IN THE COURT OF 3 SUPREME COURT JUDGES OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 111

Originating Application 15 of 2023

Between

Attorney-General

… *Applicant*

And

Shahira Banu d/o Khaja Moinudeen

… *Respondent*

GROUNDS OF DECISION

[Legal Profession — Disciplinary proceedings — Application pursuant to sections 16(4) and 98 of the Legal Profession Act 1966]
[Legal Profession — Duties — Duty of candour]
[Legal Profession — Admission]

Attorney-General
v
Shahira Banu d/o Khaja Moinudeen

[2024] SGHC 111

Court of 3 Supreme Court Judges — Originating Application No 15 of 2023
Sundaresh Menon CJ, Steven Chong JCA and Andrew Phang SJ
22 January, 12 March 2024

2 May 2024

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 The administration of justice is not an abstract exercise. Nor is it the *exclusive* preserve of the individual members of the judiciary. Its endeavour is to deliver concrete outcomes that are fair and just in each case, and this comes about from the honest and diligent consideration of the evidence and arguments presented in real cases involving real people. For this end to be achieved, the evidence and arguments must be prepared diligently and presented fairly, and this in turn relies on the interconnected operation of different parts of the legal system. Interpreters help to ensure that those less conversant in English can participate in proceedings effectively. Security officers help to maintain the orderliness of proceedings. Legislative drafters aid in making laws clear and accessible for self-represented persons. Court transcribers and audio technicians help to ensure that an accurate record exists of what transpires in proceedings.

2 Within this system, advocates and solicitors have a special role as officers of the court to assist in the administration of justice, an obligation recognised both in the common law (*Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("*Udeh Kumar*") at [104]) and in legislation (see, for example, r 9(1)(*a*) of the Legal Profession (Professional Conduct) Rules 2015 ("the PCR")). This is for good reason. The administration of justice rests on the foundational premise that courts can rely upon the honesty and fair-mindedness of the solicitors with whom they deal. The public, too, must be able to repose confidence in a profession which plays so indispensable a part in the administration of justice (*Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 at [12]). Central among a solicitor's ethical duties is the duty of candour to the court: untrue facts cannot be knowingly stated, and material facts cannot be concealed (*Bachoo Mohan Singh v Public Prosecutor and another matter* [2010] 4 SLR 137 ("*Bachoo Mohan Singh*") at [114]). The present case afforded us an opportunity to examine the contours of this duty of candour, in the context of what it means for an Advocate and Solicitor ("A&S") appearing before the court, and equally, for those seeking to persuade the court to admit them to the ranks of this profession.

Background

3 This case involved an application by the Attorney-General ("the AG") to strike Ms Shahira Banu d/o Khaja Moinudeen ("the Respondent") off the roll of advocates and solicitors of the Supreme Court of Singapore ("the Roll") pursuant to ss 16(4) and 98 of the Legal Profession Act 1966 (2020 Rev Ed) ("the LPA"). This stemmed from her not disclosing in the affidavit she had filed in support of her application for admission a material fact that was known to her but not to the court or to the other stakeholders: namely, her commission of an

academic offence of plagiarism while she was a law undergraduate ("the Academic Offence").

The Academic Offence

4 The Respondent was in her second year of law school at the National University of Singapore ("NUS") in April 2020 when she took a module entitled Constitutional and Administrative Law ("CAAL"). On 28 April 2020, she completed a take-home examination for the CAAL module, which had a weightage of 70% of her overall grade for the course.

5 On 19 May 2020, the Respondent was issued a preliminary Academic Offence Report by NUS because her essay answer to Question 3 of the CAAL examination had been flagged as identical to the answers of three other students taking the same examination.

6 On 22 May 2022, the Respondent attended an Inquiry Panel comprising Professor David Tan ("Prof Tan") and Ms Chuan Chin Yee, the Vice Dean and Assistant Dean of Academic Affairs at NUS Law respectively. The Respondent told the Inquiry Panel that she had not colluded with any other student for the CAAL examination. However, she had prepared sample essays using her senior's "mugger notes" and thought that she could use those materials in her answer to the CAAL examination question provided her senior had consented to this. Prof Tan informed the Respondent that her explanation was untenable given the definition of plagiarism in NUS's Ethical Conduct Guidelines as disclosing academic dishonesty when "a student … uses an idea, or words … of another person as though they were his or her own work". He invited the Respondent to dispute the finding of plagiarism before NUS's Board of Discipline. Prof Tan recorded the Respondent's response as being "very

apologetic" and she assured him that she would not repeat her actions. The Respondent was also warned that if she was found guilty of plagiarism again, she would be referred to the Board of Discipline.

7 The final Academic Offence Report issued by Prof Tan on 24 May 2020 reflected that he was satisfied that there was an absence of intention to cheat, and that the gravity of the Respondent's Academic Offence was "moderate". The Respondent was given zero marks for Question 3 of the CAAL examination. The Respondent confirmed that the record of inquiry prepared by Prof Tan was accurate, accepted the finding of plagiarism, and did not pursue the matter further.

The Respondent's application for admission to the Bar

8 The Respondent filed her application for admission as an A&S on 29 May 2023, three years after the Academic Offence. The Respondent had 32 days to prepare her affidavit for admission between 29 May and the submission deadline of 31 July. She went on two holidays between 11 and 27 July, partly in the context of her upcoming wedding. She prepared her affidavit for admission after returning to Singapore on 27 July and had it affirmed and submitted on 31 July 2023 after cross-checking it against a friend's affidavit for admission which had previously been filed and accepted by the court. In her affidavit for admission, the Respondent declared at paragraph 7(*j*) that she had "no knowledge of any fact that affects my suitability to practise as an advocate and solicitor in Singapore or as a legal practitioner (by whatever name called) elsewhere". She, however, did not disclose the Academic Offence.

