IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 271

Originating Summons No 10 of 2019

Between

Choy Chee Yean

… *Applicant*

And

(1) Law Society of Singapore
(2) The Attorney-General

… *Respondents*

EX TEMPORE JUDGMENT

[Legal Profession] — [Reinstatement] — [Interest of the public] — [Whether applicant fully rehabilitated] — [Section 102 Legal Profession Act (Cap 161, 2001 Rev Ed]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Choy Chee Yean
v
Law Society of Singapore and another

[2019] SGHC 271

Court of Three Judges — Originating Summons No 10 of 2019
Andrew Phang Boon Leong JA, Chao Hick Tin SJ and Belinda Ang Saw Ean J
19 November 2019

19 November 2019

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

1 This is an originating summons by the applicant, Mr Choy Chee Yean, seeking reinstatement to the roll of advocates and solicitors of the Supreme Court of Singapore ("the Roll") pursuant to s 102 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"). The applicant was struck off the Roll on 25 May 2010 in *Law Society of Singapore v Choy Chee Yean* [2010] 3 SLR 560 ("the Striking-Off Judgment"), following a criminal conviction for burglary in Hong Kong.

2 There are two questions before us: whether the applicant should be reinstated; and the applicable conditions, if any, to be imposed.

The parties' positions

3 The parties have reached an agreement on the conditions to be imposed upon the applicant's reinstatement ("the Conditions"):

> (a) The applicant shall obtain a psychiatric assessment report confirming that he is mentally able and psychologically fit to continue active legal practice not less than two weeks before the expiration of the first practising certificate issued to the applicant upon reinstatement. In the event the first practising certificate issued to the applicant upon reinstatement expires in March 2020, the applicant shall obtain a psychiatric assessment confirming that he is mentally able and psychologically fit to continue active legal practice not less than two weeks before the expiration of (1) the first practising certificate; and (2) a second practising certificate issued to the applicant ("the first condition").
>
> (b) For a period of 12 months from the date of issue of his first practicing certificate after reinstatement herein (provided the applicant engages in active legal practice during this period), the applicant shall not be a sole proprietor, a partner (including managing partner or salaried partner), or a director (including managing director, senior executive director, executive director, senior associate director or associate director) ("the second condition").
>
> (c) For a period of 12 months from the date of issue of his first practicing certificate after reinstatement herein (provided the applicant engages in active legal practice during this period), the applicant shall not hold or receive any client or trust account monies, or operate any client or trust account of any law practice ("the third condition").

Version No 2: 27 Oct 2020 (22:41 hrs)

(d) For a period of 12 months from the date of issue of his first practicing certificate after reinstatement herein (provided the applicant engages in active legal practice during this period), the applicant shall not be a signatory to any client or trust account of any law practice ("the fourth condition").

4 The court, however, must nevertheless scrutinise whether the applicant should be reinstated, and whether the Conditions are indeed appropriate.

Our decision

Whether the applicant ought to be reinstated

5 It is settled jurisprudence that there are three crucial factors that must be considered in a reinstatement application (see *Nathan Edmund v Law Society of Singapore* [2013] 1 SLR 729 ("*Nathan Edmund*") at [10]):

(a) The adequacy of the period of time lapsed between disbarment and the reinstatement application;

(b) Whether the applicant has been fully and completely rehabilitated; and most importantly,

(c) The protection of the public interest and reputation of the legal profession.

Adequacy of time

6 The applicant has been kept off the Roll for a sufficiently long period of time. It has been nine years since his disbarment (May 2010), and 11 years since his voluntary cessation from active legal practice (April 2008).

Version No 2: 27 Oct 2020 (22:41 hrs)

7 As we previously stated at [52] of the Striking Off Judgment, the time period during which a lawyer had voluntarily ceased practice before he was struck off the roll may be taken into account in appropriate circumstances. What is key is whether one's cessation was truly voluntary and was undertaken in recognition of or in atonement for his transgressions (see *Knight Glenn Jeyasingam v Law Society of Singapore* [2007] 3 SLR(R) 704 at [16]–[17]).

8 This was the case at present. The applicant had voluntarily suspended himself from legal practice in early April 2008, before he pleaded guilty in the District Court of the Hong Kong Special Administrative Region ("HK District Court") on 21 April 2008 and before disciplinary proceedings in Singapore were instituted against him – in fact, he had written to inform the Law Society of his conviction in Hong Kong.

9 We emphasise also that the applicant's case is an exceptional one. As we observed in the Striking-Off Judgment, the element of dishonesty manifested by the applicant was a one-off case at a time when he was under psychological stress. At the time of his offence committed in Hong Kong, the applicant was suffering from Major Depressive Disorder. Psychiatric evidence demonstrated that he was, at that time, under a tremendous amount of pressure from work, his family, and the expectations of a career. The HK District Court and the Hong Kong Solicitors Disciplinary Tribunal ("HK Tribunal") placed significant weight on this in their respective decisions.

10 It was in these circumstances that we opined at [52] of the Striking-Off Judgment that the normal waiting period before a solicitor who is struck off for dishonest conduct may apply for reinstatement, *ie* "a period significantly longer than five years", may not be appropriate in the applicant's case. We are satisfied

Version No 2: 27 Oct 2020 (22:41 hrs)

that the waiting period of 11 years (taking into account the applicant's voluntary cessation of legal practice) is a sufficient length of time.

