IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 82

Admission of Advocates and Solicitors No 224 of 2022

In the matter of Section 12 of the Legal Profession Act 1966

And

In the matter of Rule 25 of the Legal Profession (Admission) Rules 2011

And

In the matter of Gabriel Silas Tang Rafferty

Gabriel Silas Tang Rafferty

… *Applicant*

JUDGMENT

[Legal Profession — Admission]

Re Gabriel Silas Tang Rafferty

[2024] SGHC 82

General Division of the High Court — Admission of Advocates and Solicitors
No 224 of 2022
Sundaresh Menon CJ
30 January, 13 February 2024

22 March 2024 Judgment reserved.

Sundaresh Menon CJ:

Introduction

1 The court is entrusted with the responsibility of deciding whether an aspiring lawyer has the necessary qualities of character as well as competence, to be admitted to the ranks of the legal profession. When a person is admitted as an Advocate and Solicitor of the Supreme Court, he or she becomes an officer of the court and is charged with the onerous responsibility of assisting the court in the administration of justice. Justice, as a foundational pursuit in any society, demands an adherence to such values as fairness, honesty and ultimately, integrity. That is why we expect high standards of probity of members of the legal profession, and why, when we consider applications for admission to the profession, we examine questions of character very closely, even if the requisite standards of competence are met.

2 In that light, an applicant's lack of candour in the admission process is especially troubling because it is a flagrant betrayal of the wider responsibilities that *the applicant*, by putting forward his application for admission, represents he is ready to assume. Indeed, depending on its nature and extent, a lack of candour that suggests a desire to deceive the court, will be indicative of a grave and severe character deficit at the very threshold of admission. The duty of candour to the court is but one facet of a legal practitioner's paramount and overriding duty to the court in the administration of justice; but it is a very important facet of that duty. The court, in exercising its discretion to admit an Advocate and Solicitor, *must* be satisfied that such a person can be suitably depended upon to maintain the highest standards of honesty and integrity, so that the public confidence in the legal profession and in the administration of justice can be upheld.

3 The present case is the latest in a series of cases, that have come before me over the last two years or so, where for one reason or another, a question has been raised as to the applicant's fitness of character, at the time the application is made, for admission to the Bar. All of these cases have thus far been disposed of, either by permitting the applicant concerned to withdraw the application, if I judged that he or she was not yet a fit and proper person, or by granting the admission application, if I judged that the character issue in question had been resolved. This is the first case, where I consider that permitting the withdrawal of the admission application would be an inadequate response to the gravity of the present applicant's character deficit, and therefore dismiss the application instead. While the practical effect of these orders may bear similarities, the *signalling* of each of these orders is fundamentally different. Where an applicant's character defects are so dire, a dismissal of the application is called for in order to convey, in adequate terms, the *urgency* with which the applicant ought to confront his need for reform if he intends to pursue his goal of being

admitted to the Bar. This case affords me the opportunity to examine the applicable principles guiding the court's exercise of its discretion to either dismiss an admission application, or to permit the withdrawal of the same.

Background

4 The applicant is Mr Gabriel Silas Tang Rafferty (the "Applicant"). On 30 March 2022, the Applicant filed HC/AAS 224/2022 (the "Application") for admission as an Advocate and Solicitor of the Supreme Court of Singapore pursuant to s 12 of the Legal Profession Act 1966 (2020 Rev Ed) ("LPA"). The Applicant is 47 years old.

5 The relevant stakeholders' ("Stakeholders") objections to the Application stemmed from two incidents of academic misconduct which the Applicant had committed in early 2019, when he was a first-year student in the Juris Doctor law programme at the Singapore Management University ("SMU"). Nonetheless, the two incidents of misconduct only constituted a part of the story, because the Stakeholders' objections to the Application also arose out of the Applicant's conduct in the admission process. To be specific, the Applicant disclosed his misconduct in the second of the two incidents mentioned above, but *wholly failed to disclose the fact of the first incident of misconduct* until specifically requested to do so by the Attorney-General ("AG") on 26 June 2023, after the AG had learnt of it following some inquiries.

The first incident of academic misconduct

6 In January 2019, the Applicant was enrolled in a module entitled "Legal Research and Writing 2" ("LRW2"), that was taught by senior lecturer Ms Ong Ee Ing ("Ms Ong"), as well as a module, "Comparative Legal Systems" ("CLS"), taught by Professor Maartje de Visser ("Prof de Visser"). The LRW2

module required the Applicant to complete a written assignment involving the submission of a set of written submissions for the purposes of a hypothetical application for an interlocutory injunction (the "Assignment"). The Assignment constituted 5% of the Applicant's course grade for the LRW2 module and was due to be submitted on 1 February 2019. One day before the Assignment was due, the Applicant sought an extension of time from Ms Ong. He described some of the personal circumstances he was then facing, and stated that "[i]t has been a very distracted and difficult week for me". On the same day, Ms Ong approved a 24-hour extension of the Assignment deadline for the Applicant.

7 On 2 February 2019, the Applicant submitted the Assignment and, on the last page of his submission, *declared* that he had "abided by SMU's Code of Academic Integrity". However, he had in fact obtained the work product of a classmate (the "Classmate's Assignment") and copied many portions of her work in the assignment he eventually submitted. There was no suggestion that the Applicant's failure to give proper credit to the Classmate's Assignment was inadvertent. In the Applicant's account of the matter to the court, he states that he was "[u]nable to focus and cope with the assignment", and "turned to a classmate who kindly guided me through her work." He went on to say that although he used some different arguments, he "did use many portions of her work in the assignment I eventually submitted". I observe that this does not provide a full and accurate picture of the Applicant's misconduct. To understand the true extent of this misconduct, it should be noted that a comparison of the assignments submitted by the Applicant and the classmate reveals that *substantial* portions of the Assignment had been copied from the Classmate's Assignment without any proper attribution. The Applicant clearly intended to pass off many portions of his classmate's work as his own. In fairness to the classmate, I should note that there has been no suggestion that she intended to

facilitate the Applicant's plagiarism of her assignment; nor did the Applicant suggest that he had her permission to copy large portions of her work.

8 The plagiarism came to light on 12 February 2019, when Ms Ong informed the Applicant that substantial portions of similarity with another piece of work had been flagged out in relation to the Assignment. The Applicant claims that he readily admitted to Ms Ong that he had sought help from a classmate and had based a large portion of his work from hers.

