IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 214

Originating Summons No 1163 of 2020 (Summons No 5437 of 2021)

In the matter of Sections 82A(5) and (6) of the Legal Profession Act (Cap 161, 2009 Rev Ed)

Between

Law Society of Singapore

… *Applicant*

And

Chia Chwee Imm Helen Mrs Helen Thomas

… *Respondent*

GROUNDS OF DECISION

[Legal Profession — Professional conduct — Breach]
[Legal Profession — Solicitor-client relationship — Transactions with client]

Law Society of Singapore
v
Chia Chwee Imm Helen Mrs Helen Thomas

[2022] SGHC 214

Court of Three Judges — Originating Summons No 1163 of 2020 (Summons No 5437 of 2021)
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Tay Yong Kwang JCA
2 August 2022

5 September 2022

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

Introduction

1 This was an application by the Law Society of Singapore (the "Law Society") brought against Ms Chia Chwee Imm Helen Mrs Helen Thomas (the "Respondent"), for the Respondent to be sanctioned under s 82A(12) of the Legal Profession Act (Cap 161, 2009 Rev Ed) (the "LPA"), and to pay for the costs of and incidental to the action, including the costs of the proceedings before the Disciplinary Tribunal ("DT").

2 The Respondent faced two charges for professional misconduct before the DT (the "Charges"). The first charge was in relation to the Respondent acting for a client (the "Complainant") in the Complainant's custody dispute as

an advocate and solicitor without a valid practising certificate ("PC") between 17 December 2016 and 30 May 2018, as the Respondent was bankrupt at the material time. The subject matter of the second charge related to prohibited borrowing transactions, where the Respondent had borrowed or arranged for her husband to borrow $40,000 from the Complainant, and she had separately borrowed another $20,000 from the Complainant's mother. All these transactions were entered into whilst the Respondent was purportedly acting as the Complainant's lawyer. The DT issued its determination on 26 October 2021, finding that the Charges against the Respondent were made out, and that there was cause of sufficient gravity for disciplinary action under s 82A(3)(*a*) of the LPA.

3 After carefully considering the parties' written as well as oral submissions, we found that there was due cause for disciplinary action against the Respondent in relation to both Charges, and struck the Respondent off the Roll of Advocates and Solicitors. We gave brief oral grounds at the conclusion of the hearing. We now provide the detailed grounds for our decision.

Background

4 The present application arose from the complaint against the Respondent by the Complainant, following which the Honourable Chief Justice granted leave for the appointment of a DT in *Law Society of Singapore v Chia Chwee Imm Helen Mrs Helen Thomas* [2021] 5 SLR 838 ("*Law Society v Helen Chia*"). The facts were largely undisputed between parties.

5 The Respondent was admitted to the Roll of Advocates and Solicitors of the Supreme Court of Singapore on 11 August 1999. Between 17 December 2016 and 30 May 2018, the Respondent did not have a PC, as she was an

undischarged bankrupt during this period. The bankruptcy order was made against the Respondent on 15 December 2016, and was annulled on 22 May 2018.

6 On 18 December 2016, the Complainant contacted the Respondent, seeking an appointment for the Respondent's advice on a care and custody matter for the Complainant's son. They met in the Respondent's office the following day for the first consultation, and exchanged text messages and emails from 19 December to 31 December 2016 to discuss the matter. They did not communicate again until 24 August 2017.

7 Around 24 August 2017, the Complainant contacted the Respondent regarding the custody issue, following which the Complainant formally engaged the Respondent to act for the Complainant in the custody dispute. On 9 November 2017, the Respondent advised the Complainant to apply to the Family Justice Courts in respect of the care and custody matter. The Respondent also assisted with the preparation of the court documents and drafted e-mails and/or letters to the opposing party for the same matter, but did not personally attend court.

8 It was not until 18 December 2017 that the Respondent informed the Complainant, for the first time, that she was an undischarged bankrupt (the "Disclosure"). This took place during a meeting between the Respondent and the Complainant. On the same day, the Respondent borrowed $40,000 from the Complainant ostensibly for the purpose of annulling the bankruptcy order. The Complainant first provided the Respondent with $3,000 in cash, and provided $37,000 in cash the following day. The Respondent agreed to repay $40,000 to the Complainant in April 2018. Separately, the Respondent also approached the Complainant's mother to borrow $20,000 around 2 February 2018. This loan

was to be repaid a few weeks after February 2018. All of the loans were repaid towards the end of September 2018 after the Complainant threatened to commence bankruptcy proceedings.