9 Three days after filing her initial affidavit for admission, the Respondent filed a second affidavit for admission on 3 August 2023 to correct a

typographical error in the details of one of the two Certificates of Good Character filed on her behalf. She, again, did not declare the Academic Offence.

The Respondent's admission to the Bar

10 On 7 August 2023, the AG issued a Letter of No Objections to the Respondent's admission application as her cause papers otherwise appeared to be in order. She was admitted as an A&S on 22 August 2023 and placed on the Roll.

The discovery of the Academic Offence

11 The Respondent's Academic Offence was discovered when another student, Ms Ong Pei Qi Stasia ("Ms Stasia Ong"), declared that she had committed plagiarism in the same CAAL examination in 2020 in her application for admission to the Bar in 2023 (see *Re Ong Pei Qi, Stasia* [2024] SGHC 61 ("*Stasia Ong*") at [2]–[8]). Among the documents disclosed by Ms Stasia Ong in her admission application, an Academic Offence Report by NUS suggested that other students were potentially being investigated for similar academic offences in the same examination. The identity of the Respondent and the Academic Offence Report issued to her were subsequently disclosed to the AG by NUS.

Procedural history

The AG's application

12 The AG filed the Originating Application for the present case on 23 October 2023. On 28 November 2023, the Respondent deposed a first affidavit in these proceedings ("the First Affidavit"). In the First Affidavit, the Respondent explained that during her preparation of the initial affidavit for

admission, her focus had been on meeting the deadline for submission, leading to her missing, among other things, footnote j of paragraph 7(*j*) in Form A(1) ("footnote j") in the Second Schedule of the Legal Profession (Admission) Regulations 2011 ("LP(A)R"). This states:

> State the necessary particulars, including (where applicable) —
>
> (a) any determination by the university mentioned in paragraph 2, or any other institution of higher learning, of the applicant's commission of a deliberate assessment offence that amounts to plagiarism or cheating to gain an advantage for the applicant or others; and
>
> (b) any misconduct (including a deliberate assessment offence, if any) for which any of the institutions charged, disciplined or suspended the applicant.

13 By reason of overlooking this footnote, the Respondent claimed to have had "no inkling" that the finding of plagiarism in relation to the Academic Offence was serious enough to be a relevant fact that ought to have been declared when she applied for admission as an A&S. The thought that the Academic Offence might be something she should declare apparently did not cross her mind at all. In addition, the Academic Offence had taken place over three years ago and was not in her mind at the time she prepared her affidavit for admission given that she had already been dealt with by NUS. This, she claimed, had led to her inadvertent declaration in paragraph 7(*j*) of her admission affidavit and her omission to disclose the Academic Offence. This obliviousness apparently continued when she filed the amended affidavit for admission.

The Respondent's supplementary affidavit

14 On 19 January 2024, just prior to the first hearing of the matter that was scheduled on 22 January 2024, the Respondent sought leave to file a supplementary affidavit ("the Supplementary Affidavit") and further

submissions, as well as to have the hearing on 22 January 2024 vacated. We heard the parties on 22 January 2024, and granted the Respondent leave to file a supplementary affidavit, with the AG having leave to file an affidavit in response.

15 In her Supplementary Affidavit, the Respondent expanded her account in her First Affidavit as to why she had inadvertently omitted to disclose the Academic Offence. She explained that she had relied on an outdated version of the LP(A)R which had been hosted on the website of the Singapore Institute of Legal Education ("SILE") at the time. In this outdated version, which had been in force from 20 March 2015, footnote j to Form A(1) of the Second Schedule only prompted applicants to "[s]tate the necessary particulars" without specifically highlighting the points reflected in the extract reproduced at [12] above. The AG's affidavit in reply was attested to by Mr David Quark Kok Sin in his capacity as Executive Director of the SILE ("the SILE Affidavit") and this confirmed that the outdated version of the LP(A)R had indeed been hosted on SILE's website from May 2023 until 19 January 2024. However, the SILE Affidavit and the AG's subsequent submissions highlighted that the Respondent's affidavit for admission used wording which tracked the updated version of the LP(A)R, such as references to the "Legal Profession Act 1966" rather than to the "Legal Profession Act (Cap 161)" which was found in the outdated version of the LP(A)R hosted on the SILE's website. This raised some doubt over whether the Respondent had in fact relied on the outdated version of the LP(A)R in preparing her affidavit for admission.

16 We were prepared to give the Respondent the benefit of the doubt that she had in fact referred to the outdated version of the LP(A)R hosted on the SILE's website in preparing her affidavit for admission, and that the wording in her affidavit had been later updated after cross-checking with a friend. However,

even taking this into account, we could not accept the Respondent's explanation that her omission to disclose the Academic Offence could be satisfactorily explained by inadvertence on her part. We came to this view for three reasons.

17 First, we did not accept the Respondent's explanation that she had forgotten about the Academic Offence because the issue had been dealt with by NUS three years prior to her application to admission. In fact, the converse is more likely than not to have been the case: the Respondent could *not* have forgotten about her commission of the Academic Offence because she had been disciplined formally by NUS over this incident. She attended a meeting with the Inquiry Panel, was issued a formal offence report which she acknowledged, and was given zero marks for the question involved. These incidents would not have been easily erased from her memory.