9 On 13 February 2019, the Applicant emailed Ms Ong to apologise for the incident, stating that he would learn from the incident, and "solemnly promise[d] this will not ever happen again with regards to [his] work in school and in future if and when [he does] get to practice". Ms Ong took the opportunity to counsel the Applicant that "plagiarism is a serious issue, as well as a violation of the SMU code of conduct" and informed him that "*please also note that this is now a documented incident. If it (or anything similar) occurs again, more severe consequences will follow*" [emphasis added]. She further added:

> I reiterate what I said yesterday during our discussion – in school and later on in practice/life, you will always face difficult circumstances, whether due to your personal life or professional pressures. And there will always be the temptation to take the "easy" way out.
>
> I hope this serves as a reminder that the better way is to simply face the problem head-on. Eg in this situation, it would have been far better to submit whatever you could (however poorly written), let me know that you could not do a good job under the circumstances, and to make up for it in the later assignments.

10 On 14 February 2019, Ms Ong informed the Applicant that having discussed the matter with Prof de Visser, who was then the Director of the Juris Doctor programme in SMU, and having regard to certain personal

circumstances that had led to what Ms Ong described as this "first-time offence", the Applicant would be penalised by receiving a failing grade for the Assignment, which, as I have noted, constituted 5% of the Applicant's overall assessment for the LRW2 module.

11 I refer to this incident of plagiarism as the "First Incident". This entire incident was *not* initially mentioned in the Applicant's admission papers, and a key plank of the Applicant's explanation for this non-disclosure, was that both Prof de Visser and Ms Ong had allegedly assured him orally that "due to the privacy and sensitivity concerns" surrounding the Applicant's personal circumstances at the time of the First Incident, the First Incident "will be kept confidential". I will return to this.

The second incident of academic misconduct

12 Despite receiving Ms Ong's counsel, and despite the Applicant's "solemnly [*sic*] promise" that he would learn from the First Incident, the Applicant committed a second act of academic misconduct (the "Second Incident") less than two months after the First Incident occurred. He had either failed to apprise himself of the prevailing standards of academic honesty and integrity expected of him, or simply did not in fact ever have any intention to keep his promise.

13 The Second Incident concerned a graded research paper that the Applicant submitted to Prof de Visser for the CLS module on 14 March 2019 ("CLS Research Paper"). Significant portions of the CLS Research Paper were flagged out by the Turnitin software, used by SMU for this purpose, to have been plagiarised from multiple sources. After an inquiry, the Applicant was found by the SMU's University Council of Student Conduct (the "Council") to have committed the academic offence of plagiarism. I set out the Council's

findings in the formal letter of reprimand issued to the Applicant on 29 March 2019 (the "Letter of Reprimand"), as follows:

> [Prof de Visser] discovered significant portions of your assignment to be plagiarized from multiple sources without proper attribution. This constitutes an offence of plagiarism, which is a serious violation of the Code of Academic Integrity.

14 In his admission papers, the Applicant said that when he was confronted by Prof de Visser on 20 March 2019, his explanation was as follows:

> I explained to [Prof de Visser] that it was the first time I had written a research paper as I had read Math, Economics and Theatre Studies in my undergraduate studies in the National University of Singapore and had never been required to write one. *I had mistakenly thought that the task at hand for a research paper was to diligently research, compile my findings keeping the material as accurate as possible from the sources I had identified and form a conclusion from the material that I had gathered.* It was because of this that I tried to keep the usage of the material from my sources expressed in verbatim as much as possible.
>
> [emphasis added]

15 The Applicant's continued account of his interaction with Prof de Visser suggested that he *had not known* of the need to cite his sources at every instance:

> Prof [de Visser] then explained to me that this was not sufficient as research papers have to be original work in my own words. She went on to explain that it constitutes plagiarism if I did not mark the verbatim words I had used in inverted commas and even then, that kind of usage should also be kept to a minimal. *She further explained that even though I had cited all my sources in my bibliography, whenever there is instance of using material from sources, they must be pinpoint footnoted, which I had not done at every instance.*
>
> [emphasis added]

16 I examined a side-by-side comparison of the Applicant's CLS Research Paper and the various source materials he had reproduced (the "Plagiarised Sources"), as well as a copy of Prof de Visser's original marking of the CLS

Research Paper which showed the portions that had been flagged out by the Turnitin software for plagiarism ("Prof de Visser's Mark-up"). The latter was disclosed in the Applicant's second supplementary affidavit filed on 26 June 2023 following the AG's request for further documents. From this comparison, it was evident that *substantial portions* of the CLS Research Paper had been directly copied from the various academic references or sources without proper attribution. Indeed, counsel for the AG, Ms Shi, noted during the hearing that *more* portions of the CLS Research Paper had been plagiarised than not. Contrary to the Applicant's characterisation of what he had done, this was *not* merely a "lack of diligence in fleshing out arguments in [his] own words". Furthermore, despite the Applicant's assertion that he had "cited all [his] sources from various articles, journals and books", there were a significant number of passages in the CLS Research Paper which, although copied verbatim from the Plagiarised Sources, were not properly referenced. In some instances, adjacent to a passage that was properly referenced, would be text that was equally attributable to the same Plagiarised Source, but the latter would not be sourced or referenced, leaving the false impression that such text was the product of the Applicant's original work. Such selective referencing also exposed the falsity of the suggestion in the Applicant's admission papers (see [14]–[15] above), that he did not know he should cite his sources. This was not a case of sloppiness but of passing off the work of others as the Applicant's own work.

17 In any event, the Applicant's contention that he did not appreciate the need to cite his sources was utterly unconvincing. It must mean that throughout the Applicant's time at SMU until the Second Incident, and throughout his undergraduate studies at the National University of Singapore, the Applicant had no awareness at all of the need to cite references or sources and did not have any appreciation or understanding of the appropriate use of footnotes. Not only

was this incredulous, but it was directly contradicted by what the Applicant himself did in the CLS Research Paper. As I have noted, this not a case where the Applicant had totally omitted to cite his references or sources, but rather, he had engaged in partial or *selective* omissions to cite. Quite plainly, the Applicant had appreciated the need to cite his academic sources *but chose not to do so*. Furthermore, it must be recalled that the Applicant had just two months earlier been counselled for the First Incident and warned that more serious consequences would follow if he repeated the misconduct. From this point, he could not have failed to be aware of the relevant requirements. Sadly, when the First Incident occurred, he rather grandly made promises to the effect that the misconduct would not recur (see [9] above), but the overwhelming conclusion to be drawn is that those promises were nothing more than empty words.