9 It was crucial that after the Disclosure, the Respondent continued to act for the Complainant. In a WhatsApp message to the Complainant on 10 January 2018, the Respondent stated that she had had the annulment of the bankruptcy order "sorted", and that the case file against her would be closed. But in actuality, the bankruptcy order was not annulled until 22 May 2018, four months after the said message was sent.

10 As for the Complainant's custody proceedings, the hearings were held on 11 April, with oral grounds delivered by 8 May 2018. It was Mr Sean Say ("Mr Say") who represented the Complainant in these proceedings. The Complainant formally discharged the Respondent on 21 September 2018.

Hearings before the Disciplinary Tribunal

11 Of the two Charges the Respondent faced before the DT, the first charge against the Respondent is as follows (the "First Charge"):

> You, [the Respondent], an Advocate and Solicitor of the Supreme Court of Singapore, are charged that between 17 December 2016 to 30 May 2018 (both dates inclusive), when you did not have in force a practising certificate, you acted as an advocate or a solicitor for the Complainant in relation to the care and custody matter concerning the Complainant's son and/or wilfully or falsely pretended and/or represented yourself to be duly authori[s]ed to act as an advocate or a solicitor for the Complainant, in that:
>
> (1) You met with and/or advised the Complainant in relation to the said care and custody matter;
>
> (2) You prepared and/or drafted emails and/or letters to the opposing party in respect of the said care and custody matter on behalf of the Complainant as the Complainant's lawyer;

> (3) You prepared and/or drafted court documents for the Complainant in respect of the Family Justice Courts proceedings concerning the said care and custody proceedings;
>
> (4) You discussed and/or charged your fees for acting for the Complainant in the said care and custody matter with the Complainant;
>
> (5) You represented to the Complainant that you were handling the Complainant's said care and custody matter personally;
>
> (6) You represented to the Complainant that you were supervising and/or working with other lawyers on the Complainant's said care and custody matter; and/or
>
> (7) You represented to the Complainant that you would and/or were duly authori[s]ed to represent her at the hearings before the Family Justice Courts for the said care and custody matter,
>
> and you are thereby guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an hono[u]rable profession within the meaning of Section 82A(3)(a) of the Legal Profession Act (Cap 161).

12 The second charge against the Respondent is as follows (the "Second Charge"):

> You, [the Respondent], an Advocate and Solicitor of the Supreme Court of Singapore, are charged that you borrowed and/or instructed, procured and/or arranged for your husband, …, to borrow a sum of S$40,000 from the Complainant on or around 18 and 19 December 2017, and a further sum of S$20,000 from the Complainant's mother in or around February 2018, in circumstances where:
>
> (1) The said loans were borrowed by you and/or on your behalf during the period from 17 December 2016 to 30 May 2018 (both dates inclusive) when you were acting as an advocate or a solicitor for the Complainant in relation to the care and custody matter concerning the Complainant's son and/or wilfully or falsely pretending and/or representing yourself to be duly authori[s]ed to act as an advocate or a solicitor for the Complainant while not having in force a practising certificate;
>
> (2) The said loans were borrowed by you and/or on your behalf on the basis and/or pretext that the said loans would enable you to discharge and/or annul your bankruptcy and/or allow you to continue to act for and/or represent the Complainant in said care and custody matter;

> (3) The said loans were provided by the Complainant and her mother without them seeking independent legal advice and/or you asking them to seek independent legal advice; and/or
>
> (4) After taking the said loans, and in or around December 2017 to May 2018, you had wilfully and/or falsely represented to the Complainant that you ha[d] obtained an annulment of your bankruptcy, held a valid practi[s]ing certificate and/or could continue to act for and/or represent the Complainant in the care and custody matter, but you in fact continued not to hold a practising certificate at all material times from 17 December 2016 to 30 May 2018 (both dates inclusive),
>
> and you are thereby guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an hono[u]rable profession within the meaning of Section 82A(3)(*a*) of the Legal Profession Act (Cap 161).

13 During the DT proceedings, the Respondent admitted to most of the elements of the Charges, save for one element in the First Charge, namely, limb 7 of the First Charge, which is that the Respondent had represented to the Complainant that she would and/or was duly authorised to represent the Complainant at the hearings before the Family Justice Courts for the said care and custody matter. While the Respondent accepted that she had made such a representation between 17 December 2016 and 17 December 2017, she denied having done so from 18 December 2017 to 30 May 2018. The Respondent claimed that after she had made the Disclosure, the Complainant was "happy for the Respondent to carry on acting as the Complainant's advocate and solicitor in her [custody dispute] without going to court or mediation" during the period between 18 December 2017 to 30 May 2018 (the "Post-Disclosure Period"). This was therefore the sole disputed issue before the DT (the "Sole Disputed Issue").

