Singapore Medical Council v Shorvon Simon
[2005] SGHC 93

Case Number : BOC 298/2004, SIC 1017/2005, 1058/2005

Decision Date : 09 May 2005

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Melanie Ho and Chang Man Phing (Harry Elias Partnership) for the applicant; Myint Soe and Daniel Atticus Xu (MyintSoe and Selvaraj) for the respondent

Parties : Singapore Medical Council — Shorvon Simon

Civil Procedure – Costs – Taxation – Proceedings by Disciplinary Committee of Singapore Medical Council against research scientist – Research scientist ordered to pay costs and expenses of and incidental to disciplinary proceedings – Whether quantum of costs awarded by assistant registrar correct – Whether costs should be awarded on per-trial day basis

Professions – Medical profession and practice – Professional conduct – Proceedings by Disciplinary Committee of Singapore Medical Council against research scientist – Research scientist ordered to pay costs and expenses of and incidental to disciplinary proceedings – Whether costs should be awarded for work relating to advice at complaint stage – Whether costs of disciplinary proceedings to be taxed as if proceedings were trials

9 May 2005

Tay Yong Kwang J:

The taxation of costs

1 At the conclusion of an inquiry by the Disciplinary Committee of the Singapore Medical Council ("SMC") against Prof Simon Shorvon ("the Professor") under the provisions of the Medical Registration Act (Cap 174, 1998 Rev Ed) ("the Act") in February 2004, the costs of the SMC were ordered to be taxed pursuant to ss 45(4) and 45(5) of the Act. These provisions state:

> (4) A Disciplinary Committee may under subsection (2) order the registered medical practitioner concerned to pay to the Medical Council such sums as it thinks fit in respect of costs and expenses of and incidental to any proceedings before the Disciplinary Committee and, where, applicable, an Interim Orders Committee.
>
> (5) The High Court shall have jurisdiction to tax such costs referred to in subsection (4) and any such order for costs made shall be enforceable as if it were ordered in connection with a civil action in the High Court.

The Disciplinary Committee ordered the Professor to pay the costs and expenses of and incidental to the proceedings, including the costs and expenses of the counsel for the SMC and the Legal Assessor.

2 On 15 February 2005, the SMC's bill of costs was taxed by an assistant registrar ("the AR"). Both parties were dissatisfied with the AR's decision and hence made the cross-applications before me seeking a review of her decision. The Professor sought a downward revision of the amount of $250,000 allowed under section 1 of the bill of costs and the amount of $50,100 allowed in respect of the Legal Assessor (Mr Chelva Rajah SC) under section 3 of the said bill while the SMC confined its application to a review of the said amount of $250,000.

3 On 30 March 2005, I heard and dismissed both cross-applications and ordered each party to bear its own costs for the review before me. At the conclusion of the hearing that day, Dr Myint Soe, counsel for the Professor, made an oral application for leave to appeal to the Court of Appeal as s 34 (2)(b) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) provides that no appeal shall be brought to the Court of Appeal where the only issue in the appeal relates to costs, except with the leave of the Court of Appeal or a judge. I informed Dr Myint Soe to make a formal application stating the grounds why such leave should be granted in this case.

The application for leave to appeal to the Court of Appeal

4 Counsel for the Professor subsequently filed an application for leave to appeal in respect of the amount of $250,000 only. However, the application was not placed before me. Instead, it was placed in the list of applications to be heard by a judge in chambers on a summons day. Order 56 r 3(1) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) provides:

> A party applying for leave under section 34 of the Supreme Court of Judicature Act to appeal against an order made, or a judgment given, by a Judge must file his application —
>
> (*a*) to the Judge within 7 days of the order or judgment; and
>
> (*b*) in the event leave is refused by the Judge, to the Court of Appeal within 7 days of the refusal.

The parties should therefore have requested that the application for leave to appeal be heard by me.

5 The Professor's application came on for hearing before Judith Prakash J on 18 April 2005 and leave to appeal was granted by the judge after hearing arguments on the merits by the parties. The procedural issue mentioned by me above did not appear to have been argued by the parties.