18 Therefore, the picture that emerges is that the Applicant had deliberately attempted to pass off substantial portions of the CLS Research Paper as his original work, when these had been plagiarised from other sources. Further, the Applicant's account of his misconduct in his admission affidavits did not confront the true nature and extent of his wrongdoing, and instead sought to downplay his culpability in the Second Incident. It should also be noted that the Applicant's misconduct in the Second Incident resulted in academic consequences which were more severe than those that followed the First Incident. For his violation in the Second Incident, the Applicant failed the CLS module, which appeared on his official transcript, and he was handed a formal Letter of Reprimand. It appears that he subsequently completed his studies at SMU without further incident.

The Applicant's non-disclosure of the First Incident in his admission affidavit

19 On 12 April 2023, the Applicant filed his affidavit in support of the Application (the "Supporting Affidavit"). In the Supporting Affidavit, the Applicant deposed that he "[had] no knowledge of any fact that affects [his] suitability to practise as an advocate and solicitor in Singapore…, except the following […]" and disclosed, among other matters, the fact of the Second Incident and its surrounding circumstances though he characterised this in terms that understated its true gravity, as I have noted above. In particular, the Applicant wholly omitted to disclose the First Incident in the Supporting Affidavit. Sometime on or about 21 June 2023, the AG came to learn from correspondence with the SMU, that the Applicant had in fact been involved in another incident of plagiarism that predated the Second Incident (namely, the First Incident). On 26 June 2023, the Applicant was asked by the AG to provide further information regarding the First Incident and it was only then that the Applicant disclosed the First Incident in his third supplementary affidavit filed on 28 June 2023 ("Third Supplementary Affidavit").

20 In my judgment, the failure to disclose the First Incident was a serious failure to disclose a relevant and material fact at the admission stage. The First Incident occurred close in time to and involved much the same kind of misconduct as the Second Incident (namely, academic plagiarism). The fact that the Applicant *knew* he was required to disclose the Second Incident leads to the irresistible conclusion that he also knew he ought to disclose the First Incident because it would be relevant to the court's consideration of his admission application. Not only was it of the same nature as the Second Incident, it would also have cast the Applicant's conduct and his explanations for that conduct in relation to the Second Incident, in their proper context. Unsurprisingly, counsel

for the Applicant, Mr Fernandez, acknowledged during the hearing that the Applicant was obliged to disclose the First Incident.

21 The question then is *why* the Applicant did not make the relevant disclosure. As to this, the Applicant asserts that he believed "the First [Incident] was confidential based on the verbal assurance of his professors, leading him to believe that his wrongdoing had been forgiven. By relying on this belief, [the Applicant] did not make disclosure". At the hearing, Mr Fernandez maintained that the Applicant believed he had been forgiven by the SMU for the misconduct. I found this explanation wholly without basis and altogether appalling. Prof de Visser and Ms Ong may have said that *they* would not disclose the First Incident and, in the absence of evidence indicating otherwise, I proceed on the basis that they did do so. But this could not, by any stretch of the imagination, have meant the Applicant himself could not or should not disclose it, especially where it may be material to *his dealings with the court* and the Stakeholders, or indeed his *duty of disclosure* in the admission process. Whatever assurances were given, they could not reasonably have been construed to mean that SMU was thereby assuring him that *he* did not need to disclose such information to the court.

22 In my judgment, the Applicant did not disclose the First Incident because he thought the court and the Stakeholders would not find about it given his belief that SMU would not disclose or divulge the matter. The only difference between the two incidents of academic misconduct pertained to the Applicant's assessment of the risk of the Stakeholders and/or the court finding out about them. In addition to the verbal assurances which the Applicant believed he had received in respect of the First Incident, the academic consequences of the First Incident were not easily detectable on the face of the Applicant's official transcript. I am satisfied that the Applicant failed to disclose

the First Incident because he did not think it would be uncovered, even though he must have known it was relevant to the court and to the Stakeholders. This amounts to dishonesty in the admission process because the Applicant was implicitly suggesting that there was only one incident of plagiarism even though he knew there had been two. This attempt to mislead the court would have succeeded *but for* the AG's discovery of the matter.

23 Further, the Applicant's bold claim that he believed he had been "forgiven" by SMU for his misconduct in the First Incident, was disingenuous. As with the Second Incident, the First Incident did result in academic sanctions, even if these were less serious than was the case for the Second Incident. The Applicant did not claim he had been "forgiven" for the Second Incident, as seen by his voluntary disclosure of the same. Finally, any question of forgiveness by SMU could have no bearing on the Applicant's duty of candour to the court, and could not possibly have been understood to suggest that the First Incident could be conveniently scrubbed from the record as though it had never happened.

24 At points in the Applicant's Third Supplementary Affidavit, he also asserts that "[d]isclosing the circumstances of the [First Incident] meant that [he] had to make a very difficult decision of publicly admitting to and facing the stigma" of certain personal circumstances which formed the underlying factual background to the First Incident. It is not necessary for me to go into the details of these personal circumstances, save to say that they were entirely *irrelevant* to the matters that *were themselves relevant* to the court's consideration of the Applicant's admission, namely that he had twice been dealt with by the SMU for academic misconduct, and within a short period of time to boot.

25 Therefore, I am satisfied that this is a case *not* of an innocent omission, but rather one where the Applicant *chose* not to disclose the relevant fact of his misconduct in the First Incident as part of his effort to mislead the court. Apart from his initial failure to disclose in the Supporting Affidavit of 12 April 2023, the Applicant also filed two supplementary affidavits on 9 June 2023 and 26 June 2023 respectively, in response to the Stakeholders' various requests for further information and documents relating to the matters he had disclosed in the Supporting Affidavit. In none of these supplementary affidavits did the Applicant come clean with the fact of the First Incident. Therefore, even when presented with the opportunity to *voluntarily rectify* his initial non-disclosure and bring the matter to the Stakeholders' attention, he did not do so. In the event, on 26 June 2023, when he was confronted by the AG, it became evident that he could no longer conceal the matter from the Stakeholders (see [19] above).