Relevant legal provisions

14 We set out the relevant provisions which the Respondent has allegedly contravened. In respect of the First Charge, section 33 of the LPA states that

any unauthorised person shall not act as an advocate or solicitor, or wilfully pretend to be someone who is duly authorised to act:

> **33.**—(1) Any unauthorised person who —
>
> (*a*) acts as an advocate or a solicitor or an agent for any party to proceedings, or, as such advocate, solicitor or agent —
>
> (i) sues out any writ, summons or process;
>
> (ii) commences, carries on, solicits or defends any action, suit or other proceeding in the name of any other person, or in his own name, in any of the courts in Singapore; or
>
> (iii) draws or prepares any document or instrument relating to any proceeding in the courts in Singapore; or
>
> (*b*) wilfully or falsely pretends to be, or takes or uses any name, title, addition or description implying that he is duly qualified or authorised to act as an advocate or a solicitor, or that he is recognised by law as so qualified or authorised,
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $25,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 12 months or to both.

15 For the second charge, which concerns the prohibited borrowing, rule 23 of the Legal Profession (Professional Conduct) Rules 2015 ("LPPCR") reads as follows:

> **23.**—(1) Subject to paragraph (2), a legal practitioner or law practice must not do any of the following:
>
> (*a*) enter into a prohibited borrowing transaction;
>
> (*b*) instruct, procure, provide security for or arrange for an associated party to enter into a prohibited borrowing transaction;
>
> (*c*) knowingly allow an associated party to enter into a prohibited borrowing transaction which the legal practitioner or law practice has the power to prevent.

16 This provision would not apply to the prohibited borrowing transaction if every party to the transaction has received independent advice (see rule 23(2)(*a*)(i) of the LPPCR). It was not disputed that neither the Complainant nor her mother had received any independent legal advice.

17 Finally, section 82A(3)(*a*) of the LPA under which the Charges were brought, states as follows:

> (3) Such due cause may be shown by proof that a Legal Service Officer or a non-practising solicitor, as the case may be —
>
> > (*a*) has been guilty in Singapore or elsewhere of such misconduct unbefitting a Legal Service Officer or an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession; or
> >
> > …

18 As the court has held in *Law Society v Helen Chia* at [57], wilful misrepresentation in breach of s 33 of the LPA would be considered as "misconduct unbefitting … an advocate and solicitor" for the purpose of s 82A(3)(*a*) of the LPA, citing the decision in *Law Society of Singapore v Mahadevan Lukshumayeh and others* [2008] 4 SLR(R) 116 ("*Mahadevan*").

Report of the Disciplinary Tribunal

19 The DT's findings are summarised as follows.

20 On the First Charge, the DT was satisfied that there was cause of sufficient gravity for disciplinary action under s 82A(3)(*a*) of the LPA:

> (a) The Respondent admitted that she had wilfully and falsely represented to the Complainant that she was duly authorised to act as an advocate and solicitor between 17 December 2016 and 17 December

2017, during which time she was an undischarged bankrupt without a PC.

(b) Limb 7 of the First Charge, which is that the Respondent wilfully and falsely represented to the Complainant that she was duly authorised to act from 18 December 2017 to 30 May 2018, was satisfied.

(c) The Respondent had therefore breached s 33(1) of the LPA which prohibits an unauthorised person from acting as an advocate and solicitor. Her wilful misrepresentation of her authorisation to act constituted "misconduct unbefitting … an advocate and solicitor as an officer of the Supreme Court" within the meaning of s 82A(3)(*a*).

(d) When the Respondent made the Disclosure on 18 December 2017, there was a pending mediation, and the Complainant had insisted that the Respondent attend the mediation with her. The Disclosure was thus made in opportunistic circumstances when the Complainant would find it difficult to change solicitors upon short notice. The Complainant had said that she felt "trapped".

(e) The Respondent had therefore acted for the Complainant without a valid PC for a period of 9 months (from 24 August 2017 to 30 May 2018).

21 The DT also found that the Second Charge was proven beyond a reasonable doubt, and that there was therefore cause of sufficient gravity for disciplinary action:

(a) The Respondent borrowed and/or instructed, procured, and/or arranged for her husband to borrow the $40,000 from the Complainant on 18 and 19 December 2017, when she should not have done so whilst

acting as an advocate and solicitor. She also did not ask the Complainant to seek independent legal advice.