18 Second, quite apart from footnote j, the Respondent acknowledged in her First Affidavit that she was "vaguely aware" of cases in the news where plagiarism and academic misconduct had been found by the court to amount to serious misconduct affecting one's suitability for admission to the Bar. These would have included cases such as *Re Tay Quan Li Leon* [2022] 5 SLR 896 ("*Leon Tay*") and *Re Wong Wai Loong Sean and other matters* [2023] 4 SLR 541 ("*Sean Wong*"). However, she claimed that she had not read the grounds of decision in those cases and she had mistakenly assumed that they related to serious cases of academic misconduct, such as collusion during examinations, which were far more egregious than the Academic Offence. In our view, the Respondent's explanation did not pass muster. Beyond the fact that this was an entirely self-serving assertion, it would make no sense for the Respondent to jump to the conclusion that those cases involved conduct that was much more serious than her Academic Offence when she claimed not to have even read the relevant judgments or known the facts of those cases to begin with. More

importantly, as conceded by counsel for the Respondent, Mr Nakoorsha Bin Abdul Kadir ("Mr Nakoorsha"), during the hearing on 12 March 2024, she *did* know that applicants to the Bar had been denied admission in circumstances where they had committed academic offences. Whether or not those academic offences were more serious than hers, it remains the case that she was aware that the Academic Offence was a type of conduct which was, or *at the very least* could well be, relevant and material to the inquiry into her suitability for admission to the Bar.

19 Third, the contents of the SILE Affidavit adduced in response to the Respondent's Supplementary Affidavit proved to be particularly damaging to the Respondent's narrative of her non-disclosure being inadvertent. The SILE Affidavit highlighted that on 23 June 2023, the Respondent was sent an email from the SILE entitled "Mass Call 2023 – A Timely Reminder", informing her that SILE had "prepared an SILE Guide for Mass Call 2023 which may help you avoid some of the pitfalls commonly associated with the admission process". A hyperlink was attached to the text "SILE Guide for Mass Call 2023", bringing users to a document with the same title ("the SILE Guide"). The SILE Guide was a single A3-sized document which included, among other things, a reminder to applicants for admission to "[e]nsure particulars of any facts which affect your suitability to practise (e.g., **deliberate assessment offences** and misconduct at University) are declared at 7(j)" [emphasis added in bold]. The SILE Guide itself also included hyperlinks, one of which linked to a webpage containing the relevant forms for practice training and admission. Alongside these forms was a webpage titled "Note on change to form of affidavit", which included a specific reminder by the SILE to prospective applicants to declare deliberate assessment offences, with the updated version of footnote j prominently highlighted in yellow. SILE sent several further emails

to the Respondent on 5, 6, 11 and 14 July 2023, and in each of them a notice was displayed to refer to a hyperlinked SILE Guide for more information.

20 The Respondent did not contest that these emails had been sent to her. She even accepted that she had had sight of the SILE Guide while preparing her affidavit for admission. She instead sought to explain, again in a self-serving way, in her Supplementary Affidavit that she had "not focused on the portions in relation to preparing the affidavit for admission" as she had been focused on sorting out her Certificate of Diligence and Practice Training Contract Checklist instead. We could not accept this explanation. The Respondent had been through four years of law school, and had been sent a guide which was less than a page long explaining important information relating to what needed to be done for her admission to the Bar. The importance of this document had been highlighted to her in multiple emails. Her assertion that she had simply missed out on reading the SILE's reminders to disclose any academic offences rang hollow.

Whether the Respondent should be struck off

21 Section 16(4) of the LPA states:

> (4) If, at any time after the admission of any person as an advocate and solicitor, it is shown to the satisfaction of the court that any application, affidavit, certificate or other document filed by the person **contains any substantially false statement or a suppression of any material fact**, or that any such certificate was obtained by fraud or misrepresentation, the name of the person **must be struck off** the roll. [emphasis added in bold]

22 We agreed with the AG, and the Respondent did not contest, that the Respondent's affidavit for admission necessitated her being struck off the Roll

because it fell under two different limbs of s 16(4), each of which was an independent and sufficient trigger for striking off.

23 As to the first limb under s 16(4), the Respondent's affidavit for admission contained a substantially false statement in the form of her declaration that she did not have knowledge of any fact that affected her suitability to practise as an A&S in Singapore. This was a substantially false statement in light of the fact that (a) the Respondent knew she had committed the Academic Offence, (b) the Academic Offence was a fact affecting her suitability to practise (see, for example, *Leon Tay*, *Sean Wong*, and *Re Tay Jie Qi and another matter* [2023] 4 SLR 1258 ("*Tay Jie Qi*")), and (c) she knew such academic offences were or at least were likely to be relevant in the determination of an aspiring A&S's suitability for admission to the Bar (see [18] above). On this basis alone, the Respondent's striking off followed as an automatic consequence. Under this limb, it is unnecessary to enquire further as to the subjective intention of the Respondent. Striking off follows as a consequence once an application, affidavit, certificate or other document filed by an applicant for admission has been shown to the court's satisfaction to contain a substantially false statement, because the presence of false information presented in the course of one's admission to the Bar adulterates the validity of that admission. In such a case, there is nothing prohibiting the stricken-off solicitor from being immediately readmitted in suitable circumstances, such as for instance, where the non-disclosure was plainly inadvertent and of matters not of sufficient materiality to preclude such a course. However, what is important is that the readmission process should take place with the court's awareness of the false information so as to properly carry out its supervisory power over the ranks of the profession.