The Applicant's under-declarations as to the extent of his academic misconduct

26 Aside from the Applicant's non-disclosure of the First Incident, it also emerged that the Applicant had not been truthful in the disclosures he made concerning the *extent* of his plagiarism on both occasions.

27 In relation to the Second Incident, the Applicant filed his first supplementary affidavit on 12 June 2023 ("First Supplementary Affidavit") and exhibited a copy of the CLS Research Paper in which he claimed, to "[his] best reconstruction", to have colour-coded the portions of the paper that had been copied verbatim. Subsequently, the AG was able to identify additional plagiarised portions which had not been colour-coded by the Applicant ("AG's Mark-up"). The AG's Mark-up corresponded to Prof de Visser's Mark-up. A side-by-side comparison of the various versions clearly showed that the Applicant had *under-declared* the portions of the CLS Research Paper which he

had plagiarised from the various academic sources. I was also satisfied that the extent of such under-declaration was not minimal or even insignificant.

28 In relation to the First Incident, the Applicant's disclosure of the matter after 26 June 2023 similarly downplayed the extent of his plagiarism. The Applicant again *under-declared* the portions of the Assignment that had been copied from his classmate's work. While the Applicant exhibited in the Third Supplementary Affidavit a marked-up copy of the Assignment, with the plagiarised portions highlighted by him in yellow, the AG subsequently identified additional portions of similarity which had not been highlighted by the Applicant.

29 The explanations which the Applicant provided for his under-declarations are not convincing. At the hearing, Mr Fernandez claimed that the Applicant could not recall which portions he had plagiarised. Yet this was a straightforward matter of *comparing* the Applicant's submitted work against the sources from which the Applicant had plagiarised. These sources were before the Applicant, just as they were before the AG and the AG had been able to highlight additional plagiarised portions of text (see [27]–[28] above). Mr Fernandez also claimed that other portions of under-declaration in the CLS Research Paper were "so generic" that it was not clear whether this constituted plagiarism. As I pointed out during the hearing, however, the relevant portions were hardly generic or insignificant. For instance, almost all of the Applicant's under-declarations in the CLS Research Paper concerned passages of text plagiarised from the following two sources: (i) a 2013 Singapore Law Gazette article titled "'Old Fashioned' Breach of Confidence: The Singapore Approach to Privacy Law" ("Law Gazette Article"), jointly authored by Mr Mohammed Reza, a legal practitioner, and Mr Azri Tan, then a student at NUS; and (ii) a Singapore Law Review publication titled "Privacy Law: A Case for the

Protection of Informational Privacy in Singapore" ("SLR Article"), written by its author during his undergraduate studies at the NUS Faculty of Law (see, Samuel Wee Choong Sian, "Privacy Law: A Case for the Protection of Informational Privacy in Singapore" (2013) 31 Sing L Rev 143). To illustrate just *one* example of the Applicant's under-declaration, I can do no better than to reproduce the AG's mark-up (with the under-declaration in orange highlights) which shows that *the entirety* of the Applicant's conclusion in the CLS Research Paper was plagiarised from either the Law Gazette Article or the SLR Article, but had not been sourced and was not declared as such by the Applicant:

VI. Conclusion

Lifted from the Law Gazette Article

With the proliferation of technology like social media, intrusions into our private lives are the norm. Whilst privacy is an important aspect of our lives, the right to privacy should not override more important public interests.

Lifted from the SLR Article at p 167

It is clear that the development of privacy laws in Singapore has fallen behind the European jurisdictions. The experiences of the civil and common law in Europe have shown that the right to privacy can be sufficiently protected either under a statutory or common law regime. It is time for the Singapore Parliament to create privacy laws and like the European models, should only confer a qualified right to privacy, balancing it against other competing interests such as the right to the freedom of speech under Article 14 of the Singapore Constitution and national security.

30 The Applicant could not provide any satisfactory explanation for the under-declarations.

The issues before the court

31 The AG filed a Notice of Objection on 10 October 2023; and the Law Society of Singapore ("Law Society") and the Singapore Institute of Legal Education ("SILE") on 31 October 2023. On 30 January 2024, I heard the

Application and adjourned the matter with permission for the parties to file further written submissions on whether this was a case where the court should dismiss the Application rather than permit the Applicant to withdraw the same.

32 The AG and the Law Society take the position that the court ought to dismiss the Application. In addition, the AG asks that the court make certain further orders upon such dismissal, including an order that the Applicant is not to bring a fresh admission application for at least three years, or a suitable period to be determined by the court. The SILE takes the position that the Application ought to be dismissed unless the Applicant withdraws the Application and undertakes not to bring a fresh admission application in Singapore or in any other jurisdiction for a period of not less than two years. The Applicant asks that the Application be adjourned for 12 months and that he be given leave to file a further affidavit after that period of 12 months to provide the court and the Stakeholders with an update of any steps he might have taken during that time before a decision is made. In the Applicant's first set of written submissions, he originally asked that he be permitted to withdraw the Application subject to an undertaking not to bring a fresh admission application for a period of six months.

33 In the light of the foregoing, the issues before me are:

(a) Whether the Applicant is presently a fit and proper person for admission in view of the issues that have been outlined above; and

(b) If the answer to (a) is negative, whether the Application should be dismissed or whether the Applicant should be permitted to withdraw the same.

Whether the Applicant is presently a fit and proper person for admission

General principles

34 As I noted in *Re Wong Wai Loong Sean and other matters* [2023] 4 SLR 541 ("*Re Sean Wong*") at [3], the central inquiry in admission applications, where there is no question as to an applicant's competence or qualifications, is whether the applicant in question is suitable for admission in terms of his character. Where there have been incidents of misconduct suggesting the need to drill further into this issue, the court will consider all the circumstances, including: (a) the circumstances of the applicant's misconduct; (b) the applicant's conduct in the course of any investigations that may have been held in connection with the misconduct; (c) the nature and extent of and the circumstances surrounding the initial and subsequent disclosures about the misconduct made by the applicant in his application for admission; (d) any evidence of remorse; and (e) any evidence of rehabilitation including steps that have been planned or already taken towards achieving the applicant's rehabilitation). As these are pointers or indicia that inform the court's assessment of the nature and severity of the applicant's character issues, they ought not to be applied mechanically but in a holistic manner, with a keen eye on the particular facts of each case arising before the court. I add that misconduct in this context is not limited to academic misconduct, but extends more broadly to all matters caught by para 7 of the prescribed form for admission in the Legal Profession (Admission) Rules 2011 ("2011 Rules") which bear on an applicant's suitability to practice (see, for example, *Re Lee Jun Ming Chester and other matters* [2023] SGHC 282).