(b) At the time of the loan, although the Respondent was without a PC, she was acting as the Complainant's lawyer and was in a position of influence over the Complainant who was in a vulnerable position *vis-à-vis* the Respondent. The Complainant trusted the Respondent and relied on her advice in the custody proceedings. The Respondent was a fiduciary and had breached her fiduciary duties to the Complainant as she did not ask the Complainant to seek independent legal advice.

(c) This was a breach of rr 23(1) and (2) of the LPPCR, which prohibit a legal practitioner from entering into a prohibited borrowing transaction unless the party to the transaction has received independent legal advice before entering into such a transaction. It was irrelevant that the Complainant had prior practice experience as an in-house counsel; it was also irrelevant whether it was the Complainant who had suggested the possibility of a loan.

(d) Based on the evidence of the Complainant who felt "trapped" and was worried that she would be without a lawyer in her custody proceedings, the DT found that there was also an element of undue influence.

22 On the Sole Disputed Issue, the DT found in favour of the Law Society in as far as there was wilful misrepresentation by the Respondent from 18 December 2017 to 30 May 2018 that the Respondent was duly authorised to act as an advocate and solicitor for the Complainant during the Post-Disclosure Period. The DT relied on a series of messages between the Respondent and the Complainant:

(a) Based on the WhatsApp messages, it was clear that the Respondent had represented to the Complainant on 10 January 2018 that she had the annulment "sorted" and the case file against her would be closed, when in fact she did not obtain the annulment of the bankruptcy order until 22 May 2018, which was four months later.

(b) On 2 February 2018, the Respondent also represented to the Complainant that she was handling multiple cases – "5 Appeals and 3 of your such cases" – and was attending to the Complainant's matter personally. The DT found that the Respondent was in effect reassuring the Complainant that she was a busy qualified lawyer.

(c) On 28 March 2018, the Respondent answered affirmatively in response to the Complainant's question that it would be the Respondent, and not Mr Say, who would be representing the Complainant in the hearings. These messages were consistent with the false representations to the Complainant that the Respondent was holding a PC, as she would not have been able to attend the hearings otherwise.

(d) On 11 April 2018, the Respondent created a charade and sent out deliberately timed messages to give the Complainant the false impression that she was the one attending the hearing on behalf of the Complainant, when it was in fact Mr Say, who was in the same firm as the Respondent, who appeared for the Complainant. The Respondent admitted in cross-examination that the Complainant was labouring under the impression that the Respondent had a valid PC by 11 April 2018.

(e) The Respondent continued to create such a false impression even on 8 May 2018, when the Respondent avoided meeting the Complainant

near the court to discuss the decision of the court. Under cross-examination, the Respondent admitted that by the messages to the Complainant, she intended to give the false impression that she was going to collect the judgment personally.

23 In the circumstances, the DT found that the two Charges were proven beyond a reasonable doubt.

Parties' cases

Applicant's Case

24 Before us, the Law Society submitted that both Charges were made out. This was based on the evidence adduced by the Law Society as well as the admissions made by the Respondent before the DT. In relation to the First Charge, the Respondent admitted to acting without a valid PC between 17 December 2016 and 17 December 2017 (the "Pre-Disclosure Period"), and admitted that she also did not have a valid PC during the Post-Disclosure Period, but had contested the allegation that she had wilfully or falsely pretended or represented that she was authorised to act as an advocate and solicitor during the Post-Disclosure Period. Leaving aside the Sole Disputed Issue, the Respondent had admitted that she falsely represented to the Complainant that she was duly authorised to act as an advocate and solicitor at least for the Pre-Disclosure Period. She had also given legal advice to the Complainant as if she had been duly authorised to do so, and had even prepared and worked on the Complainant's care and custody application in the Family Justice Courts. The Law Society submitted that this was plainly dishonest, and that the First Charge alone would disclose due cause for disciplinary action against the Respondent.

25 The Law Society also submitted that the Disclosure was made in opportunistic circumstances, because the Respondent knew that the Complainant was in a vulnerable position and would have found it difficult to change lawyers at short notice. The Complainant's evidence before the DT was that she felt "trapped" after the Disclosure, as it was a mere two weeks before an important mediation for the Complainant's care and custody matter. As the Respondent had admitted during cross-examination, the reason she came clean to the Complainant was because of the upcoming mediation and not out of remorse.