24 In this connection, we take this opportunity to make two brief observations on s 16(4) of the LPA. First, although the ambit of the provision extends to "any application, affidavit, certificate or other document filed by the person", this should be read in the context of Part 2A of the LPA, within which s 16 is situated. The title of Part 2A reads "Admission of Advocates and Solicitors". This title can be taken notice of by the court (see s 6 of the Interpretation Act 1965) and is as much a part of the LPA as are marginal notes/section headers (Diggory Bailey & Luke Norbury, *Bennion, Bailey and Norbury on Statutory Interpretation* (LexisNexis Butterworths, 7th Ed, 2017) at 444), all of which may be used as aids to statutory interpretation as long as the meaning ultimately attributed to the provision is gleaned from both the actual statutory language as well as the context (*Tee Soon Kay v Attorney-General* [2007] 3 SLR(R) 133 at [37]–[41]; *Ratnam Alfred Christie v Public Prosecutor* [1999] 3 SLR(R) 685 at [7]). In our view, s 16(4) of the LPA, when viewed in conjunction with the title of Part 2A, ought only to apply to applications, affidavits, certificates, or documents filed in connection with the process of being placed on the Roll.

25 Second, the word "substantially" within the term "substantially false statement" in s 16(4) of the LPA ought to be read as indicating more than a *de minimis* threshold for the materiality of what constitutes a false statement. The term "substantially" should be seen as a modifier not just of the word "false", but also of the term "false statement" – that is, it is insufficient that a statement is "substantially false" in the sense of being false to a significant degree; it must also be that the nature of the falseness of the statement is substantial and not merely typographical in nature. This reading brings the meaning of "substantially false statement" in line with the second limb of the same section, which also imposes a requirement for the suppressed fact to be material. For

example, should an applicant for admission mistakenly state that "I am *not* the subject of any pending investigation or proceedings in Singapore or elsewhere in respect of any criminal offence", but then proceed to provide details of pending criminal investigations against himself or herself, it would be readily inferred that that the inclusion of the word "not" was an inadvertent typographical error which would not be a substantially false statement despite the statement in isolation being *prima facie* false.

26 In any event, we were also satisfied that the Respondent's affidavit for admission involved suppression of a material fact. Under this limb, assessing whether the Respondent's conduct amounts to suppression involves both (a) an objective inquiry as to whether there was suppression of evidence, and (b) a subjective inquiry into the intention of the suppressor (see *Law Society of Singapore v de Souza Christopher James* [2023] SGHC 318 ("*de Souza*") at [76]–[77], [157] and [168]). The Respondent's Academic Offence was undisputedly a material fact which she ought to have disclosed in her affidavit for admission but did not. Her duty to disclose this was specified in footnote j contained in Form A(1), the very form setting out the template for her admission affidavit. It had also been repeatedly highlighted in cases such as *Leon Tay*, *Sean Wong* and *Tay Jie Qi* that academic misconduct is or is likely to be relevant to the court's consideration of an applicant's suitability for admission and ought therefore to be disclosed. As to the Respondent's subjective intention, our rejection of the Respondent's explanation of innocent inadvertence as the reason for her non-disclosure of the Academic Offence left us with no choice but to conclude that there was a degree of deliberation behind her wrongful non-disclosure. We were thus satisfied that there had been both a substantially false statement and the suppression of a material fact in the Respondent's affidavit for admission. We therefore ordered that the Respondent be struck off the Roll.

The period of the reinstatement interval to be imposed

General principles

27 Where an A&S is struck off the Roll for disciplinary infringements, the court will not normally consider the duration of time before a fresh application for admission may be made. In this context, both the AG and the Respondent invited us to view this type of case as bearing a closer analogy with those cases in which we have considered whether the *earlier* misconduct of the applicant taking place before admission to the Roll renders him or her unsuitable for admission when the court is apprised of the matter. On the other hand, counsel for the Law Society of Singapore ("the Law Society"), Mr Rajan Sanjiv Kumar, whom we invited to address the court on the issue of the duty of candour owed by an A&S and by applicants for admission, observed that it might not be necessary for us to stipulate a reinstatement interval since this is not typically done within an order for striking off. On this issue, we agreed with the AG and the Respondent and were satisfied that in the present case, it was appropriate to stipulate a minimum reinstatement interval. In our judgment, it was a material consideration in this context that the misconduct in question preceded the individual's enrolment as an A&S. Such a person faces the prospect of being struck off the Roll not as a consequence of any improper act or omission done as an A&S, but because of prior misconduct and/or the failure to make the appropriate disclosures to the court when applying for admission. Nonetheless, it is relevant to consider the sort of factors that the court will typically take into account when considering an application for restoration to the Roll by an A&S who has been struck off for a disciplinary offence. There are three factors (*Nathan Edmund v Law Society of Singapore* [2013] 1 SLR 719 at [10] and [26]):

(a) an adequate period of time must have passed between the striking off order and the reinstatement application, ascertained in relation to the severity of the offence that led to the striking off;

(b) the applicant must have been fully and completely rehabilitated; and

(c) allowing reinstatement must not undermine or prejudice the protection of the public interest and the reputation of the legal profession.