6 The appeal by the Professor is confined to the said amount of $250,000 only.

The facts

7 The Professor faced 30 charges of professional misconduct in the inquiry. They arose from the conduct of a research project known as "A Study of Haplotype Structure and SNPs Frequencies in Candidate Genes associated with Neurological Diseases and Drug Response: Biomedical Research Council ("BMRC") for Neurological and Population Genetics" ("the project"). The project was funded with a grant of $10m over a five-year period. The Professor was the principal investigator of the project and it was his involvement in the conduct of the Parkinson's disease portion of the project, where research was conducted on patients with that disease, that was relevant to the inquiry.

8 The 30 charges were categorised into four main types. The 13 "best interest charges" involved 13 patients with their particular circumstances and alleged that the Professor had failed on various dates between September and December 2002 to safeguard the best interests and health of the patients and that he exposed them to unnecessary risks. The patients' medication was omitted and/or modified for the purpose of "on-off" L-Dopa (or Levodopa, a drug used to treat patients with Parkinson's disease) testing without a competent assessment made by the patients' respective managing physicians or other clinically competent medical persons as to the patients' suitability for the test and without having instituted proper safeguards.

9 The second set of charges alleged that the Professor failed to obtain the patients' informed

consent prior to carrying out the "on-off" L-Dopa testing. These fell within the category of the "informed consent charges". The same 13 patients were involved.

10 The third set of charges alleged that the Professor failed to obtain ethics approval for the said testing that was carried out as part of the project. These two "ethics approval charges" concerned the Professor's failure to obtain the requisite approval from the Tan Tock Seng Hospital Ethics Committee and the Singapore General Hospital Ethics Committee.

11 The final set of two "confidentiality charges" alleged that the Professor breached the patients' rights to medical confidentiality by obtaining their medical data and records from the Tan Tock Seng Hospital and the Singapore General Hospital pharmacies without their consent and using such information for the project which was unconnected with the patients' treatment.

12 From the outset of the inquiry, the Professor, through the UK Medical Protection Society, took the position that the SMC had no jurisdiction over him. He argued that he had resigned from the register of medical practitioners in Singapore and should no longer be on the said register when the complaint was made. The position of the SMC was that the misconduct took place while the Professor was still on the register. He did not attend the inquiry and was not represented during the proceedings. However, he requested that his earlier position on jurisdiction be made known to the Disciplinary Committee. Counsel for the SMC obliged and the submissions on the preliminary issue of jurisdiction took one and a half days, with the SMC having to present arguments from both sides on this issue. This was followed by the inquiry into the merits of the charges.

13 The Disciplinary Committee usually sat from about 2.00pm until the evening, sometimes up to 9.00pm. After a nine-day hearing, the Disciplinary Committee adjourned for three days to consider its decision. It then gave its decision, contained in a 22-page document, over an hour or so on the tenth day of the inquiry. For the first two sets of charges involving the 13 patients, the Disciplinary Committee ordered that the Professor be censured, that he give an undertaking and be fined $5,000 on each charge. It also ordered that his name be removed from the register of medical practitioners. For the remaining four charges, it ordered that the Professor be censured, that he give an undertaking and be fined $5,000 on each charge.

14 As a consequence of a subsequent ruling in respect of another medical practitioner by the court of three judges under the Act (*Chia Yang Pong v Singapore Medical Council* [2004] 3 SLR 151), the SMC then applied to court for the total fine imposed on the Professor to be reduced to $10,000.

15 At the taxation before the AR, the SMC claimed $450,000 as costs for work done for and during the inquiry but not including the taxation. The AR reduced this amount to $250,000. Counsel for the SMC urged me to allow the amount as claimed while counsel for the Professor submitted that no more than $108,000 should be allowed.

The decision of the court

16 In assessing the amount of costs to be awarded, the court has to consider all the circumstances of the case, including the factors spelt out in Appendix 1 of O 59 of the Rules of Court. These factors are:

(a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(b) the skill, specialised knowledge and responsibility required of, and the time and labour

expended by, the solicitor;

(c) the number and importance of the documents (however brief) prepared or perused;

(d) the place and circumstances in which the business involved is transacted;

(e) the urgency and importance of the cause or matter to the client; and

(f) where money or property is involved, its amount or value.