26 In relation to the Sole Disputed Issue, the Law Society submitted that even if the Complainant had consented to the Respondent acting for the Complainant, knowing of the Respondent's bankruptcy status, this did not absolve the Respondent from liability from the First Charge as the Respondent simply should not have continued acting as an advocate and solicitor for the Complainant. Section 33 of the LPA, which prohibits an unauthorised person from acting as an advocate and solicitor, does not regard such a person (even a legally trained one) as being absolved from liability even if the client had known and consented to such a person acting for him or her. The Law Society submitted that this court should find against the Respondent with regard to the Sole Disputed Issue and this would accordingly establish a finding of dishonesty in the Respondent's dealings with the Complainant during the Post-Disclosure Period.

27 The Law Society submitted that even after the Respondent had made the Disclosure, she continued to give the Complainant the false impression that the Respondent was attending to the custody matter personally. On the day of the hearing for the custody matter, the Respondent created the "biggest charade" and sent out "deliberately timed" and "orchestrated" messages, as the DT had

found, to give the Complainant the false impression that it was the Respondent who had attended the court hearings.

28 In relation to the Second Charge, to which the Respondent also admitted, the Law Society pointed out that the Respondent was in a position of influence over the Complainant, and that the Respondent stood as a fiduciary *vis-à-vis* the Complainant. Similarly, the Respondent also exercised influence over the Complainant's mother, from whom she had borrowed $20,000, by virtue of the Respondent's position as a solicitor for the Complainant for the custody matter relating to the Complainant's son. The unchallenged evidence of the Complainant's mother was that she felt that she could not turn down the Respondent's request for a loan. Notwithstanding the fact that the Respondent did not have a valid PC at the time of the prohibited transactions, the DT rightly found that r 23 of the LPPCR continued to apply to the Respondent, as the rationale of r 23 of the LPPCR, which is to protect the client, should apply with equal force to the Respondent.

29 In so far as the appropriate sanction to be administered was concerned, the Law Society sought the most severe sanction of striking off. For the First Charge alone, this would have warranted a prohibition from applying for a PC for a substantial period of time. Further, there was uncontroverted evidence that the Respondent had acted dishonestly and deceitfully against the Complainant for a substantial period of time. Finally, the Respondent had not raised any valid mitigating factors to justify a less severe sanction.

Respondent's Case

30 The Respondent admitted to both Charges at the DT hearings. The Respondent's submission was effectively a mitigation plea.

31 In mitigation, the Respondent claimed to have suffered from depression due to work-related stress. With respect to the underlying DT proceedings, the Respondent claimed that she had made the Disclosure, and thus it was the Respondent's understanding that the Complainant had understood and was willing to wait for the order to be annulled, and was willing for the Respondent's firm to continue acting for her. The Complainant was aware that the Respondent could not represent her in court, and was aware that other solicitors would attend to her case. The text message relied upon by the Applicant, where the Respondent told the Complainant that the Respondent had had her "annulment sorted", was not to inform the Complainant that the annulment was complete, but only to update the Complainant on the progress of the annulment regularly.

32 The Complainant and Respondent became close friends, especially after the Respondent had made the Disclosure. She had gone through difficult times because her relationship with the Complainant had deteriorated.

33 The Respondent expressed deep remorse for her errors and sought the court's understanding as she was emotionally unstable and mentally unwell at the material time. She was quick to admit to her breaches in the DT hearing, and was forthright in dealing with the Inquiry committee ("IC"). The Respondent had also been an active contributor to the practice of family law, and had volunteered in pro bono services with the Legal Aid Bureau, as a mediator in the Family Justice Courts and other legal clinics and charities.

Our decision

34 There were two issues before us: (a) whether due cause existed for disciplinary action under s 82A of the LPA; and (b) if so, what the appropriate sanction was. On the first issue, we found that there was due cause for

disciplinary action against the Respondent in relation to both of these charges under s 82A(12) of the LPA, as both charges had been proved beyond a reasonable doubt.

Standard of proof

35 In accordance with s 82A(3)(*a*) of the LPA, the question for the court to determine is whether due cause has been shown for the Respondent to be punished. Such due cause may be shown by proof that the Respondent was guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court:

> **Disciplinary proceedings against Legal Service Officers and non-practising solicitors**
>
> (3) Such due cause may be shown by proof that a Legal Service Officer or a non-practising solicitor, as the case may be —
>
> > (*a*) has been guilty in Singapore or elsewhere of such misconduct unbefitting a Legal Service Officer or an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession; or
> >
> > …

36 Although the DT had made its findings that there was cause of sufficient gravity for disciplinary action, the Court of Three Judges must be independently satisfied that the Respondent's conduct was serious enough to warrant sanction pursuant to s 82A(12) of the LPA (see *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 at [27] ("*Ravi 2016*")). The criminal standard of proof applies to such proceedings, *viz*, that the charges had been made out beyond reasonable doubt.