28 The present case, as we have explained, was more closely analogised with cases of applicants whose admission applications have been deferred on account of their conduct *before* and/or *during* their application for admission raising issues over their suitability to be an A&S. In these cases, the key concern is rehabilitation. This points to the view that a stipulated reinstatement interval is helpful in assisting the applicant in question to work towards this goal. Significantly, unlike the position where an A&S has been disciplined and seeks restoration, the extent of the interval is calibrated not based on the severity of the offence (see at [27(a)] above) but rather based on the time that is thought to be necessary to enable the applicant in question to come to a proper appreciation of the nature and extent of the character issues he or she needs to confront and to work through. Hence, in the latter context, the length of the reinstatement interval as between two different applicants may not correspond to the relative gravity of their respective acts of misconduct: see *Re Gabriel Silas Tang Rafferty* [2024] SGHC 82 ("*Gabriel Rafferty*") at [37].

29 This brings us to the question of how we should calibrate the reinstatement interval. To determine this, two anterior questions arise:

(a) What is the severity of the Respondent's initial misconduct and subsequent non-disclosure?

(b) What insight does the Respondent have into the character issues she needs to confront?

The severity of the Respondent's misconduct and subsequent non-disclosure

30 Although the Respondent's initial misconduct in committing the Academic Offence was by no means trivial, it likely would not have been fatal to the Respondent's aspiration of becoming an A&S. The circumstances of Ms Stasia Ong's admission as an A&S are instructive in this regard. Ms Ong had committed a similar offence of plagiarism in the very same CAAL examination as the Respondent. She had even compounded her misconduct by giving a false explanation to NUS in the subsequent inquiry that was conducted (*Stasia Ong* at [3]). Prior to her application for admission as an A&S, however, Ms Ong contacted NUS to disclose the fact that she had given a false explanation in the course of the inquiry. She also made full disclosure of her plagiarism and of her lying in the subsequent inquiry in her affidavit in support of her admission application. In allowing her application for admission following a voluntary five-month deferment of her application, the court noted that her unprompted disclosure cast a very positive light on her genuine desire to come clean and make a fresh start on the right footing. She showed candour and courage in owning up to her mistakes, had ethical insight into her misconduct, and demonstrated a real capacity for change and rehabilitation (*Stasia Ong* at [17]–[21]).

31 In the present case, the Respondent's initial response to her Academic Offence did show greater ethical insight than Ms Stasia Ong – there is no indication that she lied to the Inquiry Panel, she accepted NUS's disciplinary

determination without further incident, and she did not go on to commit further recorded academic offences in her time at university. However, this response was eclipsed by her subsequent non-disclosure of the Academic Offence in her affidavit for admission, which constituted a breach of the duty of candour she owed to the court. We turn to consider the gravity of this breach.

The duty of candour owed by an A&S

32 To assess this, we begin by examining what the duty entails.

33 As noted by V K Rajah JA in *Bachoo Mohan Singh* at [114] (cited with approval in *Udeh Kumar* at [55]), the duty of candour is equivalent to an A&S's duty not to mislead the court, and this is a "touchstone of our adversarial system". It is incapable of being exhaustively defined given the broad spectrum of activity it encompasses, but can nevertheless be said with confidence to be indivisible, uncompromising, and enduring (*Public Trustee and another v By Products Traders Pte Ltd and others* [2005] 3 SLR(R) 449 ("*Public Trustee*") at [30]). It applies when performing any act in the course of practice as an A&S (*Bachoo Mohan Singh* at [114]) and extends to both the passive concealment of material facts and active misrepresentation (*Public Trustee* at [30]; *Law Society of Singapore v Nor'ain bte Abu Bakar and others* [2009] 1 SLR(R) 753 at [46]).

34 The importance of the duty of candour stems from 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 (*Public Trustee* at [35]). It takes precedence over the duty to one's client (see r 4(*a*) of the PCR). Breaches of this duty will be viewed sternly by the court (*Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [23]; *Loh Der Ming Andrew v Koh Tien Hua* [2022] 3 SLR 1417 at [67]).

35 This brings us to the question of when the duty of candour is breached. We found the concurring judgment of Kannan Ramesh JAD in *de Souza* to be helpful in this regard. That case concerned whether the respondent solicitor was a party to and assisted his client, Amber, in suppressing evidence in breach of r 10(3)(*a*) of the PCR by preparing and filing an affidavit without exhibiting other documents which, if exhibited, would have revealed that Amber had breached a previous undertaking to the court. Both the majority decision (of Belinda Ang JCA on behalf of herself and Woo Bih Li JAD) ("the Majority Opinion") and the concurring judgment of Kannan Ramesh JAD ("the Concurring Opinion") agreed that the respondent solicitor had not been a party to or assisted with Amber's suppression of evidence.

36 Where the Majority Opinion and Concurring Opinion diverged was over the manner of the respondent solicitor's disclosure of the fact that there *had been* some prior breach of the court undertaking by Amber, and whether that manner of disclosure was sufficient. The background to this lay in the fact that the respondent solicitor knew that a disclosure had to be made and was managing the tension between this acknowledged duty and the fact that his client, Amber, wished either to avoid making the disclosure or to minimise the disclosure. The Majority Opinion considered that the specific framing of the charge against the respondent solicitor did not require the respondent solicitor to disclose anything more than the *fact* that there had been some prior breach of the court undertaking by Amber (at [155]). The Majority Opinion took this view because the relevant charge alleged that the respondent had failed to exhibit documents which "would have revealed *that* Amber had breached its undertakings" [emphasis added] (at [87]) and it was not necessary to go further and disclose the nature and extent of the breach of the court undertaking. In short, the Majority Opinion considered that the duty of disclosure was not

animated by the need of the court to know all the relevant circumstances of Amber's breach because of the way the charge was framed. Conversely, the Concurring Opinion thought that this was insufficient and held that the *circumstances and extent* of the breach needed to be disclosed as well so that the court dealing with the matter would have a proper appreciation of what had happened (at [181]–[195]).