17 A judge hearing an application for review of taxation of costs under O 59 rr 34 and 35 hears the matter *de novo* and is not fettered by the discretion exercised by the Registrar. The judge may substitute his discretion for that of the Registrar although, in making his decision, he should give due weight to the Registrar's decision on the quantum that was allowed (*Tan Boon Hai v Lee Ah Fong* [2002] 1 SLR 10 at [31]). This decision of the Court of Appeal on what was then O 59 r 36 is not affected by the amendments made to the review of taxation procedure on 15 April 2002.

18 This case was the first one involving disciplinary proceedings against a research scientist as opposed to clinicians. The jurisdictional issue and the ethical issues appeared novel and were no less easy to resolve simply because of the absence of the Professor in the proceedings. The Disciplinary Committee had to be persuaded and thorough work had to be done, failing which the proceedings could be subject to judicial review. Counsel for the SMC obviously needed to study and understand the project in question and the medical terminology and tests involved. A large amount of time was spent with the various physicians in order to understand Parkinson's disease and the traits peculiar to each of the patients as the severity of the illness and the risks differed from patient to patient.

19 A significant amount of time was spent liaising with the patients in order to visit them at appropriate times to take their statements when their family members could be present. An interpreter was required in many of the cases, thereby entailing more co-ordinating work. Many of the patients had to be visited after office hours at their homes over an intense two-week period. The patients would not exactly be in a very responsive mood after having been interviewed in earlier separate inquiries into the same matters by the National Neuroscience Institute ("NNI") and the Ministry of Health. The solicitors taking the patients' statements had to do things fast, efficiently and accurately and complete everything at one sitting. They had to bring their electronic equipment along on the home visits, type in the patients' statements, check them against previous statements for inconsistencies, print them and get them signed at the same interview session so as to minimise the inconvenience caused to the patients and their families.

20 Voluminous documents had to be studied. These went back to August 2001, when the BMRC grant was sought, until the suspension of the project in January 2003. The NNI's primary documents, including the patients' case notes, had to be perused before coming to the decision on the charges to prefer against the Professor and the witnesses to be called to prove the case against him. The NNI and the Ministry of Health's inquiry reports also had to be studied.

21 Although the Professor did not attend the proceedings, was unrepresented by counsel and did not call any witnesses in his defence, he requested that his previous statements made at the earlier inquiries be taken into account, in much the same way that he contested the jurisdictional point. He had maintained that the manner in which the studies or tests were carried out in the project was acceptable in the United Kingdom and in Europe. The SMC therefore had to call evidence from various doctors to meet this defence. Research had to be done in respect of the World Medical Association Declaration of Helsinki (Ethical Principles for Medical Research involving Human Subjects)

and the guidelines issued by the United Kingdom's General Medical Council to demonstrate that the standards set here were based on international norms.

22 The alleged professional misconduct involved patients whose lives were placed at risk. Upon the discovery of the breaches, there was a public outcry among the test subjects. There was therefore a need to take immediate and urgent action. The NNI inquiry panel was appointed in January 2003 to investigate the breaches. It released its report in March 2003. The complaint to the SMC was filed on 11 April 2003 and the Professor was notified about the complaint and asked to submit his explanation. About three months were spent in correspondence with the United Kingdom Medical Protection Society thereafter.

23 A total of 36 witnesses were called at the proceedings before the Disciplinary Committee. Twenty-four of these witnesses had their statements prepared ahead of the proceedings and that expedited the hearing process considerably, bearing in mind the age and the condition of the patients in question. If the Professor had elected to be present or represented at the proceedings, some of the documentation and evidence could have been obviated through an agreed statement of facts and the SMC would not have had to prove every factual matter, such as taking the precaution of calling the Secretary of the SMC to testify that the Professor's name was still on the register.