First Charge

37 Based on the DT's findings as summarised above at [20] as well as the Respondent's own admissions in the course of the DT hearings and in the hearing before us, we agreed with the Law Society that the First Charge had been proved beyond a reasonable doubt. It was undisputed that the Respondent was practising without a PC in force from 17 December 2016 to 30 May 2018. The only dispute was in relation to the Sole Disputed Issue for which the Law Society also sought a finding from this court, which was whether the Respondent had continued to misrepresent her status as a non-practising solicitor to the Complainant during the *Post*-Disclosure Period as well.

38 The Respondent's position was that during the Post-Disclosure Period, the Complainant was aware that the Respondent could not represent her in court. However, this was plainly contradicted by the evidence. Although the Complainant was aware of the Respondent's bankruptcy status, the series of messages adduced before the DT clearly showed that the Respondent had continued to misrepresent her status to the Complainant as a duly authorised legal practitioner. She first represented that she had had her annulment "sorted" in her message dated 10 January 2018, which could only be taken to mean that she had managed to set aside her bankruptcy order such that she could obtain a PC once again. Further, she reassured the Complainant that she (the Respondent) could attend to the custody matter personally. It was upon such reassurance from the Respondent that the Complainant laboured under the impression that the Respondent was properly authorised to represent her in court. Moreover, it was not only the message from 10 January 2018 which the DT had relied upon; there were also messages subsequently on 2 February 2018, 28 March 2018, 11 April 2018 and 8 May 2018 (see above at [22]). These messages, regardless of whether they were considered as a whole or examined

individually, gave rise to the impression that the Respondent was able to practise, that she was personally attending to the Complainant's custody matter, and could represent the Complainant in court. These representations were made despite the fact that the Respondent clearly had not had her bankruptcy annulled and did not have a PC until much later.

39 Although the Complainant conceded before the DT that she knew that the Respondent would not be allowed to go to court if she were a bankrupt without a PC, the Complainant was clearly under the impression, as a result of these text messages, that the Respondent was able to practise and represent the Complainant in the subsequent hearings. It was clear that the Respondent did in fact hold herself out as a duly authorised lawyer with a PC, when it was clear that she was not so authorised. Even if the Complainant had been put on notice or had acquiesced in her acting in such a capacity, that was no defence to the Respondent's wilful misrepresentation of her status as a non-practising solicitor.

40 Hence, the Respondent's defence that the Complainant was aware of her lack of a PC and consented to it, did not hold any water in light of the evidence against her and before us. She rightly did not persist in maintaining this position before this court.

Second Charge

41 In so far as the Second Charge was concerned, it was undisputed that the Respondent had procured two loans from the Complainant and her mother while she was purportedly acting as the Complainant's advocate and solicitor in relation to the custody matter. It was likewise undisputed that she did not ask the Complainant and her mother to seek independent legal advice. Hence, the Second Charge was clearly made out. Previously, in *Law Society v Helen Chia*

(at [53]–[54]), the court left open the point as to whether r 23 of the LPPCR, which prohibits borrowing from clients by a "legal practitioner", would apply to the Respondent who did not have a valid PC and was therefore not a practising solicitor at the material time. The Respondent did not, in fact, seriously dispute that this rule applied. We nevertheless proceeded to address the issue as to why r 23 would apply to the Respondent, notwithstanding her lack of a PC at the material time, as this also related to an important general point as well.

Whether r 23 applies to a lawyer without a valid PC

42 The DT found that r 23 should apply to a lawyer without a valid PC because the rationale behind the rule applies with equal force to the Respondent. The Law Society had taken a similar position. We agreed.

43 First, the plain wording of r 23 which applies to a "legal practitioner" does not exclude a lawyer who is practicing without a PC. Under r 3(1) of the LPPCR which sets out the scope of application of the LPPCR, it is stated that Part 2 of the LPPCR applies to legal practitioners who have "in force a practising certificate". However, r 3(4) of the LPPCR states that Part 3 of the LPPCR (which includes r 23) applies to the following "legal practitioners", the definition of which includes a person admitted under s 15 of the LPA. The plain wording of the provision does not require the said legal practitioner to hold a valid PC.