35 In cases where the original misconduct took place a significant time ago, the court will have the opportunity to view the applicant's earlier actions with the benefit of the perspective that comes from there being some distance

between the applicant's misconduct and his subsequent admission application. The intervening period of time can become a weighty factor where it is substantial and the applicant is capable of demonstrating through concrete steps that he has sufficiently reformed and rehabilitated his character in that time. It was in this context that I made clear in *Re Tay Jie Qi and another matter* [2023] 4 SLR 1258 ("*Re Tay Jie Qi*") at [4] that the last two factors (namely, evidence of remorse and efforts towards rehabilitation) take on particular importance in the court's assessment of the applicant's suitability, where a significant period of time has passed since the misconduct (in contrast to the situation of the applicants in *Re Sean Wong*, *Re Tay Quan Li Leon* [2022] 5 SLR 896 ("*Re Leon Tay*") and *Re Monisha Devaraj and other matters* [2022] 5 SLR 638 who had cheated in their Part B examinations *shortly before* their admission applications). On the facts of *Re Tay Jie Qi*, this led me to conclude that further deferment of the applicants' admission applications was not necessary because they had each demonstrated genuine remorse and satisfied the court, through a course of consistent proper conduct, that they had learnt the requisite lessons and successfully resolved their character issues. It was noteworthy that they had both *voluntarily* disclosed their misconduct to the relevant stakeholders in the admission process, despite such information not otherwise being in the public domain (*Re Tay Jie Qi* at [18], [31] and [33]).

36 Where the original misconduct took place a significant time ago, the third factor (namely, the applicant's candour in his dealings with the court and the respective stakeholders) also assumes particular importance especially where this takes place in the context of the admission application. As I have alluded to above, a substantial lapse of time affords the court the opportunity *to gauge* how the applicant has progressed in his reform and rehabilitation in the intervening period, and his understanding of the ethical duties expected of an aspiring Advocate and Solicitor. For instance, in *Re Suria Shaik Aziz* [2023]

5 SLR 1272 ("*Suria Shaik*"), the applicant ("Mr Aziz") was found to have committed plagiarism in a research paper ("Research Paper") he submitted whilst a student at the University of Tasmania in October 2016. Just one month prior to that, Mr Aziz had already received certain warnings concerning plagiarism in respect of the ungraded research outline ("Research Outline") which he had submitted for the Research Paper. In that case, Mr Aziz filed his application for admission *more than five years after* the plagiarism incident. Although he disclosed the plagiarism incident involving the Research Paper, his disclosures made no mention of the Research Outline incident and the warning he received in respect of the same. Furthermore, he *characterised* the incident as merely a "[f]ormal reprimand by [the] University of Tasmania … for failure to acknowledge sources for [his] International Trade Law Research Paper", and was found to have continued downplaying his culpability in the incident (*Suria Shaik* at [12], [42] and [45]). The situation in *Suria Shaik* therefore presented an instance where the applicant *had* disclosed the relevant plagiarism incident, but had not been entirely forthright in disclosing the full context and the *relevant* surrounding circumstances which, on any reasonable basis, included the matters pertaining to the Research Outline. In the circumstances, I came to the conclusion that Mr Aziz had *not* sufficiently appreciated the ethical implications of his misconduct, despite the fact that the misconduct had occurred some years earlier (*Suria Shaik* at [1] and [24]). Depending on the facts at hand, a lack of candour in the context where there has been a substantial lapse of time since the original misconduct may indicate that the applicant has not reformed his character, is persisting in an attitude that reflects a lack of honesty and integrity, and has scant regard for his duty to the court. The fact that this persistence has survived the significant period of time that has passed may suggest it is deep-seated. It may also indicate that whatever remorse he purported to express, is not genuine.

37 By way of comparison, I recently heard the matter in *Re Ong Pei Qi Stasia* [2024] SGHC 61 ("*Stasia Ong*") and was satisfied that the applicant in that case ("Ms Stasia Ong") was a fit and proper person for admission. Although Ms Stasia Ong's original misconduct three years prior to the admission application was more serious in that she had, in addition to the academic offence of plagiarism, displayed *dishonesty* and made an untrue statement in the initial investigation process (the "Untrue Statement"), her candour in the admission process left me in no doubt at all that she had been completely rehabilitated by the time of her application for admission. In particular, her *voluntary* disclosure of the academic offence *and the Untrue Statement* at the first opportunity when she filed her admission affidavit cast a very positive light on her genuine desire to come clean and to make a fresh start on the right footing (*Stasia Ong* at [17]–[18] and [21]). This was all the more significant in assessing her rehabilitation because neither the relevant stakeholders *nor the university itself* would have become aware of the Untrue Statement but for Ms Stasia Ong's admission of the same (*Stasia Ong* at [6] and [18]). It was also significant in the light of the fact that some time prior to filing her first affidavit, when she raised with a member of the university staff the fact that she had made the Untrue Statement, she was met with a response which seemed to suggest that it might not have been necessary for her to have raised this (*Stasia Ong* at [6] and [18]). In the circumstances, I was satisfied that Ms Stasia Ong's candour and courage in owning up to her mistakes, even to one that had not yet been uncovered, were very good signs of reform. I add that this brief comparison of the case law also accords with my views expressed at [60] below, namely, that it is conceivable that in certain circumstances, the original misconduct that took place some time ago in one case may be *objectively* more serious than the misconduct that took place in some other case, and yet the court may justifiably decide on the facts and circumstances before it that the applicant has progressed further along in

his journey of rehabilitation in the former case than in the latter by the time of the admission application. And, finally in this connection, all of this coheres with the fact that the principal concern of the court is to assess the rehabilitation of the applicant and not to punish past mistakes.

