not so find, so long as the ingredients of each charge were satisfied. Both limbs cover very much the same evil, with the emphasis in limb (d) on payment and limb (e) on procurement.

Penalty

We now turn to the question of the appropriate penalty to be imposed on Lee. In **Law Society of Singapore v Ravindra Samuel** [1999] 1 SLR 696 , this court emphasised three objectives for the imposition of penalty against an errant advocate and solicitor: (i) punishment of the solicitor for the default; (ii) deterrence against similar misconduct by like-minded solicitors in the future; and (iii) protection of public confidence in the legal profession and the administration of justice.

In **Re an Advocate & Solicitor** [1978-1979] SLR 240 [1978] 2 MLJ 7 , Wee Chong Jin CJ, delivering the judgment of the Court of Three Judges, declared that a charge under s 83(2)(e) `is a serious charge and if found proved could attract the punishment of disbarment.` However, in that case, the respondent was not found guilty of the charge.

It would appear that there is only one other case which dealt with misconduct of a similar nature. In **Law Society of Singapore v Lau See-Jin Jeffrey** [1999] 2 SLR 215 , where a solicitor agreed to pay a commission to another for procuring for the former legal work, this court declared that the solicitor`s conduct `had fallen short of the integrity and impartiality which are to be expected of a solicitor. A mere censure would not suffice as a charge under s 83(2)(e) ... is a serious charge`. The court imposed a penalty of five years` suspension from practice.

Comparing the position in the present case with that in ***Lau See-Jin Jeffrey*** , the difference lies in the fact that the person to whom Lee had paid a gratification/commission was an employee, and that in ***Lau See-Jin Jeffrey*** the payment was agreed to be made to a third party. Furthermore, the commission which was agreed to be paid in ***Lau See-Jin Jeffrey*** was 30%, a much higher percentage than in this case. Therefore, the misconduct in the earlier case could be considered to be graver. But this was not to say that a mere censure against Lee would suffice. The misconduct of Lee remained serious. A clear message must be conveyed to the profession as a whole that such unprofessional and unethical conduct could not be condoned. It also undermined the integrity and dignity of the profession. Therefore, we considered that it warranted a period of suspension. Three years was what we felt would fit the wrongdoing.

Outcome:

Order accordingly.