44 Next, we considered the rationale and purpose of r 23, which supported the position taken by both the DT and the Law Society that r 23 ought to apply to legal practitioners who do not have a PC. The rationale of r 23 is to protect clients who are in a vulnerable position *vis-à-vis* their solicitors, who enjoy a

position of influence over the clients and should therefore act with utmost good faith. This was explained in detail by the court in *Law Society of Singapore v Yap Bock Heng Christopher* [2014] 4 SLR 877 at [28]–[29]:

> 28 A breach of rr 33(*a*) and 34(*a*) of the PC Rules is one that will be viewed extremely seriously by this court. The rationale for prohibiting solicitors from borrowing from their clients (except where the clients have obtained independent legal advice) should be apparent. ***A client is vulnerable vis-à-vis his solicitor because the latter enjoys a position of influence over the client, and the client may find it difficult to deny a loan simply because of the trust and confidence he has reposed in the solicitor***: see *Law Society of Singapore v Devadas Naidu* [2001] 1 SLR(R) 65 at [17] which in turn cites the decision of Hope JA in *Law Society of New South Wales v Moulton* [1981] 2 NSWLR at 739–740.
>
> 29 Furthermore, it is trite that a solicitor stands in a ***fiduciary relationship to his client and that the core of this relationship is the duty of fidelity***, *ie*, the duty on the fiduciary's part to place the interests of his principal ahead of his own: *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 at [135]. A solicitor should therefore act *vis-à-vis* his client with utmost good faith. … Whilst a solicitor who borrows from his client who is not independently advised may not be considered dishonest in the usual sense, ***he is certainly taking advantage of his position to obtain a benefit for himself in breach of his duty of fidelity***.
>
> [emphasis added in bold italics]

45 Hence, given the very nature of the solicitor-client relationship, which consists in the lawyer's position of influence over the client and the client's corresponding *vulnerability* and *dependence* on the solicitor, it is wholly consistent with the purpose of r 23 that it should apply to a legal practitioner who does not have a valid PC, and yet acts as a *de facto* solicitor in advising and allegedly representing the client, putting himself or herself in a position of influence over the client. It might even be argued that it is *a fortiori* the case that r 23 ought to apply to such solicitors. The Respondent had, in fact, procured *two* loans while she was engaged by the Complainant. She could not do so with impunity simply by virtue of her lack of a PC at the material time.

Appropriate Sanction

Applicable principles

46 The relevant sentencing principles in so far as dishonest conduct is concerned are well-established. The court takes a stern view of dishonest conduct on the part of a solicitor. Where a solicitor has acted dishonestly, it is completely contrary to the role of a solicitor who is, instead, to serve as an officer of the court and uphold public confidence in the administration of justice. It is therefore in the interest of protecting the public confidence in the administration of justice, as well as the public trust in the integrity of the legal profession, that the court imposes severe punishments on dishonest conduct. As this court held in *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 ("*Chia Choon Yang*"), the principal purpose of sanctions is not to punish the errant solicitor, but to protect the public interest involved. The court in *Chia Choon Yang* also reiterated the relevant principles where dishonesty is involved (at [19]–[20]):

> 19 In *Udeh Kumar*, we identified three broad categories of cases where dishonesty will almost invariably lead to an order for striking off (at [105]–[108]):
>
> (a) First, where the errant solicitor has been convicted of a criminal offence involving dishonesty that implies a "defect of character" that renders him unfit for the profession.
>
> (b) Second, where the errant solicitor fails to deal appropriately with his client's money or his firm's accounts. This category of cases would also include instances where the solicitor has been dishonest in his dealings with the client such that there is a violation of the relationship of trust and confidence that inheres in the solicitor-client relationship.
>
> (c) Third, where the errant solicitor is fraudulent in his dealings with the court, or breaches his duty of candour to the court and violates his obligations as an officer of the court. This is rooted in the fact that at the core of

> the solicitor's role is the duty to assist in the administration of justice.
>
> 20 These categories of cases illustrate the overarching principle that ***striking off will be the presumptive sanction in cases involving dishonesty that is indicative of a character defect rendering the solicitor unfit for the profession***, or if it undermines the administration of justice. …
>
> [emphasis added in bold italics]

47 In *Loh Der Ming Andrew v Koh Tien Hua* [2022] SGHC 84, this court also set out other relevant factors in order to determine whether the sanction of striking off is warranted:

> 110 … To reiterate, the overarching principle is that solicitors who conduct themselves dishonestly will, presumptively, be struck off the roll, *if* their dishonest conduct indicates a character defect rendering them unfit to remain in the profession, or if such conduct undermines the administration of justice (*Chia Choon Yang* at [20]). At [40] of *Chia Choon Yang*, we also set out ***other*** (non-exhaustive) factors which the court should consider in determining whether the sanction of striking off is warranted: **(a) the real nature of the wrong and the interest which has been implicated; (b) the extent and nature of the deception; (c) the motivations and reasons behind the dishonesty and whether it indicates a fundamental lack of integrity on the one hand or a case of misjudgment on the other; whether the errant solicitor benefited from the dishonesty; and (d) whether the dishonesty caused actual harm, or had the potential to cause harm which the errant solicitor ought to have or in fact recognised.**
>
> [emphasis in italics and bold italics in original; emphasis added in bold]

48 In summary, misconduct involving dishonesty will almost invariably warrant an order for striking off where the dishonesty reveals a character defect rendering the errant solicitor unsuitable for the profession, or where it undermines the administration of justice. Striking off may not be appropriate where the dishonest act reveals an error of judgment rather than a grave character defect.