38 In making the affidavit in support of the application for admission, an applicant is required to disclose *any fact* which could affect his suitability to be admitted. The statutory requirement in para 7 of the prescribed form that is found in the 2011 Rules is a codification of the overriding duty of candour that an applicant owes to the court and the stakeholders in the admission process. This duty of candour is especially important in the context of an admission application because it will often be the applicant *alone* who has knowledge of the facts that may have a bearing on his suitability to be admitted as a legal practitioner. Therefore, in making the supporting affidavit, the applicant effectively warrants that the court has before it *all* the necessary information bearing on his or her suitability. This much is borne out by the *negative formulation* of para 7(*j*) of the prescribed form, which is a "catch-all" part of the affidavit requiring the applicant to declare that he has "*no knowledge of any fact* that affects my suitability to practise as an advocate and solicitor in Singapore…, *except the following* […]" [emphasis added]. Under no circumstances can this been seen by an applicant as a perfunctory step in the process leading to admission.

39 Quite apart from constituting a breach of one's duty to the court, which in itself is serious cause for concern, a deliberate lack of candour in the admission process is also *wholly incompatible* with an applicant's fitness to be called to the Bar. It strikes at the very heart of the question of whether the applicant can be entrusted with and relied upon to assume the weighty responsibilities that every lawyer as an officer of the court must shoulder. It has

been forcefully observed that the very fabric of our justice system hinges on a solicitor's paramount and overriding duty to the court, and the court is "inextricably and inescapably dependent … on the integrity of solicitors appearing before it" (*Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [23]; *Public Trustee and another v By Products Traders Pte Ltd and others* [2005] 3 SLR(R) 449 at [1]; see also *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 at [12]–[13]). It is a solicitor's imperative duty "to ensure that he never communicates information, makes submissions, presents evidence or facts which would mislead the court" (Jeffrey Pinsler, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) at para 04-001; see also rr 4(*a*)–(*b*), 9(1)(*a*) and 9(2)(*a*)(i) of the Legal Profession (Professional Conduct) Rules 2015 which are indicative of the wider responsibilities owed by a solicitor who assists in the administration of justice). It is equally an imperative duty of a solicitor not to withhold from the court, information that he is aware of and that he knows will be material to the decision of the court, absent a legal basis for doing so. In my judgment, an applicant for admission to the Bar who fails in this regard cannot be depended upon to place his duty of candour to the court above his proclivity for self-interest, and so cannot be trusted to ably serve in the administration of justice.

My decision

40 As I observed to counsel during the hearing, there is a difference between misconduct that takes place at the *very threshold* of the point of admission, and the incidents of misconduct that had taken place several years ago. The former is especially disconcerting because, as I have observed, an applicant in effect holds out by his admission application, that he believes he is a fit and proper person for admission at the time of the application, and further

that he has made available to the court all material information to enable the court to come to a similar conclusion.

41 The Applicant no longer disputes that there has been a serious failure on his part in not disclosing the fact of the First Incident at the admission stage (see [20]–[25] above). I reiterate that, in my judgment, this was not an innocent omission, but a deliberate decision not to disclose the incident because the Applicant did not think the court or the Stakeholders would find it out. The Applicant only addressed the First Incident *after* the AG informed him that the matter had come to the attention of his staff. I have also concluded that the Applicant had, by his omission, sought to mislead the court, grossly failing in his duty of candour to the court, which is among the most fundamental and important duties expected of a lawyer or, for that matter, a prospective lawyer. In the circumstances, the Applicant's deliberate failure to disclose the First Incident strikes at the very heart of his fitness for admission.

42 The Applicant's lack of candour was compounded by his *repeated* under-declarations of the extent of his plagiarism (see [26]–[29] above). In circumstances where a *continuing* duty of candour was in place, the Applicant twice repeated the under-declaration. In my judgment, this reflects an unwillingness to come completely clean, which is the first step towards reform and rehabilitation. It also points to a continuing lack of insight into and appreciation of the essential attributes of honesty and integrity that are expected of a lawyer.

43 Insofar as the original incidents of misconduct are concerned, I am satisfied that both the First Incident and the Second Incident involved dishonesty on the Applicant's part. In relation to the First Incident, the Applicant clearly intended to pass off "many portions of [the classmate's] work"

as his own (see [7] above), despite his declaration that he had "abided by SMU's Code of Academic Integrity" on the last page of his submission. I reiterate my observations in *Re Sean Wong* that misconduct of this nature is a clear breach "not only of the examination rules, but also of what should be understood as a basic threshold of honesty" and "a fundamental disregard for doing what was plainly right" (*Re Sean Wong* at [9] and [22]). The Applicant asserts that he was facing difficult personal circumstances at the time of the First Incident. As I have observed elsewhere, lawyers or prospective lawyers are expected to make *honest* decisions even under the most difficult of circumstances. Pressure or stress is never a good reason for *dishonest* decisions, especially in view of the nature of the manifold demands of this profession (*Re Sean Wong* at [22]).

44 In relation to the Second Incident, I repeat [13]–[18] above. The Applicant's claim that he did not appreciate the need to cite the source materials, flew in the face of the selective and partial citations which he made in the CLS Research Paper. The extent of the Applicant's plagiarism was substantial, with more portions of the CLS Research Paper that had been plagiarised than not. It was also pertinent that the Second Incident occurred close in time to and just after the Applicant had already been found out, counselled and penalised for the First Incident. That the Applicant did not learn from the First Incident and so blithely repeated it, suggests a disturbing degree of recalcitrance.

45 I turn to consider whether there is evidence of real remorse. The Applicant repeated his misconduct less than two months after the First Incident, despite his purported assurances that he would learn from the incident and familiarise himself with SMU's Code of Academic Integrity. The Applicant himself claimed that it was only *after* the Second Incident that he "belatedly" familiarised himself with the said Code, which, if true, raises a question as to why he had been so lackadaisical about this given the solemn promises he had

made to Ms Ong after the First Incident that such misconduct would not recur. Further, even up to the point of his admission application, the Applicant failed to disclose the fact of the First Incident in his admission affidavit; and, even when he was forced to disclose it, he was economical as to the extent of his plagiarism in both the First Incident and the Second Incident. When faced with the *uniform* view of the Stakeholders that a substantial period of time would be required to rebuild trust and rehabilitate the Applicant, save perhaps the Law Society which preferred that the Application be dismissed, the Applicant initially maintained the position that he be permitted to withdraw the Application and that an exclusionary period of six months would be sufficient for his rehabilitation. In all the circumstances, I consider that the Applicant's position on such a short period of exclusion indicates a severe lack of insight into the true ethical nature and implications of his actions.