24 Counsel for the Professor objected in principle to the inclusion of the work spelt out in items 1 to 18 of the bill of costs on the ground that such work related to advice at the Complaints Committee stage, which was different from and before the formation of the Disciplinary Committee, and was not therefore costs of or incidental to the proceedings within the meaning of s 45(4) of the Act. It was argued that there would have been no Disciplinary Committee appointed had the Complaints Committee dismissed the complaint. Further, it was submitted that the decision of the Complaints Committee could be appealed against and that the complainant did appeal successfully to the Minister for Health against the dismissal of two of the charges. Generally, lawyers are not allowed to participate in the proceedings at the complaints stage. Therefore the said items 1 to 18 of the bill of costs concerned work done for the SMC rather than in respect of the disciplinary proceedings.

25 I was unable to agree with these arguments. The complaints stage was essentially a prelude to the disciplinary proceedings stage and counsel for the SMC had to advise their client on the contested issue of jurisdiction. Work done at the earlier stage was therefore incidental to the disciplinary proceedings. Even if I am wrong on this point, the costs claimed under these items would not affect the total amount significantly.

26 Counsel for the Professor argued that the drafting of charges took no more than one day as indicated by the dates in items 19 and 20 of the bill of costs. In any event, he argued, the drafting process had been made very simple by the NNI report which ran into some 300 pages and which was very comprehensive, with input from Senior Counsel like Mr K Shanmugam (who assisted the NNI inquiry panel as legal counsel) and Mr Wong Meng Meng (who appeared as counsel for the Professor there).

27 I agreed with counsel for the SMC that, while they did study the NNI report, they had to review the evidence and verify the facts too. It was not a case of merely lifting statements or portions of the NNI report and incorporating them into their charges. The drafting of the charges was followed by further refinement as indicated in items 22 and 25 of the bill of costs. The fact that the Disciplinary Committee endorsed the findings of the NNI report did not mean that all that was done was to present that report during the disciplinary proceedings.

28 Counsel for the Professor also took issue with the billing for 1,020 hours of work and with the

naming of the four solicitors involved in the work. It was argued that the SMC could have asked the Disciplinary Committee to certify that the case justified costs for two counsel (under s 45(6) of the Act) but did not do so and was now trying to claim costs for more than one counsel without the certification. Counsel for the SMC explained that the names were inserted for completeness only and denied the allegation made against them. I accepted the explanation. The number of lawyer-hours involved is only one aspect of the total picture anyway.

29 There were also submissions on whether costs of such disciplinary proceedings ought to be taxed as if the proceedings were High Court trials or District Court trials and whether they were akin to criminal proceedings thereby justifying costs of investigative work. Reference was made to s 45(5) of the Act under which the High Court has the jurisdiction to tax costs of disciplinary proceedings and any order for costs made by the Disciplinary Committee shall be enforceable as if it were ordered in connection with a civil action in the High Court. The better view is that disciplinary proceedings are really a hybrid category of cases with no strict rules of evidence or procedure but which incorporate aspects of criminal and civil procedure applicable in the courts, and the Disciplinary Committee under the Act is neither the equivalent of a District Court nor the High Court. It is unique in that an appeal therefrom lies to a High Court of three judges as the final decision-making body. It is therefore not really possible, nor is it fruitful, to try to draw an analogy with the court system. I also do not think it matters very much that "the Disciplinary Committee now sits in the Board Room of the Singapore Medical Council, where the atmosphere is relaxed and friendly with everyone sitting down unlike legal proceedings in a court of law" as submitted by counsel for the Professor.[1] Indeed, some may argue that it is more demanding to appear before a fact-finding tribunal of three professionals and one observer, which the Disciplinary Committee here is, and face the possibility of being questioned by more than one panel member and having to persuade not one but three "judges". The fact that the panel members are senior doctors "who can pick up the complexities and technicalities with relative ease"[2] did not mean that counsel for the SMC could get by with less preparation for the hearing.

