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

[2024] SGHC 214

Originating Application No 4 of 2024

Between

Attorney-General

… *Applicant*

And

Jill Phua

… *Respondent*

GROUNDS OF DECISION

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

Attorney-General
v
Phua Jill

[2024] SGHC 214

Court of 3 Supreme Court Judges — Originating Application No 4 of 2024
Sundaresh Menon CJ, Tay Yong Kwang JCA and Andrew Phang Boon Leong SJ
6 August 2024

20 August 2024

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

1 This was the application of the Attorney-General (the "AG") for Ms Jill Phua (the "Respondent") to be struck off the roll of advocates and solicitors of the Supreme Court of Singapore (the "Roll") pursuant to ss 16(4) and 98 of the Legal Profession Act 1966 (2020 Rev Ed) (the "LPA"). The AG further invited us to impose a minimum reinstatement interval of three years before a fresh application for admission may be brought by the Respondent. The Respondent did not contest either the striking off application or the proposed reinstatement interval. The Law Society of Singapore (the "Law Society") took the view that a minimum reinstatement interval of between two and three years would be sufficient in the circumstances.

2 On 6 August 2024, having considered the submissions of the parties, we ordered that the Respondent be struck off the Roll and imposed a minimum

reinstatement interval of two years and six months. We now explain our reasons for coming to this decision.

3 The Respondent graduated from the Singapore Management University Yong Pung How School of Law ("SMU Law") in December 2021. She completed her practice training with Withers Khattarwong LLP ("Withers") between January 2022 and July 2022. In August 2022, she commenced her "Part B" of the bar admission course with the Singapore Institute of Legal Education while concurrently working as a paralegal at Withers.

4 On 18 January 2023 the Respondent applied by way of HC/AAS 2/2023 to be admitted as an Advocate and Solicitor of the Supreme Court ("A&S") (the "Admission Application"). Her first supporting affidavit dated 20 June 2023, filed pursuant to r 25 of the Legal Profession (Admission) Rules 2011 (the "LP(A)R"), contained the standard declarations prescribed in Form A(1) of the Second Schedule to the LP(A)R, of which the material declaration (the "Declaration") made at paragraph 7(j) was in the following terms:

> 7. I —
>
> …
>
> (*j*) have no knowledge of any fact that affects my suitability to practice as an advocate and solicitor in Singapore or as legal practitioner (by whatever name called) elsewhere.

5 The Declaration was repeated in a subsequent affidavit filed three days later on 23 June 2023 which contained revisions to the Respondent's character references, as her first supporting affidavit was rejected due to insufficient character references. As the papers appeared to be in order, the AG issued a "Letter of No Objections" to the Respondent's Admission Application on 30

June 2023. The Respondent was admitted as an A&S on 12 July 2023 and placed on the Roll.

6 The Respondent's time as an A&S was, however, to be short-lived. On 31 August 2023, the AG contacted SMU Law to follow up on a lead that certain students may have omitted declaring in their admissions affidavit that they had committed plagiarism in respect of the Constitutional and Administrative Law Module ("CAAL Module").

7 This led to an investigation, that continued for about five months until 2 February 2024, and which revealed, among other things, that the Respondent had been issued an official reprimand by SMU Law on 12 May 2020 for "an offence of plagiarism, which is a serious violation of the Code of Academic Integrity", in respect of an Individual Research Paper ("IRP") submitted as part of the curriculum for the CAAL Module (the "Academic Offence"). The factual basis of the Academic Offence was that 15 paragraphs of the Respondent's IRP appeared to have been lifted with superficial paraphrasing from another candidate's essay that had been submitted some years earlier without proper attribution. Apart from the official reprimand, the Respondent also received zero marks for her IRP. The Respondent did not dispute that she was guilty of the Academic Offence but exercised her right of appeal to the Dean against the sanctions imposed, and this was rejected.

8 Having uncovered the foregoing, the AG brought this application on 14 March 2024 for the Respondent to be struck off the Roll on the basis that the Declaration contained both a substantially false statement and/or the suppression of a material fact within the meaning of s 16(4) of the LPA. The

Respondent accepted that her non-declaration of the Academic Offence contravened s 16(4), providing the following explanation:

> At the material time, I had followed past templates to complete the forms. I knew that I had received an internal warning from SMU, but as a coping mechanism, I had put it at the back of my mind. I was afraid and embarrassed of my past record. I know now that I should have been forthcoming and honest in my affidavit. I am very sorry.