49 With these principles in mind, we were of the view that striking off was warranted in the present case. There were, in fact, a few aggravating factors.

50 First, the Respondent acted as a solicitor without a valid PC for a prolonged period of time, even though she was well aware, by her own admission, that she was not authorised to do so. This was further aggravated by the clear element of dishonesty, that the Respondent had misled the Complainant into thinking that she had the requisite authority to represent the Complainant in court. This was not a case where the deception was a one-off incident. Before disclosing the fact of her bankruptcy, she did not disclose her lack of a PC and continued to advise the Complainant. After the Disclosure and after obtaining the loans from the Complainant, the Respondent falsely represented that she had the annulment "sorted", and that she was representing the Complainant personally in court. This was a deliberate misrepresentation amounting to dishonesty. In our judgment, the dishonesty in this case did violate the trust and confidence that the Complainant had reposed in the Respondent, who was engaged in a *de facto* solicitor and client relationship with the Complainant. In this light, as set out in the authorities, striking off was the presumptive sanction.

51 It was also crucial that the Respondent continued to create the false impression that she was a duly authorised solicitor, as evidenced from multiple WhatsApp messages that the DT had relied on (see above at [22]). In these messages, she claimed to be attending to the Complainant's matter personally and representing the Complainant in court hearings, when that was clearly not the case. The extent to which the Respondent had gone to create such an impression revealed a defect of character, rather than a mere lapse of judgment.

52 It was also in this context of a *de facto* solicitor-client relationship that she borrowed $60,000 from the Complainant and the Complainant's mother. This was yet another aggravating factor. Regardless of the Complainant's financial situation or level of sophistication, the solicitor should not be taking advantage of his or her position to obtain such a benefit. This was compounded by the fact that there was an element of undue influence, as the DT had found, because the loans were procured at a time when the Complainant had pending custody proceedings, and the Complainant felt "trapped" and was worried that she would be without a lawyer.

53 In so far as possible mitigating factors were concerned, the Respondent sought to rely on her mental health issues as a mitigating factor. We did not think this was a relevant factor. First, the Respondent had adduced no evidence in relation to her alleged psychiatric issues. Secondly, the paramount considerations here were the *protection of the public*, and the *public trust in the administration of justice*. This was emphasised by this court in *Ravi 2016* at [40]–[41], that personal circumstances that would otherwise have been deemed as mitigating in criminal proceedings are accorded less weight in disciplinary proceedings against solicitors; in particular, this court observed in that decision (at [41]) as follows:

> 41 Unlike the situation in criminal proceedings however, in disciplinary proceedings against errant lawyers, the paramount considerations are first, the protection of the public, and second (and this is closely related to the first), upholding public confidence in the integrity of the legal profession. … What this means in practical terms is that a sanction that disables the solicitor from practising for a time may be warranted by the need to protect the public and uphold confidence in the integrity of the profession even if that sanction might seem excessive if one looked at it purely from the perspective of whether, having regard to the actual culpability of the offender, the sanction was appropriate in the circumstances.

54 Hence, difficult circumstances and dire financial straits can never be an excuse for wrongful conduct. The public interest in ensuring public trust in the administration of justice is of paramount concern. For these reasons, we did not accord much weight to her alleged mental health issues, and considered striking off as the appropriate penalty.

Conclusion

55 In light of all the aggravating factors and the absence of any weighty mitigating factors, we imposed the sanction of striking off. At the hearing before us, the Respondent personally proffered her apology to the court. While it did not affect our view as to the appropriate sanction in this case, we encouraged the Respondent to use her remorse as a springboard for her eventual rehabilitation as a solicitor.

56 We also allowed the Law Society's application for costs of the DT proceedings, and awarded costs in favour of the Law Society at $28,000 all-in (this included the costs of the leave application in *Law Society v Helen Chia* and the present application). We allowed the striking off order to take effect on 15 August 2022.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

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The respondent in person.