46 These considerations are further compounded by the fact that the Applicant is a mature candidate of 47 years of age, who has had far more in the way of life experiences than would be the case with the typical applicant for admission. This should have resulted in a measure of maturity and judgment that I have, regrettably, not seen.

47 The AG initially suggested that the conduct of the Applicant in this case could be compared with that of the applicant in *Re Sean Wong* ("Mr Wong"). I disagree. Mr Wong's misconduct was an impulsive error committed in the Part B examinations. Whilst not diminishing the gravity of Mr Wong's misconduct in that case, it is pertinent to appreciate that although Mr Wong too had failed to disclose the misconduct in his admission affidavit, I was not persuaded that this failure rose to the level of dishonesty (*Re Sean Wong* at [19]–[20]). Seen in the light of his earlier candour to the SILE in the initial investigations process, *and* because the full extent of Mr Wong's misconduct

had already been known to the SILE, he must have known that the SILE could easily and likely would have informed the other stakeholders and the court (*Re Sean Wong* at [19]). The present case, as I have found, engages a pattern of repeated failings that goes back several years and that *persists even* to the point of the Applicant's admission application. The Applicant's lack of candour in his dealings with the court and the Stakeholders, his attempts to mislead the court, and his unwillingness to face up to the true scale of his wrongdoing leave me satisfied that the Applicant is presently not a fit and proper person for admission.

48 This is the view also of the Stakeholders, and to some degree at least, also of the Applicant. The Applicant, however, contends that the present application should be adjourned for up to a year.

Whether to dismiss the Application or permit the Applicant to withdraw of the same

General principles

49 Prior to the present case, the court has not been faced with a situation where permitting the withdrawal of the admission application might be considered an *inadequate* response. Where it is clear that an applicant is not a fit and proper person at the time of disposing of the application for admission, the court may, as an alternative to dismissing the admission application, permit the applicant to withdraw the same on terms. This was considered appropriate in *Re Leon Tay* and the subsequent cases. These options are not exhaustive and, in exercising its discretion, the court may alternatively consider adjourning the matter for a period of time (see *Re Leon Tay* at [46]).

50 In my judgment, the choice between these options is ultimately a matter of principle and not of sympathy. The *signalling* of each of these orders is

fundamentally different. Where the court thinks that a relatively short period of deferment is all that is likely to be needed, it may adjourn the matter. If a longer period is thought appropriate, the court may permit the withdrawal of the admission application, almost invariably on terms. This should be seen as *an invitation* to the applicant to take the first step in his journey towards rehabilitation by publicly taking responsibility for his wrong, accepting that he is not a fit and proper person for admission, and pledging to rehabilitate himself by first giving the court the appropriate undertakings (*Re Leon Tay* at [39]). This will be an appropriate course where the court is satisfied that the applicant has displayed *discernible* signs of insight into his ethical issues and the need for reform and rehabilitation. As I have observed elsewhere, the latter is a necessary prerequisite to embarking on any process of actual rehabilitation and transformation (*Re Suria Shaik* at [22]).

51 On the other hand, where the court is not satisfied that the applicant can be said to have *begun* to truly appreciate the ethical consequences of his misconduct and the need for reform, let alone embarked on even the first steps of the journey towards rehabilitation, it will be appropriate to dismiss the application. An applicant who has not begun to appreciate the nature and extent of his wrongdoing, quite plainly cannot assert that he is ready to take responsibility for it. I reiterate that this inquiry is *not* to punish the applicant, but to provide him with the opportunity for rehabilitation. Quite simply, the further an applicant is from recognising the scale of his wrong, the further he will be from taking responsibility for it, and so too from beginning the journey towards reform and rehabilitation.

My decision

52 In my judgment, it would be inappropriate for me to permit the Applicant to withdraw his application for admission. I am faced here with an applicant who evidently does not yet appreciate or acknowledge the full extent of his wrongdoing, who does not appreciate his duty of candour and who has attempted to mislead the court and the Stakeholders in his application for admission. The present case, as I have found, engages a pattern of repeated failings persisting over a period of five years, culminating, at the *very threshold* of the application to be admitted to the Bar, in the apparent ease with which the Applicant has demonstrated his willingness to be less than completely forthright in his dealings with the court and/or the Stakeholders. This is markedly different from the situation in *Re Suria Shaik*, in which I permitted the applicant to withdraw his admission application on terms. I have already discussed the facts in *Re Suria Shaik* in some detail at [36] above; it is relevant that the applicant there had at least disclosed the fact of the plagiarism incident and there was no finding of an attempt to mislead the court.

53 I therefore dismiss the Application.

54 The AG has raised a concern that should the Applicant continue to desire admission to the Bar, it may be undesirable for him to be left without any indication as to when a fresh application for admission might be considered. In my judgment, this can be addressed by the imposition of appropriate terms.

55 The court has the inherent power to regulate its own processes to serve the ends of justice. This is implicitly acknowledged in O 3 r 2(2) of the Rules of Court 2021, which states as follows:

> **General powers of Court (O. 3, r. 2)**
>
> **2.**— …
>
> (2) Where there is no express provision in these Rules or any other written law on any matter, the Court may do whatever the Court considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of the process of the Court, so long as it is not prohibited by law and is consistent with the Ideals.

56 In relation to a legal practitioner's position as an officer of the court, the court's inherent powers in the admission context is derived from its "jurisdiction over who can be admitted to the Bar" (*Re Leon Tay* at [38]), and the court's power to rule on the relevant stakeholders' objections under s 12(4) of the LPA. I agree with the AG that while the current version of the LPA in force does not expressly set out the court's power to make the appropriate orders on dismissing an admission application, the recent legislative amendments to the LPA (which have not come into force) *clarify* that the court has the existing power to do so. Section 7 of the Legal Profession (Amendment) Act 2023 (Act 37 of 2023) ("Amendment Act") will, upon coming into force, insert a new s 12(5A), which provides:

> (5A) To avoid doubt, the court may, having regard to the conduct and character of the eligible person concerned and all other relevant circumstances, *on such terms as the court thinks fit*, do either or both of the following:
>
> (*a*) adjourn the matter for a specified period or allow the application to be withdrawn;
>
> (*b*) *make such other order as it considers appropriate*.
>
> [emphasis added]

57 The Explanatory Statement to the Legal Profession (Amendment) Bill (Bill No 32/2023) confirms that the new subsection 5(A) is intended to clarify that "the court may, having regard to the conduct and character of the eligible person concerned and all other relevant circumstances, make other orders such

as adjourn the matter or allow the application to be withdrawn. The inclusion of this clarification *does not imply* that the court has no power to make similar orders in other parts of the Act merely because there is no similar clarification in those parts" [emphasis added].