37 In our judgment, and with respect to the Majority Opinion, the Law Society and the AG were correct in their submissions before us that the approach of the Concurring Opinion in its assessment of the duty of disclosure owed by an A&S under r 10(3)(*a*) of the PCR is to be preferred and ought to apply to the assessment of when an A&S has breached their duty of candour to the court. This involves a contextual assessment of the nature and scope of the evidence that ought to have been disclosed, based on the nature and purpose of the proceedings in which the suppression of evidence occurred and the relevant law that applies to those proceedings (*de Souza* at [161]). Only after consideration of this context should the court go on to determine whether there was, objectively assessed, a failure to disclose evidence falling within the scope of the duty of disclosure, and whether the A&S subjectively intended the non-disclosure (*de Souza* at [164]). In that case, the respondent solicitor had exerted considerable efforts to frame the disclosure in terms that would be acceptable to his client, and which he thought would meet the requisite threshold of proper disclosure to the court. In such a case, if the disclosure to the court is subsequently found to be insufficient, then it seems to us it would, or at least would very likely, follow that the requisite subjective intention would be found unless close examination of the circumstances satisfied the court otherwise. The key point is that the fact that some disclosure was made would not be sufficient to support a finding that an A&S has discharged the duty of candour towards

the court if the nature and purpose of the proceedings as well as the applicable law point to further information being necessary. In so far as an A&S has a duty to be candid to the court, the starting and ending point of this duty is that one cannot be parsimonious with the truth; it must be told in full. Anything less than the whole truth is not the whole truth, if what has been omitted is potentially relevant and/or material. Solicitors should be especially mindful of the dangers of erring on the wrong side of this tension when faced with the pressure of a client pulling in the opposite direction of what the solicitor knows or has reason to believe is the duty owed to the court. Because a solicitor is an officer of the court in the administration of justice, nothing should come in the way of the latter duty.

The duty of candour owed by an applicant for admission to the Bar

38 We turn then to the slightly different question of the duty of candour owed by an applicant for admission to the Bar. The AG, the Respondent, and the Law Society were all in agreement that an applicant owed some form of duty of candour to the court, although they differed as to *why* this was so.

39 The AG suggested that an applicant owed a duty of candour by virtue of the common law. Such an applicant would be a litigant seeking relief from the court and would owe an overarching common law duty of candour to the court, and this was true of all parties before the court (*Bachoo Mohan Singh* at [114]). The Respondent agreed that an applicant would owe such a duty by virtue of being a litigant before the court, but did not accept, as argued by the AG, that there was no distinction between the standards of conduct expected of an A&S and an applicant; duties in the PCR, according to the Respondent, did not apply to applicants.

40 Seen in context, V K Rajah JA's remarks in *Bachoo Mohan Singh* at [114]–[116] only affirm that litigants owe *some* form of duty of candour to the court; they do not go so far as to support the proposition that litigants owe an *equivalent* duty of candour as an A&S. In our view, it would be unwise to view those remarks as suggesting that the duty of candour owed by a litigant, and by extension an applicant for admission to the Bar, would be subject to similar obligations as an A&S. Nothing was advanced to us that sufficiently bridged the gap between the duties of a lay litigant and those of an A&S.

41 The Law Society, on the other hand, contended that the duty of candour owed by an applicant for admission derives from a combination of the LPA, the LP(A)R, and the common law. We agreed with this. The starting point for assessment of an applicant's character for the purposes of admission is found in s 13(1)(*b*) of the LPA, which states that an applicant for admission must not be admitted as an A&S unless he or she is of "good character". As noted in *Re Suria Shaik Aziz* [2023] 5 SLR 1272 ("*Re Suria*") at [39]–[40], this requirement extends to part call applications as much as it does to applications for admission as an A&S.

42 The requirement of good character involves a consideration of whether an individual can be trusted to aid in the administration of justice. Applicants for admission seek to become officers of the court and in doing so, will owe a paramount duty to the court (r 4(*a*) of the PCR) and must be able to be trusted to aid in the administration of justice (*Leon Tay* at [1]). The protection of the public and the administration of justice are thus central features of the admission process, as evidenced by the involvement of the Attorney-General, the SILE, and the Law Society as stakeholders in the admission process who protect the public interest by identifying individuals who are unsuitable for admission (*Sean Wong* at [27]). More specifically, a recognition of the importance of the

duty of candour *must* be a prerequisite for an individual to be trusted to aid in the administration of justice because a willingness to mislead the court compromises the overriding public interest in maintaining the dignity and honour of the legal profession through the preservation of the highest ethical and moral standards amongst solicitors (*Public Trustee* at [35]). An inability to appreciate one's duty of candour to the court would thus indicate that an applicant for admission falls short of the "good character" requirement under s 13(1)(*b*) of the LPA.

43 As to the *extent* of the duty of candour owed by an applicant for admission to the Bar, both the AG and the Law Society took the position that applicants for admission owe a duty of candour to the court which is equal to, and in any event not less than, the duty of candour owed to the court by an A&S. The Respondent argued that the duty of candour owed by an applicant for admission would "at its highest" be the same as that of an A&S, but would have a narrower scope, and further, that it would be of a different nature in that only intentional misrepresentation, and not reckless or inadvertent false statements, should amount to a breach of an applicant's duty of candour.