9 We note that there was no attempt by the Respondent to exonerate, excuse or exculpate her actions. Her only explanation for what she had done was to admit that she had been overwhelmed by the fear of having her past conduct exposed and likely, ventilated.

10 The principles governing s 16(4) of the LPA, which were undisputed as between the parties, were articulated by this Court in our recent decision in *Attorney-General v Shahira Banu d/o Khaja Moinudeen* [2024] 4 SLR 1324 ("*Shahira Banu*") and can be summarised as follows:

(a) The present application engages two limbs under section 16(4) of the LPA – the making of a "substantially false statement" and the "suppression of any material fact", each of which is an independent and sufficient trigger for striking off: *Shahira Banu* at [22].

(b) On the first limb, the *nature* of the falseness of the statement must be substantial and not merely typographical in nature. It must also cross the *de minimis* threshold of materiality. Once it has been shown to the satisfaction of the Court that an application, affidavit, certificate or other document filed by an applicant contains a substantially false statement, it is unnecessary to enquire further as to the subjective intention of that applicant: *Shahira Banu* at [23] and [25].

(c) On the second limb, the inquiry as to whether a material fact had been suppressed involves (i) an objective inquiry as to whether there was suppression of evidence and (ii) a subjective inquiry into the intention of the suppressor: *Shahira Banu* at [26]

11 It was clear to us in the present case that the Declaration was a substantially false statement within the meaning of s 16(4) of the LPA. The Academic Offence, being an offence of plagiarism, was in its nature substantial in the sense that it crosses the *de minimis* threshold of materiality and ought to have been disclosed to enable the court to accurately assess the suitability of the Respondent to be admitted as an A&S: see *Shahira Banu* at [23] and [25]. By her own concession the Respondent subjectively contemplated the Academic Offence at the time she made the Declaration, and further accepted the AG's assertion that she must have known that the Academic Offence was a material fact which could affect her suitability to be admitted as an A&S. Against these undisputed facts the Declaration made by the Respondent was clearly a substantially false statement. Moreover, we were satisfied that this also supported the finding that the non-disclosure of the Academic Offence amounted to a suppression of a material fact.

12 Section 16(4) of the LPA prescribes that the making of a substantially false statement and/or the suppression of a material fact in an application for admission *necessitates* that the errant A&S be struck off the Roll, and we so ordered.

13 We turn to the calibration of the appropriate reinstatement interval for the Respondent. In this regard, the parties were largely aligned on the legal principles applicable to determine the appropriate reinstatement interval. It was

accepted between the parties, and rightly so, that the Respondent's non-disclosure of the Academic Offence was a serious breach of the duty of candour owed to the Court in the context of the admissions process: *Shahira Banu* at [50]. We also agreed with the submissions of the stakeholders that the Respondent's initial misconduct was unlikely to have been fatal to her Admission Application, noting similar cases such as *Re Ong Pei Qi Stasia* [2024] 4 SLR 392 ("*Ong Pei Qi Stasia*") and *Re Tay Jie Qi and another matter* [2023] 4 SLR 1258.

14 We briefly address the Respondent's case, for which there is much to be said in her favour, at least in relation to the manner in which she conducted herself once this application was served on her. She was forthcoming in admitting to her wrongdoing, and she consciously (and in our view, correctly) chose not to rely on the array of tumultuous personal hardships she was battling at the material time. While we might have had some sympathy at a personal level, as we have noted on several occasions, personal hardship and pressure are scant justification for *ethical misconduct* given the inherently demanding and dynamic nature of the practice of law: *Re Gabriel Silas Tang Rafferty* [2024] 4 SLR 401 at [43]; *Re Wong Wai Loong Sean and other matters* [2023] 4 SLR 541 at [22]. Even under stress, lawyers are expected to make *honest* choices and decisions. But we were left with a favourable impression that the Respondent seemed to recognise this because in her affidavit and submissions, she did not at any point seek to rely on these personally very stressful circumstances to suggest that her misconduct should be viewed as having been mitigated as a result.