30 Counsel for the Professor relied on various previous bills of costs taxed in High Court trials, in particular, Bill of Costs No 600176/2001 in the medical negligence suit of *Tan Hun Hoe v Harte Denis Matthew* [2001] 4 SLR 317. That case involved a hotly contested trial lasting 31 days and resulted in a judgment of 191 pages by the trial judge. The amount of $600,000 was allowed under s 1 in the plaintiff's bill of costs but there was a certificate for two counsel granted by the trial judge. The yardstick was therefore $19,360 per trial day for two counsel. Using a two-thirds guideline for one counsel, the yardstick would be about $13,000 to $14,000 per trial day. In *Tan Boon Hai v Lee Ah Fong* ([17] *supra*) the amount of $70,000 was allowed for a trial which ran for nine days and which was then discontinued, providing a yardstick of some $8,000 per trial day. However, this was for only one set of costs out of a total of three as the other sets of defendants had not taxed their bills of costs yet. The judge who heard the review of taxation, with whose decision the Court of Appeal disagreed, had increased the amount to $100,000, using a guideline of $10,000 a day as the starting point. The Court of Appeal did not expressly disagree with this guideline. This guideline, it was submitted, was reinforced in the article by Adrian Yeo, "Access to Justice: A Case for Contingency Fees in Singapore" (2004) 16 SAcLJ 76 at 143, n 247 where the author said:

> However, some litigation lawyers I interviewed estimated that for the usual case in the High Court, party-and-party costs awarded are about $10,000 for each day of trial.

Based on these guidelines, Counsel for the Professor submitted that the amount of costs to be awarded here ought to be computed at 9 days x $12,000, giving a total of $108,000. He submitted that the amount of $250,000 awarded by the AR should be reduced accordingly as it represented an astronomically high yardstick of almost $28,000 per day. Indeed, this argument about an unreasonably high yardstick appeared to be the mainstay of the submissions before me and in the application for

leave to appeal to the Court of Appeal.

31 Contrary to the submissions, I was not attempting to re-write any yardsticks for taxation of costs in disciplinary proceedings in the medical profession nor was I awarding costs on a per-trial day basis. I considered all the relevant circumstances of the case, which I have set out above, and the length of the hearing was but one of the many factors taken into account. I also took into account the fact that the adducing of evidence at the hearing was done without the stress of cross-examination and re-examination. In some instances, coming up with the recipe and then shopping frantically for the correct ingredients are much more onerous and demanding than the actual cooking process and the proceedings here were one such case.

32 Awarding costs on a per-trial day basis is but a very rough guide and, if adhered to rigidly without due regard for all other relevant factors, may work unfairly against a receiving party. Take for instance the present proceedings. Assuming the Professor had decided to admit all the charges preferred against him on the eve of the proceedings and the hearing was thereby shortened to only one day. Going by the rate suggested by counsel for the Professor, the SMC should receive only about $12,000 in costs. Such an outcome would obviously be unjust. Even if that amount was topped up by another two days' worth of work (still going strictly by the per-trial day basis), I doubt very much if the increased amount of $36,000 would have done justice to the amount of time and effort expended by counsel for the SMC.

33 There was also a suggestion that costs awarded against doctors in disciplinary proceedings were "additional punishment" and many of them might not be able to pay the high costs claimed by distinguished firms of solicitors because of the lack of insurance. This would have the undesirable consequence of the doctors being made bankrupt, thus ruining their career and their life. It was also suggested that solicitors assisting in disciplinary proceedings should bear in mind the element of public duty and should not expect high costs, much like those assigned to defend accused persons in cases involving capital punishment.

34 Costs normally follow the event and they are compensatory in nature. They are no more punitive than costs ordered against the losing party in civil proceedings in court. I see no reason why disciplinary proceedings against errant medical practitioners should be treated any differently from other contentious proceedings or be likened to capital cases. Should a doctor acquitted in disciplinary proceedings expect to receive lower costs as well? In my view, all costs incurred reasonably in principle and in reasonable amounts should be allowed.

35 Taking into consideration all the circumstances of this case, I felt the amount of $250,000 awarded by the AR was fair and reasonable and therefore dismissed both applications for review of her decision, with each party to bear its own costs.

Applications dismissed.

---

[1]See para 4 of the written submissions by counsel for the Professor.

[2]See para 5 of the same written submissions.