Rehabilitation of the applicant

11 We turn to the factor of the rehabilitation of the applicant. In assessing the extent of rehabilitation, the applicant must demonstrate through his conduct and actions during the interim period that he has been fully rehabilitated and is fit to be restored to the Roll (see *Kalpanath Singh s/o Ram Raj Singh v Law Society of Singapore* [2009] 4 SLR(R) 1018 at [19]). In this regard, both the objective evidence of what he has been involved in during the relevant period, as well as references (particularly from members of the legal fraternity) are key.

12 Dr Ko Soo Meng ("Dr Ko"), who has been the applicant's psychiatrist since 2 May 2008, certified on 20 October 2010 that the applicant's depressive condition had been in remission for more than two years, and that his risk of relapse was small. Dr Ko confirmed on 12 June 2019, pursuant to a mental state examination conducted on the applicant, that the applicant is not in any depressive condition and is both mentally and psychologically fit to return to professional legal practice. We see no reason to disagree with Dr Ko's assessment of the applicant's state of mind.

13 The applicant has also kept himself in gainful employment while demonstrating a willingness to continuously engage with the law. In the last decade, he has taken on various roles, as an author, a paralegal, an in-house counsel, and a consultant and trainer. He has, in doing so, earned the praise of legal practitioners for being able to produce high-quality work under stressful conditions. Critically, they affirm the applicant's emotional balance and

Version No 2: 27 Oct 2020 (22:41 hrs)

stability. We are satisfied that the applicant has demonstrated his full rehabilitation.

Protection of the public interest and reputation of the legal profession

14 The reinstatement of a person who has been previously struck off the roll for grossly improper conduct must necessarily be subjected to stricter scrutiny than that of a new entrant to the profession who has no adverse record (see *Narindar Singh Kang v Law Society of Singapore* [2007] 4 SLR(R) 641 at [19]). It concerns the protection of the public interest and public confidence in the general reputation of the legal profession.

15 There is, however, also a collective interest in the rehabilitation and redemption of the individual applicant. A second chance ought to be offered to those who are genuine in their contrition (see *Nathan Edmund* at [25]).

16 As stated earlier, the applicant's act of dishonesty in his offence of burglary stemmed from an exceptional situation of psychiatric disorder. Given that he has been fully rehabilitated, he is unlikely to suffer from a relapse or any similar ailment due to stress or pressure. He has also demonstrated genuine contrition, both in his voluntary cessation from practice and his continuous involvement with the legal profession.

17 Nevertheless, the importance of maintaining public confidence in the legal profession requires that certain precautions be taken in order to prevent any potential lapses of judgment by the applicant.

18 The imposition of conditions, in this regard, sends a clear signal that the reinstatement of a disbarred advocate and solicitor is a serious matter, and that practical measures will be put in place to protect the interests of potential clients

Version No 2: 27 Oct 2020 (22:41 hrs)

(see *Narindar Singh Kang v Law Society of Singapore* [2013] 4 SLR 1157 at [26]). This is a suitable case for such conditions to be imposed.

Conditions that ought to be imposed

19 Under s 102(1)(*b*) of the LPA, the court may order that a solicitor's name be replaced on the Roll "subject to such conditions as the court thinks fit". Such conditions must be useful and tailored to the applicant's specific circumstances.

The first condition

20 The utility of the first condition is clear – it ensures the applicant's continued mental and emotional stability for the practice of law. There is little controversy over this condition given the applicant's history of Major Depressive Disorder.

The second condition

21 The underlying basis for the second condition, which prevents the applicant from assuming a position as a partner, director or sole proprietor for 12 months, is to guard against any potential relapse of the applicant's Major Depressive Disorder.

22 The period of 12 months would allow him to reacquaint himself with legal practice and provide an opportunity for him to adjust to the pressures of being an advocate and solicitor, especially considering that stress arising from his work had contributed to his previous psychiatric condition.

23 A practitioner in the position of partner, director, or sole-proprietor would also appear to the public to be in a position of heightened responsibility.

Version No 2: 27 Oct 2020 (22:41 hrs)

A period of 12 months before the applicant may take on such positions would "remove any lingering doubts which the public might entertain as to the honesty or integrity of the applicant" (see *Nirmal Singh s/o Fauja Singh v Law Society of Singapore* [2011] 1 SLR 645 at [25]).

The third and fourth conditions

24 The third and fourth conditions both deal with the operation of trust account and client monies, and should hence be viewed together. They complement the second condition by addressing any concerns that the public may have regarding any possibility of the applicant committing a subsequent offence of dishonesty with trust or client monies.

25 As the HK District Court and the HK Tribunal emphasised, the offence of burglary is a serious one that would typically attract an immediate custodial sentence. While the applicant possessed mitigating factors that allowed him to avoid such a sentence in Hong Kong, the seriousness of the offence nevertheless persists. The third and fourth conditions serve as a recognition of the severity of the applicant's wrongdoing.

26 For the reasons given above, we allow the application, subject to the imposition of the Conditions. We make no order as to costs.

Andrew Phang Boon Leong Judge of Appeal	Chao Hick Tin Senior Judge	Belinda Ang Saw Ean Judge

Version No 2: 27 Oct 2020 (22:41 hrs)

Kam Su Cheun Aurill and Lee Pei Pei (Legal Clinic LLC) for the applicant;
Sanjiv Kumar Rajan, Christine Tee and Simaa Ravichandran (Allen & Gledhill LLP) for the first respondent;
Jeyendran Jeyapal and Faith Boey (Attorney-General's Chambers) for the second respondent.

Version No 2: 27 Oct 2020 (22:41 hrs)