44 We did not accept the Respondent's position. In so far as applicants for admission aspire towards assuming the privileges and responsibilities of being an A&S, there is no reason why they should not be expected to demonstrate an ability to appreciate the importance of the duty of candour expected of A&Ss, including the need *not* to make representations recklessly to the court without regard to their truthfulness (*Udeh Kumar* at [34]–[36]). Although an applicant's lack of experience might be of limited mitigatory value in assessing the severity of the breach of any duty of candour in very specific scenarios, there is no reason why such inexperience would render the applicant unable to appreciate the importance of being candid in dealings with the court.

45 Further, when we considered the nature and purpose of admission proceedings, as well as the applicable law in relation to those proceedings, it became evident that the duty of candour applicable to an applicant for admission is equal to that owed by an A&S. This would encompass both deliberate and reckless misrepresentation (*Udeh Kumar* at [34]–[36]). We came to this conclusion for these reasons:

(a) The purpose of admission proceedings is to ensure, among other requirements, that those admitted to become A&Ss are individuals of "good character" who can be entrusted to aid in the administration of justice as A&Ss. If applicants are applying to serve this function, it follows they must demonstrate that they adhere to the same ethical standards which A&Ss are held to. As noted in *Gabriel Rafferty* at [39], an applicant for admission to the Bar who fails to appreciate the gravity of withholding information from the court without legal basis for doing so cannot be depended upon to place their duty of candour to the court above their proclivity for self-interest, and so cannot be trusted to ably serve in the administration of justice.

(b) Admission proceedings take place at the cusp on an applicant entering the legal profession. This points towards similar ethical standards being expected of them as of an A&S. Admission proceedings also entail scrutiny of the character of the applicant, for example through the requirement to file a certificate of diligence signed by their supervising solicitor and two certificates of good character by persons known to the applicant, both certifying that the applicant is a fit and proper person for admission. This information is also placed before the stakeholders who make an independent determination of their view of the applicant's suitability for admission. The heightened emphasis on

gauging the applicant's character suggests that disclosure of the necessary information to make this assessment is an important part of the admission process and that a high standard of candour is necessary. More generally, an affidavit for admission involves an applicant holding out that they believe they are a fit and proper person for admission at the time of the application and that they have made available to the court all material information to enable the court to come to a similar conclusion (*Gabriel Rafferty* at [40]), through, among other things, the wide-ranging declaration that they have no knowledge of any fact affecting their suitability to practise as an A&S. In these circumstances, there is no reason why the standard for assessing whether an applicant is indeed a fit and proper person should differ from that expected from an A&S.

(c) The applicable law on application for admission to the Bar also supports the duty of candour expected from an applicant being equivalent to that expected from an A&S. An applicant must be able to show that they are able to "shoulder the weighty responsibilities that come with being [an A&S]" (*Re Suria* at [23]), that they can make honest, careful, and diligent decisions quickly within the stressful practice of law (*Sean Wong* at [22]), and that they can be "suitably depended upon to maintain the highest standards of honesty and integrity" (*Gabriel Rafferty* at [2]).

46 As to the *content* of the duty of candour owed by an applicant of admission, we make the following observations.

47 First, the onus of disclosure lies on the applicant to avail the court and stakeholders of all relevant information (*Re Suria* at [40]). Where an applicant makes voluntary disclosure of such information, this will often weigh heavily

in favour of a finding that the duty of candour towards the court has been discharged.

48 Second, where an applicant for admission has reason to believe past misconduct may be relevant to the assessment of their suitability for admission to the Bar, the invariable course will be to disclose not just the fact of the misconduct, but also the relevant circumstances and extent of the misconduct, to enable the court and the stakeholders to properly assess the applicant's suitability for admission (see further at [35]–[37] above).

49 Third, the requirement for an applicant to make disclosure of all facts relevant to the assessment of their "good character", although somewhat onerous for good reason, does not extend to a confessional recantation of every historical transgression on the part of that applicant. The focus is on those aspects of character which are relevant to one's suitability to be admitted *as an advocate and solicitor*. We reiterate that this is an objective question for the *court* to pronounce on. Where, for example, a stakeholder takes the position that an applicant ought to voluntarily defer their application for admission because of previous misconduct in exchange for its agreement not to object to the application down the road, an applicant should address their mind to whether that misconduct is pertinent to the question of suitability as an A&S. Should such an applicant persist with the application for admission, and be able to show to the court that the misconduct (and evidence of subsequent rehabilitation) does not affect that person's suitability for admission to the Bar, the fact that the application for admission has been made despite the protest of a stakeholder should not be viewed as detrimental to the prospect of admission.

The Respondent's non-disclosure

50 Seen in this light, the Respondent's failure to declare the Academic Offence in her affidavit for admission was a serious breach of the duty of candour she owed to the court as an applicant for admission to the Bar. She failed to make *any* disclosure and this fell far short of the ethical standard expected of an A&S. Where she ought to have erred on the side of disclosure, she at least twice took the questionable position of attempting to persuade us that her decision to view her Academic Offence as insufficiently serious so as to necessitate disclosure to the court or to the stakeholders was a mere administrative error with no ethical implications. In addition, on factual points, she twice took positions that we considered were self-serving and ultimately untenable: see at [18] and [20] above.

The Respondent's insight into her character issues

51 In our view, the Respondent's conduct throughout the course of her application for admission and the present proceedings showed little appreciation of her duty of candour to the court, what that duty required of her, or the insight to acknowledge that she had been woefully lacking in relation to the discharge of that duty. This compounded the seriousness of her initial misconduct and non-disclosure.