15 In all the circumstances, we considered that by the time of the hearing of this application the Respondent had demonstrated some degree of ethical

insight into her wrongdoing. However, this is not to be seen in a vacuum. The AG had proposed a minimum reinstatement interval of three years, and in our judgment, this was a reasonable position to take. The character defect inherent in the Respondent's non-disclosure of the Academic Offence should not be understated. The non-disclosure at the time of her Admission Application, was, as we have already noted, a conscious decision by the Respondent, even if it may have been motivated by fear. Further, but for the AG's following up on the lead that his Chambers received, it seems clear that the Respondent would not have come clean and would have gotten away with the making of a substantially false statement and the suppression of a material fact, in flagrant violation of the duty of candour owed to the court. This, therefore, was a serious breach of the Respondent's duty of candour to the court. We also take into account that the evidence of the wrongdoing (both the Academic Offence and the subsequent non-disclosure) was overwhelming, and that the Respondent's ethical insight only came to the fore *after* the commencement of this application. In the circumstances, it was therefore clear to us that significant character issues remained to be resolved by the Respondent before a fresh application should be brought. The Respondent in the present case was clearly not in the same situation as Ms Stasia Ong, whose application for admission was allowed at the time it was heard by the court without any further deferment being considered necessary because of the persistent and extensive steps she took to ensure that the court was fully apprised of the circumstances of her past misconduct: see *Ong Pei Qi Stasia* at [17]–[21].

16 Having said all that, we considered that a reduction from the period of three years was appropriate on account of the voluntary steps taken by the Respondent upon being served with this application on 18 March 2024. This included informing her supervising solicitor at Withers and withdrawing her

application for a practising certificate on the very next day, and thereafter proceeding on no-pay leave from 1 April 2024. In doing this, we consider that the Respondent had voluntarily dissociated herself from the rights and privileges of the office of an A&S from the moment this application was commenced, even though she could have continued practicing until the hearing of this application some four months later. We have observed, albeit in the context of disciplinary proceedings, that an A&S' voluntary cessation of practice upon the commencement of proceedings can be a weighty mitigating factor that is indicative of remorse and guilt: *Law Society of Singapore v Tan See Leh Jonathan* [2020] 5 SLR 418 at [12]. While the considerations in disciplinary proceedings are somewhat different, the voluntary surrender of one's right to practice may remain relevant in demonstrating one's ethical insight and one's progress towards rehabilitation.

17 In the present case, the Respondent's decision to do so took on greater significance because it was evident to us that from the time this application was commenced, she had prioritised her duty to the court and to the profession over her own financial predicament and the burden this would add to the personal hardships which she continues to face. As we indicated during the hearing, this in our view was a reflection of the progress that she had already made towards her rehabilitation, and we thought it appropriate to recognise this and to encourage her to continue on this journey towards her eventual restoration to the Bar. We put this to Ms Sarah Shi, who appeared for the AG, and she very properly and readily accepted that this would be a relevant consideration.

18 For this reason, we considered that a minimum reinstatement interval of two years and six months, being a six-month reduction from the period initially sought by the AG, was appropriate in the circumstances. We also imposed the

usual conditions, these being that the minimum reinstatement interval is subject to satisfactory evidence of rehabilitative efforts, evidence of satisfactory appreciation of the Respondent's ethical duties and compliance with any reasonable requirements that may be in place either under statute or as may be imposed by the court or by the stakeholders at the time she makes a fresh application.

19 We fixed costs of the application, in favour of the AG in the aggregate sum of $3,500 inclusive of disbursements.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Andrew Phang Boon Leong
Senior Judge

Shi Pei-yi Sarah (Xu Peiyi), Tay Jia Yi, Pesdy and Lim Toh Han (Attorney-General's Chambers) for the applicant;
Nathan Shashidran and Pereira Jeremy Mark (Withers KhattarWong LLP) for the respondent;
Rajan Sanjiv Kumar and Prabu Devaraj s/o Raman (Allen & Gledhill LLP) for the Law Society of Singapore.