58 The invocation of the court's inherent powers in the present case is necessary to achieve a just outcome. Absent appropriate conditions on dismissal of the Application, there would be nothing to prevent the Applicant from making a fresh admission application as and when he decides to, and this would not be productive. It is also counter-intuitive since it is common ground that if I had allowed the application to be withdrawn, I would have been entitled to impose a period of deferment.

59 I accordingly impose the condition that the Applicant is not to bring a fresh application to be admitted as an Advocate and Solicitor in Singapore for a period of not less than five years from the date of my decision. I have limited this to an imposition in relation to any prospective application for admission to practise in Singapore and have not extended this to other jurisdictions because, in so far as I rely on my inherent jurisdiction to make this order, it is not clear that this extends to a power to impose a condition that pertains to a person's wish to be admitted to a *foreign* jurisdiction. The point was not specifically argued, and I therefore decline to make an order to this effect and prefer to keep this open until it arises on a future occasion. This may be contrasted with the position where leave is granted to withdraw such an application on terms that include a voluntary undertaking given to the Court not to bring a similar application elsewhere. That said, it should be amply clear to the Applicant that if he does intend to make any such application, he would be well-advised to make full disclosure of all the relevant facts and matters, including this judgment. As to the length of the deferment period, I recognise that this period

is significantly more than the period of three years sought by the AG and two years sought by the SILE. I will explain my basis for arriving at a period of deferment of five years.

60 The imposition of a suitable deferment period is not with a view to punish an applicant; it is instead a minimum time that the court considers will be needed for the applicant's reflection, learning and growth. As is the case where an applicant is permitted to withdraw his admission application, where the court determines that it is appropriate to *dismiss* the application, such a period ought likewise to be reflective of the time which the applicant will, realistically speaking, need in order to work through his character issues (*Re Sean Wong* at [27] and [75]). The length of the period will depend on all the circumstances, including the nature of the wrongdoing, what that wrongdoing informs the court about the applicant's character, the length of time between the occasion of the wrongdoing and the present, the applicant's progress in his journey to come to grips with what he has done wrong, and his pathway to reform and rehabilitation. It follows that prior cases, although capable of providing guidance, should *not* be viewed in a mechanical fashion as precedents. The AG produced a table of precedents, but I do not place much reliance on this, because of the danger that this might engender a tendency to view the period of deferment as a primarily *punitive* response. It is, for instance, conceivable that in certain circumstances, the original misconduct that took place some time ago in one case may be objectively more serious than the misconduct that took place in another case, and yet the court may justifiably decide on the facts and circumstances before it that the period required for the rehabilitation of the applicant in the former case is shorter than that in the latter (see, relatedly, [37] above). Conversely, if the applicant displays *even* up to the doorstep of admission a continuing unwillingness to confront the true nature and scale of his misconduct, such an applicant may justifiably need a longer

period for rehabilitation. Much will depend on the precise facts and circumstances before the court in each case.

61 As I mentioned during the hearing, the difficulty in the present case is that I find it difficult at present to anticipate what would be a *realistic* time frame for the Applicant to rehabilitate his character. At risk of repeating myself, I am concerned that the Applicant does not appear even to have embarked on the process of rehabilitation. At the same time, his present character deficits are so dire and his lack of insight so acute, that a substantial period of deferment would be minimally required for the Applicant to sufficiently reform himself. By way of comparison and to put things into perspective, the applicant in *Re Leon Tay* ("Mr Tay") was given permission to withdraw his admission application subject to an undertaking that he would not bring a fresh application for a minimum period of five years. The AG in that case sought a dismissal of the admission application. Mr Tay had cheated in the Part B examinations and was found to have presented a false account to the SILE of what had transpired. In his admission affidavit, he made partial and selective disclosures of the relevant facts of the misconduct, *despite* having sought prior guidance from the SILE as to what he needed to disclose (*Re Leon Tay* at [33]). Five years was regarded to be the minimum period of time that Mr Tay needed in order to address the *gravity* of the character issues that he faced, yet it was also apparent that by the time of the hearing before me Mr Tay demonstrated that he was ready to take the first key step towards his rehabilitation. He acknowledged what he had done wrong and undertook to abide by the conditions imposed, including the deferment period of five years (*Re Leon Tay* at [39]–[40]).

62 Further, five years is roughly the period of time that has passed since the time of the Applicant's original misconduct in 2019 to the present. The fact that the Applicant has not yet begun to confront the nature and scale of his

misconduct, suggests to me that any period less than five years would be insufficient to enable the Applicant to gain the proper insight into and to undertake the meaningful reform of his character issues.

Conclusion

63 For these reasons, I dismiss the Application and further order that the Applicant is not to bring a fresh application to be admitted as an Advocate and Solicitor in Singapore for a period of not less than five years from the date of my decision. If and when the Applicant brings a fresh application for admission, he is to satisfy the prevailing statutory and other reasonable requirements as may be imposed by the AG, the Law Society, the SILE and/or the court as to his fitness and suitability for admission, including any requirement for the Applicant to furnish character references from his supervising solicitor or other supervisor and/or a person who can attest to his rehabilitation. The Applicant is also to provide to the court sufficient evidence of the efforts he will by then have undertaken to understand the ethical nature and implications of his actions.

64 I will hear the parties on the costs of the Application. Any party seeking costs may within seven days of the date of this judgment, write in by letter (limited to two pages) setting out the costs order they seek.

Sundaresh Menon
Chief Justice

Patrick Fernandez and Mohd Arshad (Fernandez LLC) for the applicant;
Shi Pei-Yi Sarah and Tay Jia Yi Pesdy (Attorney-General's Chambers) for the Attorney-General;
Darryl Chew Zijie (Chia Wong Chambers LLC) for the Law Society of Singapore;
Chong Soon Yong Avery (Avery Chong Law Practice) for the Singapore Institute of Legal Education.