52 In her First Affidavit, despite purporting to recognise that being an A&S comes with a "heavy responsibility to uphold the highest standards of conduct", the Respondent did not suggest at all that she may have fallen short of these standards and instead sought to characterise her failure as a lack of diligence. Even though she was "sorry and regretful" that she had "inadvertently not declared the [Academic Offence]", this seemed to only be because she "should have been more careful when preparing [her affidavits for admission]". In other

words, the Respondent seemed to have supposed that her omission to disclose the Academic Offence was merely reflective of a lack of diligence in making herself aware of the *administrative* requirements of disclosure, rather than a failure of her *ethical* responsibilities as an aspiring A&S to appreciate the duty of candour owed to the court.

53 The Respondent continued to display this lack of insight in her decision to file her Supplementary Affidavit. This seemed to us to miss the forest for the trees. Even if the Respondent might have succeeded in showing she had not seen footnote j of Form A(1) of the LP(A)R, the evidence all but pointed towards her being aware of this obligation through other means – whether through her awareness of cases in the news such as *Sean Wong* or *Leon Tay*, or through the emails sent to her by the SILE. The Respondent's decision was all the more puzzling given that counsel for the AG, Mr Jeyendran s/o Jeyapal, had already indicated during the first hearing on 22 January 2024 that should the Respondent file a supplementary affidavit attesting to her reliance on an outdated version of the LP(A)R being hosted on the SILE's website, the AG reserved the right to file a reply affidavit to the effect that the SILE had sent specific directions to candidates on the need to disclose academic assessment offences. The information in the SILE affidavit eventually filed by the AG made clear that the Respondent had received quite specific instructions on what she ought to disclose; she did not deny that she had read the relevant documents or emails. The Respondent's assertion that she simply had not focused on the portions relating to her affidavit for admission (in a one-page document) was not credible and certainly not mitigating, even if it were found to be true. This cast more doubt on the Respondent's insistence that her non-disclosure of the Academic Offence was inadvertent. Indeed, Mr Nakoorsha eventually conceded during the

hearing that the contents of the Supplementary Affidavit were of no help to the Respondent in light of the information in the SILE affidavit.

54 The contents of the Supplementary Affidavit also further demonstrated the limited extent of the Respondent's ethical insight into her duty of candour. She maintained that she "should have been more careful" when preparing her affidavit for admission, and emphasised that she was "extremely sorry and regret [sic] not being more careful when preparing my affidavit for admission and for inadvertently failing to declare and disclose the [Academic Offence] in my affidavit for admission". In other words, there was still no indication that the Respondent appreciated that her non-disclosure of the Academic Offence was not just a matter of carefulness, but of candour.

55 The only point that Mr Nakoorsha was able to offer in favour of the Respondent was that her non-contestation of the application for striking off showed some insight into the wrongfulness of her non-disclosure. However, as we pointed out during the hearing, this did not go very far. The evidence in support of the Respondent having made a substantially false statement was plain on the face of her affidavit; it would have been hopeless to contest this or to deny the automatic consequence of striking off prescribed by s 16(4) of the LPA. Further, the evidence in support of the Respondent's affidavit for admission having involved suppression of a material fact was similarly overwhelming (see above at [17]–[20], [23] and [26]).

56 We were thus unconvinced that the Respondent had insight into the duty of candour which she owed as an applicant (and subsequently as an A&S) to the court, as well as into the severity of the breach of the duty of candour which she committed in omitting to disclose the Academic Offence.

Our decision

57 As we noted at [28] above, the appropriate reinstatement interval to be imposed on the Respondent should be more closely aligned with cases of applicants whose admission applications were deferred on account of past misconduct, rather than with cases of A&Ss disciplined for misconduct as an A&S. The central consideration in determining the minimum period before a reinstatement application will be entertained would thus be similar to how this is approached in the cases of applicants for admission – meaning, the time the Respondent would, realistically speaking, need in order to work through her character issues, having regard to the nature of the wrongdoing, what that wrongdoing informs the court about the Respondent's character, the length of time between the occasion of the wrongdoing and the present, the Respondent's progress in her journey to come to grips with what she has done wrong, and her pathway to reform and rehabilitation (*Gabriel Rafferty* at [60]).

58 Following from our findings above, we were not satisfied that the Respondent had, even to the filing of her Supplementary Affidavit, appreciated that her non-disclosure of the Academic Offence was a serious ethical breach of her duty of candour towards the court, rather than a mere failure of diligence to observe administrative requirements of disclosure. Although she acknowledged what she had done was wrong, the manner in which she conducted herself in the course of the present proceedings suggested an unwillingness to confront the true gravity of her misconduct underlying her lack of candour to the court.

59 The AG suggested that a period of four to five years would be an appropriate reinstatement period; the Respondent suggested two and a half to three years. In our judgment, given the lack of insight demonstrated by the Respondent, a minimum of four years was appropriate in this case, subject to

satisfactory evidence of rehabilitative efforts, evidence of satisfactory appreciation of the Respondent's ethical duties and reasonable requirements that may be in place either under statute or as may be imposed by the court or by the stakeholders.

Conclusion

60 Those called to the Bar play a uniquely important role in the administration of justice. They ensure that the evidence and arguments adduced before the court are skilfully, accurately, and fairly presented. This not only ensures the administration of justice in each instant case; it also helps to build a firm foundation for the system of common law on which our legal system rests, as precedent builds upon precedent.

61 We would like, finally, to thank counsel for the AG, the Respondent, and the Law Society for their assistance in this case, which was valuable in shedding light on some very important questions affecting the profession.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Andrew Phang
Senior Judge

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